

**PART I      FLATHEAD COUNTY**  
**REGULATIONS FOR ONSITE SEWAGE TREATMENT SYSTEMS**

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**FLATHEAD COUNTY**  
**REGULATIONS FOR ONSITE SEWAGE TREATMENT SYSTEMS**

**PURPOSE OF REGULATIONS**

The Flathead City-County Board of Health understands the importance of proper treatment and disposal of sewage. Diseases such as dysentery, infectious hepatitis, typhoid, paratyphoid, and various types of diarrheal infections are transmitted from one person to another through fecal contamination of food, water and other vectors. This can occur by the improper treatment and disposal of sewage. Every effort must be made to prevent such hazards. Important to this is the proper treatment of sewage and not just the disposal of sewage.

Safe treatment and disposal of all sewage is necessary to protect the health of the individual family and the community and to prevent the occurrence of public health nuisances. To accomplish satisfactory results such waste must be treated and disposed of so that:

1. It will not contaminate any existing or future drinking water supply,
2. It will not be accessible to insects, rodents, or other possible carriers which may come into contact with food or drinking water,
3. It does not pose a health hazard by being accessible to children,
4. It will not pollute or present the potential to contaminate any surface or ground water,
5. It will not give rise to a nuisance due to odor, insect or animal attraction.
6. It will not violate laws or regulations concerning water quality protection or sewage treatment/disposal.

The Flathead City-County Board of Health has developed the following regulations and construction standards to insure the proper design, installation and operation of sewage treatment systems and to alleviate possible public health hazards associated with improper treatment and disposal of sewage.

**SECTION 1 - Authority and Scope of Regulations**

- 1.1 These regulations have been written pursuant to Title 50-2-116 - Powers and duties of Local Boards - (j) "adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system (fees shall be deposited with the County Treasurer)".
- 1.2 These regulations cover ALL sewage treatment systems in Flathead County except "Municipal and Publicly owned Sewage Treatment Systems", as defined herein.
- 1.3 The permit system established through these regulations governs the design, installation and operation of sewage treatment systems. Operation shall mean the system is functioning properly in compliance with the regulations at the time the permit is issued. The permit is not to be construed as being a building permit or any other permit that may be required by other agencies to erect a structure in Flathead County.
- 1.4 The permit itself establishes the minimum criteria for the standards adopted in Flathead County. The Department does not design the systems and the recommendations set forth in the permit do not bind or obligate the county to guarantee the satisfactory operation of any system.

- 1.5 At any time throughout this permit system process, the Flathead City-County Health Department may require the applicant to provide verification of compliance, or the ability to comply with other agencies', districts', or governmental entities' bylaws, ordinances, zoning laws, rules or regulations when deemed pertinent and appropriate by the Department.

## **SECTION 2 - Effective Date and Review Procedures**

- 2.1 All provisions established under this regulation shall become effective as of July 1, 2014.
- 2.2 At any time, the Board may propose additions or revisions to these regulations. Changes proposed to the regulation by the Board shall be processed for adoption, as prescribed by existing County Administrative Regulations.

## **SECTION 3 - Definitions**

- 3.1 "Abatement Order" shall mean a written order to (1) cease an act(s) which is in violation or causes a violation of these regulations or (2) to do an act(s) so as to comply with these regulations; it shall specify which section of these regulations is being violated or must be complied with and it shall be delivered in the manner prescribed in Section 13.2.
- 3.2 "Adequate Facilities" shall mean a subsurface sewage treatment system or other facilities approved by the Department.
- 3.3 "Alteration" shall mean physically changing a sewage treatment system by lengthening, shortening, widening, building structures over or changing the flow into a system by changing use of a living unit. Changing the use of a living unit or commercial use unit may include, but not be limited to, adding living quarters, adding structures or changing the use in such a manner as to alter the wastewater characteristics for which the system was permitted. This shall not be construed to mean changing dwellings in a campground or a trailer court currently licensed by the State Department of Health and Environmental Sciences. Conversion of a campground to a mobile home park shall be considered an alteration requiring Department approval. Alteration shall also mean the conversion of an existing living unit into multiple units.
- 3.4 "Applicant" shall mean any person, institution, public or private corporation, partnership or other entity that submits an application for a permit to install, alter, construct or repair a sewage treatment system.
- 3.5 "Bedrock" shall mean material that cannot be readily excavated by hand tools, material that does not allow water to pass through or material that does not provide for the adequate treatment and disposal of wastewater.
- 3.6 "Board" shall mean the Flathead City-County Board of Health.
- 3.7 "Class 1 System" shall mean an individual sewage treatment system.
- 3.8 "Class 2 System" shall mean a shared, multi-user or public sewage treatment system with design flow of less than 1000 gallons per day.
- 3.9 "Class 3 System" shall mean a shared, multi-user or public sewage treatment system with design flow of 1000 or more gallons per day.
- 3.10 "Composting Toilet" shall mean a unit that consists of a toilet seat and cover over a riser which connects to a watertight compartment or vault that contains or will receive composting materials sufficient to reduce waste by aerobic decomposition.

- 3.11 "Conventional System" shall mean a sewage treatment system composed of a septic tank and standard soil absorption trenches.
- 3.12 "Department" shall mean the Flathead City-County Health Department.
- 3.13 "Dosing" shall mean storage and periodic, high rate discharge of sewage or effluent from one sewage treatment unit to the next.
- 3.14 "Failing Sewage Treatment System" shall mean any sewage treatment system not properly functioning and shall include but not be limited to:
- (1) Sewage treatment systems whose sewage or effluent flows or enters surface waters or groundwaters without adequate treatment or removal of bacteria, virus, and other contaminants of danger to public health or the environment.
  - (2) Systems that have sewage or effluent overflow from any of their component parts that ponds or flows on the ground surface.
  - (3) Systems that back sewage or effluent into any portion of the building or plumbing system.
- 3.15 "Fill" shall mean artificially placed soil.
- 3.16 "Final effluent treatment" shall mean the natural treatment derived through the process of effluent release to the environment.
- 3.17 "Floodplain" shall mean the area adjoining the watercourse or drainway which would be covered by the floodwater of a flood of 100-year frequency (1% chance of occurring in any given year) as delineated by Zones "A" and "AE" on a Flood Insurance Rate Map (FIRM), Federal Emergency Management Agency (FEMA).
- 3.18 "Gray Water" shall mean any wastewater other than toilet or industrial wastes and includes, but is not limited to, shower and bath wastes, kitchen wastewater, usual household chemicals and laundry wastes. Industrial wastes containing industrial chemicals are not considered as Gray Water.
- 3.19 "Groundwater Table" shall mean the upper surface of groundwater in the zone of saturation of a geologic formation. The upper surface of a perched water table is included in this definition.
- 3.20 "Health Officer" shall mean the legally established authority as designated by the Flathead City-County Board of Health.
- 3.21 "High Seasonal Groundwater Level" shall mean the minimum depth, during any period of the year to the groundwater table as measured from the natural ground surface.
- 3.22 "Holding Tank" shall mean a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose of or treat the wastewater.
- 3.23 "Impervious or Restrictive Layer" shall mean a layer of material that has a percolation rate slower than two hundred forty (240) minutes per inch.
- 3.24 "Individual Sewage Treatment System" shall mean a system designed to serve one living unit or a structure used for a single commercial use which employs and/or serves less than 25 people per day or a single commercial unit which employs and/or serves 25 or more people per day less than 60 days per year.

