



# WELL DEVELOPMENTS

Spring - 2010

**BWWC**

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**IN THIS ISSUE**

- 1 MCA v. ARM
- 2 License Renewals
- 2 New Licenses
- 3 Online CE Classes
- 3 April Board Meeting
- 3 Location of Wells
- 4 Websites to Bookmark

## MCA v. ARM: What is the Difference Between the Administrative Rules of Montana and the Montana Code Annotated?

*Lucy Richards, ARM Coordinator, DNRC Director's Office*

Perhaps this is a question that has haunted your dreams at night (or not). Both the Montana Code Annotated ("MCA" or "statute") and the Administrative Rules of Montana ("ARM") are the laws that must be followed by the citizens and the government of the state of Montana. The essential difference is that MCA are adopted by the Legislature, while ARM are adopted by state agencies.

The MCA is the official published version of all current Montana law. The MCA is made up of those bills introduced and codified into law by the state legislature, which meets every two years. Citizens may participate in the process through input to their legislators.

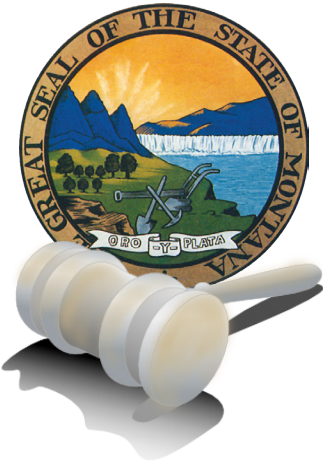
The ARM—Title 36 in the DNRC's case—are agency regulations, standards, or statements of applicability that implement,

interpret, or set law or policy. They describe the organization, procedures, or practice requirements of the agency. Agencies are given rulemaking authority through the legislative process. ARM have the force and effect of law. They cannot conflict with MCA. However ARM can be more specific—much in the same way that state laws can be more restrictive than federal laws, as long as the federal law is being followed.

Rulemaking is initiated by the agency. There is a statutorily required public comment period during the rulemaking process, in which the public may give input on the proposed rule changes. The statutes that give the agency the authority to make and carry out a rule are listed at the bottom of each rule.

A practical example of how statute and ARM go hand-in-hand is 85-2-516, MCA and ARM 36.21.639. MCA tells drillers that a well log

*continued...*



	MCA	ARM
<b>Who has the authority to adopt?</b>	Legislature *Through the legislative process, the public can petition their legislators to introduce bills. Agencies can also petition legislators to introduce bills.	Agencies *When the legislature is not in session, an interested party may petition an agency to change a rule.  Legislature *The legislature may specifically direct an agency(ies) to initiate rulemaking within statute.
<b>Can the public comment on the process?</b>	Yes – during public hearings before the bill is signed into law.	Yes – during the public comment period after the agency files its proposal notice with the Secretary of State's Office.
<b>Do I comply with what the MCA says, or what the ARM says?</b>	You must comply with both. ARM and statute should never contradict one another and both must be followed.	
<b>Must I comply with this at all times?</b>	Yes	
<b>Purpose</b>	Set the laws for the state of Montana	Agency regulations standards, or statements of applicability that implement, interpret, or set law or policy. Does not supersede statute.

must be filed with the Board of Water Well Contractors for each well drilled. It also states that the well log must be filed within 60 days of completion. ARM 36.21.639 does not mention the 60 days, but the driller must still comply with the statutory requirement. ARM 36.21.639 also specifies that in addition to the requirements of 85-2-516, MCA, a copy of the well log must be retained by the driller and another sent to the well owner.

The thing that the driller in the example above, or anyone else trying to comply with the law must remember is: **In order to meet all legal requirements both the ARM and the MCA must be complied with.**

## License Renewals

As it will soon be time to renew your licenses, we thought this is a good time to explain the renewal process. Usually license renewal notices are sent out on or before May 10 of each year, giving you lots of time to send in the renewal notice and fee before your current license expires on June 30.

Montana Code Annotated section 37-43-307, provides that any license which is not renewed by June 30 is considered suspended. If the license remains suspended more than 30 days after July 1, it is considered revoked. However, before revoking the license, the Board will send a notice to the licensee of its intent to revoke. This letter is mailed to the licensee on or before July 15. If the license has not been renewed by August 1, it is automatically revoked and cannot be reinstated without payment of the application fee and successful completion of the appropriate exam.

Administrative Rule of Montana 36.21.415 also provides that any licensee who has not renewed his license by July 10 will pay a \$75 late fee.

Important dates for license renewals:

- May 10 renewal notices are mailed to the licensees
- June 30 licenses expire
- July 1 licenses are suspended, the licensee is not allowed to drill
- July 10 late fee applied
- July 15 letter of intent to revoke license are mailed
- August 1 licenses are revoked

When submitting the license renewal application, four things are required:

- 1) completed renewal form including current address and phone numbers
- 2) the correct fee must be paid
- 3) proof of bond must be provided
- 4) proof of 4 hours of continuing education

Renewal applications that are incomplete will be returned to the licensee. Licensees will be charged with a late fee if the documentation for bonding or continuing education is submitted after July 10 even if the original renewal form was sent in prior to this date. In past years there have been licensees that have abused the system and took months to submit the proper documentation hence the need to enforce the letter of the law.

Last year there were a number of problems with providing proof of bonding and proof of continuing education hours. Drillers should start on obtaining the proof of bonding by contacting their bond companies early. All bond companies will provide the necessary documents, but it may take some time to receive the documents. Some licensed persons assume that the bonding company sends the continuation certificate to the Board of Water Well Contractors, but this is not always the case. The licensee is responsible for contacting the companies and making the request. It is helpful if the term of the bond is from June to June each year so that the continuing certificate is in your hands by the time you are ready to submit the renewal form.

