

HEALTH AND ENVIRONMENT REGULATIONS
Chapter 3: Lincoln County Wastewater Treatment and Disposal Regulation
10 May 2017 (Revised October 2018, March 2023)

SUBCHAPTER 1: GENERAL PROVISIONS

3.1.101 INTENT: The purpose of this regulation is to protect the health, safety and welfare of the people of Lincoln County by requiring that on-site wastewater treatment and disposal be accomplished in a manner that prevents the creation of health hazards, adverse environmental effects, the pollution of water, and the use and enjoyment of property.

3.1.102 AUTHORITY:

- (1) Authority for regulations promulgated in this rule is provided for in MCA 50-2-116.
- (2) As required by M.C.A. 50-2-116 (1)(j), the City-County Board of Health for Lincoln County hereby recommends the Governing Body adopt by reference A.R.M. Title 17, Chapter 36, Subdivisions/On-Site Subsurface Wastewater Treatment as a part of the Lincoln County Wastewater Treatment and Disposal Regulation. Such adoption, if adopted, is noted at the end of the Regulation.

3.1.103 DEFINITIONS: The following definitions shall apply in the interpretation and enforcement of this rule:

- (1) "Altered" - to have physically changed a wastewater treatment and disposal system
- (2) "Affidavit" – Affidavit of Wastewater Treatment and Disposal System Compliance Review for System Installed, Repaired or Replaced Without a Valid Permit may be used to remove illegal status of a system installed without a permit
- (3) "As-Built" – an accurate drawing submitted by the installer showing the measured placement of all subsurface wastewater treatment system components relative to property boundaries and common reference points
- (4) "Board of Health" – is the City-County Board of Health for Lincoln County
- (5) "Department" – Lincoln County Health Department
- (6) "Governing Body" – Identified in the Board of Health Bylaws as the Lincoln County Board of Commissioners
- (7) "Health Officer" – Lincoln County Health Officer or their designated representative
- (8) "Holding Tank" – a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose of or treat the wastewater
- (9) "Infiltrators" – leaching chambers with an open bottom, structurally designed to carry the earth loading
- (10) "Licensed Installer" – a person holding a current license, issued by the Department, to install, alter or repair wastewater treatment and disposal systems regulated by the Board of Health
- (11) "Person" – any individual, institution, corporation, association, or other private or governmental entity
- (12) "Primary Treatment" – 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
- (13) "Qualified Site Evaluator" – a person who has demonstrated knowledge of soils and site characteristics necessary to conduct percolation tests and soil profiles
- (14) "Replacement System" – a wastewater treatment and disposal system installed to replace an existing system that is failed, failing or contaminating. New systems that serve an expanded home, or installed to relocate an existing system, are not replacement systems unless the system is replacing a legal failed, failing, or contaminating system
- (15) "Secondary Treatment" – the further treatment of wastewater after primary treatment, such as in a subsurface drainfield
- (16) "System" – any on-site wastewater collection, treatment, or disposal system, such as a septic system, that provides primary or secondary treatment or containment
- (17) "Wastewater" – water-carried waste including, but not limited to, household, commercial, or industrial wastes, chemicals, human excreta, or animal and vegetable matter in suspension or solution

SUBCHAPTER 2: COMPLIANCE REQUIREMENTS

3.2.101 PROHIBITED ACTS:

- (1) It shall be unlawful to violate any provision of this regulation.
- (2) It shall be unlawful for any person to install, construct, alter, extend, repair, or use a wastewater treatment and disposal system that is in violation of this regulation.
- (3) It shall be unlawful to use a malfunctioning system, to remove wastewater or human excreta from a system and dispose of it in or at an unauthorized location, or to collect and/or dispose of wastewater or human excreta in an unpermitted manner.
- (4) It shall be unlawful for any property owner to utilize, or allow to be utilized, a wastewater treatment and disposal system that does not have a valid permit issued by Lincoln County if one was required at the time of construction.
- (5) Structures designed and constructed for occupancy by people that have water service must not be occupied unless connected to an authorized wastewater treatment and disposal system.
- (6) No property owner may utilize, or allow to be utilized, a wastewater treatment and disposal system that is located in a floodplain unless the system was installed according to the regulations effective at the time of installation. No person may increase use to a wastewater system in the floodplain.
- (7) Holding tanks are prohibited except as allowed in ARM 17.36.321.

