COMMERCIAL - INDUSTRIAL - ENERGY

AIR QUALITY PERMITS: STATE

1. Types of Activities Regulated

An air quality permit and/or an air quality operating permit are required from the Montana Department of Environmental Quality (DEQ) for the construction, installation, and operation of equipment or facilities that may cause or contribute to air pollution. Exceptions include residential heating units, motor vehicles, trains, aircraft, equipment for road construction (except stationary sources—permits are required for temporary crushers and asphalt plants), agricultural activity or equipment associated with the use of agricultural land, emergency equipment, forestry equipment used for forestry practices that remain in a single location for less than 12 months, and other sources which emit less than specified amounts. A city or county may administer its own air quality permit program in lieu of part or all of the DEQ's air quality permit program if the program is approved by the Montana Board of Environmental Review (BER).

Statute: 75-2-101, *et seq.*, MCA (Montana Clean Air Act)

Rule: ARM 17.8.740, *et seq.* and 17.8.1201, *et seq.*

Contact: LOCAL GOVERNMENT
Health Department

DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Air Resources Management Bureau

2. Application Requirements

Applicants for *air quality permits* must file an application with the DEQ at least 180 days before construction begins, or if construction is not required, at least 120 days before installation, alteration or use of the facility begins.

Owners and operators of registration-eligible oil and gas wells must register the facilities within 60 days after the date the well is completed. During operation, the facilities must stay within the emission limits described in DEQ rules.

Applicants for *air quality operating permits* for new major sources (as defined by DEQ rule) must submit operating permit applications within 12 months after beginning operation. Applicants required to obtain an operating permit revision must submit operating permit

applications within 12 months after beginning operation unless an existing operating permit would prohibit the construction or change in operation. If an existing operating permit would prohibit the construction or change in operation, the applicant must obtain the permit revision before beginning operation. Existing facilities are required to submit an application within 12 months of becoming subject to the operating permit program.

Statute: 75-2-211, MCA (air quality permit)
75-2-217, MCA (operating permit)

Rule: ARM 17.8.748 and 17.8.1205

3. Permitting Procedures

A. Air Quality Permit

1) The application for an air quality permit is not considered filed until all filing requirements are completed. However, if the DEQ fails to notify the applicant within 30 days that an application is incomplete, the application is considered complete.

2) The applicant must post a public notice in a newspaper of general circulation in the area of the proposed facility within 10 days before or after submitting the application. The DEQ will supply the form of the notice.

3) Within 40 days after receipt of the complete and filed application, the DEQ makes a preliminary determination on whether the permit should be issued, issued with conditions, or denied. The department must notify both the applicant and the members of the public who requested notification of its preliminary determination. There is a 15 day comment period after the preliminary determination is issued for most minor source permits. There is a 30 day public comment period after the preliminary determination is issued for permits that are subject to certain federal air permitting provisions (see 42 U.S.C. 7475, 42 U.S.C. 7503 and 42 U.S.C. 7661), for incinerators (see pp. 40 and 157) and for permits that require an Environmental Impact Statement (EIS), (see MONTANA ENVIRONMENTAL POLICY ACT, p. 130). See timelines in the table on the following page.

4) The DEQ has 60 days after a completed and filed application is submitted to notify the applicant of its decision for most minor source permits. The DEQ has 75 days after a completed and filed application is submitted to the department to notify the applicant of its decision for permits that are subject to certain federal air permitting provisions (see above), for incinerators and for permits that require an EIS. Extensions may be granted under certain

conditions by written agreement of the DEQ and the applicant. If an EIS is required, final action must be taken within 180 days if the DEQ prepares the EIS. See timelines in the table below.

Timeline for public comment and permit approval

	Minor Sources	Project is subject to certain federal provisions or is an incinerator	Project for which an EIS is prepared by the DEQ	Projects for which an EIS is prepared by another agency or under Title 82, chapter 4, parts 1-3
Public comment period after preliminary determination is issued	15 days	30 days	30 days	30 days
Time period for DEQ to approve or deny the permit	60 days	75 days	180 days	30 days after issuance of the EIS

5) The applicant may appeal the DEQ's decision to the BER. Any person adversely affected by the decision to approve or deny the application may also appeal to the BER within 15 days of the DEQ's decision, upon affidavit, explaining the grounds for the appeal.

