

THE MONTANA ENVIRONMENTAL POLICY ACT - MEPA

A CITIZEN'S GUIDE TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING

2002

WHAT IS MEPA?

Enacted by the 1971 Legislature, the Montana Environmental Policy Act, or MEPA, provides a public process that assures Montana's citizens that before state government makes a decision that could have significant impacts on the human environment, a deliberate effort is made to identify those impacts. The concept is that the decisionmaker and the public should be well informed of the environmental impacts of the decision before the decision is made.

In order to learn the most about what the environmental impacts of a significant state action might be, agencies are directed to obtain the input of others. This is important because state government often makes decisions that can impact the environment or affect our personal property rights or quality of life, and no one decisionmaker has all the answers.

MEPA declares that it is the policy of the State of Montana to create and maintain conditions in which people can exist in productive harmony with nature, and it recognizes each person's entitlement to a healthful environment. The right to a clean and healthful environment and the right to possess and protect property are among the inalienable rights guaranteed to Montanans in the state constitution. At the same time, laws enacted by the Legislature provide citizens and state agencies with the statutory authority to impact or to develop resources if certain conditions are met. A MEPA review of the impacts of a proposed decision on the human environment helps determine whether the state can accommodate these statutory rights to development in a way that does not conflict with the public's constitutional rights. The review can also help agencies avoid unintended environmental consequences.

WHAT ARE MEPA ACTIONS?

There are two basic types of state government activities that most commonly require a MEPA review of possible impacts on the human environment. The first type of activity is an agency-sponsored proposal to implement a program or project or to undertake an activity on its own or in concert with other agencies. This may include local projects if they are funded by the state. Examples include timber sales on state lands, the construction of a road or a state recreation area, or a state decision to help finance a local wastewater treatment plant. The second type of activity includes a decision by the state to grant to an

applicant a license, permit, lease, or other state authorization to act. Examples of this type of action include permits for mines, air or water quality discharges, surface or ground water use, mineral leasing, and many others.

WHAT DOES MEPA DO?

MEPA requires agencies to prepare a written environmental review that is available to the public. This review may be a simple checklist environmental assessment (checklist EA), a more comprehensive EA, or a more detailed environmental impact statement (EIS).

MEPA requires that the level of analysis (checklist EA, EA, or EIS) and the degree of public involvement increase, depending on the significance of the potential or identified environmental impacts.

WHAT MEPA IS NOT AND DOES NOT DO

MEPA does not apply to city or county decisionmaking. It applies only to actions taken by state government. A similar federal law, the National Environmental Policy Act, or NEPA, applies to decisions made by the federal government.

MEPA itself does not force agencies to select a particular course of action depending on the anticipated environmental impacts of a proposal. This is particularly true for agency decisions involving permits, leases, or other authorizations to act. The permitting or authorizing laws and regulations determine whether or not a permit or authorization will be granted and under what conditions. MEPA will only identify the possible environmental impacts of the proposal and require agencies to describe those impacts to the decisionmaker, the project applicant, and the public. For projects for which an EIS is prepared, it requires the agency to explain why it made a particular decision, what voluntary or enforceable mitigation efforts have been included in the decision, and what unavoidable environmental impacts may occur as a result of the decision.

MEPA is not a land use law, and it cannot be used as a substitute for local planning and zoning decisions. MEPA is not a vote or a popularity contest, although public participation in agency decisions may result in changes to the proposal or further analysis of potential impacts. MEPA is not a permitting law. For example, would MEPA prevent the establishment of a commercial feedlot in the middle of town? No, not directly. The project is subject only to federal, state, and local requirements that are applicable to the establishment of a feedlot, if any. If a state permit or approval is required, a MEPA review of the potential environmental impacts would be prepared commensurate with the significance of the impacts. An EIS analysis would identify all of the potential impacts of the proposal, review alternatives, and describe reasonable impact mitigation measures. The project sponsor may decide that the impacts are too great or the compliance requirements, if any, are too costly and may either modify, relocate, or abandon the proposal. However, if the facility can comply with the federal, state, and local permitting requirements applicable to feedlots, environmental impacts alone, identified through the MEPA process, are not sufficient cause for a permit denial or to require mitigating

conditions. On the other hand, environmental impact mitigations that are within an agency's permitting authority and other mitigations that are agreeable to the project sponsor can be made permit requirements.

HOW CAN THE PUBLIC PARTICIPATE IN MEPA DECISIONS?

The Montana Constitution includes a right to know provision that guarantees, with very few exceptions involving individual privacy, public access to governmental documents and governmental deliberations. The constitution also provides the public with the right to expect the government to provide citizens with the opportunity to participate in decisions that are of significant interest to the public.

All environmental reviews are public documents that may be inspected upon request to the decisionmaker. You can have your name added to a mailing list that agencies may establish for a proposal that is of particular public interest. Several agencies also include a list of available EAs and EISs on their agency web pages.

MEPA rules require that state agencies provide an opportunity for public review and comment commensurate with the level of public interest and the seriousness and complexity of the environmental issues related to a proposed action. This is done at the agency's discretion on a case-by-case basis and through a variety of methods.

