

# LEWIS AND CLARK CITY-COUNTY JOINT GOVERNING BODY

## Meeting Agenda

Date April 22, 2025

Time 2:30-3:30 P.M.

Location 1930 9<sup>th</sup> Avenue, Helena, MT- Public Health Conference Room

2:30 p.m.	Approval of Agenda	Page 1
2:35 p.m.	Approval of the June 27, 2024 minutes	Page 2
2:40 p.m.	Nomination & vote on Chair & Vice Chair	Page 5
2:45 p.m.	Review & vote on the recommendation to approve the Onsite Wastewater Regulations	Page 6
3:20 p.m.	Public comment on items within the Governing Bodies purview but not on the agenda.	Page 49
3:30 p.m.	Adjourn	

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**LEWIS & CLARK CITY/COUNTY BOARD OF HEALTH GOVERNING BODY**  
**Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

<b>April 22, 2025</b>
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**Agenda Item No.**

<b>1</b>
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☐ Minutes    ☒ Board Member Discussion    ☐ Action

**AGENDA ITEMS:** Review of Agenda

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** Time is allowed for board members to review the agenda and to add any new agenda items.

☐ ADDITIONAL INFORMATION ATTACHED

**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
Bedell						
Brown						
Reed						
Harris						
Kaufman						
MacLaurin						
Ohs-Mosely						
Rolfe						
Weltz						

**LEWIS & CLARK CITY/COUNTY BOARD OF HEALTH GOVERNING BODY**  
**Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**April 22, 2025**

**Agenda Item No.**

**2**

☐ Minutes    ☒ Board Member Discussion    ☒ Action

**AGENDA ITEMS:** Review of Minutes- June 27, 2024

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** Upon approval, the minutes represent official actions of the Governing Body. Every effort is made to have these recommended minutes accurately portray the proceedings and procedures of the board.

☒ **ADDITIONAL INFORMATION ATTACHED**

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
Bedell						
Brown						
Reed						
Harris						
Kaufman						
MacLaurin						
Ohs-Mosely						
Rolfe						
Weltz						

# Lewis & Clark City-County Board of Health Joint Governing Body | MINUTES

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June 27, 2024, | 3:00-4:00 p.m. | Meeting location 1930 9<sup>th</sup> Ave. Public Health Conference Rm

Meeting called by Mayor Collins

Type of meeting General

Note taker Jolene Helgersen

Guests Present:

Deputy County Attorney Nicho Hash

Health Officer Drenda Niemann

Members Present:

Mayor Kelly Harris

Commissioner Tom Rolfe

Commissioner Andy Shirtliff

Members Absent:

Commissioner Candace Payne

Mayor Wilmot Collins

## AGENDA TOPICS

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Time allotted | 5 minutes | Agenda topic Review of Agenda | Presenter Governing Body

The Joint Governing Body reviewed the agenda, no changes were made. No public comment was given.

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Time allotted | 5 minutes | Agenda topic Review of Minutes | Presenter Governing Body

The Governing Body reviewed the August 30, 2023, minutes. Mayor Kelly Harris made a motion to approve the August 30, 2023, minutes. Commissioner Andy Shirtliff seconded the motion. The motion carried 3-0. No public comment was given.

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Time allotted | 5 minutes | Agenda topic Vote Board Chair and Vice Chair | Presenter Governing Body

The Joint Governing Body nominated Mayor Wilmot Collins to serve as the Chair of the Joint Governing Body for another 1-year term. Mayor Harris made a motion to approve the nomination. Commissioner Shirtliff seconded the motion. No public comment was given. The motion carried 3-0.

The Joint Governing Body nominated Mayor Harris to serve as Vice Chair of the Joint Governing Body for a 1-year term. Commissioner Shirtliff made a motion to approve the nomination. Commissioner Tom Rolfe seconded the motion. No public comment was given. The motion carried 3-0.

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Time allotted | 15 minutes | Agenda topic Soils Displacement Regulations | Presenter Governing Body

Drenda Niemann, Health Officer, presented the Board of Health recommended Soils Displacement Regulations to the Joint Governing Body to review and approve (see Attachment "A"). After reviewing the regulations, Commissioner Rolfe asked that any future regulations that come before the board have track changes available for review. In answer to a question from Commissioner Shirtliff, Mayor Harris said that the concerns he has received from developers in the City of East Helena was about the final decision by the Environmental Protection Agency (EPA) on what the residential soil-lead cleanup level were going to be. There being no further board member discussion, Commissioner Rolfe made a motion to approve the Board of Health recommended Regulations Governing Soil Displacement and Disposal in the East Helena Superfund area in Lewis and Clark County, Montana. Commissioner Shirtliff seconded the motion. No public comment was given. The motion carried 3-0.

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Time allotted | 5 minutes | Agenda topic Public Comment | Presenter Governing Body

No public comment was given.

Meeting Adjourned at 3:25 p.m.

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Mayor Wilmot Collins, Chair

**LEWIS & CLARK CITY/COUNTY BOARD OF HEALTH GOVERNING BODY**  
**Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**April 22, 2025**

**Agenda Item No.**

**3**

☐ Minutes    ☒ Board Member Discussion    ☒ Action

**AGENDA ITEMS:** Nomination & vote of the Chair & Vice Chair

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** Nominate and vote for the Board Chair and Vice Chair

☐ ADDITIONAL INFORMATION ATTACHED

**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
Bedell						
Brown						
Reed						
Harris						
Kaufman						
MacLaurin						
Ohs-Mosely						
Rolfe						
Weltz						

**LEWIS & CLARK CITY/COUNTY BOARD OF HEALTH GOVERNING BODY**  
**Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**April 22, 2025**

**Agenda Item No.**

**4**

☐ Minutes    ☒ Board Member Discussion    ☒ Action

**AGENDA ITEMS:** Review and vote on the recommendation to approve the Onsite Wastewater Regulations

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** The Governing Body will review and vote on the 2025 proposed updates to the Onsite Wastewater Regulations.

☒ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
Bedell						
Brown						
Reed						
Harris						
Kaufman						
MacLaurin						
Ohs-Mosely						
Rolfe						
Weltz						



## **Summary of Changes**

### **2025 Rewrite of the Lewis and Clark County Onsite Wastewater Treatment Regulations**

The Lewis and Clark County Onsite Wastewater Regulations were last updated in February 2020. These regulations are to be reviewed and evaluated by the Board every 2 years. Because there were to be Administrative Rule changes at the State level, staff held off so that when the ARM was updated, then the local regulations could be updated to reflect new changes. That has not happened to date, and the Environmental Division is moving forward with review and changes.

Below is a summary of the draft changes to the regulations:

1. Correction of typos. General formatting will be addressed in the final draft. This document is very hard to format in the Track Changes format.
2. Section 2.1 (Page 2): Change to mirror ARM 17.36.913(1).
3. Section 2.8(7)(c) (Page 6): Established flexibility to allow existing component parts of a septic system with specific conditions.
4. Section 3.4 (Page 8): Changed Environmental Services Division Administrator to Administrator to reflect current structure of the Health Department.
5. Section 10 (Page 32): Removed definitions that are in Circular DEQ-4, and are no longer located in the regulations. Also corrected numbering, typos, etc.
6. Updated page numbers.