For energy development projects, a request for a hearing must be filed within 30 days of the DEQ's decision and include an affidavit explaining the grounds for the appeal. The person requesting a hearing may elect for the appeal to be heard in District Court. This election must occur within 15 days of receipt of the request for hearing with the BER and must be submitted to the BER.

6) The permit becomes final 15 days after the DEQ's decision unless a stay is granted.

Statute: 75-2-211, MCA

Rule: ARM 17.8.740, *et seq.*

B. <u>Operating Permit</u>

Operating permits must be obtained for all new and existing major sources of air pollution and are subject to the same completeness and appeal procedures as air quality permits. The application for an operating permit

requires more extensive public notification, including the requirement that the applicant notify the U.S. Environmental Protection Agency (EPA). In addition, the DEQ must give notice to surrounding states of draft operating permit issuance. Operating permits must be renewed every five years.

Statute: 75-2-218, MCA

Rule: ARM 17.8.1203-17.8.1207

4. Fees

The DEQ assesses an application fee and an operating fee from applicants and permitholders to fund the air quality permitting program and to implement and enforce the terms and conditions of the permit.

Statute: 75-2-220, MCA

Rule: ARM 17.8.501, *et seq.*

5. Criteria

An air quality permit to construct or operate a new or altered air pollution source cannot be issued unless the source is able to comply with the standards, emission limitations, and other rules adopted under the Montana Clean Air Act, the applicable regulations and requirements of the federal Clean Air Act, and any applicable control strategy contained in the Montana State Implementation Plan. The applicant must also demonstrate that the source will not cause or contribute to a violation of a Montana or national ambient air quality standard.

Rule: ARM 17.8.749

6. Additional Information

A. Prevention of Significant Deterioration (PSD)

1) When a major new source of air pollution is proposed to be constructed or modified in an area in compliance with ambient air quality standards, a more rigorous review procedure may apply. The review may include one year of pre-application baseline data, control technology review, air pollution impact modeling, and other measures.

2) The DEQ must: 1) advertise in a newspaper of general circulation in the air quality control region affected by the proposed source that an application has been received along with the DEQ's preliminary determination, the degree of increment consumption expected from the source, how written comments may be submitted, and how the DEQ's final decision may be appealed to the BER; and 2) forward copies of the advertisement to the applicant, Region VIII Administrator of the EPA, and to area officials and agencies affected by the proposed construction.

Rule: ARM 17.8.801, *et seq.*

B. New Source Review in Nonattainment Areas

Major new or modified sources of air pollution locating in or near areas that are not attaining ambient air quality standards must meet additional permitting criteria, including obtaining emission offsets and installing control equipment that meets the *lowest achievable emission rate* (LAER).

Rule: ARM 17.8.901-17.8.906

C. Incinerators - Commercial Medical or Hazardous Waste

Commercial medical waste and commercial hazardous waste incinerators have special requirements in addition to the permitting requirements under the Montana Clean Air Act (see AIR QUALITY PERMITS, p. 36); and the Montana Solid Waste Management Act (see SOLID WASTE - HAZARDOUS WASTE, p. 155), Commercial medical waste and commercial hazardous waste incinerators must achieve the lowest achievable emission rates as identified by DEQ rules for dioxins, furans, heavy metals, and other hazardous air pollutants to prevent risk to public health. The plan for a commercial hazardous waste incinerator must include a scheme for the cessation of burning if site-specific monitoring determines that inversion conditions, as defined by DEQ rule, exist. If the facility is close to a populated area, the department may require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to provide telemetering service to the DEQ with an immediate notification system activated when emissions approach or exceed permitted limits.

