

# Subdivision Annual Report to the Environmental Quality Council

August 27, 2021



Montana Department of Environmental Quality

Kevin Smith, PE, Engineering Bureau Chief

[ksmith@mt.gov](mailto:ksmith@mt.gov) (406) 444-1277

## PURPOSE

The purpose of the Sanitation in Subdivisions Act is to protect water quality for drinking and other beneficial uses. This includes agriculture, industry, recreation, and wildlife use. Protections are accomplished by Department (DEQ) review and approval of subdivision water, wastewater, and storm water facilities for compliance with minimum design standards and administrative rules prior to recording a new subdivision with the County Clerk and Recorder.

MCA 76-4-116 requires that the Department report annually to the Environmental Quality Council about review procedures adopted under Title 76-4 and recommending whether statutory changes should be made to the process.

## STATUTORY AUTHORITY

The Sanitation Act is found in MCA 76-4. The Sanitation Act:

- Identifies which parcels require Sanitation Act review
- Identifies which parcels are statutorily exempt from Sanitation Act review
- Requires the Department to adopt rules for water, wastewater and storm water facilities
- Establishes procedures for Counties to review subdivisions under contract with DEQ
- Requires that property purchasers be notified of the approved facilities
- Prohibits County Clerks from recording a new subdivision until it is approved or has a valid exemption
- Establishes review procedures and timelines, and
- Establishes subdivision review fees and program funding
- Describes prohibited actions under the Sanitation Act and their enforcement.

## REVIEW SCOPE

Subdivision regulation in Montana began in 1961. The size and type of parcels that require review has changed several times since regulation began. The current definition is:

*"Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.*

Review under the Sanitation Act covers water, wastewater, and storm water facilities.

## Water Systems

Water system review ensures that there is adequate water quality, quantity, and dependability to serve a proposed subdivision.

## Storm Water Systems

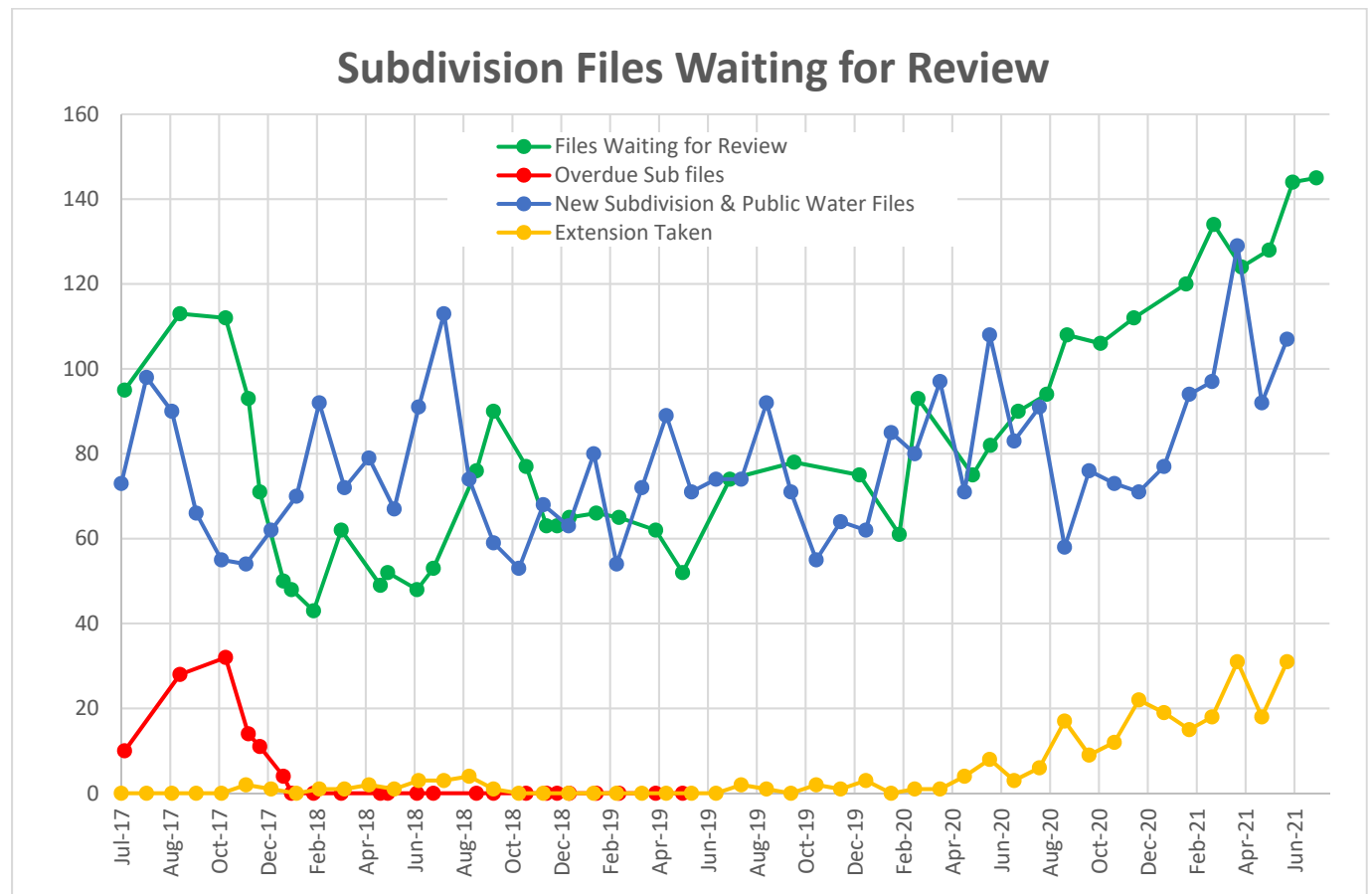
Storm water review ensures that additional storm water runoff generated from a development during certain storm events does not negatively impact adjacent properties and roads.