*Our mission is to improve and protect the health of all Lewis and Clark County residents.*



# **LEWIS AND CLARK COUNTY**

## **ON-SITE WASTEWATER TREATMENT REGULATIONS**

**2025**

**LEWIS AND CLARK PUBLIC HEALTH**

**ENVIRONMENTAL HEALTH DIVISION**

1930 9<sup>th</sup> Avenue, HELENA, MT 59601  
(406) 447-8351

TABLE OF CONTENTS  
FOR ONSITE WASTEWATER TREATMENT REGULATIONS

<b>SECTION 1.</b>	<b><u>AUTHORITY, SCOPE, AND REVISIONS</u></b> .....	Page 1
1.1	Title	
1.2	Authority and Fees	
1.3	Findings	
1.4	Scope	
1.5	Revision	
1.6	Violations	
<b>SECTION 2.</b>	<b><u>REVISION AND GENERAL REGULATIONS</u></b> .....	Page 2
2.1	Public Health Threats	
2.2	General Prohibitions	
2.3	Construction Prohibitions	
2.4	Occupancy Prohibitions	
2.5	Prohibited Systems	
2.6	Systems Requiring Connection to Public Wastewater	
2.7	Connection to Abandoned Systems	
2.8	Failed Systems	
2.9	Design and Operation Limits	
<b>SECTION 3.</b>	<b><u>PERMIT PROCEDURES AND REQUIREMENTS</u></b> .....	Page 6
3.1	Applications to Construct All Systems	
3.2	Permits to Construct New Systems	
3.3	Permits to Alter or Replace Existing Systems	
3.4	Denial of Permits to Construct or Alter On-Site Wastewater Treatment Systems and Variance Procedure	
<b>SECTION 4.</b>	<b><u>REQUIREMENTS FOR ALLOWABLE SYSTEMS</u></b> .....	Page 11
4.1	Septic Tank Requirements	
4.2	Holding Tank Requirements	
4.3	Site Requirements	
4.4	Treatment Field Requirements	
4.5	Minimum Construction Requirements	
<b>SECTION 5.</b>	<b><u>REQUIREMENTS FOR EXPERIMENTAL SYSTEMS</u></b> .....	Page 17
5.1	General Compliance	

TABLE OF CONTENTS  
FOR ONSITE WASTEWATER TREATMENT REGULATIONS  
Page 2

<b>SECTION 6.</b>	<b><u>CERTIFIED INSTALLER PROGRAM</u></b> .....	Page 17
6.1	Certification Program	
6.2	Renewal of Certification	
6.3	Records	
6.4	Revocation of Certification	
<b>SECTION 7.</b>	<b><u>INSPECTIONS</u></b> .....	Page 19
7.1	Inspection of Systems Installed by Certified Installers	
7.2	Inspection of Systems Installed by Non-Certified Installers	
<b>SECTION 8.</b>	<b><u>OPERATION AND MAINTENANCE</u></b> .....	Page 21
8.1	General Requirements	
8.2	Owner/Occupant Responsibilities and Requirements	
8.3	Operation and Maintenance (O and M) Service Provider Responsibilities and Requirements	
8.4	Department Responsibilities and Requirements	
<b>SECTION 9.</b>	<b><u>ENFORCEMENT AND SEVERABILITY</u></b> .....	Page 28
9.1	Access Rights	
9.2	Enforcement and Penalties for Violations	
9.3	Severability	
<b>SECTION 10.</b>	<b><u>DEFINITIONS</u></b> .....	Page 31
<b>SECTION 11.</b>	<b><u>REPEALER AND EFFECTIVE DATE</u></b> .....	Page 38

## **SECTION 1. AUTHORITY, SCOPE, AND REVISIONS**

### **1.1. TITLE**

This must be known and cited as: THE REGULATIONS GOVERNING THE ON-SITE TREATMENT OF WASTEWATER IN LEWIS AND CLARK COUNTY.

### **1.2 AUTHORITY AND FEES**

- (1) The Board promulgates these regulations under the authority of Section 50-2-116. MCA.
- (2) Fees must be charged for the administration of these regulations under the authority of Section 50-2-116, MCA.
- (3) Pursuant to 50-2-116, MCA, local boards of health must adopt regulations no less stringent than those in Title 17, Chapter 36, Sub-Chapter 9 of the Administrative Rules of Montana (A.R.M.).
- (4) Construction or alteration of on-site wastewater treatment systems must conform to the requirements found in Montana Department of Environmental Quality (DEQ) Circular DEQ-4 and A.R.M. 17.36.900.
- (5) Local boards may adopt stricter requirements or specifications than those found in A.R.M 17.36.900, as provided in 50-2-116 and 50-2-130, MCA.

### **1.3 FINDINGS**

The Board finds that

- (1) Regulating the treatment and disposal of wastewater and the design, construction, use, alteration, maintenance or repair of on-site wastewater treatment systems within Lewis and Clark County leads to the control of environmental pollution and communicable diseases; and
- (2) These regulations are necessary for the protection of the public health and the control of environmental pollution within Lewis and Clark County

### **1.4 SCOPE**

- (1) These regulations apply to any person constructing, using, maintaining, altering, or repairing new, existing, or abandoned on-site wastewater

treatment systems, including making load increases to existing systems on parcels of land that are subject to these regulations.

- (2) Parcels that have undergone state subdivision review must also conform to these regulations.

## **1.5 REVISION**

Revisions to these regulations must be made as needed to ensure proper administration and to allow for improved methods of on-site wastewater treatment. The Board must hold a public hearing before any revision to these regulations.

## **1.6 VIOLATIONS**

- (1) A person who violates any of the provisions of these regulations is subject to the penalties described in Section 9.2.
- (2) More than one person may violate a single regulation, and in that case, each person is subject to the penalties described in Section 9.2.

## **SECTION 2. GENERAL REGULATIONS**

### **2.1 PUBLIC HEALTH THREATS**

It is a violation of this regulation to construct, alter, extend or utilize a wastewater treatment or disposal system that may:

- (1) discharge any wastewater to ground surface, or to any state water;
- (2) contaminate any actual or potential drinking water supply;
- (3) cause public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
- (4) cause a public health hazard by being accessible to person or animals;
- (5) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in these regulations;
- (6) pollute or contaminate state waters, in violation of Section 75-5-605, MCA; or

- (7) degrade state waters unless authorized pursuant to Section 75-5-303, MCA; or
- (8) cause a nuisance due to odor, an unsightly appearance, or other aesthetic consideration.

## **2.2 GENERAL PROHIBITIONS**

- (1) It is a violation of this regulation to construct, repair, use, alter or make load increases to any onsite wastewater treatment system without strict compliance with the provisions of these regulations and the possession of a valid permit issued pursuant to these regulations.
- (2) It is a violation of these regulations to begin construction or to drill any well prior to the issuance of a department letter of approval or valid on-site wastewater treatment permit.

## **2.3 CONSTRUCTION PROHIBITIONS**

- (1) Construction on a parcel of land prior to the issuance of a valid on-site wastewater treatment system permit must result in the doubling of the permit fee and may include additional penalties as provided in Section 9.2.
- (2) No construction may begin on a parcel of land unless all applicable permits and approvals are obtained from all other governmental agencies.

## **2.4 OCCUPANCY PROHIBITIONS**

It is a violation of these regulations to occupy or allow occupation of any dwelling unit or other structure served by a piped water supply unless the structure is connected to:

- (1) An on-site wastewater treatment system approved under the current regulations governing on-site wastewater treatment in Lewis and Clark County; or
- (2) An on-site wastewater treatment system approved under earlier regulation, ordinances, or resolutions of Lewis and Clark County; or
- (3) An on-site wastewater treatment system installed prior to the enactment of any Lewis and Clark County regulations, ordinances, or resolutions governing the same; or

- (4) An on-site wastewater treatment system approved through a variance granted by the Board; or
- (5) A public sewer system approved by the Montana Department of Environmental Quality (DEQ).

## **2.5 PROHIBITED SYSTEMS**

- (1) The installation of cesspools for the disposal of wastewater is specifically prohibited.
- (2) Wastewater holding tanks may not be used as a permanent method of wastewater disposal except as provided in Section 4.2
- (3) The installation of any system must comply with specifications and regulations in the most current version of DEQ Circular DEQ-4.

## **2.6 SYSTEMS REQUIRING CONNECTION TO PUBLIC WASTEWATER**

If a Montana Department of Environmental Quality approved public collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed system, and the owner or managing entity of the public collection and treatment system approves the connection, wastewater must be discharged to the public system.

- (1) A public system is not “readily available” if there is evidence demonstrating that connection to the system is physically or economically impractical, or that easements cannot be obtained.
- (2) A connection is “economically impractical” if the cost of connection to the public system equals or exceeds three times the cost of installation of a proposed onsite wastewater treatment system approved by the Department.

