



ADMINISTRATIVE RULES OF MONTANA



17.38.103 PUBLIC WATER AND SEWAGE PROJECTS ELIGIBLE FOR CATEGORICAL EXCLUSION FROM MEPA REVIEW

- (1) Except as provided in (2), a department action under this subchapter and under either Title 75, chapter 6, part 1 or Title 75, chapter 6, part 2, MCA, is excluded from the requirement to prepare an environmental assessment or an environmental impact statement if the application for department review is for any of the following projects:
 - (a) projects relating to existing infrastructure systems such as sewage systems, drinking water supply systems, and stormwater systems, including combined sewer overflow systems that involve:
 - (i) minor upgrading;
 - (ii) minor expansion of system capacity;
 - (iii) rehabilitation (including functional replacement) of the existing system and system components; or
 - (iv) construction of new minor ancillary facilities adjacent to or on the same property as existing facilities; or
 - (b) projects in unsewered communities involving the replacement of existing on-site systems, provided that the new on-site systems do not result in substantial increases in the volume of discharges or in loadings of pollutants from existing sources, and do not relocate existing discharges.
- (2) A categorical exclusion may not be granted for a department action under (1) if:
 - (a) the action would authorize facilities that will provide a new discharge or relocate an existing discharge to ground or surface waters;
 - (b) the action would result in an increase above permit levels established for the facility under the Montana pollutant discharge elimination system or Montana ground water pollution control system for either volume of discharge or loading rate of pollutants to receiving waters;
 - (c) the action would authorize facilities that will provide capacity to serve a population at least 30% greater than the existing population;
 - (d) the action is not supported by the state, or other regional growth plan or strategy;
 - (e) the action directly or indirectly involves or relates to upgrading or extending infrastructure systems primarily for the purposes of future development;

- (f) the department has received information indicating that public controversy exists over the project's potential effects on the quality of the human environment; or
- (g) the department determines that the proposed project that is the subject of the state action shows some potential for causing a significant effect on the quality of the human environment, based on ARM 17.4.608, or might possibly affect:
 - (i) sensitive environmental or cultural resource areas; or
 - (ii) endangered or threatened species and their critical habitats.
- (3) The department shall document its decision to issue a categorical exclusion by referencing the application, providing a brief description of the proposed action, and describing how the action meets the criteria for a categorical exclusion in (1) without violating the criteria in (2).
- (4) The department may revoke a categorical exclusion if:
 - (a) the project is not initiated within the time period specified in the facility plan, or a new or modified application is submitted;
 - (b) the proposed action no longer meets the requirements for a categorical exclusion because of changes in the proposed action;
 - (c) new evidence demonstrates that serious local or environmental issues exist; or
 - (d) state, local, tribal, or federal laws may be violated.

Authorizing statute(s): 75-6-104, MCA

Implementing statute(s): 75-6-104, MCA

History: NEW, 2009 MAR p. 412, Eff. 4/17/09; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2024 MAR p. 253, Eff. 2/10/24.