- 3.25 "Infiltrative surface" means the undisturbed soil interface beneath the drainrock or leaching chamber
- 3.26 "Level 2 treatment" means a subsurface wastewater treatment system that:
- (a) removes at least 60% of total nitrogen as measured from the raw sewage load to the system; or
  - (b) discharges a total nitrogen effluent concentration of 24 mg/L or less.
- The term does not include treatment systems for industrial waste.
- 3.27 "Living Unit" means the area under one roof that can be used for one residential unit and has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.
- 3.28 "Mobile Home Park" shall mean a tract of land providing space and water and/or sewer service to two (2) or more mobile home lots for lease or rent to the general public.
- 3.29 "Multi-user Sewage Treatment System" shall mean a non-public wastewater system that serves, or is intended to serve, more than two living or commercial units, but which is not a public sewage system as defined in 75-6-102, MCA. The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the Department shall multiply the number of living units times 2.5 people per living unit..
- 3.30 "Municipal Sewage Treatment System" shall mean a system that is the sole responsibility of an incorporated city or town government.
- 3.31 "Owner" shall mean the person who is the legal titleholder of land onto which a sewage treatment system has been or is to be placed.
- 3.32 "Permit" shall mean a written authorization issued by the Department allowing construction, alteration, installation or repair and operation of a sewage treatment system under the provisions of this regulation.
- 3.33 "Person" shall mean any individual, public or private corporation, institution, partnership or other legal entity.
- 3.34 "Pit Privy" shall mean a sheltered outdoor toilet which receives undiluted sanitary sewage.
- 3.35 "Premises" shall mean a definite portion of real property with its appurtenances, also to include a building or part of a building. This shall include, but not be limited to, residential dwellings, mobile homes, recreational vehicles, commercial or industrial structures, apartment, condominiums, and townhouses.
- 3.36 "Primary Treatment" shall mean a treatment system, such as a septic tank, that provides retention time to settle the solids in raw wastewater and that retains scum within the system.
- 3.37 "Publicly Owned Sewage Treatment System" shall mean a system that is the sole responsibility of a Special Improvement Sewer District created in accordance with Montana Law.
- 3.38 "Public Sewage System" means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for any 60 days or more in a calendar year. In estimating the population that will be served by a proposed residential system, the Department shall multiply the number of living units times 2.5 people per living unit, so that 10 or more proposed residential connections will be considered a public system.
- 3.39 "Sealed component" shall mean a receptacle which is watertight on the sides, bottom and possibly the top in which wastewater is held for primary treatment or effluent is held for intermittent conveyance to

an additional treatment component.

- 3.40 "Secondary Treatment" shall normally mean any process or facility to further reduce the suspended or dissolved organic and/or inorganic solids in the effluent from a "Primary Treatment" facility or process. This can take many forms, one of which is a subsurface drainfield.
- 3.41 "Septage" shall mean material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.
- 3.42 "Septic Tank" shall mean a watertight accessible covered receptacle designed and constructed to receive sewage from a structure or structures, settle solids from the liquid, to anaerobically digest organic matter and store digested solids through a period of retention and allow the clarified liquids to discharge to other treatment units for final disposal.
- 3.43 "Sewage" shall mean a combination of liquid wastes that may include usual household chemicals, domestic wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, which is discharged from a dwelling, building or other establishment.
- 3.44 "Sewage Treatment System" shall mean a system for sanitary collection, transportation, treatment and disposal of sewage, operated in accordance with State and Local Board of Health Regulations.
- 3.45 "Shared Sewage Treatment System" means a sewage treatment system which receives wastewater from 2 living or commercial units with a total service population of less than 25 people per day, or more than 25 people per day for less than 60 days per year.
- 3.46 "Site Evaluation" shall mean the physical inspection of the property to determine suitability for installation of sewage treatment systems.
- 3.47 "Soil Profile" shall mean a detailed description of the soil strata to a specific depth. The description can be expressed using the U.S. Department of Agriculture's Soil Classification System or the Unified Soil Classification System.
- 3.48 "Standard Soil Absorption Trench" or "Drainfield Trench" shall mean a ditch or trench with vertical sides and substantially flat bottom dug to a width of two (2) feet and to a maximum depth of three (3) feet.
- 3.49 "Subdivision" shall mean a division of land as defined in the most current revision of the Sanitation in Subdivisions Act (76-4-101 thru 76-4-131, M.C.A. 1995) and/or its Regulations (Title 17, Chapter 36, Sub- Chapters 1, 3 and 6 ARM), now and as hereafter amended.
- 3.50 "Subsoil Drain" shall mean foundation drains, french drains, vertical drains, or other drainage systems designed to lower a groundwater table.
- 3.51 "Surface Water" shall mean any natural or man-made body of water or watercourse, including lakes, ponds, rivers, creeks, streams and swamps.
- 3.52 "Temporary Permit" shall mean a permit authorizing installation of an interim sewage treatment system.
- 3.53 "Test Hole or Test Pit" shall mean an open pit dug to sufficient size and depth to permit

thorough examination of the soil to determine a soil profile.

- 3.54 "Vault Pit Privy" is a structure and an underground watertight vault for the temporary storage of non-water-carried wastewater.

#### **SECTION 4 - Application and Permits**

- 4.1 A permit issued by the department is required for any person to construct, alter, repair and/or operate any sewage treatment system within Flathead County unless the system is either a municipal or publicly owned sewage treatment system.
- 4.2. All applications for permits shall be made to the Department. The Department will be furnished a copy of all plans. Individual sewage treatment plans will be processed at the County level. Multi-user and Public Sewage system plans will be reviewed by the Department and forwarded to the Montana Department of Environmental Quality, if required, for their review, approval and returned to the Department. Permits shall be issued upon compliance by the applicant with all provisions of these regulations. Upon completion of the review process, approval and payment of the appropriate fee, one copy of the permit will be provided to the applicant.
- 4.3 All sewage treatment systems in Flathead County shall utilize uniform pressure distribution. Plans and specifications shall be prepared by a professional engineer or a sewage treatment system designer certified by the Department.
- 4.4 Non-degradation - All new septic systems within Flathead County, except those previously reviewed under the Sanitation in Subdivisions Act, shall comply with those standards as required under the Administration Rules of Montana (ARM) Title 17, Chapter 30, Sub-chapter 5, Mixing Zones in Surface and Groundwater and Sub-chapter 7, Non-degradation of Water Quality.
- 4.5 Application for a sewage treatment system permit or site evaluation shall be made only by the owner or lessee of the property for which the system is proposed or his/her duly authorized agent or assigns and shall be in writing bearing the applicant's signature. Applications shall be made on forms provided by the Department and shall include the following:
- (1) Legal description of property for which construction, alteration, or repair is proposed. (Lot and Block numbers in a platted subdivision, or if applicable the Tract Nos.; and a quarter-quarter breakdown of a Section plus the Section, Township and Range). The applicant **MUST ALSO PROVIDE** a visual representation of the property. This may be a copy of a Certificate of Survey that created the property, a copy of the Plat, Deed Exhibit, or a copy of the Section map. This material may be obtained at the Plat Room of the County Clerk and Recorder's Office at the owner's expense.
  - (2) Parcel Size
  - (3) Names, current addresses and telephone numbers of the applicant, and those legally responsible for the operation and maintenance of the system.
  - (4) Address of the property on which the system is to be installed.
  - (5) A site plan indicating whether public and/or private sewer and water systems will be used. Include the design and location of proposed sewer and water systems showing their relation to site elevations, water wells or surface water bodies, including those located on adjacent properties within 100 feet of the property line, proposed and existing buildings, driveways, parking areas, other utility lines, and lot boundaries. Show the site available for a replacement system, or include a plan to correct possible system failure.