## **2.7 CONNECTION TO ABANDONED SYSTEMS**

A person may not connect to, use, or maintain an abandoned system unless:

- (1) The system meets current standards as determined by an inspection and the issuance of a permit by the Department; or
- (2) The person has obtained a permit and has performed the permitted alterations prior to connection or use.

## **2.8 FAILED SYSTEMS**

- (1) The owner and/or occupant of the premises must report a failed system to the Department.
- (2) Use of or maintenance of a failed wastewater treatment system violates these regulations.
- (3) Upon determining that a system has failed, the Department shall give written notice of the violation to the owner and/or occupant of the property.
- (4) Upon receipt of written notice, the owner and/or occupant must immediately stop the flow of wastewater.
- (5) The owner and/or occupant shall repair or replace the failed system in accordance with the provisions of these regulations within 30 days of receipt of notice of violation for a system failure.
  - (a) An owner and/or tenant who fails to repair and restore the failed wastewater treatment system within 30 days of receipt of notice of violation shall vacate the property. Each day of failure to vacate constitutes a separate violation of this regulation.
  - (b) The owner of the property may voluntarily vacate the premises instead of repairing or replacing the failed system, provided that all surface contamination is properly remediated, and the failed system is made inoperable. The abandoned tank must be pumped and then removed or filled with approved solid material.
  - (c) If any part of the system repair requires a variance from this regulation, or if other special circumstances exist, the property owner/tenant must provide a written plan to the Department within 30 days of receipt of the notice of violation. The Department may approve an extension.
- (6) The Department may require the owner and/or occupant to remove and dispose of contaminated soil. The Department must approve any disposal or removal.
- (7) Before making repairs or replacing a failed system or any of its component parts, an owner/tenant shall acquire a permit.



- (a) The Department may require a site evaluation to ensure that repairs or replacement of the failed system and its components complies with all current regulations.
- (b) The owner and/or occupant shall comply with all current regulations and pay all fees associated with the site evaluation and permit.
- (c) The Department may permit the use of components that are not failed as long as they meet all of the following:
  - (i) The component(s) to be retained must be previously permitted and approved by the Department,
  - (ii) The component(s) to be retained is permitted for its original intended use and there has been no load increase or change in use to the system,
  - (iii) The component(s) to be retained is not failing, is operational, and structurally sound.
- (d) The Department may require submittal of proof of compliance with the permit.

## **2.9 DESIGN AND OPERATION LIMITS**

- (1) The Department does not design on-site wastewater treatment systems.
- (2) The requirements set forth in a permit do not guarantee the proper operation of any system.

## **SECTION 3. PERMIT PROCEDURES AND REQUIREMENTS**

### **3.1 APPLICATIONS TO CONTRUCT ALL SYSTEMS**

- (1) Application for a permit to construct an on-site wastewater treatment system is made by completing a comprehensive permitting application and an application for site evaluation available from the Lewis and Clark County Permitting Office and submitting all required fees and information.
- (2) The applicant for a permit must submit all fees and all information required by these regulations before the Department must begin the review of the application.

- (3) The Department may require the applicant to submit the results of a percolation test performed in accordance with Circular DEQ-4. The Department may also require that applicant to submit the floor plan of the proposed house to verify the number of bedrooms.
- (4) The Department must review the site evaluation application and conduct a site inspection to determine compliance with these regulations.
- (5) The Department must give written approval or denial within 20 working days from the receipt of a complete site evaluation application and full payment of associated fees.
- (6) In the case of on-site community or multi-family systems, or systems that require engineering review, the Department must give written approval or denial within thirty working days of receipt of a complete site evaluation application and full payment of associated fees.

### **3.2 PERMITS TO CONSTRUCT NEW SYSTEMS**

- (1) A permit to construct a new on-site wastewater treatment system must only be issued by the Department upon approval of the site evaluation application.
- (2) The permit supplied by the Department must be available at the site of construction and must remain on the site until final inspection by the Department.
- (3) A permit issued by the Department is valid for a one-year period. If system construction and final department approval of the installed system has not been completed within this period, the applicant must reapply and meet all requirements of the regulations in effect at the time of reapplications.

### **3.3 PERMITS TO ALTER OR REPLACE EXISTING SYSTEMS**

- (1) Prior to the alteration or replacement of an existing system, a valid permit must be obtained following the procedures contained in Section 3.1 and 3.2
- (2) A permit to alter or replace an existing system, or any portion thereof, may not be issued unless the entire system meets all requirements of these regulations.

- (3) A person requesting to repair or replace an existing system that does not meet the requirements of these regulations must obtain a variance from the Board following the procedures contained in Section 3.4.
- (4) The abandoned tanks from replaced systems must be pumped, and then removed or filled with approved solid material.
- (5) In an emergency, the installation of a tank by a certified installer may begin upon verbal approval from the Department provided that:
  - (a) The completed application is submitted no later than the end of the next working day; and
  - (b) All standard inspection procedures in Section 7.0 are followed.
- (6) The Department may require an illegally installed system to be uncovered for inspection prior to final department approval. The Department must not issue a permit for a system installed illegally unless all current regulations are met.
- (7) Owner and/or occupants found to violate these regulations because of load increases to the system must:
  - (a) Obtain a permit that reflects the correct load increase and that conforms to all other requirements in accordance with these regulations, or
  - (b) Obtain an operation and maintenance inspection in accordance with Section 8.4 of these regulations at an interval not to exceed three (3) years.

### **3.4 DENIAL OF PERMITS TO CONSTRUCT, OR ALTER ON-SITE WASTEWATER TREATMENT SYSTEMS AND VARIANCE PRODEDURE**

- (1) If an application for an on-site wastewater treatment system permit is denied, the applicant may:
  - (a) Seek department approval for a new site; or
  - (b) Request a variance from these regulations.
- (2) A completed application for variance must be submitted to the Administrator at least 14 working days prior to a regularly scheduled Board meeting.

- (3) The applicant or designated representative shall attend the variance hearing in person or remotely.
- (4) After receiving a timely request under (2) above, the Administrator must notify the Board Chair.
- (5) The Board Chair, in consultation with the Health Officer and the Administrator, must determine whether the variance request must be heard by the Board or by a Hearings Officer. The Board may establish criteria to guide this decision.
- (6) The Board Chair must instruct the Administrator to schedule the variance request for a public hearing.
- (7) If the variance request must be heard by the Board, a public hearing must be conducted by a quorum of the Board at the next regularly scheduled Board meeting.
- (8) If the variance request must be heard by a Hearings Officer, the Board Chair must appoint a Hearings Officer. The Board may adopt policies establishing criteria to guide the selection of a Hearings Officer.
- (9) The Hearings Officer must conduct a public hearing and submit in writing to the Board proposed Findings of Fact, Conclusions of Law, and a Written Recommendation.
- (10) A quorum of the Board shall act on the recommendation at the next regularly scheduled Board meeting following the public hearing.
- (11) A decision or order of the Board must include Findings of Fact and Conclusions of Law.
- (12) The Board may grant a variance from a requirement only if it finds that the following criteria are met:
  - (a) Granting a variance will not:
    - (i) Contaminate any actual or potential drinking water supply;
    - (ii) Cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;

- (iii) Cause a public health hazard by being accessible to persons or animals;
  - (iv) Violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in ARM 17.36.901 thru 17.36.924, except for the rule that the variance is requested from;
  - (v) Pollute or contaminate state waters, in violation of 75-5-605, MCA;
  - (vi) Degrade state waters unless authorized pursuant to 75-5-303, MCA; or
  - (vii) Cause a nuisance due to odor, unsightly appearance, or other aesthetic consideration.
- (b) Compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;
- (c) The variance is necessary to address extraordinary conditions that the applicant could not reasonably have prevented;
- (d) No alternatives that comply with the requirement are reasonably feasible; and
- (e) The variance requested is not more than the minimum needed to address the extraordinary conditions.
- (13) The Board must make specific Findings of Fact that support the Conclusions of Law.
- (14) The Board may place any reasonable conditions on a variance granted under this regulation.
- (15) The applicant shall have 20 days from the date of Board approval to sign an acceptance of variance or the variance shall be withdrawn. A time extension may be granted at the Department's discretion.
- (16) An applicant for a variance may appeal the Board's final decision to the Montana DEQ pursuant to A.R.M. 17.36.924.