For example, agencies are required to provide public involvement for EAs on proposals that indicate significant impacts that can be mitigated and for all EISs. For checklist EAs and for most EAs in which agencies determine that there will be no significant environmental impact, the document may simply be filed without any formal opportunity for public comment, again depending on the level of public interest.

Before an EIS is prepared, agencies will conduct initial scoping meetings to help identify aspects of the proposal that are of concern. The public must be invited to participate in this process. Agencies may use this scoping process for complex EAs also. If an EA is prepared and made available for comment, agencies are required to consider all substantive comments received and determine if the document is adequate or needs to be modified or whether an EIS is necessary.

If an EIS is prepared, a draft is required to be circulated for at least 30 days for public review and comment. In the final EIS, agencies must address the substantive comments that they receive and address whether or not the comments change the information and conclusions made in the draft EIS, or agencies must describe how and where the final EIS was changed as a result of the comments.

Agencies do have the option of adopting the draft EIS as the final if it is determined that, based on substantive comments, the preparation of a separate final EIS is not warranted. A decision to adopt the draft as the final must be in writing, contain a copy of a summary of

the comments received, and explain why the issues raised do not warrant the preparation of a final EIS.

The decisionmaker may solicit public input on the project through public notices or news releases or by holding informal public meetings or formal public hearings. Agencies must hold a formal public hearing on a draft EIS if requested by the applicant, another agency with jurisdiction over the action, an association representing 25 members affected by the proposal, or 10% or 25 of the persons directly affected by the proposal. Beyond the applicable MEPA rules, opportunities for public comment are at the agency's discretion, subject to other laws and rules that may be applicable to the proposal.

HOW CAN I MAKE MY CONCERNS HEARD?

You may provide oral or written testimony at scoping meetings, public meetings, or public hearings held in conjunction with MEPA reviews. Written comments may also be submitted during the public comment period for environmental review documents. Agencies are seeking assistance from all sources that will help them make informed decisions about a proposal's potential impacts on the human environment. The term "human environment" includes biological, physical, social, economic, cultural, and aesthetic components of the environment.

MEPA requires the decisionmaker to use a broad interdisciplinary approach by soliciting comments from other governmental agencies and concerned public and private organizations and individuals prior to making a decision. Comments from individuals with a special expertise or local or historical knowledge about an area or a proposal are especially helpful. Substantive comments that raise a specific concern about a likely impact from the proposal are most useful to the decisionmaker and are more likely to get a response.

"I'm concerned about water quality" may suffice for a scoping meeting, but "My fifty-foot deep drinking water well is just one-quarter of a mile from the proposed mine tailings pond" will draw the decisionmaker's attention and review. "I don't want the landfill next door" may be a legitimate concern, but if the landfill permitting law and local land use planning and zoning ordinances will allow it, the agency could be in violation of state law if it denied the permit on that basis alone. MEPA's purpose to identify significant impacts on the human environment and to make better decisions when there is authority to do so would be better served by comments such as "there are two public schools and four child day-care centers along a high speed segment of the proposed haul road to the new landfill". Although this comment may not stop a project, the information may result in changes in laws, rules, zoning, speed limits, roadway fencing, road design, or rerouting of vehicles that would minimize the potential impacts or avoid them in the future.

Your comments in response to an environmental review document should be clear and concise regarding what statements in the report you believe are in error and why. If there are alternatives to the conclusions or assumptions that were made, you should state them.

CAN I USE MEPA TO STOP A PROJECT?

The short answer to this question is "no" if the proposal is in compliance with all of the requirements for receiving the permit, license, or other authorization to proceed and if the agency has conducted an adequate MEPA review. The state laws and rules that authorize the proposed action also describe the requirements that must be met in order for the proposal to go forward or not. If they are met, the project goes forward.

Compliance with MEPA and the identification of the proposal's potential impact on the human environment are only procedural requirements. By law, agencies may not withhold, deny, or impose conditions on any permit or other authorization to act based on MEPA unless the project sponsor and the decisionmaker mutually agree. However, other laws or rules may allow the denial or conditioning of a proposal based on the information discovered as the result of a MEPA review. Also, for an agency-initiated action in which the same state agency is both the project sponsor and the decisionmaker, MEPA concerns can have significantly more impact on the agency's final decision to proceed.

WHAT ARE THE BENEFITS OF PUBLIC PARTICIPATION AND MY COMMENTS?

Your comments ensure that the decisionmaker is identifying and analyzing the impacts and values that are important to you and others. Public comments give a private project sponsor and the decisionmaker a better understanding of the public perception and acceptance of the project. Citizen concerns about environmental impacts or the acceptability of a proposal can result in voluntary or, in some cases, enforceable modifications or agreements that ultimately result in better projects. Public involvement can force decisionmakers and project sponsors to consider environmental impacts earlier in the planning of the project. Public participation helps state government make informed decisions that may reduce the potential for serious unintended consequences. Your comments can often provide information to decisionmakers that might not be available through other sources, and they may prevent oversight of other legal considerations, including local ordinances, covenants, or easements. Public participation may show decisionmakers and legislators where there's a need for policy changes. Most importantly, your comments give you a voice in decisions that affect you and your environment, and they can lead to better decisionmaking by state government.