The definition of commercial medical waste incinerator does not include hospital or medical facilities that primarily incinerate medical waste generated onsite.

A statement disclosing if the applicant has had a record of complaints and convictions for the violation of environmental protection laws is required for the issuance, transfer, or alteration of an air quality permit for a commercial medical waste or commercial hazardous waste incinerator. The DEQ may deny an application or impose conditions on a permit based on an applicant's compliance history.

Statute: 75-2-230 through 75-2-233, MCA

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Air Resources Management Bureau
Waste and Underground Tank Management Bureau

D. Variances

A person may apply to the BER for an exemption from applicable rules governing emissions. The variance may be issued if the BER finds there will be no adverse impact to public health or safety and that compliance with the rules would be an undue hardship on the applicant. The length of the variance is at the BER's discretion and may be renewed. An applicant for a variance must submit a sum of two percent of the cost of equipment needed to bring the facility into compliance with the rule from which the exemption is sought, but not less than $500 nor more than $80,000.

Statute: 75-2-212, MCA

Rule: ARM 17.8.120

AIR QUALITY PERMITS: FEDERAL

For information about air quality permits on reservation lands, contact the U.S. Environmental Protection Agency.

Contact: ENVIRONMENTAL PROTECTION AGENCY
Montana Office, Helena

GEOTHERMAL LEASES

Development of geothermal resources will generally require the appropriation of water (see WATER APPROPRIATIONS - GROUND WATER, p. 195) and may require a Certificate

of Compliance (see MAJOR FACILITY SITING ACT, p. 51). For general information, contact the Montana Department of Environmental Quality.

GEOTHERMAL LEASES ON STATE LANDS

1. Types of Activities Regulated

The Board of Land Commissioners may lease state-owned lands, including the beds of navigable streams and water bodies, for the purposes of prospecting, exploration, well construction, or production of geothermal resources.

Statute: 77-4-101, *et seq.*, MCA

Rule: ARM 36.25.401, *et seq.*

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Trust Land Management Division
Minerals Management Bureau

2. Permitting Procedures

1) A person applying for a geothermal lease on state lands must submit a completed application to the Montana Department of Natural Resources and Conservation. The required information is identified in the application and must include an adequate description of the land. A water right may also be required. See WATER APPROPRIATIONS, p. 195.

2) When sufficient applications have been received to warrant a sale, or at the director's discretion, a sale will be announced.

3) The notice of the sale must be published in a geothermal trade journal or in two newspapers of general circulation in Lewis and Clark County. Notice must be published for four weeks preceding the sale date. The sale may be offered by competitive bid.

4) A minimum bond of $2,000 is required to protect the state's interest in the resource.

5) The term of a geothermal lease is 10 years. Compensation must be paid to the surface lessee for damage to the surface or the lease holder's interest.

Rule: ARM 36.25.404

3. **Fees**

The fee for a geothermal lease application is $25. Rental and royalty charges are determined by the Board but are not less than $1 per acre, not less than 10 percent of the amount or value of steam, heat, or energy produced and not more than five percent of any byproduct.

Rule: ARM 36.2.1003, 36.25.404, and 36.25.406

HAZARDOUS SUBSTANCES - COMMUNITY RIGHT TO KNOW

1. **Types of Activities Regulated**

The purpose of the federal Emergency Planning and Community Right to Know Act (EPCRA—also known as SARA Title III) is to provide local governments and the public with information about hazardous substances in their communities in order to encourage and support facility planning in the event of an accidental release or spill.

Under the EPCRA, the governor of each state appoints a State Emergency Response Commission (SERC), which in turn appoints Emergency Planning Districts and a Local Emergency Planning Commission (LEPC) for each district. In Montana, each county is a district, thus there are 56 districts and LEPCs. A person or facility with designated types and quantities of hazardous or toxic substances must compile information on the chemicals it uses, stores, and releases into the environment and provide this information to the SERC, the LEPC, and the local fire department. Montana's SERC requires that all reporting be completed through E-Plan, found here: erplan.net. (Check at deq.mt.gov under EPCRA reporting to find directions.) Local fire departments and LEPC may have access to E-Plan or may require individual submitting to them. The LEPCs receive and maintain information, assist in facility planning, and develop a district plan to prepare for chemical emergencies.

