



SANDERS COUNTY

Environmental Health

ADMINISTRATIVE REGULATIONS

Effective December 21, 2016

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1. **Purpose and Authority.** The purpose of the Sanders County Environmental Health Regulations is to protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health. The Sanders County Board of Health is authorized by 50-2-116, MCA.
2. **Definitions and Acronyms.** The following definitions apply to this Code unless terms are otherwise defined under a specific regulation.
 - (A) **Board:** the Sanders County Board of Health
 - (B) **Department:** the Sanders County Environmental Department
 - (C) **Facility:** a business, residence, structure, system, area or location
 - (D) **Health Officer:** the Sanders County Health Officer or a designated representative
 - (E) **DEQ:** the Montana Department of Environmental Quality
 - (F) **Person:** any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.
3. **Enforcement and Review**
 - (A) **Notices of Violation and Orders to Take Corrective Action.** When the Department determines that a violation of the Code has occurred, the Department may issue written notice to the offender or an agent of the offender, either personally or by certified mail. Such notice shall specify the provision or provisions of the Code alleged to have been violated along with a short and plain statement of the facts that constitute the violation. The notice shall include an ORDER TO TAKE CORRECTIVE ACTION within a reasonable time as stated in the order. The order is final unless, within five working days after the order is received, the offender submits a written request for an administrative review as provided for in Section 3(E), or within 10 working days of receipt of the Department's decision concluding the administrative review, the offender submits a written request for a hearing before the Board, as provided for in Section 3(F). Upon good cause shown, the time frame for requesting an administrative review or a Board review may be extended if made within the time specified for compliance with the Notice of Violation and Order to Take Corrective Action. A request for administrative review does not stay the order.
 - (B) **Penalties.** Any person who violates any regulation, provision, or rule enforced under this Code, or any order made pursuant to this Code shall be guilty of a misdemeanor and subject to, upon conviction, a fine of not less than \$10 or more than \$200 per offense. Each day of violation constitutes a separate offense.
 - (C) **Other Remedies.** Action under this part shall not bar enforcement of the Code by injunction or other appropriate remedy.
 - (D) This section does not prevent the Board or Department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.
 - (E) **Administrative Review**
 - (1) Any person subject to a Department Notice of Violation and Order to Take Corrective Action may request an administrative review by the Health Officer, or in the case of Health Officer absence, his or her designee (Hearing Officer).

- (2) The Hearing Officer shall schedule an administrative review hearing as soon as possible within the timeframe for compliance required in the Department's Order to Take Corrective Action. The administrative review hearing may be scheduled at a time beyond 10 days of receipt of the request by mutual consent of the Department and the party requesting the hearing. The Hearing Officer shall provide written or verbal notice of the date, time and location of the scheduled hearing to the person requesting the hearing.
- (3) At the administrative hearing, the Hearing Officer shall first hear the staff report, if any, on the Notice of Violation and Order to Take Corrective Action. Second, the person who requested the hearing may present relevant information to the Hearing Officer. Third, the Hearing Officer may hear any person who has relevant information regarding the Notice of Violation and Order to Take Corrective Action. The Hearing Officer may continue the administrative review for a reasonable time period following the administrative review hearing in order to obtain information necessary to make a decision.
- (4) The Hearing Office shall affirm, modify or revoke the Notice of Violation and Order to Take Corrective Action, in writing, following completion of the administrative review. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the administrative review.

(F) **Board Hearings**

- (1) Persons subject to a Department Notice of Violation and Order to Take Corrective Action may submit a written request for a hearing before the Board following conclusion of an administrative review, within ten days of receipt of the Hearing Officer's decision concluding the administrative review. Upon good cause shown, the time frame for requesting a hearing may be extended if made within the time specified for compliance in the Notice of Violation and Order to Take Corrective Action.
- (2) The Board shall schedule a hearing within 45 days of this request.
- (3) Notice of hearing shall be given by the Department to persons requesting a hearing at the address stated on the request for hearing or at the last known address, by personal service or by mail, not less than seven days before the hearing is scheduled. Notice is complete on the date of delivery or mailing.
- (4) The Department shall publish a notice of hearing in a newspaper of general circulation Sanders County. The notice shall be published twice, with at least six days separating publication.
- (5) At the hearing, the Board shall first hear the staff report, if any, on the Notice of Violation and Order to Take Corrective Action. Second, the person who requested the hearing may present relevant information to the Board. Third, the Board may hear any person who has relevant information regarding the Notice of Violation and Order to Take Corrective Action. The hearing may be conducted informally and need not follow rules of evidence or procedure applicable to judicial hearings. The Board chair may impose rules for the orderly conduct of the hearing.
- (6) The Board shall affirm, modify, or revoke the Notice of Violation and Order to Take Corrective Action, in writing, following completion of its review. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the hearing. The Board shall maintain a written record of the hearings and document its final decision in the record.