All continuing education courses need to be pre approved by the Board. Proof of attending or completing course work for continuing education hours should be: class attendance roster provided by the sponsor of the class or a certificate of attendance. Licensees that attend the National Ground Water Convention will need to provide the NWGA continuing education reporting form with the name of each class and the course code. A receipt for paying convention fees or a motel bill does not qualify as proof of continuing education hours. New licenses will not be issued until all of the requirements are met.

## New Licenses

- |                        |                    |
|------------------------|--------------------|
| Herman (Bill) Borchert | Michael Wilson     |
| Agri Industries        | A K Drilling       |
| Sydney, MT             | Butte, MT          |
| Water Well Contractor  | Water Well Driller |



## Online CE Classes

At the last Board of Water Well Contractor's Board meeting, the Board approved on line CE courses from the International School of Well Drilling. There are 5 one hour CE courses and 4 two hour CE courses. The courses include: geothermal heating and cooling systems, drilling methods, well rehabilitation, injection wells, basic geology and groundwater, well abandonment, well development, aquifer storage and recovery and history of well construction.

The web site to access the courses is: [www.welldrillingschool.com](http://www.welldrillingschool.com)

At the completion of each course, review questions are asked. The driller is free to refer back as often as needed to the text before selecting the answer to the review questions. The completed review questions are submitted via email to the staff of the International School of Well Drilling so that the CE hour Completion certificate can be emailed to the course completer. A minimum score of 70% is needed to successfully pass the review questions. Once the review questions for the course selected are completed and the Statement of Integrity has been signed the driller is asked to make payment by credit card. The CE hour is then submitted. Each CE hour costs \$34.95, so a one hour CE course costs \$34.95 and a two hour CE course costs \$69.90.

A one CE hour course is designed to take one hour to complete from start to finish. A two CE hour course is designed to take two hours from start to finish.

A driller is only allowed to receive a CE hour credit once from each course taken. In other words, drillers may not receive additional CE hour credits by repeating the same course more than once within the same license period.

The purpose of offering the on line class is to provide another source for drillers to obtain the required 4 hours of continuing education.

## Location of Wells

The Administrative Rules of Montana § 36.21.638 states:

- (1) At a minimum, unless contamination risk is evident, water wells shall not be located within:
  - (a) 50 feet of septic tanks and underground storage tanks and associated lines; or
  - (b) 100 feet of drainfields, seepage pits or cesspools, or other site treatment systems.
- (2) Water wells should not be located within:
  - (a) 10 feet of property lines unless properly protected by easement or agreement;
  - (b) 10 feet of sewer lines with permanent watertight joints; or
  - (c) 50 feet of other sewer lines.
- (3) CONTRACTORS should contact local flood plain administrators for rules pertaining to wells in flood plain areas.

Questions have been asked about underground animal waste storage tanks or pits. All waste storage pits (human, animal or other types of waste) or underground containers should be treated the same. Outhouses are considered cesspools. Each driller should look around for possible sources of contamination. If the well becomes contaminated, the driller could be held responsible. Please note the "unless contamination risk is evident". This list does not contain "all contamination risks" that drillers should be aware of.

### Next Board Meeting

April 16, 2010  
9 AM  
DNRC Water Resources Building  
9th and Roberts  
Helena MT

### Permit to Drill a Well in Missoula County

Effective January 1, 2010, Missoula County is requiring a permit to drill a well in the county. The application is through the Missoula County Environmental Health Department. The permit fee is \$90. The internet link is: [www.co.missoula.mt.us/envhealth/waterservices/wellpermits.htm](http://www.co.missoula.mt.us/envhealth/waterservices/wellpermits.htm)



## Websites to Bookmark

The Internet is a huge information bank and finding what you are looking for can be time consuming and frustrating. Provided below is a list of websites that relate to the BWWC.

### **Board of Water Well Contractors**

The BWWC web page with links, dates, newsletter, information for drillers and Board members contact information  
[www.bwwc.mt.gov](http://www.bwwc.mt.gov)

### **Ground-Water Information Center**

Provides ground water information and filed well logs  
<http://mbmggwic.mtech.edu/>

### **Montana Codes Annotated**

Provides the Montana Statutes for the BWWC  
[http://data.opi.mt.gov/bills/mca\\_toc/37\\_43.htm](http://data.opi.mt.gov/bills/mca_toc/37_43.htm)

### **Administrative Rules of Montana**

Provides the Rules for the BWWC  
<http://www.mtrules.org/gateway/ChapterHome.asp?Chapter=36.21>

### **Well Log Report Forms**

Contains the Well Log Report Form 603 for drillers  
[http://www.dnrc.mt.gov/wrd/water\\_op/bwwc/pdfs/603-R2-04.pdf](http://www.dnrc.mt.gov/wrd/water_op/bwwc/pdfs/603-R2-04.pdf)

### **Driller's license Renewal Form**

Provides the yearly license renewal form  
[http://www.dnrc.mt.gov/wrd/water\\_op/bwwc/pdfs/renewal\\_form.pdf](http://www.dnrc.mt.gov/wrd/water_op/bwwc/pdfs/renewal_form.pdf)

### **Montana Topographic Map Finder**

By using the "Search Tools" on this site, a driller can enter well location information and the well site will be marked on a topographic map  
<http://maps2.nris.state.mt.us/scripts/esrimap.dll?name=LocMap&Cmd=Map>

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