

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.21.634 and 36.21.638)
regarding the Location of Wells)

TO: All Concerned Persons

1. On December 21, 2018, the Board of Water Well Contractors (board) of the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-194 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2494 of the 2018 Montana Administrative Register, Issue Number 24. On January 25, 2019, the board published a notice of change of hearing date and extension of comment period on the proposed amendment at page 111 of the 2019 Montana Administrative Register, Issue Number 2.

2. The department has amended ARM 36.21.634 as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.21.638 LOCATION OF WELLS (1) remains as proposed.

(a) 50 feet of septic tanks, and underground storage tanks and associated lines; or

(b) 100 feet of drainfields, seepage pits or cesspools, unregulated sewage lagoons, or other site treatment systems; or

(c) 1,000 feet of regulated sewage ~~sewer~~ lagoons; wells less than 1,000 feet setback must be in compliance with the Department of Environmental Quality under [New Rule I from MAR Notice No. 17-404].

(2) and (3) remain as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: The commenter understands the need for setback rules, but believes the proposed rules to be excessive, especially where zero-discharge permits such as animal stockwater or dairy feedlots are concerned. The commenter cited setback distances in other states with different hydrogeology and recommended reducing the distance to those of comparable neighboring states.

COMMENT 2: The commenter noted that the bill hearings precipitating this proposed amendment discussed setbacks between 100 and 500 feet, and the

commenter's organization would not have supported the bill had it been their understanding that the new setbacks would be 1,000 feet. The commenter understands the need for consistency between DNRC and Department of Environmental Quality (DEQ) rules where applicable. The commenter proposed changing the language to distinguish between regulated and unregulated sewage lagoons.

COMMENT 3: The commenter expressed concern that the 1,000 ft. setback is far too large an area to be reasonable in many cases.

RESPONSE TO COMMENTS 1-3: The board and the department agree with the comments insofar as the concern for the setback distance being greater than necessary in some cases. The language has been amended as suggested by Commenter 2 to distinguish between sewage lagoons regulated by DEQ and unregulated sewage lagoons, to allow greater flexibility in determining setback distance.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Danna R. Jackson
DANNA R. JACKSON
Rule Reviewer

Certified to the Secretary of State June 11, 2019.