## **SECTION 4. REQUIREMENT FOR ALLOWABLE SYSTEMS**

### **4.1 SEPTIC TANK REQUIREMENTS**

- (1) All wastewater treatment systems must include a septic tank to provide primary treatment.
  - (a) The septic tank must receive all wastewater from the structure being served.
  - (b) All septic tanks must be designed and constructed in compliance with the specifications contained in the most current version of DEQ Circular DEQ-4.
  - (c) All septic tanks must be equipped with an effluent filter; and
  - (d) All septic tanks must have risers to grade.
- (2) Septic Tank Sizing
  - (a) The minimum tank sizing for residential flows is determined by the following chart:

NUMBER OF BEDROOMS	MINIMUM TANK SIZE, GALLONS
1 - 3	1000
4 - 5	1500
6 - 7	2000
8	2250
9	2500
ADD 250 GALLONS FOR EACH ADDITIONAL BEDROOM AFTER 9	

- (b) The minimum tank sizing for non-residential flows is described in the most current version of DEQ Circular DEQ-4.

### **4.2 HOLDING TANK REQUIREMENTS**

- (1) The Department may approve holding tank systems if the facility to be served is for seasonal use only.
- (2) Holding tanks must meet the design and construction requirements in the most current version of DEQ Circular DEQ-4.

- (3) Permit applications for holding tanks must include plans for the proposed holding tank system. The plans must include the following information:
  - (a) The method of monitoring tank levels; and
  - (b) The method for waterproofing the tank; and
  - (c) A maintenance plan, which must include annual water tightness testing and submittal of periodic pumping receipts by a licensed septic tank pumper; and
  - (d) The method for tank stabilization if seasonal high groundwater is expected to be within 12 inches of the tank's base.

### 4.3 SITE REQUIREMENTS

- (1) The minimum safe distances for sitting the various component parts on an on-site wastewater treatment system must be measured horizontally and must comply with Table 4A below:

FEATURE	SEALED COMPONENTS (a) AND OTHER COMPONENTS (b)	ABSORPTION SYSTEMS (c)
PUBLIC OR MULTI-USER WELL/SPRING	100	100
OTHER WELLS (d)	50	100
SUCTION LINES	580	100
CISTERNS	25	50
ROADCUTS, ESCARPMENTS	10 (d)	25
SLOPES > 35% (f)	10 (d)	25
PROPERTY BOUNDARIES (g)	10	10
SUBSURFACE DRAINS	10	10
WATER MAINS (h)	10	10
DRAINFIELD/SAND MOUNDS (c)	10	0
FOUNDATION WALLS	10	10
SURFACE WATER, SPRINGS	50	100
FLOOD PLAIN, 100 yr	Sealed component—(a) Other component 100 (b)	100

Definitions of (a) - (h) from the table above:

- (a) Sealed components included sewer lines, sewer mains, septic tanks, grease traps, distribution boxes, dosing tanks, pumping chambers, holding tanks, and sealed pit privies. Holding tanks and sealed pit privies must be located at least ten (10) feet outside of the floodplain or any openings must be at least two (2) feet above the base floodplain elevation;

- (b) Other components include intermittent and recirculating sand filters, package plants, and evapotranspiration systems;
  - (c) Absorption systems include absorption trenches, absorption beds, sand mounds, and other drainfield-type systems that are not lined or sealed. This term also includes seepage pits and unsealed pit privies;
  - (d) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in the most current version of DEQ Circular DEQ-4;
  - (e) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage;
  - (f) Down-gradient of the sealed component, other component, or drainfield/sand mound;
  - (g) Easements may be used to satisfy the setback to property boundaries;
  - (h) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.
- (2) A 100-foot separation must be maintained between all surface waters and the treatment field and one hundred percent replacement area.
  - (3) The Department must measure the setback from surface waters without designated flood plains from the mean high-water level.
    - (a) For those water courses where no 100-year flood plain is established, the Department must use local interpretive data, high water marks, and/or other acceptable field data.
    - (b) If the location of the boundary is in question, delineation must be referred to the Montana Department of Natural Resources and Conservation for final determination.
  - (4) On-site wastewater treatment systems must not be located in an area where surface water accumulates or in areas of unstable landforms.



- (5) Wastewater treatment systems must be located to maximize the vertical separation in distance from the bottom of the absorption trench to the seasonally high groundwater level, bedrock, or other limiting layer, but under no circumstances may this vertical separation be less than four feet of natural soil.
- (6) If the applicant or the reviewing authority has reason to believe that groundwater level may be within seven feet of the surface at any time of the year within the boundaries of the system, the Department may require data to demonstrate that the minimum separation is four feet.
  - (a) The Department may require the applicant to install groundwater observation wells to a depth of at least ten feet to determine the seasonally high groundwater level.
  - (b) Measurement of groundwater must occur for a sufficient period of time to determine a peak and a sustained decline in the groundwater level.
- (7) The Department may require separations greater than four feet between the trench bottom and the highest level of seasonally high groundwater and/or unsuitable treatment material for systems proposed in soil type II, as designated in Table 4B.
- (8) The Department requires that a soil analysis of the site be done by the Department.
- (9) The Department requires treatment fields to be installed with the laterals perpendicular to the slope (parallel to the contour).
- (10) The area to be used for an original on-site wastewater treatment field or replacement area must be located and maintained so that it is free of buildings, driveways, livestock confinements, or any other structures.
- (11) The Department may allow stabilized fill to be used pursuant to the provisions as outlined in the most current version of DEQ Circular DEQ-4.
- (12) Replacement areas and plans must comply with requirements of these regulations.
  - (a) Each new or expanded wastewater treatment system must provide a replacement area or replacement plan.

- (b) Sites designated as one hundred percent replacement areas must be separate from the original site and meet all current site requirements for new systems; and
- (c) The one hundred percent replacement area must be designated on the permit application and evaluated at the same time as the initial treatment site; and
- (d) The expansion of existing treatment fields or the addition of new treatment fields on a site must not interfere with or use the space designated as a required treatment field replacement area.

#### **4.4 TREATMENT FIELD REQUIREMENTS**

- (1) The minimum size of a treatment field is based on the soil characteristics of the site and the estimated wastewater flow to the proposed system.
- (2) Non-residential treatment systems are sized based upon the estimated daily wastewater flow per capita unit in the most current version of DEQ Circular DEQ-4.
- (3) The number of bedrooms, as determined by the Department, is used to estimate the daily wastewater flow for residential structures.
  - (a) An unfinished basement is counted as one bedroom.
  - (b) Minimum allowable daily flow for any residence is based on 2 bedrooms.
- (4) The Department determines soil texture, structure, and type using the soil data obtained from the on-site evaluation conducted by the Department.
- (5) The Department considers each dwelling unit (for example mobile home, condominium, recreational vehicle) an individual installation and evaluates each dwelling unit based on the site evaluation results and the sizing requirements.
- (6) Accessory building flows are determined based on the most current version of DEQ Circular DEQ-4.
- (7) All non-standard systems are sized in accordance with the most current version of DEQ Circular DEQ-4.

(8) A distribution box must be used in all gravity systems, which utilize and odd number of laterals.

(9) All laterals are of equal length unless the system is pressure dosed.