## Wastewater Systems

Wastewater system review ensures wastewater treatment systems will not negatively impact ground or surface water. In addition to complying with the wastewater system design standards, new wastewater treatment systems are required to submit a non-degradation analysis in accordance with MCA 75-5.

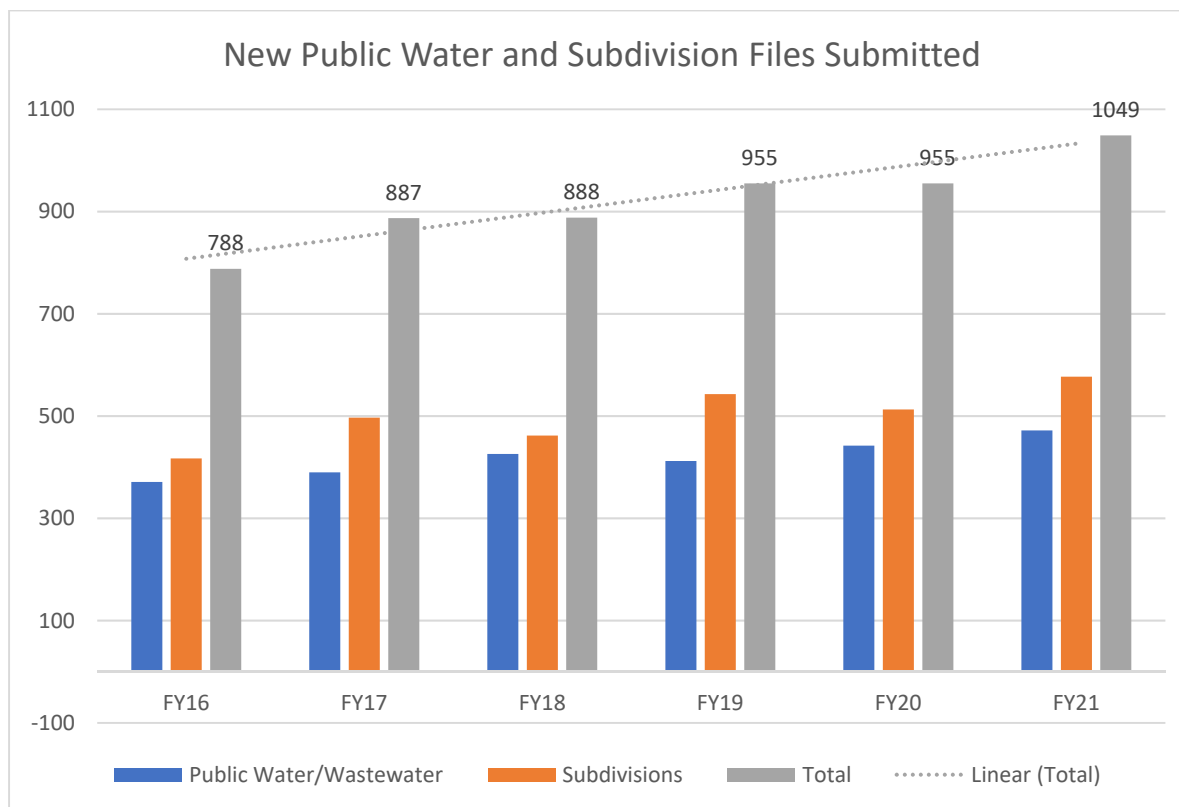
## REVIEW TIMELINES

In January 2018, the Department combined the Public Water Engineers and Subdivision Engineers under one Section Supervisor. This allows work sharing across the two programs and a larger staff base to draw from if one of the Sections sees a high influx of files. Until recently, the Section made significant progress in decreasing review times and meeting statutory review deadlines. Even with the substantial increase in the number of applications for FY2021, the average application approval time for subdivision reviews conducted at the state was 113 days. This is the same or similar timeframe as reported over the last five years. Public water and wastewater system reviews average review time has improved from the previous year and now falls within statutory requirements. In FY2020, average review item was 70 days and for FY2021 it was 57 days.