- (6) Proof that the proposed structure will be in compliance with current zoning regulations in that specific area is required.
- (7) The Department may require submission of a building plan to verify number of bedrooms and other factors in the proposed structure that may affect wastewater flows rates.
- (8) Payment of site evaluation fee.

4.6 Minimum lot size requirement - A proposal to use both an individual onsite wastewater treatment system and water supply for each Living Unit or 700 gpd of design wastewater flow for commercial and other non-residential uses on a lot which is smaller than 1 acre may be approved only if all regulatory requirements including separations and setbacks can be met.

Parcels for which additional development is proposed must provide:

- 1) at least 1 additional acre for each Living Unit or 700 gpd of design wastewater flow for commercial and other non-residential uses if served by an individual water supply and sewer service or,
  - 2) at least an additional 20,000 ft<sup>2</sup> for each Living Unit or 700 gpd of design wastewater flow for commercial and other non-residential uses if either the water or sewer is provided by a shared, multi-user or public system.
- 4.7 Procedural -If the property proposed for the sewage treatment system installation, alteration or repair and operation has not been reviewed and does not have a Certificate of Subdivision Plat approval, a site evaluation may be conducted by the Department to determine the suitability of the property and the area designated for the sewage treatment system installation, alteration or repair before issuing a permit under these regulations. The applicant shall grant the Department access to the property for the purpose of determining site suitability.

NOTE: The presence of a Certificate of Subdivision Plat Approval or previously approved site evaluation on a specific property does not obligate the Department to issue a sewage treatment system permit without a site evaluation if the information provided is found to be inaccurate or additional information from the immediate area regarding soil, groundwater, etc., indicates the physical conditions are different than represented by the Certificate of Subdivision Approval.

- (1) On any existing tract of land in Flathead County, whether it be an individual tract or a lot in a platted subdivision where new construction is proposed requiring a sewage treatment system, area must be made available for a 100% replacement of the original system in the event that failure occurs or the applicant must provide the Department with a plan or procedure to correct the system failure should it ever occur. The plan or procedure must be approved by the Department prior to issuing the permit for the original or primary system.

NOTE: New construction on any tract of land or subdivision lot, regardless of when it was created, where the new construction proposed is for multiple family structures, multiple dwelling connections or for commercial or industrial structures shall be required to have area available for a 100% replacement of the original system.

- (2) The Department may require that the applicant have a test hole dug in the area of the proposed sewage treatment system installation, alteration or repair. The depth of the test hole will be dependent upon the type of information the Department feels is necessary for that specific situation. The Department may require that the applicant provide more than one (1) test hole depending upon the variability of the soils, the type of information necessary, and/or the anticipated size of the drainfield area.



- (3) After or during the inspection of the property, the Department may require that the applicant provide additional information. The reasons for this request shall be provided to the applicant. This additional information may include, but is not limited to, percolation tests, more detailed soil analyses, groundwater monitoring or a system designed by a professional engineer.
  - (4) If groundwater monitoring is deemed necessary based on information received during the site evaluation, derived from Soil Conservation Service (SCS) material or from experience with that specific area, groundwater monitoring shall be carried out to determine the depth to high seasonal groundwater during its period of occurrence, in order to determine compliance with these regulations (see Section 9.5) If information received during a site evaluation, or if any information received indicates that a conventional system cannot be installed so as to fully comply with these regulations, the Department may require that the applicant seek the assistance of a professional engineer to design a system complying with these regulations.
  - (5) Permits for multi-user systems which are designed to serve multiple lots or parcels shall not be issued until an ownership, maintenance and operation agreement acceptable to the Department has been submitted. Furthermore, final approval of the installation shall not be given until the agreement has been filed with the County Clerk and Recorder.
  - (6) If any portion of a sewage treatment system must encroach within 10 feet of a property line, written permission from the neighboring property owner must be obtained prior to issuance of a sewage treatment system permit.
  - (7) If any portion of a sewage treatment system will be located on another parcel of land, an easement filed with the County Clerk and Recorder will be required prior to issuance of a sewage treatment system permit.
  - (8) The Department may require the material discussed in this section be provided by persons trained in the related field(s).
- 4.8 The Department shall not issue a permit until all pertinent site data and required design plans have been received, reviewed and determined to be in full compliance with all provisions contained in these regulations and applicable State Regulations. If the Department does not have qualified personnel or facilities to perform adequate review of a particular plan, it shall secure review and evaluation by an independent engineer to the extent deemed necessary. Cost of such review will be borne by the Department. One set of plans approved by the Department, will be retained. At the time the Department determines the proposal outlined in the application complies with the regulation, a permit will be prepared and signed by the Department. A permit is not considered as issued until the applicant has paid the appropriate permit fee.
- 4.9 Any system requiring a specialized design, maintenance or performance requirement, may require a Deed Restriction to be filed on the property as determined by the Department. Any permit requiring a Deed Restriction, Easement, Shared User or Maintenance Agreement will be issued only AFTER the signed document(s) have been recorded and copies have been received by the Department.

#### 4.10 Permit and Site Evaluation Fees

- (1) A site evaluation fee may be required and must be submitted with the initial applications.
- (2) Applicants shall be required to pay the permit fee prior to issuance of the permit.
- (3) Fees shall be in accordance with a Schedule of Fees adopted by the Flathead City-County Board of

Health, a copy of which shall be available at the Health Department.

- (4) Fees are to defray costs, to the extent deemed appropriate by the Board for evaluation of the site and system, administration, necessary inspection and re-inspection from initial application through construction and operational start-up.