(10) **TABLE 4B: LINEAR FEET OF PERFORATED PIPE REQUIRED FOR RESIDENTIAL ON-SITE WASTEWATER TREATMENT FIELDS**

SIZING CHART- GRAVEL TRENCHES  
(gravity=2 foot wide, pressure dose=3 foot wide)

				(225 gpd)	(300 gpd)	(350 gpd)	(400 gpd)	(450 gpd)
Soil Type	Texture	APP. Rate	TYPE	2 br	3 br	4 br	5 br	6 br
II	Gravel, gravelly sand, coarse to medium sand	0.8	gravity	140	190	220	250	280
			pressure dosed	95	125	145	170	190
III	fine sand to loamy sand	0.6	gravity	190	250	290	335	375
			pressure dosed	125	170	195	220	250
IV	loam sandy loam	0.5	gravity	225	300	350	400	450
			pressure dosed	150	200	235	270	300
V	sandy clay loam silt loam	0.4	gravity	280	375	440	500	565
			pressure dosed	190	250	290	335	375
VI	silty clay loam clay loam	0.3	gravity	375	500	585	670	750
			pressure dosed	250	335	390	445	500
VII	clays, silty clays sandy clay	0.2	gravity	565	750	875	1000	1125
			pressure dosed	375	500	585	656	750

(11) If gravelless chambers are used, the linear feet in the sizing chart above may be reduced by 25 percent.

- (12) The Department requires special construction practices as outlined in the most current version of DEQ Circular DEQ-4 for type VI and VII because soils may be easily damaged during construction of the trenches.
- (13) The Department requires pressure-dosing for any system with more than five hundred (500) lineal feet or 1000 square feet of drainfield, calculated before applying any reductions, regardless of soil type.
- (14) The Department allows three-foot wide trenches if the system is pressure-dosed.
- (15) If needed, a sample of soils must be submitted to the Natural Resources Conservation Service and sizing must be based on their soils determination.

#### **4.5 MINIMUM CONSTRUCTION REQUIREMENTS**

All wastewater treatment systems must be designed and constructed in compliance with the specifications contained in the most current version of DEQ Circular DEQ-4.

### **SECTION 5. REQUIREMENTS FOR EXPERIMENTAL SYSTEMS**

#### **5.1 GENERAL COMPLIANCE**

All experimental on-site wastewater systems must comply with the specifications contained in the most current version of Circular DEQ-4.

### **SECTION 6. CERTIFIED INSTALLER PROGRAM**

#### **6.1 CERTIFICATION PROGRAM**

- (1) Installers of on-site wastewater treatment systems may be certified by the Department. Certification is a privilege extended to an installer and not a right.
- (2) Certification means that the installer has demonstrated that they have sufficient knowledge of these regulations so as to be able to install systems in total compliance with these regulations.
- (3) Certified installers have a duty to keep current on changes to these regulations. The Department notifies installers about changes to the regulations via mail at the latest address provided to the Department by the installer.

- (4) Application for certification must be in writing and must contain the applicant's name, address, phone number, and other information deemed necessary by the Department.
- (5) To become certified, an installer must either:
  - (a)
    - (1) Attend the Department's training course;
    - (2) Satisfactorily pass the certification examination with a minimum score of 80 percent correct; and,
    - (3) Pay a non-refundable examination fee; or,
  - (b) Provide proof of current certification from a Department approved national organization.
- (6) Certification is valid for one year.
- (7) A certified installer must be on-site at all times during layout and installation of a system.

## **6.2 RENEWAL OF CERTIFICATION**

- (1) Each certification must expire annually on December 31.
- (2) There will be an annual fee to renew certification. Installers who have not renewed their certification by 5pm on the last business day of January must have their certification revoked.
- (3) If the certification is revoked due to renewal date deadline, the applicant can become recertified under Section 6.1 above.
- (4) The Department may require attendance at workshops held for certified installers to update their knowledge of current Department regulations and most current technology for installing on-site wastewater treatment systems.

## **6.3 RECORDS**

Every certified installer must maintain and submit to the Department such data and records as are required by the Department to determine compliance with these regulations.

## **6.4 REVOCATION OF CERTIFICATION**

- (1) In addition to the penalties in Section 9.2, if a certified installer or a person contracted or employed by a certified installer has begun construction of any unpermitted system, the Department must revoke the certified installer's certification for a period of 30 days. The installer may become re-certified at the end of the 30 day period by attending the next available training class, paying double the normal examination fee and passing the examination with a minimum score of 80 percent correct.
  - (a) For the second offense, the Department must revoke the certified installer's certification for a period of 180 days. The installer may become re-certified after 180 days by attending the next available training class, paying triple the normal examination fee and passing the examination with a minimum score of 80 percent correct.
  - (b) A third offense shall result in a permanent revocation of certification.

## **SECTION 7. INSPECTIONS**

### **7.1 INSPECTION OF SYSTEMS INSTALLED BY CERTIFIED INSTALLERS**

- (1) The Department may allow self-inspections of systems installed by a certified installer.
  - (a) The installer must notify the Department when a system is complete and ready for inspection.
  - (b) The Department must notify the installer of its decision to allow a self-inspection within 8 working hours.
- (2) The Department must conduct inspection within 16 working hours of the notified completion time.
- (3) Department inspections must be conducted only during normal Department working hours, excluding Saturdays, Sundays and holidays.
- (4) Systems incomplete at the time of the Department inspection may be subject to a reinspection at the convenience of the Department, and to additional fees for the reinspection.

- (5) A system must not be inspected by the Department if a hard copy or electronic version of the permit cannot be produced on request. Reinspection must be at the convenience of the Department, and may be subject to reinspection fees.
- (6) All necessary corrections must be completed by the installer and inspected by the Department before final approval of the system can be given.
- (7) In the case of self-inspection, the certified installer must complete and submit the certified installer's inspection form within ten calendar days of completion of the system. Failure to submit the certified installer's form within the ten-day period must result in no further permits being issued to that installer until all outstanding forms for completed systems have been submitted.
- (8) A certified installer completing and submitting a certified installer's inspection form for a system must personally inspect the finished system and assumes liability for non-compliance of the system.
- (9) Where site restrictions dictate, and with prior Department approval, certified installers may backfill parts of a system when necessary to be able to complete the rest of the system. When backfilling occurs, all corners, Y's and T's, and the inlets shall be left uncovered for inspection.

## **7.2 INSPECTION OF SYSTEMS INSTALLED BY NON-CERTIFIED INSTALLERS**

- (1) Non-certified installers may only install standard gravel or gravelless on-site wastewater treatment systems. In addition to the penalties in Section 9.2, violation of this section will require reinspection of the system. Reinspection must be at the convenience of the Department and may be subject to reinspection fees.
- (2) A non-certified property owner may install a non-standard system on their own property if:
  - (a) The system serves no more than one single-family residence.
  - (b) A design compliant with the most current version of DEQ Circular DEQ-4 is submitted to the Department and approved prior to issuance of the permit.
- (3) Prior to the issuance of a permit the non-certified installer must:

- (a) Set an appointment and meet with a sanitarian to discuss the installation and specifications of the system; and
  - (b) Stake out the area intended for the system; and
  - (c) Have a site evaluation conducted by the Department.
- (4) No backfilling of the system may occur unless authorized by the Department.
- (5) The Department must inspect completed systems no later than 24 working hours after the notice of completion.
- (6) Department inspections must be conducted only during normal Department working hours, excluding Saturdays, Sundays, and holidays.
- (7) A system must not be inspected by the Department if a hard copy or electronic version of the permit cannot be produced on request. Reinspection must be at the convenience of the Department, and may be subject to reinspection fees.
- (8) If the system is not in compliance, all necessary corrections must be completed and inspected by the Department before final approval by the Department. Reinspection must be at the convenience of the Department and may be subject to reinspection fees.
- (9) Use of a new system prior to final inspection and approval by the Department constitutes a violation of this regulation and is subject to penalties under Section 9.2 of this regulation.

## **SECTION 8. OPERATION AND MAINTENANCE**

### **8.1 GENERAL REQUIREMENTS**

- (1) Only an owner and/or occupant, licensed septage hauler, or person certified by the Department may perform operation and maintenance on an onsite wastewater treatment system as required by these regulations.
- (2) Systems exempt from this section include those located on:
  - (a) Parcels within an incorporated Sewer District (MCA 7-13-2201), if the district performs regular operation and maintenance pursuant



to a written operation and maintenance plan reviewed and approved by the Department;

- (b) Parcels connected to a municipal sewer system under MCA 7-13-2201 through 7-13-2351;
  - (c) Parcels served by a system maintained pursuant to a valid operation and maintenance service contract in accordance with Appendix D of DEQ Circular DEQ-4.
    - (i) Verification that the contract is valid must be submitted annually on written forms or by methods specified for use by the Department.
  - (d) Parcels that utilize a sewage holding tank in accordance with Section 4.2.
  - (e) Parcels without a piped water supply to the dwelling unit that utilize an unsealed or sealed pit privy. The owner and/or occupant may be required to submit routine pumping receipts.
- (3) Systems that require a permit under Section 3 of these regulations must comply with the operation and maintenance requirements of Section 8.4 (7) not less than three years from the date of final Department approval of the issued permit.