Rule: 42 U.S.C. 11001, *et seq*., 40 C.F.R. § 301*, et seq.*

Contact: LOCAL EMERGENCY PLANNING COMMISSION

U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington D.C.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Director's Office, Montana Department of Environmental Quality (DEQ) - Tier II Chemical Inventory Information

DEPARTMENT OF MILITARY AFFAIRS
Disaster and Emergency Services Division

HYDROELECTRIC POWER DEVELOPMENT

1. Types of Activities Regulated

Nonfederal hydroelectric power plants on navigable waters of the United States, those which occupy federal land or utilize water power from a government dam, or those which, under certain circumstances, affect the interest of interstate or foreign commerce, must be licensed by the Federal Energy Regulatory Commission (FERC). As a result, FERC is the lead agency in the licensing of new hydropower facilities and in the re-licensing of existing facilities. FERC, acting under the authority of the federal Power Act, as amended, and the National Energy Policy Act of 2005, processes and evaluates the federal applications required for all hydropower dams, diversions and other hydropower developments; reviews and analyzes environmental impacts of hydropower projects and determines appropriate mitigation and enhancement measures; and sets requirements governing the sale of the hydropower generation at the wholesale level.

There are six primary subject areas where state regulation of hydroelectric power must be considered in addition to the federal requirements under FERC. These areas (and the responsible state agencies) are:

1) Water rights permits: contact the Montana Department of Natural Resources and Conservation (DNRC), Water Rights Bureau, (see WATER APPROPRIATIONS - SURFACE DIVERSIONS, p. 199).
2) A 310 permit for altering a perennial stream: contact the DNRC, Conservation Districts Bureau or the local Conservation District supervisor (see CONSERVATION DISTRICTS, p. 1).
3) Water quality certification under Section 401 of the federal Clean Water Act: contact the Montana Department of Environmental Quality.
4) Fish and wildlife impact evaluation (no permit required): contact the Montana Department of Fish, Wildlife and Parks, Fish and Wildlife Division, Helena.
5) Hydropower projects on state land (see page 45).
6) Hydropower projects on state-owned dams (see page 46).

In addition, a 404 permit is required from the U.S. Department of the Army, Corps of Engineers for any dredge and fill activity or other work affecting United State's waters[1] or

[1] Waters of the United States includes essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

wetlands. Contact the U.S. Department of the Army, Corps of Engineers, (see STREAM BEDS - STREAM BANKS - WETLANDS, p. 10).

Statute: federal Power Act, 16 U.S.C., chapter 12

Contact: FEDERAL ENERGY REGULATORY COMMISSION
Office of Hydropower Licensing
Washington D.C.

FEDERAL ENERGY REGULATORY COMMISSION
Regional Office
Portland, Oregon

HYDROELECTRIC POWER DEVELOPMENT ON STATE LANDS

1. Types of Activities Regulated

The Board of Land Commissioners may grant leases for the construction and operation of hydroelectric power sites on state lands to any person, corporation, or municipality. See HYDROELECTRIC POWER DEVELOPMENT, above.

Statute: 77-4-201, *et seq.*, MCA

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Trust Land Management Division
Real Estate Management Bureau

2. Application Requirements

An application must be presented to the Board for a lease of or license for a power site on state lands. A preliminary examination of the proposed site's value for development is required. If the investigation requires further proceedings, the Board must publish a notice regarding the proposed lease or license for six weeks in two state newspapers, one of which must be from the affected area. The Board, at its meeting on the proposed site, may consider the original application along with any other filed applications. The Board has the authority to reject any or all bids. Acceptance depends on which offer is considered to be the most advantageous to the state. Bid preferences are given to municipalities. The term of the lease cannot exceed 50 years.