(G) **Judicial Review.** Except as otherwise provided, persons subject to a hearing decision of the Board may appeal the decision to the district court pursuant to the contested case provisions of

the Montana Administrative Procedure Act after the Department's appeal process is exhausted.

4. INSPECTIONS

- (A) Inspection purpose. Inspections performed by the Department are conducted solely for the purpose of ensuring compliance with the requirements set forth in this Code. Inspections are not performed to ensure proper workmanship or to guarantee life expectancy or operation of the facilities or for any other purpose.
- (B) Inspections for approval. The Department may require an inspection to determine compliance with this Code before granting approval for the completion or use of a wastewater treatment and disposal system or before the commencement of a group function. When a final inspection is required and a time appointed, applicants or their agents may not refuse entrance onto the site, interfere with, or substantially delay the authorized Department representative performing the inspection. Such actions are grounds for the Department to withhold approval and/or invalidate the applicant's permit or permit application. The Department may conduct inspections, which have been previously scheduled, at the appointed time regardless of whether the applicant or authorized agent is present at the site when the inspection is being conducted.
- (C) Inspections to ensure sanitary conditions. The Department may enter and inspect facilities regulated by this Code to ensure compliance. Inspections may be carried out, without prior notice, at reasonable times upon showing proper credentials. Reasonable times for inspections of facilities used in the course of business shall include regular business hours. Nothing in this section shall be construed to allow entry into a private residence by the Department unless permission has been granted or a search warrant issued.

5. PERMITS AND APPLICATIONS

Applications for permits are available at the Department located at 1111 Main Street in Thompson Falls. Applicants may obtain a permit from the Department upon compliance by the applicant with the application requirements and provisions of the applicable regulation and payment of fees.

- (A) Permit Required. No person shall conduct the following activities until the Department has issued a permit:
 - (1) Wastewater Treatment and Disposal Systems. No person shall install, construct, extend, alter, or operate a wastewater treatment and disposal system within Sanders County without first obtaining a permit from the Department.
 - (2) Other establishments. No person shall operate an establishment, which by statute or rule requires a permit or a license, within Sanders County without first obtaining a permit or license from the Department.
- (B) Permit Application and Fees. The Department may not issue a permit, a license, a registration, or conduct field work for which a fee is set until the following requirements are satisfied:
 - (1) The applicant furnishes the Department with necessary information required by the applicable regulation; and
 - (2) All required fees are paid. Application fees are non-refundable.
- (C) Revocation. The Department may revoke any permit for failure to comply with permit conditions or any applicable part of these regulations.

6. VARIANCES

- (A) Purpose. A variance provides limited flexibility from strict compliance with Health Department regulations.
- (B) Applicability. When certain conditions or circumstances preclude compliance with requirements of Health Department regulations, a person may apply to the Board for a variance from the applicable Sanders County Regulation.
- (C) Scope of Variance
 - (1) Variances are non-transferable and remain valid only for the applicant to whom they are granted for the period stipulated.
 - (2) All provisions of Health Department regulations shall apply to variance recipients except those specifically exempted by the Board pursuant to the variance.
- (D) Fees. The Board shall establish a fair and reasonable variance application fee based on the cost to give notice of hearing and review and prepare for the hearing. The application fee must be paid in full before a variance will be considered. Application fees are non-refundable. The Board may approve changes in fees at regularly scheduled board meetings.
- (E) Criteria for Variance. The Board may approve a variance only if it finds all of the following:
 - (1) The variance is necessary to address extraordinary conditions that the applicant could not have reasonably prevented;
 - (2) Compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;
 - (3) No alternatives that comply with the requirements are reasonably feasible; and
 - (4) The variance requested is not more than the minimum needed to address the extraordinary conditions.
 - (5) Additional criteria are required for a variance from Sanders County Wastewater Treatment Regulations. The Board may approve a variance from Sanders County Wastewater Treatment Regulations only if it finds, in addition to all the elements in 6(E)(1)-(4) above, that granting the variance will not:
 - (a) contaminate any actual or potential drinking water supply;
 - (b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
 - (c) cause a public health hazard by being accessible to persons or animals;
 - (d) violate any law or regulation governing water pollution or wastewater treatment and disposal except for the rule that the variance is requested from;
 - (e) pollute or contaminate state waters in violation of 75-5-605 MCA;
 - (f) degrade state waters unless authorized pursuant to 75-5-303 MCA; or
 - (g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.
- (F) Restrictions on a Variance
 - (1) No adverse effect. The Board shall not approve a variance if the applicant's proposal may adversely affect the health, safety, or welfare of any individual or cause adverse environmental effects greater than those effects caused by uses commonly permitted by the Code.
 - (2) Revisions or modifications made to Environmental Health Department regulations shall not be grounds for a variance.
 - (3) Expiration of variance. Unless otherwise specified in Health Department regulations, the privilege to execute a variance expires one year following approval by the Board.