## REVIEW TRENDS AND STAFFING

The Department has seen a steady increase in the number of files submitted over the past six years, representing a 33% increase from FY 16 to FY 21.



The combined Public Water and Subdivision Engineering Sections, when fully staffed has 12.5 full time employees (FTE). Of that, 10.5 FTE are assigned as reviewers. For the last year, the section, through turnover and marginally qualified applicant pools, has been running at 70% staffing. We are short three FTE reviewers and are actively recruiting both engineers and registered sanitarians to fill those positions.

Our workload over the last 16 months has been excessive for the number of available reviewers, resulting in an increase of extensions during application review. We anticipate that we will have at least two new hires in the next 30 days. If we fill vacancies this fall and the number of applications per month increase minimally, the Section should be properly staffed this year with the caveat that those counties contracted to do Sanitation in Subdivision Act reviews continue efforts to increase the number of reviews done at their level. If the counties under contract to the State do not provide this increase in reviews, the Department will have to reconsider staffing requirements.

In addition to the three reviewer vacancies, we have one support staff vacancy in the section. We are actively working toward hiring a database analyst for this position to improve our timeliness with information requests, streamline transition to new systems, and assist with public facing components on the Department's website.

Please note that the positive effects of a full section will not be realized for six to twelve months due to training and experience requirements.

## PUBLIC OUTREACH

After the 2021 legislative session, which saw several Sanitation Act bills, the Department made commitments to provide for better communication and involvement with stakeholders and to update the subdivision rules to provide more clarity and consistency (discussed in more detail below). To date, the Department has conducted four community meetings to allow stakeholders to express their thoughts, concerns, and suggestions. We have three additional meetings planned for September and will continue communicating with our stakeholders through newsletters and public meetings.

The Department is also ending the Subdivision and Development Advisory Council and restructuring it into a more targeted stakeholder group called the Subdivision Advisory Task Force to provide more efficient review and discussion on specific technical and process issues.

## PROPOSED RULE CHANGES: REVIEW FEES

MCA 76-4-105 requires that the Department set review fees for subdivisions that do not exceed actual costs for performing reviews. The Public Water and Subdivision Review Section fees were increased by 25% starting in March 2020 and we are now collecting fees currently commensurate with the costs incurred by the Department for reviewing public water, wastewater, and subdivision applications at the current staffing levels. The last major subdivision fee increase prior to this was in 2013.

The Department does not propose to increase fees this year. Fees, cash flow, and staffing levels will be reviewed annually. Should current trends continue, we anticipate we may request fee increases in FY2023 for additional staffing.

## PROPOSED RULE CHANGES: STORM DRAINAGE PLANS AND RELATED DESIGNS EXEMPTION

Senate Bill 44, passed during the 2021 legislative session, required the Department to adopt rules to provide a basis for not requiring stormwater review for parcels five acres and larger in size where less than 5% of area is impervious. The proposed rules would allow larger lots with minimal site development to avoid costly stormwater analysis and design. The governing law becomes effective on October 1, 2021.

## PROPOSED RULE CHANGES: COMPREHENSIVE RULE UPDATE

One of the most common concerns received by the Subdivision Section is that the rules and standards are difficult to apply and interpret.

Throughout winter 2019, the Department solicited comments from interested parties and stakeholders, including Contracted Counties and the Subdivision and Development Advisory Council. Informal stakeholder review was scheduled for May 2020. Due to senior level staff and supervisor turnover, substantial workload issues, and Covid work restrictions, the Department set aside the comprehensive updates to a later date.

The Department has now dedicated staff to consolidate past work, incorporate common themes and issues generated from our ongoing public outreach discussed previously in this report, and is actively

working toward completing this task. Our goal is to make the rules and standards as clear as possible to ensure consistent interpretation and application and to reduce the number of denial letters issued.

We will work with the Subdivision Advisory Task Force on the rule this fall. We anticipate informal review from stakeholders in December 2021 and January 2022. Initiation of rulemaking and official public comment are scheduled for spring 2022.

## PROPOSED LEGISLATION

The Department anticipates there may be legislative requests from the restructured Subdivision Advisory Task Force for the 2023 legislative session. We will be happy to present these requests in the Subdivision Annual Report for 2022.