



# Subdivision Annual Report to the Environmental Quality Council



September 1, 2023

## Montana Department of Environmental Quality

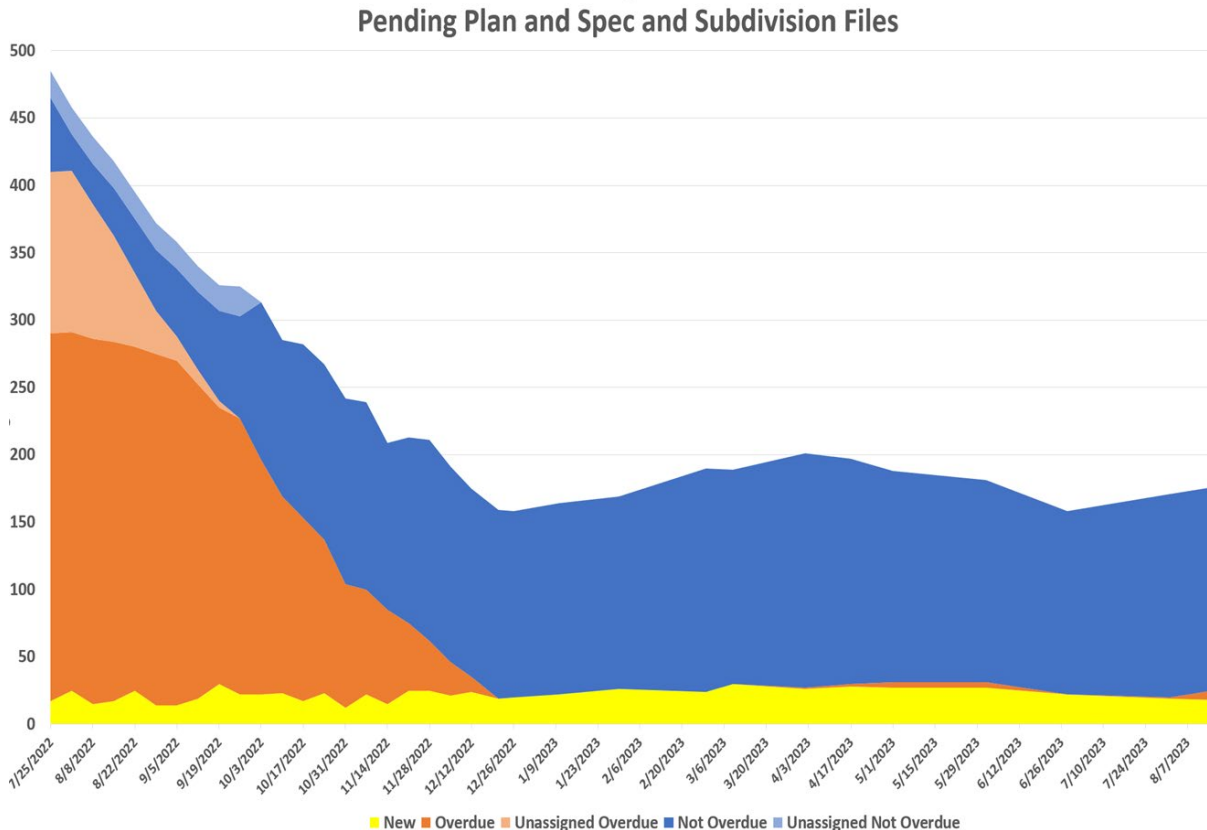
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## 1.0 Executive Summary

Since August of 2022, the Subdivision Section has eliminated any file backlog and remained on time for review of files. Additionally, the section is almost fully staffed including a new section supervisor with 20+ years of experience in private contracting and as a county sanitarian. The 2023 Legislative Session brought the passage of a number of bills that required rule changes. Work on these rules has been progressing throughout the summer and the current version is out for comment.

The chart below shows the progress made, and timelines maintained since July 2022.



## 2.0 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 to 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. In addition, starting in January 2024, the department will report quarterly the number and percentage of overdue Subdivision files.

## **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 have 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.

### **3.0 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, five sanitarian reviewers, 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 Plan and Spec Engineering Section. The Engineering Section consists of one supervisor and eight review engineer positions. The three one-time-one FTE provided by the 2023 legislature have been filled.

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.

## **4.0 Assessment**

In FY23, the Department had two goals for the Subdivision Section: to update the design criteria and to complete reviews on time.

**Goal 1 Design Criteria:** The Department successfully completed Phase 1 of the Comprehensive Rule update in April 2023 and will continue with future Phases to update the rules to make them more streamlined, efficient, and clear.

