

**Board of Health**  
**Environmental Health Subcommittee**  
**Meeting Notes**  
August 15, 2014  
8:00am – 9:30am  
Health Department, 215 W. Mendenhall  
Education Room

Present: Steve Custer, Chris Gray, Berk Knighton, Matt Kelley, Tom Moore, Tim Roark, Gretchen Rupp, Theresa Sevareid, Joe Skinner

Meeting called to order: 8:03am

Public Comment - none

- **Discussion and Decision on a Revised Policy and Procedure for Unpermitted Septic Systems**

Matt gave an overview about how the health department evaluates and deals with unpermitted septic systems. Based on discussions and advice from Chris Gray, a proposed policy for subcommittee review and a procedure to implement the policy is presented to the subcommittee today.

The Policy needs to be recommended to and adopted by the full Board.

Note: The Procedure is to be implemented by Matt with Board input.

If the Board decides to go forward with the revisions - two public meetings would be noticed and a vote would be held, if no significant revisions are made.

Matt presented a PowerPoint about the proposed policy:

**Notable items in the new regulations**

- Eliminated “obsolete” systems & streamlined document.
- Recommends use of risers to surface for all new systems;
- new fee structure;
- allows one-year extension for permits to construct;
- proposal relies on procedure rather than regulation to establish enforcing state flood plain rules. Delineation of base flood elevation is a critical point and a procedure will tell how to do this
- holding tanks are allowed for seasonal use (per ARM) only when no other options exist;
- EHS has explicit authority to require water meters or other flow measuring devices as needed.
- Middle-of-the- road fees proposed.
- Change with holding tanks- dropping their use as replacements.

- Ch 3 streamlined and reflects the policy/procedure and refers to state law as foundation. Not much elaboration. Eliminated redundancy.

We are more stringent than state percolation rates of 3min/inch. We want to require pressure distribution with percolation rates of less than 10 min/inch for better distribution and treatment.

### **PROPOSED REVISION OF OBSOLETE SYSTEMS LANGUAGE**

Currently, we state that some systems and system components are obsolete and categorically prohibiting them. This makes it hard to enforce due to how it is written. Our goal is consistency in evaluation and enforcement. Worked with Chris: state law gives us what we need, so focus on the health risks.

Currently, systems installed prior to January 1, 1966 are defined as illegal. Legally, this type of definition is more difficult to justify.

Use minimum on-site standards from the ARM 17.36.913.

Decision tree created and tested with Chris and staff.

### **Recommend approval of The Policy**

*“The HO and GCCHD EHS will apply consistent standards and criteria in reviewing and assessing WWTS w/o permits in order to determine compliance with Board regulations, Montana law and issue permits when it is likely that public health will not be adversely affected.”*

Health risk determination only.

How would this address any groundwater contamination? Questions 4-6 address this.

If not near drinking water source, could potentially answer no to all decision tree questions.

Good idea, establishes when there is an issue.

A permit MAY be issued is a confusing statement to Gretchen – investigation results in the person. Tim notes it allows some discretion. But this circumvents the point of having a screening process for the system. Discretion to be used prior to determination.

Suggested the word CAN be used instead of MAY. Health department has changed to WILL be issued.

What happens if the system is not a risk? Permit given, then neighbors move in and makes the system a risk? No mechanism to track this. Unless specific complaint. No building permits in the county for wells and no other way to deal with this. No explicit authority to do water wells. Present or future water quality – cannot guess what would happen in the future. Language requires clairvoyance.

In a subdivision, a second well is often desired but is problematic.

Opportunity for appeal? Yes, can apply for a variance and appeal the decision. Chris would review the appeal process to the BOH. Matt approves the permit. A disagreement can appeal to the BOH.

**Matt is asking for the BOH to approve the policy.**

Recommend to the full Board to approve the policy.

Gretchen stated this is a significant improvement over the status quo.

Chris – law allows the policy and implementation of a procedure to catch your problems and abide by the law.

Matt – his concern was approval would set up the BOH to feel bound with the decision. Are we giving a way to wriggle through the process even if a health concern? Considered scenarios and feels the minimum onsite standards are the criteria we need to identify issues.

Joe – likes the wriggle room if there is not a health risk. This is new!

This allows for setting priorities from Tom’s perspective and gives way to deal with them.

Steve – unpermitted system, during checklist, changes responsibility onto the staff. Requires data acquisition. Property owner responsible for doing that work. Is that true?

Matt notes it falls onto both – up to Tom to ask the questions. Some data gathering and info has to come from the property owner as well.

