

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.38.208, 17.38.225, 17.38.234, )	PROPOSED AMENDMENT
17.38.301, 17.38.302, 17.38.305, )	
17.38.310, and 17.38.312 pertaining to )	(PUBLIC WATER AND SEWAGE
treatment requirements, control tests, )	SYSTEM REQUIREMENTS)
testing and sampling records and )	
reporting requirements, definitions, )	
incorporation by reference, cross- )	
connections: regulatory requirements, )	
voluntary cross-connection control )	
programs: application requirements, )	
and standards and requirements for )	
cross-connection control )	

TO: All Concerned Persons

1. On March 2, 2012, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

- 17.38.208 TREATMENT REQUIREMENTS (1) through (3) remain the same.
- (4) The board adopts and incorporates by reference the following:
  - (a) through (g) remain the same.
  - (h) 40 CFR 141.81, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth the applicability of lead and copper corrosion control treatment steps to small, medium, and large water systems;
    - (i) remains the same.
    - (j) 40 CFR 141.83, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth lead and copper source water treatment requirements;
    - (k) 40 CFR 141.84, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth lead service line replacement requirements;
    - (l) through (w) remain the same.

AUTH: 75-6-103, MCA  
IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.208 clarify the adoption by reference of federal requirements. The proposed amendments are necessary to remove confusing language in the rules. When the department adopted the 2007 edition of 40 CFR, there were additional requirements that had been published in the Federal Register that were not included in the 2007 edition. To avoid adopting multiple editions of the CFR, the board adopted the 2007 edition as modified by the language in the Federal Register. The language in the Federal Register is now present in the 2009 edition, which the board has adopted by reference.

17.38.225 CONTROL TESTS (1) remains the same.

(2) Disinfectant residual tests must be conducted daily by:

(a) remains the same.

(b) ground water systems in accordance with 40 CFR Part 141, subpart S.

Disinfectant residual tests must be conducted daily at each entry point to the distribution system to prove compliance with the 4 four-log virus inactivation or removal requirement; and

(c) ground water systems required by the department under ARM 17.38.229 to maintain a residual, and by consecutive systems connected to those systems, at each entry point to the distribution system and, if required to maintain a residual in the distribution system, one in the distribution system. For consecutive systems, the entry point is the point at which the purchased water enters the distribution system of the consecutive system.

(3) The department may waive, on a case-by-case basis, the requirement entry point sampling, distribution sampling, or both for ground water and consecutive systems that are referenced in ARM 17.38.225(2)(c):

~~(i) entry point sampling; and~~

~~(ii) entry point sampling and distribution system sampling, if the consecutive system produces treated water for vending or bottling where the treatment is designed to produce a product free of chlorine.~~

(3) through (7) remain the same, but are renumbered (4) through (8).

AUTH: 75-6-103, MCA  
IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.225 clarify that the department may waive any or all of the disinfectant residual monitoring requirements on a case-by-case basis for systems identified in ARM 17.38.225(2)(c). The proposed clarifications are necessary to allow a regulated system to avoid regulatory requirements where the department has determined that the public health is protected through other means.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) and (2) remain the same.

(3) Recordkeeping requirements for water haulers are set forth in ARM

17.38.513.

(3) through (9) remain the same, but are renumbered (4) through (10).

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment would provide information on where the recordkeeping requirements for water haulers can be found. This proposed amendment is necessary so that confusion will not exist as to whether the recordkeeping requirements in ARM 17.38.234 are applicable to water haulers and so that the water haulers' recordkeeping requirements can be cross-referenced with the recordkeeping requirements of ARM 17.38.234.

17.38.301 DEFINITIONS For the purposes of this subchapter, unless the context requires otherwise, the following definitions, in addition to those in 75-6-102, MCA, apply:

(1) "Approved backflow prevention assembly or device" means an assembly or device included in the ~~"List of Approved Backflow Prevention Assemblies"~~, incorporated by reference in ARM 17.38.302 approved by the department.

(2) through (6) remain the same.

(7) "Certified backflow prevention assembly tester" means a person who holds a current certificate issued by a certification program of any state authorizing the person to test backflow prevention assemblies or who holds a current certificate from the American ~~s~~Society of ~~s~~Sanitary ~~e~~Engineers, or the American ~~b~~Backflow ~~p~~Prevention ~~a~~Association, foundation for cross-connection control and hydraulic research, or American water works association.