Statute: 77-4-203 through 77-4-211, MCA

HYDROELECTRIC POWER DEVELOPMENT AT STATE-OWNED DAMS

1. Types of Activities Regulated

The Montana Department of Natural Resources and Conservation (DNRC) may lease sites at state water projects that it determines to be feasible for energy generation and in the best interest of the state.

2. Application Procedures

1) The DNRC must study the economic and environmental feasibility of construction and operation of a small-scale hydroelectric power generating facility on each of its dams and periodically update the studies. The studies are submitted to the Energy and Telecommunications Interim Committee and the Water Policy Interim Committee. If the DNRC determines that hydroelectric generation at a state-owned dam is feasible based on the study, the department must publish an advertisement soliciting lease applications.

2) Following publication, individuals, public utilities, and electric cooperatives have 180 days to submit applications to the DNRC. Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the DNRC, the estimated time to make the project operational, the bid amount of the royalty, and other information the department may request to assist in evaluating the application.

3) The DNRC will hold a hearing to examine all applications and must decide whether to accept or reject applications within 180 days after the close of the application period.

4) The DNRC is authorized to hold any federal license, permit or exemption on a project at the department's discretion.

5) The duration of the lease may not exceed the term of the federal permits and may in no case exceed 55 years.

6) If no acceptable applications are received, the DNRC may reject all bids and proceed to develop the hydroelectric generation facility.

Statute: 85-1-501 through 85-1-514, MCA

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Water Resources Division

INDOOR EMISSIONS - EMPLOYEE HEALTH AND SAFETY

ASBESTOS CONTROL

1. Types of Activities Regulated

The Montana Department of Environmental Quality (DEQ) issues asbestos project permits, asbestos facility permits, inspects asbestos projects, accredits persons engaged in asbestos-related work, approves and audits asbestos training course providers, and administers the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP).

Statute: 75-2-501, *et seq.*, MCA

Rule: ARM 17.74.301, 17.74.343, 17.74.350-17.74.372, and 17.74.401-17.74.403

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Waste and Underground Tank Management Bureau

2. Permitting Requirements and Procedures

1) Any person impacting three square or linear feet of regulated asbestos containing material must be accredited by the state and operating under a special permit issued by the DEQ.

2) A person may not initiate an asbestos project without obtaining an asbestos project permit from the DEQ. Application materials include a completed, signed Montana Asbestos Project Permit Application and NESHAP Demolition/Renovation Notification form. Applicants must also pay the required permit fee.

3) The owner or operator of a facility may apply to the DEQ, under certain conditions, for an annual asbestos project permit. An annual asbestos project permit authorizes a facility to conduct asbestos projects within the confines of the facility's controlled area during the permit period. The application must include 1) a description of the facility and the asbestos work that will be performed over the year, 2) an asbestos health and safety plan, 3) a list of accredited asbestos contractor/supervisors and workers, 4) a signed statement that the asbestos-containing materials will be properly removed,

transported, and disposed of in accordance with state and federal asbestos regulations, and 5) the required annual permit application fee.

Statute: 75-2-503, 75-2-504, and 75-2-511, MCA

Rule: ARM 17.74.353-17.74.360, and 17.74.401

3. Accreditation Requirements

A person seeking accreditation as an asbestos inspector, planner, project designer, contractor/supervisor, or a worker must submit a properly completed application form, asbestos training course certificate and the applicable fee to the DEQ.

Statute: 75-2-502 and 75-2-511, MCA

Rule: ARM 17.74.353, 17.74.362, 17.74.363, and 17.74.402

4. Asbestos Training Courses

Asbestos training course providers must be approved by the DEQ and audited by the department on a regular basis. Asbestos training course providers must apply to become approved by submitting 1) a training course application, 2) a course curriculum with sample training certificate, 3) a list of instructors, 4) example examinations, 5) a course schedule and 6) the applicable fee.