4.11 Temporary Permit - A permit to install and operate a temporary sewage treatment system may be issued by the Department when municipal or public sewer is proposed to be made available to the subject property within six (6) months. Additional time must be granted through a variance with the Board of Health. Financial hardship shall not be considered as the basis for issuance of a temporary permit. Issuance of a temporary permit shall be subject to any or all of the following conditions as deemed appropriate by the Department through written agreement:

- (1) Annexation to the municipality or district.
- (2) The Department may require a form of security to assure compliance with 4.7(1). The form of security may be:
  - a) Cash or other collateral readily convertible to cash at face value deposited in an escrow account or with the Department.
  - b) Certificate of deposit payable to the Department.
  - c) The owner shall provide the Department with a letter of credit from a bank or other reputable institution or individual certifying the following:
    - 1) That the creditor guarantees funds in an amount of 125% of the projected cost of completing all required improvements;
    - 2) That if the owner fails to complete the specified improvements within the required period, the creditor will immediately pay the Department upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;
    - 3) That the letter of credit may not be withdrawn or reduced in amount until released by the Department
  - (d) A commercial bond, or
  - (e) Other security acceptable to the Board.

The amount of the security shall be 125% of the total estimated project cost and the estimated cost shall be determined by a licensed professional engineer or licensed contractor, whichever is deemed appropriate by the Department. If the Department determines that the holder of a temporary permit has not complied with the terms of the permit or agreement, it may withdraw the security and use these funds to construct the improvements or correct any deficiencies necessary to bring the permit holder's system into compliance with the permit or agreement.

4.12 Re-use of Existing Septic Systems - Sewage treatment systems no longer in use due to the removal or destruction of a structure may be permitted for re-use provided the following criteria are met:

- (1) There is a permit for the existing system in the FCCHD files.
- (2) The system is in compliance with all current separation and setback requirements.

- (3) The system is in compliance with current construction standards.
- (4) The system appears to have adequate capacity for the proposed use as related to current minimum standards, and
- (5) Application is made and a new permit is issued.

Sewage treatment systems within the 100 year floodplain may be replaced provided all other setback and separation requirements are met. However, if any portion of the applicant's property is located out of the floodplain, the applicant may be required to locate all or a portion of the replacement system in this area.

4.13 A sewage treatment system which the Department determines must be abandoned shall have:

- (1) The sewer line disconnected between the building and the septic tank.
- (2) The septic tank shall be pumped and destroyed by filling with an inert solid, removed from the premises or re-used if the tank is in suitable condition.
- (3) Written certification by the owner to the Department that the system has been abandoned in accordance with the conditions referenced above.

#### **SECTION 5 – Expiration and Revocation of Permits**

- 5.1 If a sewage treatment system for which a permit has been issued has not been installed, inspected and approved by the Department within 12 months, said permit shall expire and be void. Should a permit expire, the applicant may reapply. The new permit shall be subject to all requirements that exist at the time the new application is made.
- 5.2 The permit for a sewage treatment system which has been inspected and approved will be revoked if the system has not been put into operation within three (3) years at the permitted or lesser level of use. A new application must be made to renew any revoked permit. The application for renewal will be reviewed prior to permitting to ensure compliance of the existing system with the regulation in effect at the time of application and that the connection to a structure can be made in compliance with those regulations. A fee for renewal of the permit will be required. An inspection of the connection to a structure may also be required.  
  
NOTE: The Department is not obligated to issue a new permit to an applicant who has allowed a previously issued permit to expire or be revoked even though the new permit application utilized the same specifications and information as on the previously issued and expired permit. A new permit will not be issued if information becomes available indicating that a previously approved system or permit cannot now be approved or re-issued and be in full compliance with the regulations that exist at the time of reapplication.
- 5.3 The installation, alteration, repair or operation of a sewage treatment system after the initial permit has been voided shall constitute a violation of these regulations.
- 5.4 Any changes in plans, details or specifications of construction not approved by the Department after the permit has been issued, shall invalidate the permit.
- 5.5 There will be no reimbursement to any applicant of fees received for the issuance of the permit.
- 5.6 The Department may void a permit before its normal expiration date when any of the facts or conditions upon which the permit specifications were based are found to constitute a violation of these regulations.

## **SECTION 6 - Denial of Permits**

- 6.1 The Department may disapprove an application for a permit if the Department determines:
- (1) That the sewage treatment system, as proposed, will not comply with the requirements or specifications of these regulations, or,
  - (2) That the applicant has failed to supply all data necessary to make a determination as to whether or not the proposed sewage treatment system complies with the requirements or specifications of these regulations and had failed to provide such information within ninety (90) days after a written notice for such additional information has been made by the Department, or,
  - (3) That the applicant has failed to pay the required fees and has failed to make such payment within ninety (90) days after notice to the applicant by the Department that the permit has been prepared and can be issued upon payment of the appropriate fee.
- 6.2 If a tract of land is presently being reviewed under the Sanitation in Subdivisions Act, a permit cannot be issued for any structure on that tract of land until the review of said subdivision has been completed and the subdivision approved.
- 6.3 A permit may be denied if it is found that any provision of a Certificate of Subdivision Approval has been violated or there is departure from any criteria set forth in the approved plans and specifications of said subdivision.
- 6.4 A permit may be denied if it is found that such installation is in conflict with the requirements of the Sanitation in Subdivisions Act or its regulations, or if such installation is intended as a means of avoiding the requirements of the Sanitation in Subdivisions Act or its regulations.
- 6.5 A permit to construct a sewage treatment system for a structure on any tract of land, regardless of size, where there already exists another structure or structures, serviced by a separate sewage system(s), shall be denied if the applicant cannot provide substantiating evidence that there is available area for the construction of said system and there is sufficient area to construct a 100% replacement system for that system and for any other sewage treatment system on that tract of land.
- 6.6 If an approved municipal or other publicly owned sewage collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed treatment system, and the owner (management entity) of the publicly owned collection and treatment system approves the connection, the applicant must connect. A connection is considered as not readily available if:
- (1) The cost of the connection, as determined by the Department, is greater than three times the cost of the installation of an onsite wastewater treatment system that could be approved for the site, or
  - (2) Connection to the public system is physically impractical, or
  - (3) Necessary easements cannot be obtained.
  - (4) The municipality or special district is notified of the Department's decision and concurs with the septic system installation or repair approval.
- 6.7 If it is determined by the Department that the primary purpose of a proposed septic system is to avoid annexation to a municipality, the permit shall be denied.

- 6.8 Any denial of a permit shall be made with reasons for such denial and shall be given to the applicant within fifty (50) days of the receipt of a completed application.

## **SECTION 7 - Contractor Licensure**

- 7.1 It shall be unlawful for any person, except as delineated in this section, to construct, alter or repair an individual or multi-user sewage treatment system within Flathead County unless that person holds a valid Flathead County Sewage Treatment System Contractor's License. A homeowner constructing, altering or repairing an individual sewage treatment system for his/her own residence upon his/her own property is exempt from this requirement. However, it must be understood by the owner that the system must be constructed in full compliance with these regulations and design and construction standards. Detailed plans showing the proposed layout, construction method and materials to be used must be provided to the Department. A builder who owns several parcels of land and who builds structures on these parcels for sale, rent or lease and not for the purpose of their residing in said structures shall not be considered a "homeowner".