The 2023 session resulted in seven bills that impact the Subdivision Section. Those bills are:

HB364	Require independent reviewers when 110 new files are received per month, require refunds for untimely reviews, and report number of overdue files to the EQC quarterly.
HB592	Allow cut and fill for new systems.
SB215	Requiring a Municipality to accept a sewer connection if the lot is within 1000' of a sewer main and the property is adjacent to surface water or fails the nondegradation surface water analysis.
SB 327	Allow Municipal Development Plans to authorize connections in excess of rated capacity.
SB 240	Allow certain subdivisions to be exempt from MEPA analysis.
SB285	Modify the nondegradation rules, provide a storm water and previously approved facilities exemption, and eliminate construction details at the time of COSA approval.
SB327	Provide for multiple well locations and source-specific well isolation zones.

The Department is currently out with a proposed Rule package covering all of these legislative changes except for the nondegradation rules. The proposed Rule package is scheduled to be adopted on January 1, 2024. The nondegradation rules are scheduled to be adopted by July 1, 2024.

The proposed schedule for the remaining rules is shown below:

	5/1/2023	6/1/2023	7/1/2023	8/1/2023	9/1/2023	10/1/2023	11/1/2023	12/1/2023	1/1/2024	2/1/2024	3/1/2024	4/1/2024	5/1/2024	6/1/2024	7/1/2024	8/1/2024
<b>ACTIVITY</b>																
LEG Changes HB364, HB592, SB215, SB237, SB240, SB285, and SB327	Internal Development	External Input	Draft Rule	Draft Rule	Draft Rule	Public Hearing	Public Hearing	Public Hearing								
DEQ-8, Stormwater			Internal Development	External Input	External Input	Draft Rule	Draft Rule	Draft Rule	Public Hearing	Response to comments/adoption	Response to comments/adoption					
900-series Local Health Rules			Internal Development	External Input	External Input	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Public Hearing	Response to comments/adoption	Response to comments/adoption				
Nondegradation Circular SB285			Internal Development	External Input	External Input	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Public Hearing	Response to comments/adoption	Response to comments/adoption		
DEQ-4, On-site Wastewater			Internal Development	External Input	External Input	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Draft Rule	Public Hearing	Response to comments/adoption	Response to comments/adoption

Internal Development	External Input	Draft Rule	Public Hearing	Response to comments/adoption
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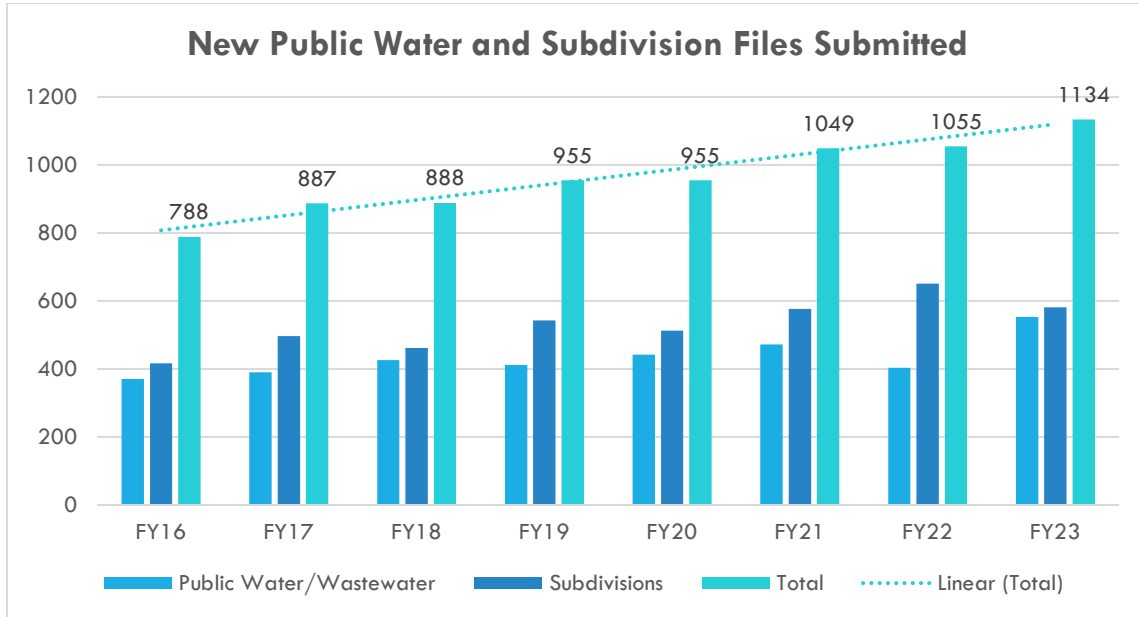
**Goal 2 Efficient Review:**

The Department has made tremendous strides to ensure reviews are completed in a timely fashion. At the beginning of FY23, 85% of all files under active department review exceeded their statutory review timeline. At the end of FY23, (July 1, 2023) no files were overdue, although in some months, there remains a small number of overdue files.