## **8.2 OWNER/OCCUPANT RESPONSIBILITIES AND REQUIREMENTS**

- (1) The owner/occupant must prevent adverse impacts to the system, which includes primary and replacement soil treatment areas, caused by use, activities, or other situations including, but not limited to:
  - (a) Encroachment such as buildings, structures, or materials;
  - (b) Vehicular traffic;
  - (c) Surface or storm water;
  - (d) Compaction, excavation, grading, cutting, or ditching of soil on top of or adjacent to a system in violation of the horizontal setback requirements contained in Table 4 A.
- (2) The owner/occupant shall monitor the use of the system to ensure conformance with these regulations.

- (3) Within 45 days of written Department Notices, the owner/occupant shall comply with either (a) or (b) below:
  - (a) Complete the Assessment for Septic Tank Pumping Frequency, and pump the septic tank(s) at the interval required by the Assessment criteria.
    - (i) The Department shall determine septic tank pumping frequency based on Assessment results as follows:
      - (1) High Frequency: Means a score of 25-36 Assessment points which requires the septic tank(s) to be pumped at least once every three (3) years;
      - (2) Medium Frequency: Means a score of 12-24 Assessment points which requires the septic tank(s) to be pumped at least once every four (4) years;
      - (3) Low Frequency: Means a score of 0-11 Assessment points which requires the septic tank(s) to be pumped at least once every five (5) years.
    - (ii) Criteria used to determine the pumping frequency, must include but are not limited to the following:
      - (1) System age;
      - (2) System type;
      - (3) Water softening units and/or garbage disposals;
      - (4) Water usage and conservation measures;
      - (5) Date of most recent septic tank(s) pumping and/or inspection;
      - (6) Number of people served by the system;
    - (iii) The completed Assessment for Septic Tank Pumping Frequency, the pumping record, and the applicable fees

must be submitted on forms or by other methods specified by the Department.

- (b) Obtain an operation and maintenance inspection performed by a certified operation and maintenance professional at an interval not to exceed four (4) years.
  - (i) The results of the operation and maintenance inspection, the septic tank(s) pumping record, and applicable fees must be submitted on written forms or by other methods specified by the Department.
  - (ii) The septic tank(s) must be pumped by a licensed septage hauler as determined by the inspection.
  - (iii) Deficiencies noted during the inspection must be corrected as required in Section 8.4 (9) of these regulations.
- (4) The owner shall correct any deficiencies discovered in an operation and maintenance inspection.
  - (a) The owner/occupant of an onsite wastewater treatment system with Type I deficiencies must repair or replace the system immediately, or as directed by the Department. These CRITICAL deficiencies include, but are not limited to:
    - (i) Sewage being discharged to ground surface;
    - (ii) Sewage being discharged to surface water or a cesspool;
    - (iii) Septic tanks that are leaking, collapsing, or overflowing;
    - (iv) Sewage backed-up into the structure;
    - (v) Septic tank lids that are broken/missing;
    - (vi) Effluent pump not functioning;
    - (vii) Floats or controls in effluent pump tank missing/not functioning;
    - (viii) Distribution lines leading into or out of the septic tank and/or drainfield that are broken, collapsed, or blocked;

- (ix) Broken or collapsed lines within a drainfield;
  - (x) Broken or blocked distribution system;
  - (xi) Tree roots within any part of the system; and,
  - (xii) System electrically unsafe.
- (b) The owner/occupant of an onsite wastewater treatment system with Type II deficiencies must repair or replace the system within thirty (30) days of the operation and maintenance inspection. These SERIOUS deficiencies must include, but are not limited to:
- (i) High water alarm inoperable;
  - (ii) Septic tank baffles missing or broken;
  - (iii) Floats or controls in the effluent pump tank not positioned properly;
  - (iv) Effluent filters blocked, missing, or broken.
- (c) The owner/occupant of an onsite wastewater treatment system with Type III deficiencies at time of inspection must be corrected before the next required operation and maintenance inspection. These MODERATE deficiencies must include but are not limited to:
- (i) Access lids from septic tank not to grade;
  - (ii) Cleanout not accessible;
  - (iii) Access ports or risers not available for distribution systems;
  - (iv) Drainfield used for parking, driving, heavy livestock traffic;
  - (v) Drainfield and/or septic tank(s) not easily accessible;
  - (vi) Free space not adequate between the inlet and the baffle (2-4 inches);

- (vii) Tank not installed properly so that the outlet is lower than the inlet;
- (viii) Tank(s) not set level.

### **8.3 OPERATION AND MAINTENANCE (O AND M) SERVICE PROVIDER RESPONSIBILITIES AND REQUIREMENTS**

- (1) O and M service providers may perform their services only when their certification is in good standing and in conformance with these regulations. Certification is a privilege extended to an O and M service provider and is not a right.
- (2) Certification means that the O and M service provider has demonstrated sufficient knowledge of these regulations to perform an operation and maintenance inspection in compliance with these regulations.
- (3) O and M service providers have a duty to keep current on changes to these regulations.
- (4) To become certified, an applicant must:
  - (a) Complete an application;
  - (b) Pay the non-refundable fee;
  - (c) Attend a Department approved certification course;
  - (d) Pass the certification exam
- (5) All certification fees will be established by the examining authority.
- (6) Prior to 5pm on the last business day of January, O and M service providers must submit both documentation that their certification is current and fees for renewal. Failure to provide either will result in Department revocation of the certification.
- (7) If the Department revokes certification for failure to meet the renewal deadline, the Department may recertify the provider pursuant to subsection (4) above.
- (8) The first year of certification is probationary. Criteria used to evaluate the fitness of the applicant for final certification include:

- (a) Demonstrated competence with onsite wastewater treatment system rules and regulations; and
  - (b) Demonstrated ability to effectively communicate and coordinate with the Department and the public.
- (9) If the Department does not grant final certification, the applicant may re-apply for certification after a one-year interval.
- (10) As part of certification or recertification, the Department may require attendance at workshops.
- (11) Performance criteria for O and M service providers include:
  - (a) Performs operation and maintenance service in accord with these regulations;
  - (b) Possesses equipment that allows for the proper inspection for a system;
  - (c) Submits operation and maintenance fees and reports on forms or by other methods specified by the Department within fifteen calendar days after completing an inspection;
  - (d) Submits Type I deficiencies reports on forms or by other methods specified by the Department within two working days after completing and inspection;
  - (e) Submits complete, truthful, and accurate inspection and maintenance reports to the Department and owner.
- (12) In order to avoid conflicts of interest, the department requires the following:
  - (a) O and M service providers, both licensed and certified, must provide the Department a description of any dual relationships. The Department must post the description on its website and must make the description available in written form to the public. Such dual relationships include but are not limited to being a certified O and M service provider and:
    - (i) Installing septic systems;
    - (ii) Designing, selling, or distributing proprietary products;

(iii) Working for or owning a pumping company.

(13) In addition to the penalties in Section 9.2, if a certified provider or a person contracted or employed by a certified provider has a first offense violation any of the requirements in Section 8.5, the Department must revoke the provider's certification for a period of 30 days. The provider may become re-certified after 30 days by attending a Department approved certification class, paying double the normal certification fee, and passing certification.

(a) For a second offense the Department must revoke the provider's certification for a period of 180 days. The provider may become re-certified after 180 days by attending a Department approved certification class, paying triple the normal certification fee, and passing the examination.

(b) For a third offense the Department must permanently revoke the provider's certification.

(c) The provider may request an administrative hearing before the Health Officer pursuant to Section 9.2.

