

Chris Taggart

From: Penney Howe <penneylane214@hotmail.com>
Sent: Tuesday, November 10, 2020 12:05 PM
To: Greg Chilcott; Chris A. Hoffman; Chris Taggart; Jeff Burrows; Ravalli County Environmental Health; John Palacio
Subject: [EXTERNAL] Comments on newest subsurface wastewater regulations
Attachments: Opposition to newest draft of subsurface treatment regulations.pdf

To all concerned please find my comments on the newest draft of the subsurface wastewater regulations being proposed in the meeting on November 10, 2020.

As stated, I am very concerned about a portion of this proposal as they continue to violate 50.2.130 MCA as I have been indicating for in excess of a year with nothing really being changed. The scientific studies and economic impact required by law are totally being ignored.

Additionally, as indicated, the language of a portion this document is "arbitrary and capricious" and will lead to lawsuits being filed and the county has a terrible track record for winning these kind of cases. The taxpayers of Ravalli County cannot be expected to foot this bill also.

Thank you

Penney Howe as a citizen as well as a real estate agent.
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Date: November 10, 2020

To: Environmental Health Department/ County Health Board, Ravalli County, Montana

From: Penney Howe, citizen of Ravalli county as well as a real estate agent

RE: Newest "Ravalli County Subsurface Wastewater Treatment and Disposal Regulations" Draft

First allow me to commend you for your continued effort at updating the afore-mentioned regulations.

However, section 8.1.3 on page 23 of these proposed regulations violates 50.2.130 in that this paragraph is proposing regulations that are more stringent than state regulations without the peer reviewed scientific studies nor the economic impact of this portion of the regulation being admitted as part of the record.

"The Ravalli County Environmental Health Department does retain the right and obligation to periodically review the permitting for any existing system and check it for compliance under Article 8, it is outside of state regulations to review the system if: i) the property is being advertised for sale (8.1.3, b), page 23) , ii) a review by the tax assessor's office shows changes made to a property, or iii) d) in order to inform the new owner, after property has been sold."

Additionally, you are violating the Environmental Health Departments fiduciary responsibility to the taxpayers of Ravalli county:

1. Is the Department going to have staff scouring real estate advertisements for "conforming systems?" If so, then there are too many people working in the department
2. How will the Environmental Health department know of a review of the tax assessor's office that may result in changes to the property?
3. "in order to inform the new owner after property has been sold"—are you going to review every deed after a sale—this is no different than what was originally drafted and has been in this proposed regulation since it's inception over a year ago.

Also at issue is the word "might" in this section of the proposed regulation. This would will lead to arbitrary and capricious decision making and/or investigations. As we all should know, Ravalli County has been sued and lost more than one legal battle for arbitrary and capricious decisions that are not justified or adequately addressed. This entire section becomes arbitrary and capricious simply by the mere violation of 50.2.130 with the lack of peer reviewed scientific study and economic impacts not being addressed.

The second portion of this same section should be addressed prior to the implementation of any new regulations. The review process forms and instructions should be included as a part of these regulations. The public education process should have already been addressed since this re-write has been in process for an extended period of time.

On page 24, item C at the top of the page, by what authority in MCA does the Board of Health have the power to order a **structure (s) served by a nonconforming existing system be moved or destroyed?**

And a last point, by considering an unfinished basement as a bedroom (in the definition section of the document), that is like saying that a person charged with a crime is guilty and must prove their innocence. It adds additional costs to the homeowner as they will automatically be required to permit and install a system larger than required. **They are being found guilty of the crime of having a basement and have to prove their innocence in that it is not a bedroom!**

Thank you for your time.

Cc: Commissioner Chris Hoffman

Commissioner Greg Chilcott

Commissioner Jeff Burrows.