



ADMINISTRATIVE RULES OF MONTANA



17.36.122 OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS

- (1) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.
- (2) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.
- (3) When required by department circulars or this chapter, an operation and maintenance manual must be provided for water supply, wastewater treatment, and storm water facilities meeting the requirements of that circular or rule.
- (4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with (6). Easements must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:
 - (a) in writing signed by the grantor of the easement that adequately describes what is being conveyed, contains language of conveyance, and identifies the grantor and grantee of the easement; or
 - (b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.
- (5) If an application includes a shared or multiple-user system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.
- (6) Proposed drainfield mixing zones and proposed well isolation zones, as those terms are defined in 76-4-102, MCA, must be wholly within the boundaries of a lot as provided in this section. This rule applies to all subdivisions subject to review under Title 76, chapter 4, MCA, including new subdivision applications, subdivision rewrites, revised lot layouts, and minor deviations, except as provided in (c). For purposes of this rule, a setback envelope or provisional mixing zone is equivalent to a drainfield mixing zone.
 - (a) For lots created after March 30, 2011, a proposed drainfield mixing zone must be located wholly within the boundaries of the lot unless:
 - (i) the adjoining land is owned by the same person;

- (ii) an easement has been obtained for the mixing zone from the affected landowner;
 - (iii) for public land, appropriate authorization has been obtained from the public entity; or
 - (iv) the mixing zone extends onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.
- (b) For lots created after October 1, 2013, a proposed well isolation zone must be located wholly within the boundaries of the lot unless:
 - (i) the adjoining land is owned by the same person;
 - (ii) an easement has been obtained for the well isolation zone from the affected landowner;
 - (iii) for public land, appropriate authorization has been obtained from the public entity; or
 - (iv) for individual wells only, the well is located a minimum of 50 feet inside the lot boundary and extends onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.
- (c) This rule does not apply to the following:
 - (i) divisions provided for in 76-3-207, MCA, except for family transfers under 76-3-207(1)(b), MCA;
 - (ii) lots created before October 1, 2021, and excluded from review pursuant to 76-4-125, MCA; or
 - (iii) changes to an existing well isolation zone or mixing zone that was previously approved under Title 76, chapter 4, MCA, if the changes would not increase the size, location, or boundaries of the existing isolation or mixing zone.

Authorizing statute(s): 76-4-104, MCA

Implementing statute(s): 76-4-104, MCA

History: NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18; TRANS and AMD, from 17.36.326, 2023 MAR p. 324, Eff. 4/15/23.