



later than 5:00 p.m. on November 10, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail MAR17-433rulemaking@mt.gov.

3. The rules as proposed to be adopted provide as follows:

**NEW RULE I CONTINUATION OF EXPIRING PERMITS** (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) the permittee has submitted a timely and complete application under ARM 17.30.1033 for a reissued permit; and

(b) the department, through no fault of the permittee, does not issue a new permit under ARM 17.30.1033 with an effective date on or before the expiration date of the previous permit.

(2) Permits continued under this rule remain fully effective and enforceable until the effective date of a new permit.

(3) When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:

(a) initiate enforcement action based upon the continued permit;

(b) issue a notice of intent to deny the new permit under ARM 17.30.1024;

(c) issue a new permit under ARM 17.30.1024 with appropriate conditions; or

(d) take other actions authorized by the MGWPCS rules.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

**REASON:** It is necessary to adopt NEW RULE I to establish and implement a clear and consistent system for issuing Montana Ground Water Pollution Control System (MGWPCS) permits authorizing discharges from point sources to state ground water. NEW RULE I is based on ARM 17.30.1313, which provides for continuation of expired Montana Pollutant Discharge Elimination System (MPDES) permits. NEW RULE I is proposed to adopt a consistent system for issuing permits to point sources authorizing discharges of pollutants to state waters. NEW RULE I will incorporate practices and procedures currently implemented by the department to administer the MGWPCS permitting program and will clarify the status of administratively continued permits.

**NEW RULE II OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION** (1) All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the department's tentative decision to prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under ARM 17.30.1024.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: It is necessary to adopt NEW RULE II to establish and implement a clear and consistent system for issuing MGWPCS permits authorizing discharges from point sources to state ground water. NEW RULE II is based on ARM 17.30.1375, and will obligate interested persons to raise all reasonably ascertainable issues and arguments on a tentative permit decision during the public comment period. NEW RULE II is necessary to provide a consistent system for issuing permits to point sources authorizing discharges of pollutants to state waters. NEW RULE II will incorporate practices and procedures currently implemented by the department to administer the MGWPCS permitting program.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.30.1001 DEFINITIONS For the purposes of this subchapter, unless the context clearly indicates otherwise, the following definitions terms have the meanings indicated below and are supplemental to the definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) "Advanced treatment system" means a subsurface wastewater treatment system that discharges a total nitrogen effluent concentration of 7.5 mg/L or less total nitrogen.

(1) remains the same, but is renumbered (2).

(3) "Conventional treatment system" means a subsurface wastewater treatment system that provides less nitrogen reduction than Level 2 treatment, or discharges a total nitrogen concentration of greater than 24 mg/L.

(4) "Cumulative" means the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development.

~~(2)~~(5) "DEQ-7" means Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (June 2019 edition), which establishes numeric water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

~~(a)~~ The ~~board~~ department adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (June 2019 edition), which establishes numeric water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) through (6) remain the same, but are renumbered (6) through (9).

~~(7)~~(10) "Mixing zone" is defined in 75-5-103, MCA means a portion of ground water to which pollutants are discharged and in which otherwise applicable ground water standards may be exceeded.

(11) "Modification" means any change to a sewage system, treatment works, or disposal system including expansions, production increases, or process modifications which may result in new or increased discharges of pollutants into state ground waters.

(8) through (13) remain the same, but are renumbered (12) through (17).

(18) "Public sewage system" has the meaning specified in ARM 17.38.101.

(14) remains the same but is renumbered (19).

(20) "Sewage" is defined in 75-5-103, MCA.

(15) and (16) remain the same, but are renumbered (21) and (22).

~~(17)~~(23) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (2018 edition).

(a) The ~~board~~ department adopts and incorporates by reference Department Circular DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Systems" (2018 edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

(24) "Wastewater" has the meaning specified in ARM 17.38.101.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-301, 75-5-401, MCA

**REASON:** It is necessary to adopt the proposed definition of "advanced treatment system" to clarify when a wastewater treatment system may be deemed capable of providing advanced treatment; and to adopt the proposed definition of "conventional treatment system" to clarify when a subsurface wastewater treatment system provides less nitrogen reduction than Level 2 or advanced treatment. Determining the level of treatment a wastewater system is capable of providing is important to determine the cumulative nitrogen load for purposes of permitting requirements, making nonsignificance determinations, and applying the State of Montana's nondegradation policy.

