

310 Permitting Basics

New Supervisor Training-Module 3

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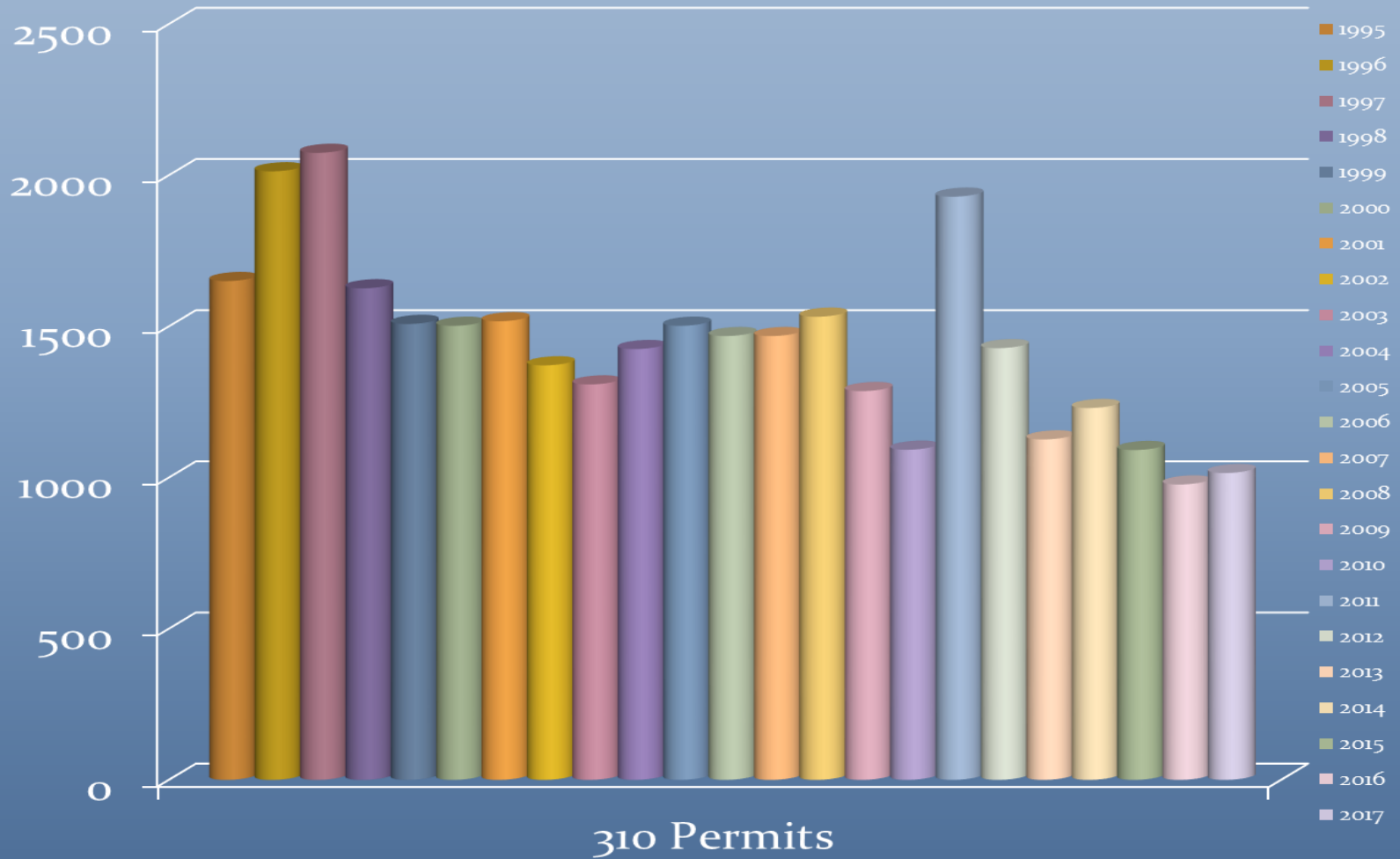
History of the 310 Law

- In 1963, Montana policy makers began to overhaul regulation related to the state's waters and streams. The Montana Stream Protection Act created regulations for government activities. Especially highway projects.
- In 1973, an attempt to include private projects under FWP's jurisdiction failed.
- The *Natural Streambed and Land Preservation Act* of 1975 was passed as a compromise to govern private party actions in and around streams.

History of the 310 Law – (Cont.)

- The state's 58 conservation districts are responsible for administering the 310 program. A 310 permit is necessary for any activity that alters or modifies the bed or banks of a perennially flowing stream.