(8) remains the same.

(9) "Degree of hazard" means the level of risk created by either a pollutant (non-health hazard) or a contaminant (health hazard), as derived from an assessment of the materials that may come in contact with the distribution system through a cross-connection.

(9) remains the same, but is renumbered (10).

~~(10)~~ (11) "Water pollution Non-health hazard" means a condition that causes or creates a potential for water quality degradation but does not constitute a health hazard.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.301(1) is necessary because the list referred to in the current definition is being deleted in ARM 17.38.302. The proposed amendment will clarify that an "approved" backflow prevention assembly or device means that the assembly or device has been approved by the department. This proposed amendment is therefore consistent with the proposed amendment to ARM 17.38.305(3).

The proposed amendments to (7) clarify which agencies can certify cross-connection control assembly testers. The proposed amendments are necessary to

correct current language that indicates that the Foundation for Cross-Connection Control and Hydraulic Research and the American Water Works Association are certifying agencies. Both of these agencies offer training and testing, but certification is through the organizations now listed in the proposed amendment to the rule.

The proposed addition of the new definition in (9) would clarify the term "degree of health hazard." The proposed definition is necessary to ensure that the term, which is common in the cross-connection control industry, is properly understood by the regulated community.

The proposed amendments to the definition of "water pollution hazard" would make the rule language consistent with standard industry terminology adopted by reference in the "Manual of Cross-Connection Control." The proposed amendment is necessary to remove language that may confuse the regulated public. The remaining amendments are necessary for renumbering purposes.

17.38.302 INCORPORATION BY REFERENCE (1) The board hereby adopts and incorporates by reference the following:

~~(a) "List of Approved Backflow Prevention Assemblies" published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (1998 edition);~~

~~(b) "Manual of Cross-Connection Control" (9<sup>10</sup>th edition), published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (December 1993 October 2009).~~

~~(2) These This publications sets forth approved backflow prevention assemblies or devices and standards for cross-connections to public water supply systems. Copies of the this publications listed above are available at may be obtained by contacting the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901 Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, Kaperielian Hall 200, Los Angeles, CA 90089-2531 or at http://www.usc.edu/dept/fccchr/.~~

~~(3) Backflow prevention assemblies or devices not identified in the publications listed above may be approved by the department if the person demonstrates to the satisfaction of the department that strict adherence to this rule is not necessary to protect public health and the quality of state waters.~~

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.302(1) would remove the adoption by reference of the "List of Approved Backflow Prevention Assemblies" and update the adoption by reference of the "Manual of Cross-Connection Control" to the 10th edition. The proposed deletion of the "List of Approved Backflow Prevention Assemblies" is necessary because Montana law does not allow for the adoption by reference of new editions without going through the rulemaking process. By keeping this adoption by reference in the rule, systems are unable to use new tools that are listed until that edition has been adopted. By removing the list and referring only to assemblies approved by the department, as is being proposed in

ARM 17.38.305(3), the department may then still use the list as guidance and refer to the most recent edition. The proposed amendment to adopt the 10th edition of the "Manual of Cross-Connection Control" would update the adoption by reference to the most current edition. The proposed amendment is necessary to ensure that certified testers are testing the cross-connection control assemblies in accordance with current industry standards. The significant changes to the testing standards will: (1) ensure that a cross-connection is not created during testing; (2) protect the tester from pressure releases; and (3) provide a required minimum value, or improve the accuracy of the test, by detailing the procedure more fully.

The proposed amendments to (2) would clarify how copies of the document adopted by reference may be obtained. The proposed amendments are necessary to reflect proposed amendments in (1) and to clarify that the department does not have copies available. The "Manual of Cross-Connection Control" is offered for sale by the publisher. Previously, because the department is a member of the association and can purchase the manual at a reduced rate, the department offered this document for sale at its cost. The department has determined that it should not be selling the manual to non-members at the member price, nor should the department charge more than its cost. The department will now only give requestors the publisher's contact information and requestors can make arrangements to receive a copy of the manual.