It is necessary to adopt the proposed definition of "cumulative" for consistency within this subchapter and to clarify the use of the term for the regulated public. Under the MGWPCS rules, "cumulative" means the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development.

Additionally, it is necessary to replace the language incorporating DEQ-2 and DEQ-7 by reference by the Board of Environmental Review because, as of July 1, 2021, the board no longer has rulemaking authority under the Montana Water Quality Act. See Senate Bill 233, Sections 31, 32, and 34, adopted by the 2021 Montana Legislature.

The department is proposing to strike portions of the definitions of "mixing zone" and "sewage" to conform with 2-4-305, MCA and not unnecessarily repeat the statutory definitions in rule.

It is necessary to adopt the proposed definition of "modification" to clarify when changes to a wastewater treatment system may trigger the need for a new permit action.

It is necessary to adopt the proposed definitions of "public sewage system" and "wastewater" to adopt definitions consistent with ARM Title 17, chapter 38, subchapter 1 pertaining to public water and sewage systems. Adoption of these proposed definitions will provide a consistency and clarity within the department and for the public.

17.30.1005 APPLICABILITY OF GROUND WATER STANDARDS AND BASIS FOR CLASSIFICATIONS (1) remains the same.

(2) The ground water standards may be exceeded within a mixing zone established pursuant to applicable provisions in ARM 17.30.501 through 17.30.518 Title 17, chapter 30, subchapter 5.

(3) and (4) remain the same.

AUTH: 75-5-301, 80-15-105, 80-15-201, MCA

IMP: 75-5-301, 80-15-201, MCA

REASON: It is necessary to amend (2) to reference the applicable mixing zone rules in ARM Title 17, chapter 30, subchapter 5 rather than citing the individual rules in that subchapter.

17.30.1010 MIXING ZONE (1) remains the same.

~~(2) The board hereby adopts and incorporates by reference ARM Title 17, chapter 30, subchapter 5, which establishes requirements and procedures for the granting or denying of mixing zones by the department.~~

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The department is proposing to strike (2) in order to eliminate the unnecessary repetition of the mixing zone rules adopted at ARM Title 17, chapter 30, subchapter 5. The applicable provisions of the mixing zone rules are already referenced in ARM 17.30.1005.

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, the following activities or operations are not subject to the permit requirements of ~~ARM 17.30.1023, 17.30.1024, 17.30.1030 through 17.30.1033, 17.30.1040, and 17.30.1041~~ this subchapter:

(a) through (c) remain the same.

(d) ~~public sewage systems with a design capacity less than 5000 gallons per day, that are reviewed and approved by the department after May 1, 1998~~ March 1, 2024, under Title 75, chapter 6, MCA, and ARM 17.38.101 under a common design plan or serving a common development that cumulatively discharge less than one pound of total nitrogen per day;

(e) multi-family sewage disposal systems reviewed and approved by the department under Title 76, chapter 4, MCA, and multi-family sewage disposal systems reviewed and approved by a local government under Title 76, chapter 3, MCA, after May 1, 1998. ~~However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);~~

(f) multiple-user sewage disposal systems reviewed and approved by the Department of Public Health and Human Services under Title 50, chapters 50, 51, and 52, MCA, and multi-family sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2, MCA, after May 1, 1998. ~~However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);~~

(g) and (h) remain the same.

(2) Cumulative total nitrogen loads for permit exclusions in (1)(d) are calculated by adding each contributing load from the public sewage systems reviewed and approved by the department under a common design plan or that serve a common development.

~~(2)~~(3) Notwithstanding the exclusions set forth in (1), all sources are subject to the provisions of ARM 17.30.1001 through 17.30.1003, ~~17.30.1010,~~ 17.30.1011, and 17.30.1045. Furthermore, any excluded source which the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602, MCA.

AUTH: 75-5-401, MCA

IMP: 75-5-401, 75-5-602, MCA

REASON: It is necessary to amend (1) to reference all the MGWPCS rules in ARM Title 17, chapter 30, subchapter 10 rather than citing individual rules.