310's Applications in Montana 1995-2017



What is the CD's Process in Relation to the 310 Law?

- 1) Determining jurisdiction.
- 2) Determine if the project is reasonable.
- 3) Determine the purpose of the project.
- 4) Make decisions based on criteria in law and rule.

What Laws and Rules Provide the Framework for 310 Permits

- Natural Streambed and Land Preservation Act
- The Administrative Rules of Montana
- Rules Adopted by the Districts

Rules

- The rules are there to help guide CDs through the 310 process.
- Every District has rules. They are based on a DNRC template and State Law.
- Rules need to be updated if any legislation affects the 310 program.
- They may also be modified within the Law to help a CD accomplish their goals for their 310 program.
 - For example: Flathead CD has a large construction requirements section which covers things like docks, boat ramps, and many other construction projects.

Rules (Cont.)

- The template for the Rules is available on the DNRC website. The last legislative change was made in 2019. Be sure your Model Rules were updated after this date.
- We are here to help you so be sure to contact the Conservation Districts Bureau if you are wanting to update and/or modify your rules. Make sure updated or modified rules are sent to DNRC.

Definition of “Project”:

- “Any activity that results in a change in the state of a natural perennial-flowing stream or river, its bed, or its immediate banks.”
- This can also be applied to work located on an intermittent or ephemeral stream.
 - Example: If construction on an intermittent or ephemeral stream leads to sediment entering a perennial stream.

Determining Jurisdiction

- There are many attributes one must review to determine if a water body is Jurisdictional.
 1. Is it a perennial stream?
 2. Could the project have an effect on a perennial stream?
 3. If the application meets the criteria in 1 and 2 above, then it is considered a Project.

Tools to help determine if a stream is jurisdictional.

- **USGS Quads – Preliminary Guide.** If it is a solid line the USGS considered it perennial when it was mapped. If it is a dotted line then they considered it ephemeral or intermittent.
- **Water Resources Surveys** – available for many areas in Montana
- **CMZ** – These can be harder to find. Mapping is being completed in many areas.
- **Soil Types/Vegetation** – Soil survey info available through NRCS.
- **Other - Google Earth** – historical imagery, Montana Cadastral, other state and federal agencies.

What Forms Are Used in the 310 Process?

- The Joint Application (Form 270)
- Arbitration Form (Form 271)
- Team Member Report (Form 272)
- Supervisor Decision Form (Form 273)
- Complaint Form (Form 274)
- Emergency Form (Form 275)

310 Application Process

- CD Receives Application for a Project.
- Initially Reviews and Accepts or sends back for more information.
- Date received may be different than date accepted.
- 60 day time frame starts when Application accepted.
- Notify FWP of Inspection within 10 working days.
 - FWP has 5 working days to say if they want an inspection. Though their participation is required, it is advisory only.

310 Application Process

- 310 Application Timeline – 60 days from date of acceptance of application. Can be shorter or longer. If longer than 60 days document in minutes if extending the time frame.
- Example 60 Day Process – This example outlines the process if you take the full 60 days.
 1. Receive the Application in July.
 2. Inspection/Decision August.
 3. Issue Decision September.

310 Disputes

- What happens if an Applicant Disagrees with a Boards Decision on Jurisdiction?— The applicant can petition for a Diclaratory Ruling within 30 days of the Board Decision.
- What if the Applicant Disagrees with the Board Decision on a Permit? The applicant can petition for Judicial Review in District Court or request arbitration.

Complaints, Violations and Penalties

Steps for receiving complaints and dealing with violations:

1. Complainant requests an official complaint form from their local conservation district.
2. A complaint should include the location, stream name, name of alleged violator and alleged violator's contact information (address, phone number).
3. Complainant's name, address, and phone number.
4. Anonymous ???
5. CD performs an on-site inspection.
6. Documents findings (Team Inspection Form).
7. If the complaint is valid the CD will notify the violator with mitigation requirements.
8. If violator does not abide. The violation is turned over to the county attorney for the assessment of fines.

Complaints continued:

What if the complaint form is incomplete?

Answer: If the complaint form is incomplete, the CD cannot move forward with pursuing an investigation.

What if the person submitting the complaint wishes to remain anonymous?

Answer: Ideally, the CD would rather know the identity of the complainant so that they could attest to what they observed in court, should the case be referred to District Court. However, there are many reasons why someone would wish to remain anonymous, many 310 complaints are the result of neighbor disputes.