#### **8.4 DEPARTMENT RESPONSIBILITIES AND REQUIREMENTS**

The Department must:

(1) Develop forms and reporting systems to facilitate conformance with these regulations;

(2) Provide written notification to owners and occupants that they are required to perform operation and maintenance tasks for their system.

### **SECTION 9. ENFORCEMENT AND SEVERABILITY**

#### **9.1 ACCESS RIGHTS**

(1) The Department is authorized and directed to make such inspections as are necessary to determine compliance with these regulations.

(2) It is the responsibility of the owner or occupant of a property to give the Department free access to the property at reasonable times for the purpose of making such inspections as are necessary for determining compliance with these regulations.

- (3) No person may molest or resist representatives of the Department in the discharge of their duty, including inspection made before, during, and after the installation and final approval of a system.

## **9.2 ENFORCEMENT AND PENALTIES FOR VIOLATIONS**

- (1) Violations of any of the provision of these regulations are a misdemeanor and are punishable as provided for in Section 50-2-124, MCA.
- (2) Instead of, or in addition to criminal proceedings, these regulations may be enforced through civil remedies and penalties as described below.
- (3) When the Department has reason to believe a violation of these regulations has occurred, it may cause written notice and an order to take corrective action to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must state:
  - (a) The section of the regulations violated;
  - (b) The facts constituting the violation;
  - (c) The specific nature of the corrective action that the Department requires;
  - (d) The date the corrective action must be completed;
  - (e) The applicable amount of the administrative penalty to be assessed, if any;
  - (f) The date by which any administrative penalty must be paid;
  - (g) That the alleged violator may request a hearing before the Lewis and Clark City-County Health Officer by filing a written request no later than 30 days after service of the notice and order.
  - (h) The Department may allow the alleged violator to submit a compliance plan if they demonstrate a hardship or other extenuating circumstance that prohibits immediate compliance with all regulations.
    - (i) The compliance plan must not create any public health threat listed in Section 2.1 of this regulation.



- (ii) The compliance plan must include a date that all necessary corrective actions will be completed.
- (4) The order becomes final 31 days after the notice is served unless the person named requests a hearing before the Lewis and Clark City-County Health Officer.
  - (a) The request for a hearing must be filed with the Department no later than 30 days after service of a notice and order under subsection (2).
  - (b) The hearing must be held within 30 days, unless the alleged violator and the Department agree to an extension.
  - (c) A record of the evidence presented at the hearing, including a recording of any oral testimony or argument, must be preserved for possible review by the District Court.
  - (d) At the hearing, the Department and the alleged violator must be allowed to present evidence and arguments orally or in writing. All testimony, whether oral or written, shall be given under oath or affirmation.
  - (e) If after a hearing, the Health Officer finds that that a violation has occurred, they shall issue an order for the corrective action or assess an administrative penalty, or both.
  - (f) The order may include an administrative civil penalty of \$250 for the first violation of these regulations and \$500 for each subsequent violation.
  - (g) Administrative civil penalties shall be paid to the Department within ten days of receipt of notice and deposited in the Health Fund.
  - (h) If after a hearing, the Health Officer finds that a violation has not occurred or is not occurring, the original order shall be rescinded.
- (5) The alleged violator may appeal the decision of the Health Officer to the 1<sup>st</sup> Judicial District Court within 30 days of the Health Officer's order.

- (6) At any time, the Health Officer may obtain the assistance of a sheriff, constable, or other peace officer to enforce an order of the Department or the Health Officer.
- (7) Instead of issuing an order or after issuing an order, the Health Officer may pursue a civil action, in the name of Lewis and Clark County, to restrain and enjoin acts in violation of these regulations.
- (8) The Health Officer may pursue a civil action, in the name of Lewis and Clark County, to recover any expenses incurred from any person who refused or neglected to comply with an order of the Health Officer. This action may be filed together with the action described in subsection (7).

### **9.3 SEVERABILITY**

- (1) In the event that any section, subsection, or other portion of these regulations is for any reason held invalid or unconstitutional, such section, subsection, or portion must be considered a separate provision of these regulations and such holding must not affect the validity of the remaining portions of these regulations, which must remain in full force and effect.

## **SECTION 10. DEFINITIONS**

**10.01 ABANDONED SYSTEM** means a system is considered to be abandoned when it meets one of the following criteria:

- (1) The system has not been used for two (2) years, or
- (2) The use of the system has been discontinued because of connection to an improved, on-site system or a public sewer system. Systems for recreational cabins or dwellings used regularly, but infrequently, shall not be considered abandoned.

**10.02 ACCESSORY BUILDING** means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guesthouse, or church rectory.

**10.03 ALTERATION** means physically changing a system by relocating, modifying, repairing, extending or replacing, all portions of a system.

**10.04 ASSESSMENT FOR SEPTIC TANK PUMPING FREQUENCY** means the form that the system owner used to report information to the Department about household

and system use practices. The reported information is then used by the Department to determine the frequency at which the owner must have the septic tank(s) pumped.

**10.05 BOARD** means the Lewis and Clark City-County Board of Health.

**10.06 BEDROCK** means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or material that does not provide for the adequate treatment and disposal of wastewater.

**10.07 BEDROOM** means any room that is or may be used for sleeping. An unfinished basement shall be considered an additional bedroom.

**10.08 CERTIFIED INSTALLER** means any individual who has attended required training and demonstrated an adequate knowledge of the regulations governing on-site wastewater treatment by passing all required examinations and paid the required certification fees.

**10.09 CESSPOOL** means a seepage pit without a septic tank to pretreat the wastewater.

**10.10 CONSTRUCTION** means the building or renovation of any structure intended for human occupancy, including excavation for foundations or footings, that would result in an increase in wastewater flow; the drilling of a well or the provisions of water to a site intended for human occupancy; or work on or the installation of any part of an on-site wastewater treatment system.

**10.11 DEPARTMENT** means the Lewis and Clark City-County Health Department.

**10.12 DOSING TANK** means a watertight receptacle receiving effluent from the septic tank or other treatment device and equipped with an automatic siphon or pump designed to discharge effluent.

**10.13 DWELLING** means any structure, building or portion thereof, which is intended or designed for human occupancy and that must be supplied with water by a piped water system.

**10.14 EMERGENCY** means any situation that poses a threat to the health of the public or the environment by allowing untreated wastewater to be exposed to the ground surface or discharged to the aquifer.

- 10.15 FAILED SYSTEM** means an on-site wastewater system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of A.R.M 17.36.913.
- 10.16 FINAL DEPARTMENT APPROVAL** means approval granted upon review and acceptance of the permitted system installation or receipt of the certified installer's inspection form or professional engineer's as-builts.
- 10.17 FLOODPLAIN** means the area adjoining the watercourse or drainway that would be covered by the floodwater or a flood of one-hundred year frequency except for sheet flood areas that receive less than one (1) foot of water per occurrence and are considered Zone B areas by the Federal Emergency Management Agency. The floodplain consists of the floodway and the flood fringe, as defined in the A.R.M Title 36, Chapter 15.
- 10.18 GRAY WATER** means any wastewater other than toilet wastes or industrial chemicals, and includes but is not limited to shower and bath wastewater, kitchen wastewater, and laundry wastewater.
- 10.19 GROUNDWATER OBSERVATION** means water level observation in a properly constructed well conducted for a long enough period of time to detect a peak and then a sustained decline in water level. Water level observing must be performed in accordance DEQ Circular with DEQ 4 in Appendix C.
- 10.20 HEALTH OFFICER** means the County Health Officer appointed by the Lewis and Clark City-County Board of Health or their designee.
- 10.21 INFILTRATIVE SURFACE** means the soil interface that receives the effluent wastewater below the drain rock or sand.
- 10.22 INSTALLERS** means those persons who are involved in the actual physical construction of on-site wastewater treatment systems.
- 10.23 LEVEL II TREATMENT** means a wastewater treatment system that must provide a higher degree of treatment than conventional systems, including the removal of at least sixty (60) percent of nitrogen as measured from the raw effluent load to the system. The term does not include treatment systems for industrial waste.
- 10.24 LICENSED SEPTAGE HAULER** means a person licensed by the State of Montana to remove and transport wastewater from onsite wastewater treatment systems to an approved facility.
- 10.25 LIMITING LAYER** means bedrock, an impervious layer, or seasonally high ground water.