- 7.2 All first time applications for contractor licenses shall be made to the Department who may grant the license upon completion of the following:

- (1) Name, address and telephone numbers of the applicant.
- (2) Passing the required examination.
- (3) Receipt of the license fee payment.

All applications for license renewal shall contain all the elements of a first time application except that the examination requirement may be waived if the applicant has demonstrated knowledge of good sewage system design and/or installation in the year immediately preceding the application.

- 7.3 Contractor licenses shall be valid from January 1 through December 31 for the year stated on the license and shall be renewable by March 1 of the following year. Licenses are not transferable.

- 7.4 Contractor licenses may be denied for any of the following reasons:

- (1) Constructing or altering a sewage treatment system without a valid permit, and/or,
- (2) Having a license revoked within twelve (12) months preceding the application, and/or,
- (3) Failure to meet the terms of License Applications.

- 7.5 Contractor licenses are the property of the Department and may be revoked by the Department at any time for the following reasons:

- (1) Installation of a sewage treatment system prior to the issuance of a septic system permit, and/or,
- (2) Failure to gain approval for a sewage treatment system installation, and/or,
- (3) Providing false evidence or information to obtain a septic permit or gain approval of a septic installation.

- 7.6 In the event that any portion of Section 7.5 has been violated and revocation of the license is deemed

appropriate, the Department shall notify the licensee in writing that the license has been revoked. Reasons for the revocation shall be specified in the letter.

- 7.7 Appeal to the Board. A contractor whose license has been revoked by the Department may appeal that decision to the Board of Health. After receiving the appeal, the Board shall allow the appellant to present his/her appeal before the Board at its next regularly scheduled meeting, provided that such request is received ten (10) days prior to the scheduled meeting date. At this meeting, the appellant may appear in person, be represented by another person, or may appeal to the Board in writing. The Board shall, within fifteen (15) days after hearing and/or reviewing the appeal, respond to the applicant in writing stating its decision and the reasons therefore. The Board's decision shall be determined as final.
- 7.8 The term of revocation will be for one calendar year from the date of violation. Relicensure shall be permitted only after completion of the requirements set forth in Section 7.2.

### **SECTION 8– Certified Designers of Sewage Treatment Systems**

- 8.1 Sewage treatment systems shall be designed by certified designers. Certified Designers shall demonstrate competency by participating in class instruction, passing the required examination, possessing the appropriate requisite skills, paying a fee and submitting designs that comply with the Regulation and Construction Standard. There shall be two levels of certification as specified below.
- (1) General Designer. A General Designer has demonstrated the skills to design the following sewage treatment systems with the following soil absorption systems:
    - a) Standard Absorption Trenches
    - b) Shallow-capped Absorption Trenches
    - c) Gravelless Trenches and Other Absorption Methods
  - (2) Specialized Designer. A Specialized Designer will generally hold a professional certification or registration but does not include professional engineers. Specialized Designers will have the demonstrated competency to design sewage treatment systems to conform to site conditions. Specialized Designers can design the following sewage treatment systems:
    - a) Systems identified in Part 1 above
    - b) Absorption Trenches in Cut, Fill and Minor Leveled Sites
    - c) At-grade Absorption Trenches on Level Sites (0-2%)
    - d) Deep Absorption Trenches
    - e) Sand-lined Absorption Trenches
    - f) Subsurface Drip
    - g) Gray Water Irrigation
    - h) Absorption Beds
    - i) Sewage Treatment Systems Incorporating Recirculating Media Trickling Filters

NOTE: Professional engineers may design any sewage treatment system identified in the Construction Standard. Sewage treatment systems not specifically identified above shall be designed only by a professional engineer. Any system with design flows over 2500 gallons per day must be designed by a Professional Engineer.

NOTE: The Department may require any sewage treatment system to be designed by a Professional Engineer based upon site limitations.

- 8.2 Certification shall be valid from January 1 through December 31 for the year stated on the Certification and shall be renewable by March 1 of the following year.
- 8.3 Certifications may be revoked by the Department for the following reasons:

- (1) Participating in the installation of a sewage treatment system prior to the issuance of a septic system permit, and/or
  - (2) Providing false evidence or information to obtain a septic permit.
  - (3) Inability to provide compliant designs.
- 8.4 In the event the revocation of Certification is deemed appropriate, the Department shall notify the licensee in writing that the license has been revoked. Reasons for the revocation shall be specified in the letter.
- 8.5 Appeals to the Board. A designer whose certification has been revoked by the Department may appeal that decision to the Board of Health. After receiving the appeal, the Board shall allow the appellant to present his/her appeal before the Board at its next regularly scheduled meeting, provided that such request is received ten (10) days prior to the scheduled meeting date. At this meeting, the appellant may appear in person, be represented by another person, or may appeal to the Board in writing. The Board shall, within fifteen (15) days after hearing and/or reviewing the appeal, respond to the applicant in writing stating its decision and the reasons therefore. The Board's decision shall be determined as final.

### **SECTION 9 - Inspection & Operation of Sewage Treatment Systems**

- 9.1 Once a permit has been issued by the Department for sewage treatment system, the applicant may begin construction. All systems SHALL be inspected by the Department PRIOR to backfilling any portion of said system, unless specific permission has been granted by the Department to backfill a portion of the system. For engineer designed systems, presence of the design engineer or his representative is mandatory at this inspection. It shall be the responsibility of the applicant, or the applicant's contractor, to notify the Department forty eight (48) hours in advance of the anticipated completion time of the construction of the system for the purpose of arranging a time for inspection. Requests for inspections must be made for normal Department work hours.
- 9.2 By the issuance of a permit, the owner of the property consents to the re-inspection by the Department of the sewage treatment system during its operational life. This consent shall be binding upon the owner's successors, heirs and assigns in interest. Re-inspections shall be conducted during regular business hours. The purpose of the re-inspection is to determine that the sewage treatment system is operating in compliance with these regulations.
- 9.3 During the Department's inspection of the sewage treatment system the inspector shall diagram the distance, dimensions and capacities of all component parts of the system on the Department's copy of the application and evaluate the conformity of the construction and operation of the system relative to all provisions of these regulations and the plans and specifications approved for that permit.
- 9.4 Should the inspector find that any aspect of the construction or operation of a sewage treatment system is not in full compliance with these regulations and/or the plans and specifications filed with the permit, he/she shall describe these deficiencies in detail in writing on the Department's copy of the inspection record. The Department shall then notify the applicant or owner immediately of all deficiencies and require that corrective action be taken. A re-inspection shall be made upon notification by the applicant or the applicant's contractor, as specified in this Section, to ensure that the deficiencies have been corrected and that the system has been brought into compliance with these regulations and/or the specifications of the permit. A re-inspection fee shall be paid prior to the re-inspection.
- 9.5 The deficiencies as described by the Department must be corrected within fifteen (15) days, unless a longer compliance schedule is approved by the Department. Noncompliance with the above schedule or use of the system shall constitute a violation of these regulations. (See Section 12 - Violations, Penalties and Enforcement)