Emergencies

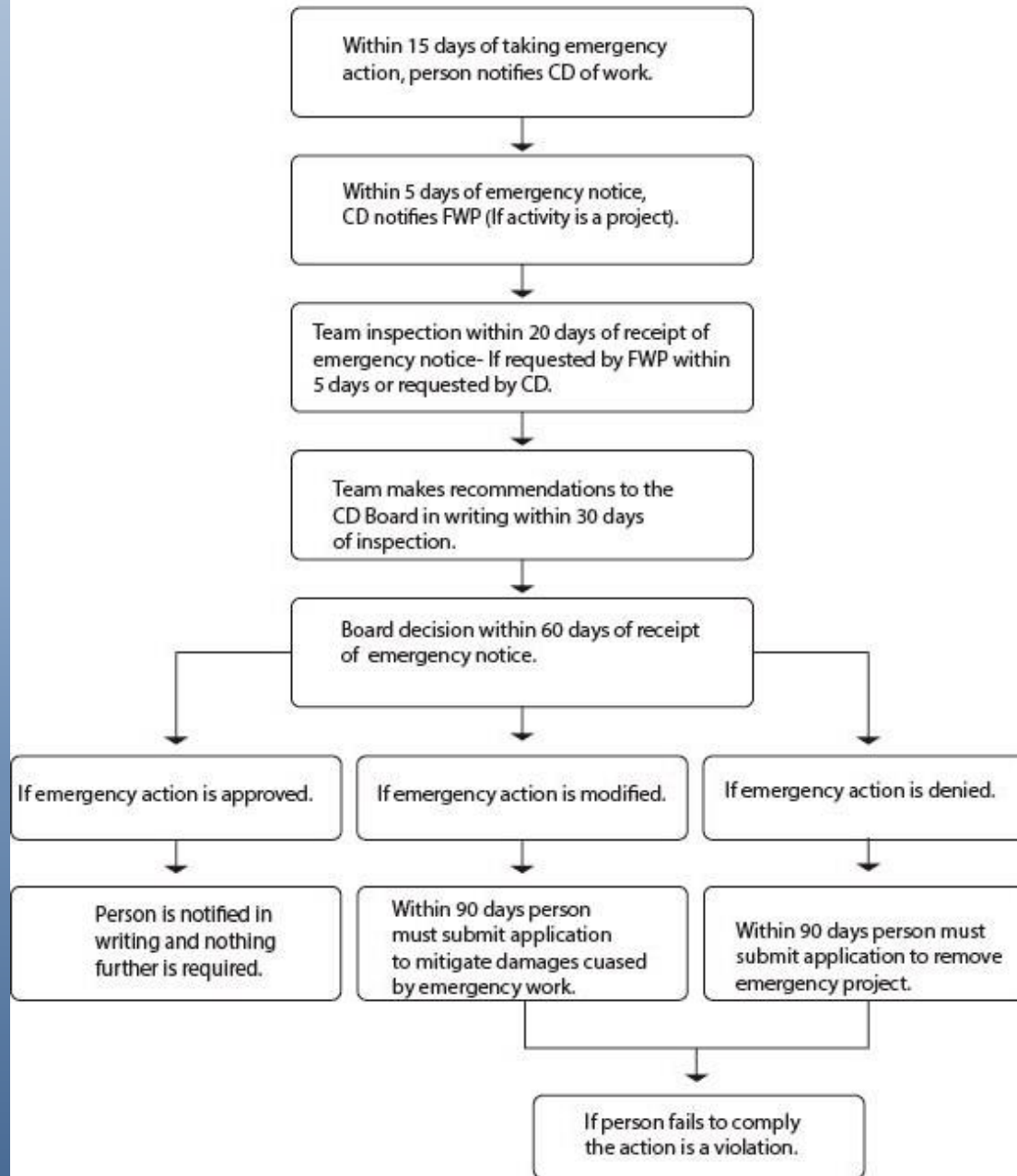
What is the definition of an emergency?

“An unforeseen event or combination of circumstances that call for immediate action to safeguard life, including human or animal, or property, including growing crops without giving time for the deliberate exercise of judgment or discretion under the 310 law.”

Emergency Notification Procedures

- Within 15-days, a person taking emergency action must notify their local conservation district using the emergency application form.
- Onsite review by team members.
(Applicant, FWP, CD supervisor)
- District will approve, modify, or deny emergency action.
- Modifications and denials require a new 310 application.

310 Emergency Flowchart



Web Resources

Stream Permitting Website:

<http://dnrc.mt.gov/divisions/cardd/conservation-districts/the-310-law>

Stream Permitting Guide

<http://dnrc.mt.gov/licenses-and-permits/stream-permitting/StreamPermittingBinderBook2020.pdf>

Questions?



Thank You!

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