3.2.102 PERMIT: A valid permit issued by the Department is required before installation, repair, modification, replacement or increased use of a wastewater treatment and disposal system.

- (1) An application for a permit shall be made to the Department. The application shall be made by the owner of the property, or his authorized agent, on a form provided by the Department; signed and dated by the applicant and shall include the following information:
 - (a) The name, address and telephone number of the property owner.
 - (b) The assessment code, legal description, and size of the property on which the system is located or proposed.
 - (c) A site evaluation shall be made as required by A.R.M. 17.36.101(55) to determine if a site is suitable for the installation of a subsurface wastewater treatment and disposal system. The evaluation shall be made by a qualified site evaluator on forms provided by the Department and shall include the information necessary to complete the forms and any additional information deemed necessary by the Department to ensure compliance with this regulation.
 - (d) A site plan showing locations of proposed wastewater treatment and disposal system components and other structures and features necessary to determine if a site is suitable.
- (2) A permit shall be issued upon approval of the application by the Department, and the payment of the permit fee. Once a permit has been issued by the Department, construction may begin.
- (3) Permit fees are included in the Wastewater Fee Schedule and approved by the Board of Health and Governing Body. The current Wastewater Fee Schedule is by this reference incorporated herein. Checks shall be payable to Lincoln County. This fee is non-refundable.
- (4) A new waste water source may be connected into an existing system provided the system meets the following criteria:
 - (a) The system has been described as to its location, composition, capacity and soundness in written notice provided to the Department.
 - (b) The system has adequate capacity to treat anticipated maximum daily wastewater discharges.
 - (c) The system provides primary and secondary treatment.
 - (d) The system complies with this regulation.
- (5) A permit shall be issued to replace a system provided the following conditions are met:
 - (a) The existing system cannot be effectively repaired.
 - (b) The replacement system complies with this regulation.
 - (c) A variance has been granted by the Board of Health in accordance with A.R.M. 17.36.922, if one is needed.
- (6) If a system has not been approved within twelve (12) months of the date the permit was issued, the permit shall expire and will be invalid. The permit may be extended at the discretion of the Department.

- (7) Any changes in plans, details or specifications of construction not approved by the Department, after the permit is issued, shall invalidate the permit and a new permit will be required for installation.
- (8) The system is not eligible for permitting if installation, repair, modification, replacement, or increased use of a system starts prior to a valid permit being issued. An Affidavit of Wastewater Treatment and Disposal System Compliance Review for System Installed, Repaired or Replaced without a Valid Permit (Affidavit) may be issued if requirements for the Affidavit are met by the applicant.
- (9) The Department shall disapprove an application for a permit in writing if they determine that any of the following conditions exist:
 - (a) The system will not comply with this regulation.
 - (b) The application is incomplete.
 - (c) The permit fee has not been paid in full.
 - (d) The tract of land on which the system is proposed is being reviewed under the Sanitation in Subdivision Act.
 - (e) The system would violate the provision of a Certificate of Survey (COS) plat approval.
- (10) A permit denial may be appealed to the Board of Health as provided in A.R.M. 17.36.922. The appeal must be made in writing and submitted to the Board of Health within sixty (60) days of the denial. If a request for variance is denied by the Board of Health, the appellant may seek a variance from the State, according to the provisions in A.R.M. 17.36.924. To the extent the appeals contemplated in this provision are subject to the Lincoln County Notice of Violation & Abatement Order Review Process, the terms of that Regulation are incorporated herein.
- (11) If a permit is not issued, the application expires one (1) year after the date of submittal.