The proposed changes to (1)(d) are necessary to clarify that permit exclusions apply to the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development. This proposed change is necessary to change the basis for permit exclusions to the total load capacity of the entire public sewage system rather than design flow. This change will better protect water quality by considering the cumulative load from all elements of a public sewage system and will close the loophole that allowed development proposals that divided wastewater flow capacity among multiple systems with design capacity less than 5000 gallons per day. The proposed change is necessary to end use of this unintended loophole and to encourage development proposals with higher levels of wastewater treatment.

The proposed changes to (1)(e) and (f) are necessary to delete the exclusions from permit exclusions for certain nonpublic aerobic package plant systems, mechanical treatment plants, and nutrient removal systems. The proposed deletion will strike superfluous language. The department has never enforced the limitations in (1)(e) and (f) on permit exclusions for nonpublic systems. Under (3), the department may require any source determined to be the cause of violation of ground water quality standards to take appropriate corrective action whether the source is excluded from permit requirements or not.

The proposed addition of (2) is necessary to clarify the department's intent to consider the cumulative total nitrogen load from a public sewage system proposed under a common design plan or serving a common development for purposes of the

permit exclusion in (1)(d). Considering the total load from a public sewage system when applying the permit exclusion in (1)(d) will reduce nitrogen loading to groundwater from multiple systems with design capacity less than 5000 gallons per day.

The proposed amendment of (3) is necessary to correct previous amendments to the MGWPCS rule that transferred and repealed ARM 17.30.1002 and 17.30.1003 and to clarify that all sources discharging pollutants to groundwater are subject to MGWPCS rules ARM 17.30.1001 through 17.30.1010, including definitions (ARM 17.30.1001), applicability provisions (ARM 17.30.1005), groundwater standards and use classifications (ARM 17.30.1006), sample collection (ARM 17.30.1007), mixing zone (ARM 17.30.1010), and nondegradation (ARM 17.30.1011) requirements. Additionally, as explained above, all sources are subject to ARM 17.30.1045, which sets forth the department's authority to take emergency action and/or initiate enforcement to require corrective action to address any source that causes groundwater quality standards to be exceeded.

17.30.1023 PERMIT APPLICATIONS (1) through (3) remain the same.

(4) All applications for an MGWPCS permit must be submitted on forms obtained from provided by the department and must ~~contain~~ include the following information ~~as deemed necessary by the department~~:

- (a) a specific site plan, indicating topography;
- (b) location and operation of treatment works and disposal systems;
- (c) location of adjacent state surface waters;
- (d) list of surface owners and lessees of land within one mile of the proposed source;
- (e) location of water supply wells and springs within one mile;
- (f) description of waste or process solutions to be contained on site; and
- (g) information describing existing ground water quality and uses within one mile of the site.

(5) In addition to the application requirements in (4), ~~The the~~ department may require the submission of additional data and information ~~with any MGWPCS permit application where~~ when warranted by the potential impacts of a source, including, but not limited to, the following:

~~(a) specific design conditions and process descriptions, proposed alternatives, soil conditions, descriptions in areas proposed for location of treatment ponds and land disposal, geological conditions, ground water characteristics, local hydrogeology, discussion of potential for and measures to be taken for emergency and accidental spills, chemical and physical characteristics of process water and wastewater, nature of proposed pond sealants and linings.~~

~~(b) for industrial wastes, waste flow diagrams showing water and material balances, chemical additions, and waste volumes and concentrations before and after treatment including, but not limited to, oil and other floating material, biochemical oxygen demand, settleable and suspended solids, acids, alkalies, dissolved salts, organic materials, toxic materials, compounds producing taste and odor in water, and colored materials and dyes.~~

~~(c) proposed measures to be taken to provide alternative water supplies or treatment in the event any domestic, municipal, agricultural, or commercial/industrial well is adversely affected by the operation of the source; and~~

~~(d) a written evaluation of alternative disposal practices for maximization of environmental protection.~~

(6) ~~Operators~~ Applicants who have submitted complete permit applications for ground water discharge sources to the department under the MPDES permit program will be deemed to have complied with the requirements of this rule.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to (4) are necessary to require applicants to submit an application on a form provided by the department and, at minimum, to provide the information listed in (4)(a) through (g). The listed information is required for the department to assess impacts associated with a discharge to state ground water.