Statute: 75-2-511, MCA

Rule: ARM 17.74.364-17.74.368 and 17.74.403

5. Fees

Asbestos project permit fees are based on 10 percent of the contract volume (as defined in ARM 17.74.401(2)). All persons seeking accreditation or an application renewal for an asbestos-related occupation who have been trained by a Montana-approved asbestos training course provider must pay a $170 fee, except for asbestos workers who are assessed a $45 fee. A surcharge of $35 is assessed to those persons who submit a training course certificate from a non-Montana approved asbestos training course provider (see ARM 17.74.402), except for asbestos workers who are assessed a $15 surcharge. Asbestos training course approval and audit fees are based on the course provided (see ARM 17.74.403). Annual asbestos permits cost $2,000 and annual permit amendments cost $600.

Statute: 75-2-503 and 75-2-511, MCA

Rule: ARM 17.74.401-17.74.403

6. Additional Information

National Emission Standards for Hazardous Air Pollutants (NESHAP)

As a U.S. Environmental Protection Agency-delegated program, the DEQ administers portions of the asbestos NESHAP, which governs building demolition and renovation activities, inspections for asbestos prior to demolition/renovation, notification of building demolition renovation activities, disposal of asbestos waste, and control of asbestos emissions.

EMPLOYEE HEALTH AND SAFETY

1. Types of Activities Regulated

The Montana Department of Labor and Industry (DLI) has the authority to regulate health and safety hazards in work places that are under the jurisdiction of state and local governments. The federal Occupational Safety and Health Administration (OSHA) regulates noise and exposure to certain hazardous chemicals in all privately owned work places.

Statute: 50-71-111, MCA

Contact: DEPARTMENT OF LABOR AND INDUSTRY
Employment Relations Division
Safety Bureau

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration

RADIATION CONTROL

1. Types of Activities Regulated

The U.S. Nuclear Regulatory Commission licenses users of byproduct materials, source materials, and special nuclear materials in Montana. A number of record-keeping and handling requirements apply.

The Montana Department of Public Health and Human Services (DPHHS) has statutory authority to register and regulate machine sources of ionizing radiation (i.e., x-rays, accelerators, etc.). Registration of these machines is required of the owner after acquisition of the machine and prior to its use. Registration forms are available from the DPHHS or machines may be registered online at https://app.mt.gov/radio. A number of record-keeping and use requirements also apply.

In addition, the DPHHS has statutory authority to license users of naturally occurring and electronically produced radionuclides but does not operate a licensing program at this time.

Statute: 50-79-201*, et seq.*, MCA

Rule: ARM 37.14.301, 37.14.302, 37.14.306, 37.14.307, and 37.14.501, *et seq.*

Contact: NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
Quality Assurance Division
Licensure Bureau

RADON CONTROL

1. Types of Activities Regulated

Prior to selling any inhabitable property, the seller or their agent must provide a designated disclosure statement (see 75-3-606, MCA) alerting the buyer to the existence of naturally occurring radon gas in some buildings in Montana and the associated health risks. Whenever a seller knows that a building has been tested for radon gas, the seller must provide the buyer with a result of the test and evidence of any subsequent mitigation or testing.

A person who wishes to be publicly listed by the Montana Department of Environmental Quality in a radon-related occupation must pass a proficiency examination administered by the National Environmental Health Association's National Radon Proficiency Program.

Statute: 75-3-601*, et seq.*, MCA (Montana Radon Control Act)

Rule: ARM 24.210.641(5)(x)

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Planning, Prevention and Assistance Division
Energy and Pollution Prevention Bureau

DEPARTMENT OF LABOR AND INDUSTRY
Business Standards Division
Board of Realty Regulation

U.S. ENVIRONMENTAL PROTECTION AGENCY
Regional Office, Denver, CO

MAJOR FACILITY SITING

1. Types of Activities Regulated

A Certificate of Compliance is required from the Montana Department of Environmental Quality (DEQ) for certain major electric transmission line and large oil, natural gas, and coal slurry pipeline facilities or large facilities that utilize geothermal resources. Associated facilities such as transportation links, pipeline pump stations, and other facilities associated with the delivery of energy are included. Prior to certification, the applicant must receive the necessary permits from the DEQ for air emissions; wastewater discharges; the generation, transportation, storage, or disposal of hazardous wastes; and other relevant permits administered by the DEQ. Special procedures apply to large hydroelectric and interstate natural gas pipeline facilities also subject to the jurisdiction of the Federal Energy Regulatory Commission