3.2.103 INSTALLER LICENSE

- (1) It shall be unlawful for any person, except as delineated in this section, to construct or alter a wastewater treatment and disposal system within Lincoln County unless that person holds a valid Lincoln County Wastewater Treatment and Disposal System Installer's License. A homeowner constructing or altering an individual standard gravity system for his/her own residence upon his/her own property is exempt from this requirement but remains subject to all provisions of this regulation, including permitting and inspections as deemed appropriate by the Department. Builders who may own several parcels of land and who build 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" and are not exempt from this requirement.
- (2) All first-time applications for installer licenses shall be made to the Department who may grant the license upon completion of the following:
 - (a) Name, address and telephone numbers of the applicant.
 - (b) Passing the required examination with a score of at least 85%.
 - (c) Receipt of the license fee payment. License fees are included in the Wastewater Fee Schedule and approved by the Board of Health and Governing Body. The current Wastewater Fee Schedule is by this reference incorporated herein. Checks shall be payable to Lincoln County. This fee is non-refundable.
- (3) 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 wastewater treatment and disposal system design and/or installation in the year immediately preceding the application.
- (4) Installer licenses shall be valid for up to two years as stated on the license, expiring on December 31 of the second year, unless revoked. Licenses shall be renewable prior to expiration. Licenses are not transferable.
- (5) Installer licenses may be denied for any of the following reasons:
 - (a) Having constructed or altered a wastewater treatment and disposal system without a valid permit, and/or,
 - (b) Having a license revoked within twelve (12) months preceding the application, and/or,
 - (c) Failure to meet the terms of the License Application.
- (6) Installer licenses are the property of the Department and may be revoked by the Department at any time for the following reasons:
 - (a) Installation of a wastewater treatment and disposal system prior to the issuance of a permit, and/or,

- (b) Failure to gain approval for a wastewater treatment and disposal system installation, and/or,
 - (c) Failure to correct violations or deficiencies noted during inspection, and/or,
 - (d) Having provided false evidence or information to obtain a permit or gain approval of an installation.
- (7) In the event that a 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 and it shall be given to the licensee by personal delivery or certified mail.
- (8) For a first violation, the license will be revoked until the installer again passes the required examination with a score of at least 85% and pays the exam fee. For subsequent violations, the term of revocation will be for a minimum of one calendar year from the date of violation or longer as determined by the Board of Health.

3.2.104 QUALIFIED SITE EVALUATOR

- (1) A site evaluation must be conducted by an approved site evaluator who has demonstrated knowledge of soils and site characteristics and how they relate to the design and function of wastewater treatment and disposal systems.
- (2) The following persons are accepted as qualified site evaluators in Lincoln County:
- (a) Professional engineers
 - (b) Persons possessing a B.S. degree in geology, hydrogeology, or soils science
 - (c) Registered Sanitarians
 - (d) Other persons with equivalent expertise or experience as determined by the Department

3.2.105 INSPECTION AND OPERATION

- (1) All systems must receive final approval from the Department for a permit to be valid.
- (2) All new or altered systems shall be inspected by the Department prior to backfilling, unless specific permission has been granted by the Department to backfill a portion of the system prior to inspection or the Department has determined that an inspection is not necessary.
- (3) Inspection of pressure dosed systems will include observed hydraulic analysis, show no greater than 10% variation in distribution of dose across the entire distribution system, and demonstrate minimum pressure as required in Circular DEQ 4. With prior approval, a portion of the system may be covered and the squirt test observed at the ends of each lateral.
- (4) The applicant or licensed installer shall notify the Department at least three business days prior to backfilling, so that arrangements for an inspection can be made.
- (5) If the inspection shows that the system is not in compliance with the permit, the system cannot be backfilled until it is brought into compliance. The Department may charge a re-inspection fee to return and re-inspect the system after violations have been corrected or require that the licensed installer provide evidence that the deficiency has been corrected.
- (6) Licensed installers, after receiving approval from the Department, may inspect their own installation and certify the system is installed in compliance with these regulations on forms provided by the Department when Department personnel are unable to inspect the system within three (3) business days of the requested inspection time. The installer must submit a completed inspection of the system, including an as-built and photo documentation, to the Department within seven (7) days after receiving permission to self-inspect.
- (7) Application for a permit confers upon the Department the authority to access the installation site at reasonable times to inspect or collect samples. The property owner or licensed installer will be notified prior to inspection.

3.2.106 DESIGN AND CONSTRUCTION STANDARDS:

- (1) General
- (a) On-site wastewater treatment and disposal systems shall be designed and constructed in accordance with the requirements described in A.R.M. Title 17, Chapter 36 and Circular DEQ 4 which are included in A.R.M. Title 17, Chapter 36 by reference unless a more specific requirement is included in this regulation.
 - (b) Minimum Horizontal Setbacks must conform to ARM 17.36.323 or ARM 17.36.918, whichever is applicable to the specific parcel.