The proposed amendments to (5) are necessary to clarify that the department may require additional information, above and beyond what is required in (4) when necessary to assess water quality impacts associated with the permitted discharge.

The changes to (5)(a) through (d) are necessary to remove language rendered redundant by the additions to (4)(b) and to (5) and the department's discretion to request the same data in the permit application when necessary to assess potential impacts related to a discharge.

The proposed amendments to (6) are necessary to clarify that submitting a complete permit application under the MPDES Rules in ARM Title 17, chapter 30, subchapter 13 fulfills the permit application requirements under the MGWPCS rules.

17.30.1024 REVIEW PROCEDURES (1) remains the same.

(2) An application for a MGWPCS permit is not deemed complete until the permit fee required under ARM 17.30.201 is remitted to the department.

~~(2)(3)~~ After receipt of a complete MGWPCS permit application and requested supplemental information, the department shall make a tentative determination with respect to issuance or denial of an MGWPCS permit. The tentative determination must be based on compliance or noncompliance with the requirements of this subchapter and Title 75, chapter 5, MCA.

(3) remains the same, but is renumbered (4).

~~(4)(5)~~ A public notice of every ~~completed MGWPCS permit application~~ tentative determination to issue a permit must be circulated by the department in accordance with the procedures described in ARM 17.30.1040 to inform the public of the proposed discharge and of the tentative determination.

~~(5) The department shall provide a period of not less than 30 days following the date of the public notice during which time any person may submit written views or request a public hearing on the tentative determination. Any request for a public hearing must indicate the interest of the party filing the request and the reasons why a hearing is warranted.~~

~~(6) The department may hold a hearing on its own initiative or when it determines good cause exists to hold such a hearing upon request of any person. Public notice of a public hearing on a tentative determination must be given in accordance with ARM 17.30.1040.~~

~~(7) If a public hearing is not held pursuant to (6), the department shall, within 30 days after termination of the comment period provided for in (5), make a final determination on issuance or denial of an MGWPCS permit. All written comments submitted during the 30-day comment period must be retained by the department and considered in the formation of the final determination.~~

~~(8) If a public hearing is held on the tentative determination, the department shall make its final determination on the MGWPCS permit application within 60 days following the hearing. All comments recorded during the public hearing and written comments submitted during the 30-day comment period required in (5) must be retained by the department and considered in the formation of the final determination.~~

~~(9) After making the final determination on an MGWPCS permit application the department shall issue an MGWPCS permit or give written notice to the applicant of the department's decision to deny, including notice to the applicant of its right to appeal the denial to the board.~~

AUTH: 75-5-401, MCA  
IMP: 75-5-401, MCA

REASON: Proposed new (2) is necessary to provide that the fee required under ARM 17.30.201 must be paid before an application for MGWPCS permit is deemed complete. The proposed amendment to (3), formerly (2), is necessary to emphasize that a complete MGWPCS permit application including all required supplemental information and the fee triggers the department's review and tentative permit decision. The proposed amendment to (4), formerly (3), is necessary to clarify that it is the tentative permit determination, not the permit application, that is circulated by the department in accordance with the procedures described in ARM 17.30.1040 to inform the public of the proposed discharge and the tentative permit decision.

The department is proposing to strike former (5) through (9) in order to eliminate unnecessary repetition and potential conflict with the public notice requirements adopted at ARM 17.30.1040.

17.30.1033 REISSUANCE OF PERMITS (1) Any permittee who wishes to continue to discharge after the expiration date of his their MGWPCS permit must request reissuance of his their permit at least ~~90~~ 180 days prior to its date of expiration.

(2) through (4) remain the same.

(5) The processing procedures for MGWPCS permit applications described in ARM 17.24.1024(4) ~~through (9)~~ will apply to the reissuance of an MGWPCS permit.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: This rule is amended to comply with gender-neutral rule writing conventions and to provide permittees with 180 days to request renewal or reissuance of MGWPCS permits. The 180-day time frame is consistent with the time frame for renewal of MPDES permits under ARM 17.30.1322. Changes to (5) correlate the proposed changes to ARM 17.30.1024.

