

DP 1004 - MT Environmental Policy Act Biennial Restricted - The executive is requesting an adjustment increasing the biennial restricted appropriation for the Montana Environmental Policy Act (MEPA) to \$2,500,000. An outside party requesting an environmental impact statement (EIS) from the department pays the fee. The average cost of an EIS is \$350,000 to \$400,000 with an average of four EIS projects per year. \$500,000 of this appropriation is contingent upon the passage of legislation to revise MEPA fees.

EXHIBIT  
DATE 3-10-05  
HB 470

**ANALYSIS OF DEQ BUDGET**

**LFD ISSUE**

Section 75-1-203, MCA provides the department authority to assess fees for collection of data and information needs to complete an EIS in relation to a lease, permit, contract license, or certificate. The department must estimate the fee based on a formula, collecting a percent of the cost of the project. When the EIS is completed, statute (76-1-205, MCA) provides direction to refund any unexpended funds without interest. While statute is silent on the timing of collection, the presence of a process to refund any unused fees could be construed that fees should be collected up front.

Figure 4 provides the revenues and expenditures from the MEPA fee fund. In FY 2004, the department collected \$270,948 in MEPA fees and incurred \$429,890 in MEPA related costs, resulting in a negative cash flow situation. Excess expenditures were covered with the federal EPA partnership grant. The projections for FY 2005 and FY 2006 create a negative ending fund balance.

There are two issues that prevent this fund from achieving structural balance.

- 1) Statute allows only for the collection of fees related to collecting data and information. This does not allow the department to recover other costs associated with the EIS, such as employee time, contractor expenses, or analysis of the collected information. In FY 2004, another \$118,240 was expended for the administration of MEPA, which was covered with general fund.
- 2) The timing of the fee is not addressed. Upfront collection of the fee would provide the department with the cash flow needed to complete the EIS

**Figure 4**  
Montana Environmental Policy Act  
Fund 2542: MEPA Fees

FY	Revenue	Expenditures	Difference	Cumulative
2007*	\$500,000	\$429,870	\$70,130	(\$1,907,664)
2006*	500,000	2,477,794	(1,977,794)	(2,047,924)
2005*	500,000	570,130	(70,130)	(229,052)
2004	270,948	429,870	(158,922)	

\* estimated

*Not a  
real  
projection*

*ORW - Petitioner pay for EIS  
Codifying existing practice*

*Negotiated  
set 4*

Dept. Of Environmental Quality 10-Central Management Program

**LFD ISSUE Cont.**

Unless scope and timing of the fee collection is addressed, regardless of the level of appropriation provided, the department will continue to expend more on EIS work than is collected in the fee.

The legislature may wish to consider amending statute to:

- Clarify when the fee should be collected
- Collect full EIS preparation costs

DP 1009 - Non-Proprietary Central Management Operating Adj - The executive requests \$170,740 in FY 2006 and \$45,761 in FY 2007 for operating adjustments for MEPA administration and the Environmental Rehabilitation and Environmental Response (ERRA) program. The adjustment would cover increased costs of contracted services and travel.

DP 1011 - Board Environmental Review Biennial Request - The executive requests \$18,528 in FY 2006 and a negative \$18,528 in FY 2007 to create a biennial appropriation for the Board of Environmental Review. The board has specific duties under various environmental statutes, which can include adopting rules, setting fees, and hearing appeals. This adjustment would allow the Board to base their meeting schedules on timing of issues rather than annual budgetary constraints.

**LFD COMMENT**

The adjustment maintains funding at the 2005 biennium level.