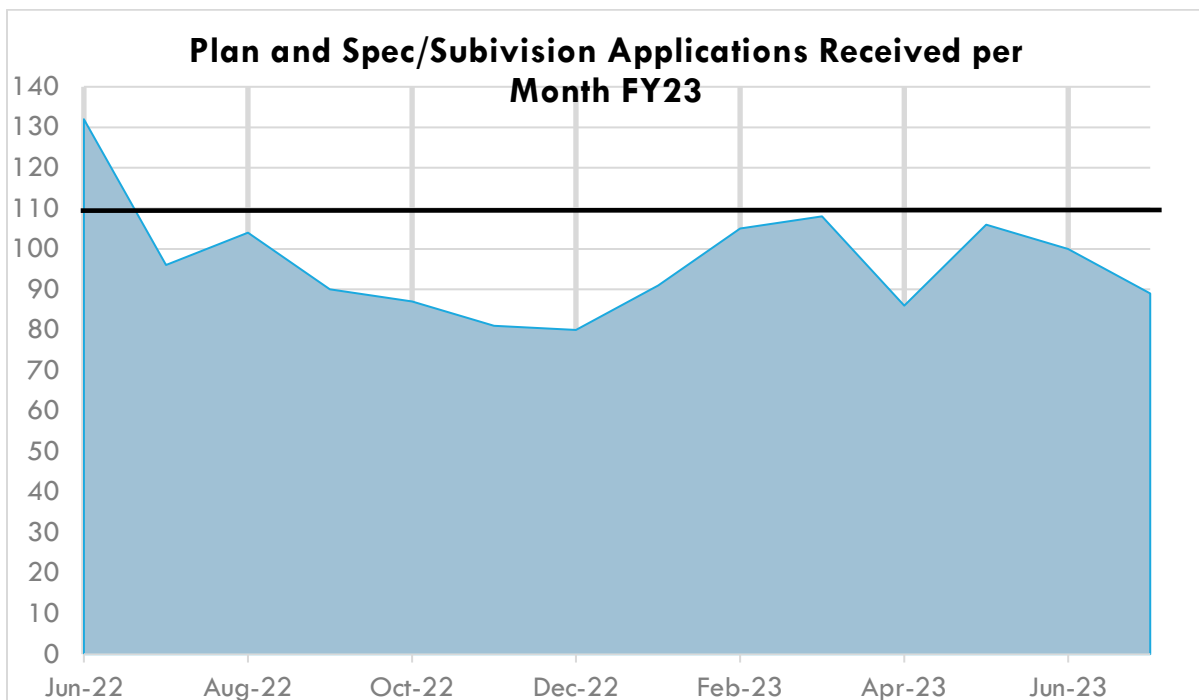
Though on time, the Department’s review margins remain very tight. Files are often completed on or near the review deadline and dedicated staff frequently review files while on vacation or over weekends to meet timelines. In one case a reviewer’s child was injured, she was unable to work for a week, and seven of her active files became overdue.

The legislature provided three one-time-only positions effective July 1, 2023. These positions (2 Engineers, 1 Sanitarian) have been filled and hopefully will alleviate some of the review congestion.

The number of new Public Water/Wastewater and Subdivision files climbed slightly in FY23 to 1,134 total files, for a 7.5% increase over FY22 numbers. Over the long term, this represents a 144% increase in the number of files received between FY16 and FY23.



HB364 requires the Department to report to the EQC on a quarterly basis the number of overdue files and the number of new files received. Starting on January 1, 2024, when the Department receives 110 or more new files a year, independent reviewers will be contracted to perform reviews for the department.



## **5.0 FY24 Goals and Objectives**

Department Goals for FY 2024 include:

<b>Goal</b>	<b>Objective</b>	<b>Measurement</b>
Continue with comprehensive rule update to make requirements more streamlined, efficient, and clear.	To make submittals are easier and to clarify requirements so there are fewer requests for additional information.	New Rule Packages adopted.
Provide training for Contracted Counties, DEQ review staff and Independent reviewers.	To ensure reviews are completed consistently.	Number of training events provided.
Provide training for consultants.	To ensure consultants understand what is needed so there are fewer requests for additional information.	Number of training events provided.
Continue work on the electronic submission and review program.	To save mail time for consultants, developers, and reviewers.	Viable on-line submission process by July 1, 2024.
Starting January 1, 2024, complete 99% of Department Subdivision reviews within statutory timeframes.	To ensure subdivision approval is consistently on-time.	Percentage of active files that are overdue.

## **6.0 Proposed Legislation**

The Department will poll the Subdivision Advisory Task Force to see if they would like to consider legislation during the 2025 session and report back to the EQC in our 2024 Annual Report.

The Department will request that the three one-time-only positions granted by the 2023 legislature be converted to permanent positions.

The Department recommends the EQC consider legislation to split the public drinking water special revenue fund into two separate funds, one for Public Water collection fees and one for Plan and Spec review fees. This will allow the department to better account for fees received and expenses incurred in these two very different programs.