The reason for the proposed deletion of (3) is the same as that given for the proposed amendments to ARM 17.38.305.

#### 17.38.305 CROSS-CONNECTIONS: REGULATORY REQUIREMENTS

(1) A cross-connection on a public water supply system must be eliminated by the disconnection of the cross-connection whenever reasonably practicable. Whenever elimination of a cross-connection is not reasonably practicable and the cross-connection creates a health or ~~water contamination~~ non-health hazard, the hazard must be eliminated by the insertion into the piping of an approved backflow prevention assembly or device in accordance with (2) ~~of this rule~~.

(2) For the cross-connections identified below, the following types of approved backflow prevention assemblies or devices must be used:

(a) A health hazard created by a cross-connection that may be subject to back pressure must be eliminated by an approved reduced pressure ~~zone~~ principle backflow prevention assembly (RP) or an air-gap.

(b) A health hazard created by a cross-connection that may be subject to back siphonage, but not subject to back pressure, must be eliminated by an approved air-gap, pressure vacuum breaker assembly (PVB), spill-resistant pressure vacuum breaker assembly (SVB), atmospheric vacuum breaker (AVB), or a reduced pressure ~~zone~~ principle backflow prevention assembly (RP).

(c) A ~~water pollution~~ non-health hazard created by a cross-connection that may be subject to back pressure and back siphonage must be eliminated, at a minimum, by an approved double check valve assembly (DC). ~~The This~~ cross-connection condition ~~described in this subsection~~ may also be eliminated by an air-gap or by an approved reduced pressure ~~zone~~ principle backflow prevention assembly (RP).

(d) A ~~water pollution~~ non-health hazard created by a cross-connection that may be subject to back siphonage, but is not subject to back pressure, must be eliminated, at a minimum, by an approved double check valve assembly (DC), pressure vacuum breaker assembly (PVB), spill-resistant pressure vacuum breaker assembly (SVB), or an atmospheric vacuum breaker (AVB) device. This cross-connection condition ~~described in this subsection~~ may also be eliminated by an air-gap or by an approved reduced pressure ~~zone~~ principle backflow prevention assembly (RP).

(3) Backflow prevention assemblies and devices must be approved by the department.

(3) through (5) remain the same, but are renumbered (4) through (6).

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.305 incorporate changes proposed under ARM 17.38.301, update the list of available treatment devices, and incorporate changes in industry naming. The proposed amendments are necessary to allow the regulated public the use of all available treatment options to achieve compliance with the requirements and to incorporate standard industry naming language.

17.38.310 VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS: APPLICATION REQUIREMENTS (1) remains the same.

(2) The application must be accompanied by a copy of the local ordinances or plan of operations that describes the methods for implementing the cross-connection control program. The local ordinances or plan of operations must include the following:

(a) and (b) remain the same.

(c) a requirement to eliminate cross-connections and hazards in compliance with ARM 17.38.305 on a priority basis beginning with those identified as having the highest degree of hazard. A health hazard must be assigned a higher degree of risk than all ~~water contamination~~ non-health hazards;

(d) remains the same.

(e) the method for identifying the appropriate backflow prevention assembly or device for a specific degree of hazard. The methodology must be in accordance with the "Manual of Cross-Connection Control" incorporated by reference in ARM 17.38.302, or as described in ARM 17.38.305(2);

(f) through (h) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.310 incorporate changes proposed under ARM 17.38.301 and clarify existing language. The proposed amendments are necessary to incorporate standard industry definitions and language and to clarify the backflow valve requirement without having to access

the Manual of Cross-Connection Control.

17.38.312 VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS:  
STANDARDS AND REQUIREMENTS FOR CROSS-CONNECTION CONTROL

- (1) The department shall approve a voluntary program for cross-connection control if:
- (a) remains the same.
  - (b) the program provides for elimination of cross-connections, health hazards, and ~~water pollution~~ non-health hazards, and for installation and maintenance of backflow ~~protection~~ prevention assemblies or devices in accordance with ARM 17.38.305;
  - (c) through (2)(c) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.312 incorporate changes proposed under ARM 17.38.301. The proposed amendments are necessary to incorporate standard industry definitions and language for clarification.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., March 8, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board 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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406)

444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, January 30, 2012.