(4) No variance granted pursuant to this section shall be construed to prevent or limit the application of emergency provisions and procedures established in Health Department regulations or relieve applicant of responsibility of complying with other applicable local, state, or federal rules or standards.

(G) Variance Procedure

- (1) A complete variance application shall be submitted to the Department within 30 days after a permit or proposed action is denied. If the Department does not receive a variance application within the prescribed time, then a variance shall not be granted.
- (2) The Department shall have 10 working days to determine if an applicant has adequately addressed criteria in Section 6 (E)(1-5) and 6 (H)(1-7).
- (3) If the Department determines that an application has not addressed Section 6 (E)(1-5) and 6 (H)(1-7) adequately, or is otherwise not complete, it shall notify the applicant of the deficiencies.
- (4) If the Department determines that an applicant has adequately addressed criteria in Section 6 (E)(1-5) and 6 (H)(1-7), the Board shall schedule a public hearing within 60 days of the Department's determination.
- (5) The Department shall serve notice of hearing to the applicant's last known address by personal service or certified mail at least 14 days before the hearing is scheduled. The Department shall publish the notice twice, with at least 6 days separating publication.
- (6) Notice shall include:
 - (a) Name and address of applicant;
 - (b) Time, location and nature of hearing;
 - (c) Address and phone number where interested parties may obtain further information.
- (7) Notice shall be sent by the Department to adjacent property owners using the list of names and addresses supplied by the applicant.

(H) Completed applications

Variance applications shall include:

- (1) Applicant's name and address.
- (2) Specific provision or provisions of the Code from which a variance is requested.
- (3) Legal description or address where the variance is requested.
- (4) Detailed and accurate description of the proposed project or circumstance under consideration.
- (5) Written explanation addressing each criteria under section 6(E)(1) and (2).
- (6) A list of names and addresses of all adjacent property owners. Failure to provide a complete and accurate list may result in delay or denial of the variance.
- (7) Any further relevant information which the Department determines will assist the Board in making its decision and which is reasonably obtainable by the applicant.

(I) Order of Hearing. Variance hearings shall proceed in the following order:

- (1) First, the Board shall hear the staff report, if any, on the proposed variance.
- (2) Second, the applicant shall present relevant evidence to the Board.
- (3) Third, the Board shall hear any person in support of or in opposition to the proposed variance and shall accept any related letters, documents or materials.

(J) Disposition of Hearing and Continuances

- (1) The Board shall deny, approve, or approve with conditions an application for a variance.

- (2) The Board shall inform an applicant of its decision in writing, along with reasons for approving or denying the variance and the terms or conditions imposed, within 15 days of its decision.
- (3) The Board may continue a hearing for a period not to exceed 45 days.
- (4) A hearing may be continued for longer than 45 days only if circumstances require a longer period and both the Board and the applicant agree to a specific period.

(K) Appeals. Any person adversely affected by a variance decision of the Board may initiate judicial review pursuant to the Montana Administrative Procedure Act, except that applicants for variance to the Wastewater Treatment and Disposal System regulation shall first appeal to the Montana Department of Environmental Quality.

(L) Variance Revocation. A variance may be revoked by the Board if information is withheld or inaccurately supplied by the applicant.

7. CONFLICTS AND SEVERABILITY

- (A) In any case where a provision of this Code is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of a City, Town, or County of Sanders, the provision which, in the judgment of the Department, establishes the higher health standard for the promotion and protection of public and environmental health and safety shall prevail.
- (B) If any section, subsection, paragraph, sentence, clause or phrase of this Code should be declared invalid for any reason, such decision shall not affect the remaining portion of this Code which shall remain in effect; and to this end, the provisions of this rule are hereby declared to be severable.

8. FEES

The Board may adopt fees that are fair and reasonable for permit applications, Department services, tests, or certifications established by this Code. Fees may be adopted or changed at any regularly scheduled meeting of the County Commissioners providing that the action is scheduled on the agenda and public comment is allowed.

9. AMENDMENTS AND REVISIONS

The Board may enact amendments or revisions to this Code after a public hearing, which has been advertised in a daily newspaper, published in Sanders County. The notice must be published twice, with at least 6 days separating publication.