



Subdivision Annual Report to the Environmental Quality Council



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1.0 Purpose of the Sanitation in Subdivisions Act

The purpose of the Sanitation in Subdivisions Act, Montana Code Annotated 76-4 is to protect water quality for drinking and other beneficial uses. This includes agriculture, industry, recreation, and wildlife use. Protections are accomplished by the Department of Environmental Quality (Department) 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 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 the Department.
- 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.
- Establishes subdivision review fees and program funding; and
- 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 parcel, regardless of size, that provides two or more permanent spaces 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.

2.0 Subdivision Section

The Subdivision Section is in the Engineering Bureau of DEQ's Water Quality Division. In August 2022, the larger Public Water Engineering and Subdivision Section was divided in two. The Subdivision Section now has a supervisor solely devoted to Subdivisions. The Section consists of the supervisor, four sanitarian reviewers, one engineer reviewer, one data control specialist, and one water quality modeler. All positions are currently filled except the water quality modeler. Most of the Subdivision work requiring review by a professional engineer is done by the companion Engineering Section. The Engineering Section consists of one supervisor and six review engineer positions, one of which is currently vacant.

The Subdivision Section's primary goals and objectives are to:

1. Provide comprehensive design criteria for water, wastewater and storm water systems that protect public health and the environment while still allowing for reasonable development, and
2. Provide efficient review within the deadlines set by statute and rule of public infrastructure and subdivisions to protect public health and water quality.

3.0 Assessment

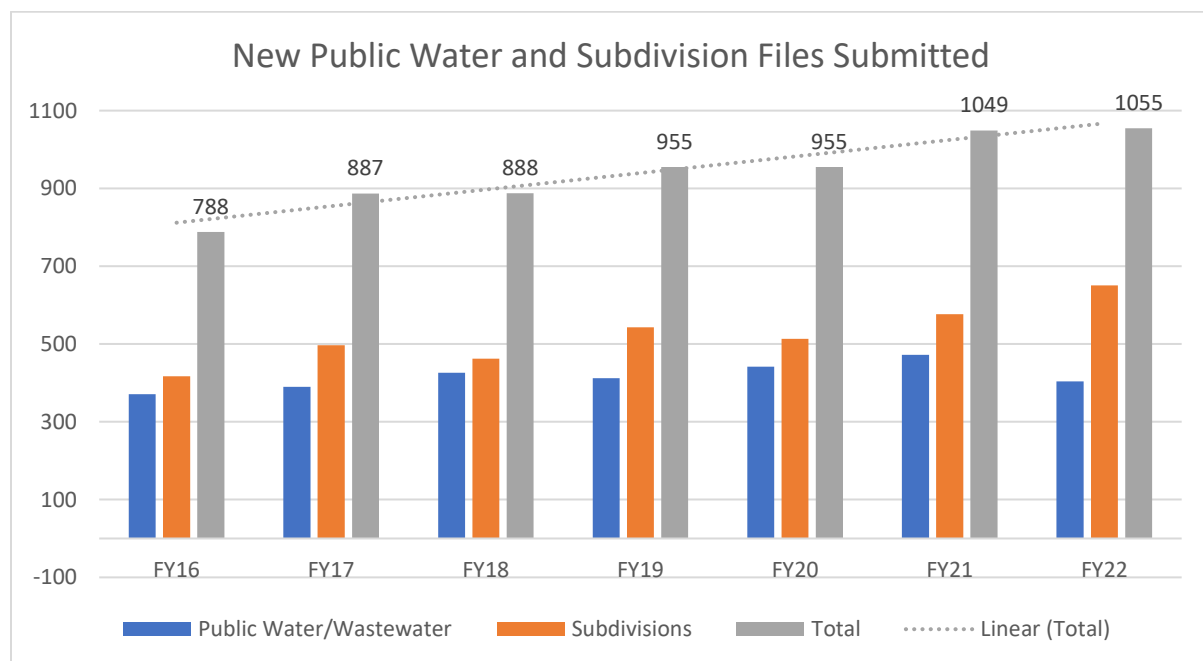
Goal 1 Design Criteria: After the 2021 legislative session, which saw several Sanitation Act bills, the Department made commitments to provide better communication and involvement with stakeholders and to update the subdivision rules to provide more clarity and consistency. To date, the Department has conducted eight community meetings to allow stakeholders to express their thoughts, concerns, and suggestions. The Department initiated a newsletter and will continue communicating with stakeholders through newsletters and public meetings. Members of the section also spoke at five other training events during FY22.

The Department established the Subdivision Advisory Task Force to provide more efficient review and discussion on specific technical and process issues. Task force members serve voluntarily and DEQ chose members from the applicants to balance

between stakeholder groups such as private consulting firms, developers, realtors, county sanitarians, local government, other stakeholders and DEQ staff. The task force met bi-monthly and focused on the proposed changes to rules and circulars. Task force members volunteered to break into smaller focus groups to discuss technical issues in detail and get in-depth feedback from the stakeholders represented on the task force.