As a complaint or permit request this information comes to the health department (HD) as a mechanism to look at the system and deal with it.

Problem with not knowing what is under the ground to determine if affecting state water – there is no proof or scientific evidence to show. We must follow statutes with goal to be less burdensome to the property owner.

Nothing in here to say that the landowner needs to bring data into the HD. As a public health issue, the information must be looked at.

What happens if there is a cesspool but no health risk? Then there is no reason not to give a permit (outhouse in middle of nowhere, for example).

Only about 6 per of these systems per year come to our attention but this could change if there’s a mechanism for obtaining a permit.

Growth is biggest risk.

BOH this month approves the policy (Note: BOH will be notified of the procedure but will not vote on it) but it takes public hearings to hear change in regulations. If this does not work with public, what then? We have to start over. In August, approve policy, in September get Board approval to hold public meetings.

This is per state law. What would the alternative be?

Chris – policy and purpose is to rid problems in regulations as it stands now (obsolete systems). Currently, we have a regulation that is unenforceable. Policy in place and how procedure is implemented is up to Matt. Recommends to do this first (approve the policy and procedure) Not sure what will come up while reviewing regulations - process of amending regulations. Policy is a bandaid on how to deal with current regulations.

Question: How to let public know we are changing policy? We notice.

Question: Any entanglement between policy and reg? Problem is not as bad from legal and enforceability.

The Department can start implementing this right now once policy is approved.

Question: Is there an opportunity for the public to look at the draft before we vote to make change of policy and procedure? This is new. We can provide more opportunity. Joe fears implementation of policy and public not knowing. Chris noted publicize the specific changes.

Question: Where to post publicly; on which website? Where the media can see and make it easier to find on our website and post into paper. Intend to send post cards to installers to notify of potential changes

Final version of policy

Procedure is for Matt to implement.

**MOTION:**

Gretchen made a motion the subcommittee recommend to the full board the adoption of the proposed new policy pertinent to unpermitted systems ~~constructed before 1966~~.

**SECOND:**

Berk seconded the motion.

Tom commented any system w/o a permit

**AMENDED MOTION:**

Strike “constructed before 1966”.

**SECOND:**

Berk seconded the amended motion.

**VOTE:**

Roll Call:

Berk – yes

Joe – yes

Gretchen – yes

Steve (did not vote)

**Motion passed.**

The discussion to come later – do we charge for this, how much . . .

**• Discussion and Decision on Revisions to Chapter 3 of Gallatin County Local Health Codes**

This is the staff’s proposal.

Feedback welcome on this proposal.

Discussion:

Gretchen noted the fee structure. 2009 fees cover about 80% and the rest subsidized by county funds. She argues that property owners of Bozeman are paying for the new WWTS and feels it is not fair to also subsidize the county WWTS. She feels the cost structure for new systems should cover 100% as a matter of equity.

The current cost of services was established with Ed Blackman.

Matt referred to Attachment F (fee schedule attachment).

Discussion : 80% is balanced – paying staff to protect state waters, general health

Question: Fees go to what? Buying time and effort. Cost of operations/staff . Cost of service estimation of staff support (\$84/hr).

Calculation based on hourly rate – cost to provide services from staff; time the staff member spends on that permit. (evaluation and issuance).

Revenues brought in about 1/3 of budget; 1/3 is general funds; 1/3 grants

Thanked Tom for summary of changes;

**No decision today – wants debate discussion along with the Board.**

Any red flags in proposed changes provided by Tom?

Steve – floodplain going away? Now refers to state laws.

Chris – changes are a good thing in local regs (10 law suits spawned) and will prevent suits challenging the determination of floodplains.

Chapter 3 to Board? Not this month. Chris is reviewing toward final reviewed copy and the process for hearings require public notice.

Steve is concerned with words “will” and “may” – discretion when imposing a fee. Tim shared when a person wanting lots of time from HD staff, taking away from other work, it is prudent to impose a fee for that time.

Matt asked the subcommittee to review and discuss any issues and bring to him.

Gretchen asked about mixing zones . . . Tim brought to board attention – subdivision rules do not allow mixing zones to go off subdivision; individual parcels are allowed. Our rules do not need to cover this because stated in the subdivision laws.

Is this a big deal that mix zones can go offsite? Can be problematic – degrades property value. Brought it up for fairness. Preventing this would bring in more variance requests.

Question: Final revision to subcommittee or full board? Gretchen – full board unless substantial changes.

Meeting adjourned at 9:35am