- 9.6 Final approval for engineer designed systems shall not be granted until the design engineer furnishes a complete set of as-built drawings and written certification to the Department that the project was completed as shown therein. Information required for the certification shall include that obtained by the engineer during an inspection conducted after final completion of the project. The certification and as-built drawings shall be provided to the Department within 10 days following the final inspection.
- 9.7 The property owner shall be responsible for proper operation, maintenance and cleaning of the system and/or abatement of any nuisance arising from its failure, unless jurisdiction for responsibility has been transferred to a public, quasi-public or private entity or political subdivision. The issuance of a permit does not constitute assumption by the Department or its employees of liability for the failure of any sewage treatment system nor does it imply any guarantee by the Department that the system will function properly.
- 9.8 The Board of Health or Department may require the owner of an individual or multi-user sewage treatment system to maintain and submit to the Department records of inspection, maintenance, cleaning and testing performed on the system as deemed necessary by the Board or Department for any system requiring maintenance beyond normal pumping and filter cleaning frequency, for any system designed to treat wastewater that exceeds residential strength, any system that utilizes Level 2 or greater treatment technology, or any system that may not be functioning or being operated properly.
- 9.9 Sewage treatment systems are designed to accept domestic wastes, not to include toxic chemical wastes, e.g., developing solutions from photographic activity, industrial wastes, washdown of chemical containers, etc. Water from roof drains, groundwater, surface runoff, gutters, sump pumps, etc., shall not be discharged into a sewage treatment system and should be purposely directed to discharge to locations that will not in any way affect a sewage treatment system or pollute State waters. NOTE: Gray Water must be treated as sewage and disposed of through an approved sewage treatment system.

## **SECTION 10 - Minimum Requirements for Class 1 - 3 Sewage Treatment Systems**

### 10.1 General

- (1) The sewage treatment system shall consist of a sewage conveyance line immediately outside the foundation wall to the septic tank or other approved primary treatment device, possibly an intermediate treatment device and a final effluent treatment system usually consisting of a subsurface absorption field.
- (2) All effluent treatment systems utilizing a subsurface absorption field shall employ uniform pressure distribution.
- (3) Wastewater flows:
  - (a) - Residential wastewater flows

Minimum design wastewater flow from a single family living unit in Flathead County is 350 gallons per day and is based on the requirement of a minimum of three (3) bedrooms per living unit. For living units which have more than 3 bedrooms, the design wastewater flow shall be increased by 75 gallons per day per additional bedroom. An unfinished basement will be considered an additional bedroom.

A Guest House or family hardship dwelling unit as defined by the Flathead County Zoning Regulation may be permitted for less than three bedroom wastewater flows.



(b) - Nonresidential wastewater flow

Typical daily flows for a variety of commercial, institutional, and recreational establishments are presented in the Construction Standards. For design purposes, the typical flows must be used as minimum design flows. Greater design flows may be required where larger flows are likely to occur, such as resort areas. Design flow must be computed using the total number of units in the proposed facility times the typical daily flow in the tables, with no reduction allowed for occupancy rates. Where the system includes several different types of uses from the tables, each use must be computed separately, and the design flow must be based on the sum of all of the uses. A means of flow measurement (such as flow meters or pump run-time meters) may be required.

As an alternative to the flows listed in the tables, design flow may be based on actual water use data from similar facilities. Because this water use data will typically be monthly averages, the peak design flow must be a minimum of 1.5 times the average flow. System components may be added (or enlarged) to address peak flows to allow drainfields to be sized based on average flow.

- (4) Upon failure of any portion of a sewage treatment system, the Department may require upgrading of any other portion of the system in addition to the failed component.
- (5) Installation of an unsealed pit privy is prohibited in Flathead County.
- (6) Installation and use of a vault toilet (sealed pit privy) shall be limited to serving a structure that does not have water piped into the building.

10.2 Location

- (1) The location and installation of a sewage treatment system and each part thereof shall be such that, with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance nor constitute a hazard to public health nor endanger the safety of any actual or potential domestic water supply, nor directly enter the waters of the State of Montana. In determining a suitable location of the system, consideration shall be given to the size and shape of the lot, soil conditions, slope of the land, depth to groundwater, proximity to existing and proposed water supplies, existing sewage treatment systems, State waters, depth to bedrock and/or impervious materials and to areas for expansion or replacement of the treatment system.
- (2) Minimum distances/separations have been established for location of the various component parts of the sewage treatment system and these distances/separations are shown in Table 1.

TABLE 1 - MINIMUM SETBACK AND SEPARATION DISTANCES		
FROM:	TO: Septic Tank pump Chamber other Sealed Components (feet)	To: Absorption System (feet)
Well <sup>(a)</sup>	50	100
100-year Floodplain	5 <sup>(b)</sup>	100
Surface Water <sup>(c)</sup>	50	100 <sup>(a)</sup>
Foundation Wall	10	10
Water Lines	10	10
Property Lines <sup>(d)</sup>	10	10
Absorption System	10	---
Slopes in excess of 25%	10	25
Groundwater Table <sup>(e)</sup>	(e)	4 <sup>(a)(g)</sup>
Bedrock <sup>(e)</sup>	(e)	4 <sup>(a)(g)</sup>
Impermeable or Impervious Layer <sup>(e)</sup>	(e)	4 <sup>(a)(g)</sup>
Subsoil Drains	10	10
Cisterns <sup>(a)</sup>	25	50

(a) Variances to these setbacks will not be considered for new construction.

(b) Forcemains for sewage and sewage effluent are excluded with the following conditions:

(i) The forcemain originates from a septic tank or other approved treatment device and terminates to a drainfield or other approved subsurface soil distribution system in compliance with the minimum setbacks provided in Table 1.

(ii) The forcemain is to be constructed of High-Density Polyethylene (HDPE) Sewer Pipe and must have a pressure rating of at least 200 PSI.

(iii) It is preferable the pipe not be joined together in the floodplain. If necessary, pipes shall be joined to one another and to HDPE fittings by thermal butt-fusion. Thermal butt-fusion of pipes and fittings shall be performed in strict accordance with procedures recommended by the pipe manufacturer.

(iv) Hydrostatic and leakage testing shall be completed on all constructed forcemains for a minimum period of 2 hours tested at one and one half times the operating pressure or 60 psi whichever is the greater value. No loss of pressure (less than five psi will be allowed).

(c) Surface Water - This distance shall be measured horizontally from the high water mark.

(d) For proposed installations where any portion of the sewage treatment system will be located less than 10 feet from the property line, written permission must be obtained from the adjoining owners.

(e) Groundwater Table - Depth to groundwater table shall be measured during its highest period of occurrence (high seasonal groundwater level).

(f) The Department may require that special design criteria and construction techniques be utilized when septic tanks, pumping chambers and sealed lines are proposed to be located within two (2) feet of the groundwater table, bedrock, impermeable soils, or extremely coarse soils (gravels).

(g) 4 feet - The separation to groundwater, bedrock and/or impermeable or impervious layer shall be measured from the infiltrative surface.