~~17.30.1040 PUBLIC NOTICE (1) Public notice of every completed MGWPCS application must be mailed to any person upon request and must be circulated within the geographic area of the proposed discharge. Circulation may include any of the following:~~

~~(a) posting in the post office and public places of the municipality nearest the premises of the applicant in which the discharge is located;~~  
~~(b) posting near the entrance to the applicant's premises and in nearby places; or~~

~~(c) publishing in local newspapers and periodicals, or if appropriate, in a daily newspaper of general circulation.~~

(1) The department shall provide public notice of the department's tentative determination to issue a permit. The department shall mail the notice to:

(a) the applicant;

(b) any agency or entity identified in ARM 17.30.1041; and

(c) any person on request.

(2) In addition, the department shall publish a notice of the tentative determination to issue a permit for two consecutive weeks on the department's web page and may include notice to the public by:

(a) posting in a newspaper of general circulation within the geographic area of the proposed discharge;

(b) posting in the post office and public places of the municipality nearest the premises of the proposed activity;

(c) posting near the entrance to the applicant's premises and in nearby places; or

(d) any other notice that the department considers reasonable to encourage public participation in the decision.

(2)(3) Public notice of any public hearing held pursuant to this subchapter must be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MGWPCS application of the department's tentative determination. Circulation must include at least the following:

(a) through (c) remain the same.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to (1) are necessary to correctly state that it is the tentative permit decision and not the completed MGWPCS permit application that triggers the public notice and comment requirements. Former (1) is stricken and new (1) is proposed to better state the department's obligation to

communicate tentative state actions to the applicant and stakeholders. The specific methods for notifying the public at large are moved to (2) and amended to better reflect modern technology and modern practices of meeting public notice obligations and encouraging public engagement.

The proposed amendments to (2) are necessary to provide for modern methods of public notice and engagement of a tentative state action. These include notice on the department's web page, posting in local newspapers, and posting in public locations in the area of the proposed discharge.

The proposed amendments to (3) are necessary to eliminate the minimum 30-day public notice requirements for a public hearing. The change will provide flexibility by allowing a shorter time frame when necessary to meet public notice requirements and finalize a permit decision. Additionally, the proposed amendments to (3) are necessary to correctly state it is the tentative permit decision that is subject to the public notice requirements in (2).

**17.30.1041 DISTRIBUTION OF INFORMATION** (1) The following governmental agencies must be included on a mailing list for public notice of tentative determinations to issue MGWPCS permits applications and are exempted from a copying fee where copies of a draft permit, fact sheet, or any related documents are requested:

- ~~(a) United States Environmental Protection Agency;~~
- ~~(b) United States Bureau of Land Management;~~
- ~~(c) United States Bureau of Reclamation;~~
- ~~(d) United States Soil Conservation Service;~~
- ~~(e) United States Forest Service;~~
- ~~(f) United States Geological Survey;~~
- (g) through (m) remain the same, but are renumbered (a) through (g).
- (2) through (5) remain the same.

AUTH: 75-5-401, MCA  
IMP: 75-5-105, 75-5-401, MCA

REASON: The proposed amendments to (1) are necessary to strike (1)(a) through (f) requiring public notice of tentative determinations to issue MGWPCS permits to the federal Environmental Protection Agency, Bureau of Land Management, Bureau of Reclamation, Soil Conservation Service, Forest Service, and Geological Survey. The department's permit decisions regarding discharges to state ground water are not subject to federal jurisdiction. Therefore, notice to the aforementioned federal entities of all tentative MGWPCS permit decisions is not required. Under the current (1)(l), the department may still provide notice to any state or federal agency upon their request.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail [MAR17-433rulemaking@mt.gov](mailto:MAR17-433rulemaking@mt.gov), and must be received no later than 5:00 p.m., November 17, 2023.

6. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Whitaker  
NICHOLAS WHITAKER  
Rule Reviewer

/s/ Christopher Dorrington  
CHRISTOPHER DORRINGTON  
Director  
Department of Environment Quality

Certified to the Secretary of State October 10, 2023.