Statute: 75-20-101*, et seq.*, MCA (Montana Major Facility Siting Act)

Rule: ARM 17.20.301-17.20.303

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Environmental Management Bureau

2. Application Requirements

Applications for a certificate under the Montana Major Facility Siting Act (MFSA) must be filed with the DEQ. The information required varies according to the size and type of the facility, but generally includes a description of the proposed facility and its location, baseline data for proposed sites, and alternate site information.

Statute: 75-20-211, MCA

Rule: ARM 17.20.801-17.20.807

3. Permitting Procedures

1) The DEQ must notify an applicant within 30 days that the application is either complete or incomplete. If an application is resubmitted, the DEQ then has 15 days to review the information and notify the applicant that the application is complete and accepted or is not complete and accepted.

2) For projects that do not cross federal lands, within nine months following the acceptance of a complete application, the DEQ must issue a report that includes the department's studies, evaluations, recommendations, customer fiscal impact analysis, if required under 69-2-216, MCA, and other relevant documents. An Environmental Impact Statement or analysis may be included if there is compelling evidence that the facility construction and operation would have adverse environmental impacts (see MONTANA ENVIRONMENTAL POLICY ACT, p. 130). During the environmental review process, the DEQ must designate a one-mile-wide facility siting corridor along the facility route for certain facilities and exempt future siting modifications within the corridor from MEPA review if the conditions in 75-20-303(6), MCA, are met. For a facility that is unlikely to result in adverse environmental impacts or a high level of public concern, the DEQ's decision must be returned in 90 days. Before issuing a decision, the DEQ will provide an opportunity for public review and comment.

3) Construction of a geothermal facility must begin within six years from the date of certification. Linear facilities must be completed within 10 years—except for transmission lines less than 30 miles in length, which must be completed within five years.

4) The DEQ's decision may be appealed to the Board of Environmental Review. Decisions of the Board may be appealed to a state District Court under the contested case provisions of the Montana Administrative Procedures Act (see MAPA, p. 129).

Statute: 75-20-216, 75-20-219, 75-20-223, 75-20-231, 75-20-301, 75-20-303, 75-20-304, and 75-20-406, MCA

Rule: ARM 17.4.501

4. Fees

The applicant for a certificate under the MFSA is required to deposit a filing fee based on the estimated cost of the project in an earmarked revenue fund for use by the DEQ to

administer the Act. A fee schedule is listed in the statute. Alternately, the applicant may contract with the DEQ for payment of fees.

Statute: 75-20-215, MCA

5. Criteria

The DEQ must issue an opinion and render a decision either granting or denying an application as filed, or granting the application with conditions or modifications. The department must grant a certificate to a geothermal facility if it does not pose a threat of serious injury or damage to the environment or area inhabitants. For a linear facility, the DEQ's decision is based on a number of factors, including need; the nature of probable environmental impacts and the minimization of impacts considering the state of available technology and the nature and economics of the alternatives; that the location of the proposed facility conforms to applicable state and local laws; that the facility will serve the public interest, convenience, and necessity; that the DEQ has issued all necessary decisions, opinions, orders, certifications, and permits; and that the use of public lands or federally designated energy corridors for the location of the facility was evaluated and public lands or federally designated energy corridors were selected whenever their use was compatible with MFSA and transmission line reliability siting criteria. The DEQ must deny the certificate if the above findings cannot be made.

The DEQ must waive the requirement for alternative site studies and the finding of minimum adverse environmental impact when a facility is proposed for construction in a county that has experienced severe unemployment problems because of plant closure.