- (3) No component of any sewage treatment system shall be located under driveways, parking areas or areas subject to heavy loading and no vehicles shall be driven over the system after installation, except those portions properly installed to accept traffic loads. No component part of any sewage treatment system shall be installed in an area that might later be used for building additions, garages, sheds or other structures that will restrict immediate access to any portion of the system for necessary maintenance and repair. NOTE: No absorption system shall be placed under driveways, roadways, parking areas or areas that may be subject to continued/periodic vehicular traffic, regardless of design and installation. Soil absorption fields shall be adequately protected (e.g., fenced) to prevent trampling by livestock or damage from vehicular traffic.
- (4) Floodplain: No soil absorption system shall be located within 100 feet of a 100 year floodplain of any river, lake, stream, pond, or watercourse and from any swamp or seep as delineated by the most current Federal Emergency Management Agency (FEMA) floodplain maps available and accepted for use in Flathead County or other method of delineation described in subsection (b).
  - (a) Where FEMA floodplain maps are available the shaded zones as shown on the map shall generally be considered as a guideline in determining the area within the 100-year floodplain. In those areas where there are questions due to either the scale of mapping or variation in topography, the 100-year floodplain boundary shall be further delineated by obtaining a Letter of Map Amendment through FEMA. Elevations as determined by a licensed surveyor or licensed engineer may be required to verify that the proposed sewage treatment system site meets the location requirements set forth in Table 1.
  - (b) If any portion of a proposed system is within two thousand (2000) horizontal feet and twenty (20) vertical feet of a live stream draining an area of twenty-five (25) square miles or more and no official FEMA floodplain delineation or floodplain studies of the stream have been made, the applicant shall be requested to furnish a detailed flood hazard evaluation delineating the base flood elevation of the 100-year floodplain. The study shall be conducted by a Professional Engineer and submitted to the Water Resources Division of the Montana Department of Natural Resources and Conservation to review the technical aspects of the flood hazard evaluation utilizing the document "Guidelines for Obtaining 100-Year Flood Elevations in Approximate Zone A or Unmapped Areas." After the Water Resources Division has reviewed the flood hazard evaluation and consider the evaluation to be consistent with the DNRC Guidelines, the applicant shall submit the flood hazard evaluation to the Department. The flood hazard evaluation shall be accompanied by correspondence from the DNRC, addressed to the Department, regarding their position on the evaluation.
  - (c) The horizontal setback to the 100-year floodplain may be waived in the event that the sewage treatment system drainfield is a minimum of 100 feet from the river, stream or other water body's average yearly highwater mark and the bottom of the drainfield will be at least two feet above the 100 year base flood elevation as determined by methods described above.
  - (d) Sewage treatment systems within the 100 year floodplain may be replaced provided all other setback and separation requirements are met. However, if any portion of the applicant's property is located out of the floodplain, the applicant may be required to locate all or a portion of the replacement system in this area.
  - (e) Replacements of sewage treatment systems within the 100 year floodplain shall be for only what the system has been serving or the use for which the system was permitted. No increase in use shall be allowed.
  - (f) The unpermitted filling of wetlands (e.g., ponds, watercourses, swamps) or the 100 year floodplain for the purpose of attaining the setback requirements set forth in Table 1 is prohibited.

- (5) The sewage treatment system shall not be located in any swales or depressions where surface runoff may flow or accumulate. Careful consideration must be made to prevent any accumulation of water over the sewage treatment system by properly landscaping to direct drainage away from the system.
- (6) The Department may require that special design criteria and construction techniques be utilized when septic tanks, pumping chambers and sealed lines are proposed to be located within two (2) feet of the groundwater table, bedrock, impermeable soils, or extremely coarse soils (gravels).

10.3 Groundwater: If groundwater is within seven (7) feet of the natural ground surface or if there is any reason to believe groundwater will be within seven (7) feet of the ground surface at any time of the year, groundwater monitoring holes shall be provided to a depth of at least eight (8) feet in the area of the absorption field to determine the high seasonal groundwater level (see Section 6 - Denial of Permits).

10.4 Bedrock/Impervious Material - If there is reason to believe that bedrock or other impervious material is within seven (7) feet of the natural ground surface, test holes shall be provided to accurately determine the depth to bedrock or other impervious material.

NOTE: If information is obtained indicating that a four (4) foot separation between the infiltrative surface and high seasonal groundwater, bedrock or other impervious materials cannot be provided in the area of the proposed sewage treatment system, a permit to install a conventional sewage treatment system shall be denied (see Section 6 - Denial of Permits).

10.5 Slope Restrictions - Natural slopes greater than 15% but less than 25 % shall preclude the use of sub-surface sewage treatment systems unless evidence is submitted substantiating that soil and groundwater conditions are such that there will be no visible outflow of liquid downslope from the installation of the sewage treatment system. Such material shall be submitted by an engineer, soils scientist, or geologist. Natural slopes greater than 25% will not be considered for sewage treatment system installation.

10.6 Holding Tanks: As defined in 3.22, holding tanks will not be considered where new construction is proposed. Their only use will be for replacement of existing systems where current regulations cannot be met and variances cannot be granted due to the potential adverse impact that a sewage treatment system might have on ground or surface waters and/or the health of any person. The only exception to the above rule shall be where connection of the structure shall be made to a public or municipal system within one year of issuance of a temporary permit (see Section 4.11).

10.7 If it is the finding of the Department that further installation of sewage treatment systems in an area may adversely affect or injure any property, the health or safety of any person, surface or groundwaters, or will conflict with the purposes of these regulations, the Board of Health may restrict, prohibit or impose additional conditions upon the installation of new sewage treatment systems within the affected area.

### **SECTION 11– Non-discharging Toilets and Portable Chemical Toilets**

11.1 Non-discharging toilets such as composting toilets, incinerator toilets and non-portable chemical toilets are acceptable provided design and construction details are supplied to the Department and are found to be acceptable.

(1) Except as provided for in Sections 11.2 and 11.3 below, non-discharging toilets shall be used as part of a waste segregation system.

11.2 Portable chemical toilets are not subject to permitting requirements of these regulations. Portable toilets may be used for temporary events, constructions sites and other locations where permanent wastewater systems are not required. Portable chemical toilets are subject to the same setbacks sealed components

found in 10.2(2) Table 1. Chemical toilets may not be used to serve as a permanent wastewater system for structures.

- 11.3 The Department may require the submittal of a waste disposal plan meeting the requirements of these regulations when a tent, RV, camper or other temporary living unit is placed in one area for 14 or more days outside of a licensed campground or RV park.

### **SECTION 12 - Special Districts**

Within the limits of its authority, the Board of Health may enter into agreements with County Water and Sewer Districts for the purpose of mitigating public health hazards, improving, protecting and preserving water quality.

### **SECTION 13 - Deviations**

- 13.1 The Health Officer may grant deviations from the requirements of the Regulation and Construction Standard in certain circumstances. Deviations from the Regulation and Construction Standard will only be considered for replacement systems.