- 10.26 LOAD INCREASE** means the addition of bedrooms in a dwelling or an increase in the volume of wastewater flow.
- 10.27 MAINTENANCE** means routine or periodic action taken to ensure proper system performance, extend system longevity, and /or assure a system meets performance requirements.
- 10.28 MONITORING** means the periodic or continuous checking of an onsite wastewater treatment system, which is performed by observation and measurements, to determine if the system is functioning as intended and if system maintenance is needed. Monitoring also includes maintaining accurate records that document monitoring activities.
- 10.29 MUNICIPAL SEWER SYSTEM** is defined in MCA §7-13-2201 through §7-13-2351, the term “municipality”, as used in this part and part 23, includes a consolidated city and county, or town and includes all corporations organized for municipal purposes within the districts.
- 10.30 NON-CERTIFIED INSTALLER** means any individual who has not attended required training, demonstrated an adequate knowledge of the regulations governing on-site wastewater treatment by passing all required examinations, and paid the required certification fees. Non-certified also refers to any certified installer who has had their certification revoked.
- 10.31 OCCUPANCY** means the fact or condition of using or residing in a building or part of a building that is served by a piped water supply, including residential, commercial, or any other type of building.
- 10.32 ON-SITE WASEWATER TREATMENT SYSTEM** means any form of subsurface wastewater treatment and all wastewater treatment systems for individual residences.
- 10.33 OPERATION** means the act or process of operating or functioning or using an onsite wastewater treatment system.
- 10.34 OPERATION AND MAINTENANCE SERVICE PROVIDER** means a qualified person certified by the Department to perform operation and maintenance inspections and repairs not requiring a permit on onsite wastewater treatment systems.
- 10.35 OWNER** means a person or persons, who have legal title to, or possession of, real property, a building, structure, or place of business.

- 10.36 VIOLATORS AGENT** means a person or business that an owner authorizes to represent them.
- 10.37 PERMIT** means the written authorization from the Lewis and Clark City-County Health Department to install a new on-site wastewater treatment system or repair, replace, expand, alter, or improve an existing on-site wastewater treatment system or any part thereof.
- 10.38 PERSON** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any branch of state, federal or local government; or any other entity that owns, rents, or leases property subject to this regulation.
- 10.39 PIPED WATER SYSTEM** means a plumbing system that conveys water from a source, including but not limited to wells, cisterns, springs, or surface water into a structure.
- 10.40 PUBLIC SYSTEM** means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in the calendar year. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.
- 10.41 PUMPING RECORD** means the record or report provided by the licensed septage hauler that records the date of removal of wastewater and the size and condition of the septic tank(s) and/or dosing tank(s).
- 10.42 REPLACEMENT SYSTEM** means an on-site wastewater treatment system proposed to replace a failed, failing, or contaminating system.
- 10.43 SEALED PIT PRIVY** means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.
- 10.44 SEASONAL** means occupancy of a residence for not more than one hundred twenty (120) days in a calendar year and which would not qualify as the primary residence of a taxpayer for federal income tax purposes related to capital gains on the sale or exchange of residential property.
- 10.45 SEEPAGE PIT** means a covered underground receptacle that receives wastewater after primary treatment and permits the wastewater to seep into surrounding soil.

- 10.46 SEPTIC TANK** means a storage-settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.
- 10.47 SEWER DISTRICT** is defined in MCA §7-13-2201 through §7-13-2351 as a unit of local government separate and distinct from a municipality, but a district may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the state.
- 10.48 SHARED WASTEWATER SYSTEM** means a wastewater system that serves or is intended to serve two (2) living units or commercial structures. The total people served may not be 25 or more. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of person per living unit based on the most recent census data.
- 10.49 SITE EVALUATION** means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.
- 10.50 SLOPE** means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.
- 10.51 SOIL PROFILE** means a description of the soil strata to a depth of eight feet using the USDA soil classification system.
- 10.52 STATE WATERS** means a body of water, irrigation system, or drainage system, either surface or underground; however, this does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.
- 10.53 SUBDIVISION** means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.
- 10.54 SUBSURFACE WASTEWATER TREATMENT SYSTEM** means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.
- 10.55 SURFACE WATER** means any body of water whether fresh or saline, including watercourses such as impoundments, lakes, streams, irrigation ditches, or ponds.

- 10.56 SYSTEM** means all components of any wastewater treatment system from the point of exit from the structure/dwelling to the end of the distribution network (including but not limited to: pipe, septic tank, dose tank, pumps, manifold, distribution box, perforated pipe, chambers).
- 10.57 TYPE I DEFICIENCY** means an instance of non-compliance noted during an operation and maintenance inspection or risk assessment that is considered an immediate public health threat and poses concerns for public and environmental safety.
- 10.58 TYPE II DEFICIENCY** means an instance of non-compliance noted during an operation and maintenance inspection or risk assessment that has the potential to result in a type I deficiency and may create damage to the onsite wastewater treatment system.
- 10.59 TYPE III DEFICIENCY** means an instance of non-compliance during an operation and maintenance inspection or risk assessment that has the potential to interfere with the overall performance of the system and may interfere with proper operation and maintenance of the onsite wastewater treatment system.
- 10.60 UNSTABLE LANDFORMS** refers to areas showing evidence of mass down-slope movement such as debris flows, landslides, rock falls, and hummock hill slopes with undrained depressions up-slope. Unstable landforms may exhibit slip surfaces roughly parallel to the hillside; landslide scars and curving debris ridges; fences, trees, or telephone poles that appear tilted; and tree trunks that bend uniformly as they enter the ground.
- 10.61 UNSUITABLE TREATMENT MATERIAL** means any rock that cannot be readily excavated by and tools, or is essentially impermeable, or has open fracture or solution channels.
- 10.62 VARIANCE** means the granting, by the Board, of an exception to the minimum requirements set out in these regulations, or to the requirements in Title 17, Chapter 36, Subchapter 9 of the Administrative Rules of Montana, or to the requirements in DEQ Circular DEQ-4.
- 10.63 WASTEWATER** means a combination of liquid wastes that may include chemicals, hose wastes, wash water, human excreta and animal or vegetable matter in suspension or solution.
- 10.64 WASTEWATER TREATMENT SYSTEM or WASTEWATER DISPOSAL SYSTEM** means a system that receives wastewater for purposes of treatment, storage, or



disposal. The term includes, but is not limited to, pit privies and experimental systems.

- 10.65 WELL** means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

## **SECTION 11 REPEALER AND EFFECTIVE DATE**

- 11.1** All previous rules, regulations, resolutions, and ordinance as adopted by the Board governing the on-site treatment of wastewater in Lewis and Clark County are hereby repealed.
- 11.2** These regulations must be in full force and effect on the 22<sup>nd</sup> day of April, 2025.
- 11.3** These regulations shall be reviewed and evaluated by the Board two (2) years from the effective date, and every two (2) years thereafter.

## **LEWIS AND CLARK CITY-COUNTY BOARD OF HEALTH**

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Brie MacLaurin, Chair  
Lewis and Clark City-County Board of Health

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Drenda Niemann, Health Officer  
Lewis and Clark County

**LEWIS & CLARK CITY/COUNTY BOARD OF HEALTH GOVERNING BODY**  
**Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

<b>April 22, 2025</b>
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**Agenda Item No.**

<b>5</b>
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☐ Minutes    ☒ Board Member Discussion    ☐ Action

**AGENDA ITEMS:** Public Comment

**PERSONNEL INVOLVED:** Public/Board Members

**BACKGROUND:** Time is allowed for public comment on matters not mentioned in the agenda within the Governing Body’s jurisdiction.

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
Bedell						
Brown						
Reed						
Harris						
Kaufman						
MacLaurin						
Ohs-Mosley						
Rolfe						
Weltz						