In cooperation with the task force and recommendations of the subcommittees, the Department initiated a comprehensive update to the Subdivision Design Circulars and Administrative Rules. The Department anticipates initiating rulemaking for Phase 1 of the update in September 2022 and to conclude that update in March of 2023. Phase 2 of the rule update is scheduled to begin in the summer of 2023 and conclude in 2024. The main purpose of the changes is to clarify areas of the existing regulations that are unclear and to eliminate regulations that are not necessary to protect public health and the environment. For example, we propose to eliminate the need for design details for individual and shared systems at the time of DEQ review because that can be accomplished during local permitting.

Goal 2 Efficient Review: The number of Public Water/Wastewater and Subdivision files climbed slightly in FY22 to 1,055 total files. This represents a 33% increase in the number of files received between FY16 and FY22. However, a majority of files reviewed during FY22 did not meet statutory review deadlines. In April, files received were held and not assigned to staff because they already had a significant backlog, called the “unassigned files.”. At this time, the section is still completing initial reviews for files that were submitted in May.



The Subdivision Section backlog is due in part to a 92% turnover rate in Engineering and Subdivision staff over the past three years, leading to lack of training and

consistency. During times in FY22, the Subdivision Section had a 40% vacancy rate and staff were unable to keep up with the number of files received, leading to a significant backlog that remains today. During FY22, staff were assigned far more files than the sustainable level of approximately 80-90 files per year for a seasoned reviewer and 70-80 for new reviewers. All reviewers were assigned more than 120 files and one was assigned 189 files or roughly double the amount they could reasonably complete.

Subdivision customers were understandably frustrated with the delay in getting projects approved. Due to the difficult working conditions, staff retention remains a huge issue for the section. The staffing shortage has also resulted in a slower rule update process than we had initially anticipated.

In response to the backlog, the Department activated its Incident Management Team (IMT) and assigned it to the Subdivision program for the purpose of helping agency leadership with identifying needs; creating a strategic support plan; establishing communications with staff and stakeholders; and to demonstrate incremental program improvements.

From May 17 to September 6 (15 weeks), the IMT contributed more than 600 hours of employee time to the Subdivision program. Specifically, value-added outcomes include:

- Standardizing processes to improve efficiency as well as consistency of reviews. Including criteria for application prioritization and staff assignments.
- Establishing an electronic application submittal system called Case Management System. This software will efficiently track and report file status and ultimately to improve file review time. The system will also allow applicants to check application status.
- Assigning internal support employees (engineers) to conduct technical reviews.
- Hiring ongoing vacant supervisory, sanitarian, and engineer positions.
- Developing a contract for municipalities to perform final reviews that eliminates duplicative reviews.
- Providing training and engagement opportunities for customers to make it easier to submit approvable applications correctly the first time, thus eliminating multiple submittals due to deficiencies.

At current application levels, the Subdivision and Engineering Sections need approximately three more FTE (two Professional Engineers and one Sanitarian Reviewer) to accomplish the work and meet statutory deadlines. We are hopeful this can be funded with other sources making a fee increase unnecessary.

County Contracts: MCA 76-4-104 allows every County in Montana to contract with DEQ to perform reviews for certain Subdivision files. We currently have 29 of the 56 counties under contract. Three contracted counties were unable to complete reviews due to the loss or extended absence of a qualified reviewer and DEQ had to accommodate review of those files.

4.0 Solutions

In FY23, the two main goals for the Subdivision Section are to:

1. Begin completing file review within statutory deadlines, and
2. Finish Phase 1 of the comprehensive rule update.

To accomplish these goals, the Department is taking the following actions:

- Updating the Design Standards and Administrative Rules as discussed earlier in this report,
- Complete hiring of the remaining vacant positions in Subdivisions and Engineering,
- Requesting three new reviewer positions,
- Contracting with City Engineers to review main extensions in lieu of DEQ, freeing Engineers to work more on Subdivision files,
- Developing an electronic submittal process to save customer time and increase communication during reviews,
- Restructuring the Bureau so there is one Supervisor devoted solely to the Subdivision Section, and
- Develop a training program for staff and applicants to ensure greater review consistency and work productivity.

5.0 Progress

The Department has made great progress in hiring qualified staff. We currently only have two vacancies between the Subdivision and Engineering Sections. All supervisory positions are currently filled. Our initial focus for the next few months is to get the unassigned files distributed to reviewers and to re-establish 10-day main extension reviews. As of the date of this report, we have successfully assigned more than half of the 140 unassigned files and issued approval for a significant percentage of the simple files like main extensions and waiver requests. Main extensions that were typically taking 120 days to review this summer are now down to 30 days.

6.0 Proposed Legislation

The Department is not requesting legislation to modify the Sanitation Act during the 2023 Legislative Session but is happy to work with legislators who wish to do so. The Department is asking for an increase in three FTE reviewers (two Professional Engineers and one Sanitarian Reviewer) in HB2 during the 2023 Legislative Session.