- 13.2 A person desiring a deviation shall make a request in writing to the Department. . The request must identify the specific section of the Regulation or Construction Standard to be considered. Adequate justification for the deviation must be provided. "Engineering judgment" or "professional opinion" without supporting data is considered inadequate justification. The justification must address the following issues:

- A. The system that would be allowed by the deviation would be no less likely to cause pollution of state waters than a fully-compliant sewage treatment system meeting all the standards.(75-5-605, MCA); and
- B. The granting of the deviation would protect the quality and potability of water for public water supplies and domestic uses and would protect the quality of water for other beneficial uses, including those uses specified in 76-4-101, MCA; and
- C. The granting of the deviation would not adversely affect public health, safety, and welfare.
- D. Setbacks from groundwater and surface water in Table 1 of Section 9.2 must be maintained for all absorption systems (non-sealed components). In no circumstance will waivers to setbacks from absorption systems be considered.

- 13.3 Department staff will review the request for the deviation and forward the request to the Health Officer for final Department action. The Health Officer may deny the request, or approve the request with or without conditions. The decision of the Health Officer may be appealed to the Board of Health as a variance request.

- 13.3. The Department shall maintain a file of all deviations.

### **SECTION 14- Variances and Appeals**

- 14.1 Appeal to the Health Officer: Should a sewage treatment system permit be denied or should any affected person wish to appeal the application or operation of any part of these regulations, the applicant or appellant may appeal such denial or the affected person may appeal the application or operation of the regulations within ten (10) days in writing to the Health Officer.

(1) The burden of proof shall be placed upon the applicant or appellant to show that the denial of the permit or application or operation of these regulations was contrary to these regulations or based upon incorrect information or incorrect interpretation of information.

(2) The Health Officer shall decide within thirty (30) days whether the denial will be upheld or the appeal granted. Reasons for any decision will be provided to the applicant or appellant in writing.

14.2 Appeal to the Board of Health. Should an appeal to the Health Officer result in a denial of the appeal, the appellant may make an appeal to the Flathead City-County Board of Health. After receiving the appeal, the Board shall allow the appellant to present his/her appeal before the Board at its next regularly scheduled meeting, provided that such request is received ten (10) days prior to the scheduled meeting date. At this meeting, the appellant may appear in person, be represented by another person, or may appeal to the Board in writing. The Board shall, within fifteen (15) days after hearing and/or reviewing the appeal, respond to the applicant in writing stating its decision and the reasons therefore. The Board's decision shall be determined as final.

14.3 Application for Variance. An application for a variance to these regulations may be made to the Board within sixty (60) days of a denial of an application for a permit. The Health Officer shall receive all applications for variances.

14.4 The Health Officer shall maintain and be custodian of all records of the Minutes of the Board and findings and decisions of the Board. All records shall be open to the public. An application for a variance shall be in writing.

14.5 At least 10 days prior to the date of the hearing on the application for a variance, the Health Officer shall transmit a copy of said application to the members of the Board. The Department shall submit its advisory opinion on said application to the members of the Board prior to the date of hearing.

14.6 Conditions Governing Variances: The Board shall have the authority to grant a variance from a requirement of these regulations unless it clearly conflicts with state or federal law.

(1) Before any variance can be granted, the Board shall make written findings of fact based upon evidence produced at the public hearing setting forth and showing that the following exist:

(a) granting the variance will not:

(i) contaminate any actual or potential drinking water supply;

(ii) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;

(iii) cause a public health hazard by being accessible to persons or animals;

(iv) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter except for the rule that the variance is requested from;

(v) pollute or contaminate state waters, in violation of 75-5-605, MCA;

(vi) degrade state waters unless authorized pursuant to 75-5-303, MCA; or

(vii) cause a nuisance due to odor, unsightly appearance, or other aesthetic consideration;

(b) compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;

(c) the variance is necessary to address extraordinary conditions that the applicant could not reasonably have prevented;

(d) no alternatives that comply with the requirement are reasonably feasible; and

(e) the variance requested is not more than the minimum needed to address the extraordinary conditions.

(2) The fact that the property may be utilized more profitably will not be an element of consideration before the Board.

14.7 In granting any variance, the Board may prescribe conditions and safeguards that insure that the purpose and intent of these regulations shall not be violated. Violation of such conditions and safeguards when made part of the terms under which the variance is granted shall be deemed a violation of these regulations and punishable under Section 15 "Violations, Penalties and Enforcement". The Health Officer shall notify the applicant in writing that the variance was denied or that the specific variance was granted and any conditions and safeguards that were made part of the terms under which the variance was granted.

14.8 Decisions of the Flathead City Board of Health may be appealed to the Montana Department of Environmental Quality (75-5-305 MCA, ARM 17.36.924).

## **SECTION 15- Violations, Penalties and Enforcement**

15.1 General Prohibitions - It shall be a violation of these regulations to:

- (1) Own or operate a malfunctioning sewage treatment system;
- (2) Install or alter a sewage treatment system without a valid permit or written Departmental approval;
- (3) Construct or maintain any dwelling or other occupied structure which is not equipped with adequate facilities for the sanitary disposal of sewage;
- (4) Removed sewage or effluent from a system and disposed of it onto any site which has no prior approval for septage disposal;
- (5) Violate any provision of these regulations.

15.2 Notice of Violation - If the Department discovers there has been a violation of any provision of these regulations or if the requirements of a sewage treatment system have been willfully violated, the Department shall give notice of such violation to the responsible person or persons. Such notice shall be in writing and shall specify any violations. The notice shall spell out the required corrective action and provide a reasonable time for correction, considering the severity of the violation and its public health significance. Service of such notice shall be by means of regular mail and shall be considered complete upon personal service or mailing by the Department. If after the notice has been served, the deficiencies have not been fully corrected to the satisfaction of the Department in the specified time period, the Department shall provide all such information to the County Attorney for appropriate legal action including, but not limited to, action to enjoin the violation.

15.3 Misrepresentation - Any permit or approval granted under these regulations which was based upon misrepresentation, failure to make a material fact or circumstances known or should have been known by the applicant or his agent, shall be void. Any construction, alteration, repair or use of a sewage treatment system after the permit for said system has been voided shall constitute a violation (see Section 12.2).

15.4 Any person who violates any provision of these regulations or any provision of any regulation adopted by the Flathead City-County Board of Health pursuant to the authority granted by this regulation, shall upon conviction be punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars

(\$500) per day of violation. Each day of violation constitutes a separate offense. The first day of violation shall be the date of the notice of violation.

## **SECTION 16 - Severability and Conflicts**

- 16.1 Conflict of Ordinances, Effect of Partial Invalidity: In any case where a provision of this regulation is found to be in conflict with a provision of any zoning, building, fire, safety or health regulation or code of the State of Montana, Flathead County, or any municipality within Flathead County, existing on the effective date of this regulation, the provision which, in the judgment of the Board, establishes the higher standard for the protection of the health and safety of the people, shall prevail.
- 16.2 If any section, paragraph, sentence, clause or phrase of this regulation should be declared invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this regulation, which shall remain in full force and effect, and to this end, the provisions of this regulation are hereby declared to be severable.