Statute: 75-20-301 and 75-20-304, MCA

6. Definition of Facility and Exceptions

Under the MFSA, a facility is:

1) Each *electric transmission line* and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

- <u>does not include</u> an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

- <u>does not include</u> an electric transmission line with a design capacity of more than 69 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more

than 75 percent of the owners who collectively own more than 75 percent of the property along the centerline;

- does not include electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in section 15-24-3001(4), MCA, or a wind generation facility, biomass generation facility, or energy storage facility as defined in section 15-6-157, MCA, to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines has obtained right-of-way agreements or options for a right-of-way from more than 75 percent of the owners who collectively own more than 75 percent of the property along the centerline or centerlines;

- does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10 percent of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.

- does not include a transmission substation, a switchyard, voltage support, or other control equipment.

2) A *pipeline* greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except for:

- a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

- a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75 percent of the owners who collectively own more than 75 percent of the property along the centerline.

3) A *pipeline* greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water. Aspects

of other pipeline projects may be covered by statutes listed under UTILITIES (p. 179).

4) A *geothermal resource* or addition designed for or capable of producing geothermally derived power equivalent to 50 megawatts, except for a compressed air energy facility as defined in section 15-6-157, MCA.

5) A plant capable of generating 50 megawatts of hydroelectric power or more, a unit, or other facility or addition subject to the jurisdiction of the Federal Regulatory Energy Commission, except for energy storage projects, as defined in section 15-6-157, MCA.

Statute: 75-20-104(8), MCA

7. Additional Information

The DEQ may not issue a certificate to construct a nuclear facility in Montana unless it meets the stringent criteria specified in 75-20-1203, MCA. All nuclear facilities must be subject to a public referendum in order to be approved.

WIND ENERGY

1. Types of Activities Regulated

The Montana Department of Environmental Quality (DEQ) does not specifically permit wind power generating facilities but the following permits may be required depending on the location of roads, turbines, and powerlines.

1) An easement from the appropriate property owner may be required to ensure an undisturbed flow of wind across that property. If the affected property owner is the Montana Department of Natural Resources and Conservation (DNRC), the use of that land may be subject to permits, leases, or easements from the department and approval from the Board of Land Commissioners (see STATE LANDS, p. 7).
2) Activities that affect air or water quality such as facility construction or wastewater discharges may require permits from the DEQ (see AIR QUALITY PERMITS, p. 36 and WATER QUALITY PERMITTING, p. 205).
3) Project sponsors must file a Notice of Intent and a Storm Water Pollution Prevention Plan with the DEQ for construction activities that would disturb more than one acre of land.
4) A person who proposes to construct an energy-related project not considered a facility pursuant to 75-20-104(8), MCA, may petition the DEQ to review the

project under the provisions of the Major Facility Siting Act. Transmission lines from a wind generating facility may be covered by the Act (see p. 51).

5) A 310 permit may be required if the project includes the alteration of a perennial stream: contact the DNRC, Conservation Districts Bureau or the local Conservation District supervisor (see CONSERVATION DISTRICTS, p. 1). A 318 permit may be required from the DEQ for work in a stream, lake or wetland, (see STREAM BEDS - STREAM BANKS - WETLANDS, p. 10).

6) Section 401 water quality certification under the federal Clean Water Act provides a review of potential adverse water quality impacts associated with discharges of dredged or fill materials in wetlands and other waters: contact the DEQ.

7) Activities that affect migratory bird populations are subject to the provisions of the federal Migratory Bird Treaty Act (see p. 99).

Statute: 70-17-303 and 70-17-402, MCA (wind energy easements)
77-1-301, MCA (DNRC easements, licenses, and permits)
75-20-101, *et seq.*, MCA (Montana Major Facility Siting Act)

Rule: ARM 36.25.104, *et seq.* (DNRC easements, licenses, and permits)
ARM 17.20.301-17.20.303 and 17.20.801, *et seq.* (facility siting)

Contact: PROPERTY OWNER

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Trust Land Management Division

DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Environmental Management Bureau

U.S. FISH AND WILDLIFE SERVICE
Montana Office, Helena