- (c) Applicants proposing a new wastewater treatment and disposal system, or increased use of a system, must designate a full sized replacement area that meets all the criteria for the initial drainfield or absorption system.
- (d) Projected residential wastewater flows will be based on the number of bedrooms. For purposes of sizing, an unfinished basement or a bathroom in a shop/garage are considered to be an additional bedroom. Facilities for dumping wastewater from an RV are considered an additional bedroom with a wastewater flow rate of 50 gallons per day if no water hookup is provided and 100 gallons per day if water hookup is provided.
- (e) Site evaluation requires percolation test(s), a soil profile description to a minimum depth of 8-10 feet, depth to groundwater, and distance to surface water. Groundwater monitoring may be required at marginal sites.
- (f) A structure, movable or immovable, may not be located over or moved onto any part of the drainfield. The drainfield or other absorption system must be located and protected in a manner that prevents vehicles from passing over or parking on top of the system. This area must be kept free of all obstructions, including pavement, which will prevent air from penetrating the soil.

(2) Design

- (a) Wastewater Treatment and Disposal Systems may be designed by the Department, a licensed professional engineer, a licensed installer, a qualified site evaluator, or a registered sanitarian.
- (b) The Department may require a wastewater treatment and disposal system be designed by a professional engineer or a registered sanitarian when the system:
 - i. is an experimental, alternative or advanced treatment system
 - ii. requires a Request for Variance from regulations
 - iii. serves a commercial or industrial establishment, or a multi-family residence
 - iv. is located on a site with difficult site conditions
- (c) No system or any portion of a system may be located on a slope that exceeds 25%. Systems installed on slopes between 15% and 25% will require an engineer's soil stability report per ARM 17.36.322.
- (d) Drainfields may not be located within 100 horizontal feet of a floodplain or flood-prone area as delineated by the most current FEMA floodplain maps. If the floodplain has not been designated and its elevation relative to a wastewater treatment and disposal system is in question, the applicant must submit evidence adequate to establish the location of the floodplain. Replacement of systems legally installed in the floodplain or flood-prone area are allowed as described in these regulations.
- (e) Reduction of drainfield size up to 25% may be allowed per the following table if infiltrators are installed:

Percolation Rate (mpi)	Application Rate (gpd/sf)	Reduction %
<3	0.8	25
3 - <6	0.8	25
6 - <10	0.6	20
10 - <16	0.5	15
16 - <31	0.4	10
31 or more	0.3 or less	0

SUBCHAPTER 3: ENFORCEABILITY AND PENALTIES

3.3.101 ENFORCEABILITY: The provisions of this regulation are enforceable by the Lincoln County Sheriff's Office, the Health Officer, the Department, or any other law enforcement personnel with jurisdiction.

3.3.102 POWERS AND DUTIES OF THE DEPARTMENT:

- (1) The Health Officer is hereby authorized to enter upon private property, at reasonable times and after attempting to notify the property owner, for the purpose of making such inspections as are necessary to determine compliance with the requirements of this regulation.
- (2) The Health Officer will determine whether or not this regulation applies after an inspection of the property or area.
- (3) The Health Officer will serve a written Notice of Violation and/or Notice to Appear and Complaint on the person who owns, leases or occupies the property on which a violation of this regulation exists. The

notice(s) may be served in person or by certified mail with return receipt.

- (4) The Health Officer can set a deadline for compliance and approve/disapprove a proposed compliance plan.
- (5) If the violation has not been corrected by the deadline, the Health Officer, or their contractor or designee, may enter onto the property for the specific purpose of abating or mitigating the violation.
- (6) To the extent the actions contemplated in this Section are subject to the Lincoln County Notice of Violation & Abatement Order Review Process, the terms of that Regulation are incorporated herein.


3.3.103 PENALTIES:

- (1) Violation of any part of this regulation shall constitute a misdemeanor punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00). Each day of violation will constitute a separate offense. The first day of violation shall be the date of the Notice of Violation.
- (2) Actions to recover the expenses incurred under 3.3.102(6) shall be brought in the name of the county as provided by MCA 50-2-123.

SUBCHAPTER 4: SEVERABILITY AND CONFLICT OF ORDINANCE

3.4.101 CONFLICT: 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 of Lincoln County, existing on the effective date of this regulation, the provision which establishes the higher standard for the protection of public health and safety shall prevail.

3.4.102 SEVERABILITY: If any provision of this regulation is declared invalid by any court or tribunal, the remaining provisions of this regulation shall not be affected thereby.



Board Chair
City-County Board of Health for Lincoln County, MT

3-14-23
Date

HEREBY ADOPTED:



Board Chair
Governing Body – Lincoln County Board of Commissioners

3-22-23
Date