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CONTENTS

	Page
FOREWARD	1
SUMMARY	2
ORIGINS OF ENVIRONMENTAL LAW	3
THE LAWS	4
ENVIRONMENTAL IMPACT ASSESSMENT PROCESS	5
PRELIMINARY ENVIRONMENTAL REVIEW	5
ACTIONS REQUIRING PREPARATION OF A DRAFT EIS ..	5
EIS FEE SCHEDULES	6
THE "DETAILED STATEMENT"	6
THE DRAFT EIS	6
CONTENTS OF A DRAFT EIS	6
CIRCULATION OF THE DRAFT EIS	7
PUBLIC HEARINGS	7
FINAL EIS DETERMINATION	7
FINAL DECISIONS	8
THE FINAL EIS	8
CONTENTS OF A FINAL EIS	8
SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS	8
SCHEMATIC FLOW CHART	9
PERMIT-GRANTING AND THE EIS PROCESS	10
JUDICIAL REVIEW	10
SOURCES OF TECHNICAL INFORMATION	11
REFERENCES	12

FOREWARD

This brochure was prepared in response to numerous inquiries about the environmental review process and environmental impact statements. Citizens taking an interest in a proposed project, and wanting to evaluate it, must understand the environmental review process in order to participate in the decision-making process. The questions usually raised are (1) what is an environmental impact statement, (2) what does it contain, (3) how should it be read, and (4) what is involved in the environmental review process?

This is especially relevant to people who, for the first time, want to read an environmental impact statement and gain as much as possible from it.

Because of the lack of awareness of the review process, this brochure attempts to help answer the above questions and give the reader a general perspective of Montana's concept of environmental assessment and environmental impact statements.

It must be noted that the process is constantly evolving. As those involved gain more expertise, and as new laws and guidelines are enacted, the process may be changed and refined from time to time.

Finally, the public benefits from informing itself about a land use or development proposal so that it may deal successfully with disclosed impacts. Public participation is vital to the enforcement of environmental law, and awareness increases the democratic utility of environmental impact analysis.

A fundamental understanding of impact assessment and active public involvement in the process helps to insure that government decision-makers consider environmental affects of proposed projects as important as economic and political concerns.

It is hoped that the information enclosed will serve to both inform and encourage citizen involvement.

“Prudent men should judge of future events by what has taken place in the past, and what is taking place in the present.”

*Miguel de Cervantes
(1547-1616)*

SUMMARY

The environmental review process is one of many legislative efforts to preserve environmental quality. Its goal is to assemble fragmented data about a land use or development proposal into comprehensive and coherent statements of overall impact. Such an approach allows the study of side effects of proposed actions and is a means of evaluating the effects of our actions. In short, it creates a tool for problem solving.

Man's history of altering the natural environment for his benefit has been accompanied by serious costs in environmental problems. The purpose of impact assessment is to identify, disclose, and measure those costs, and incorporate them into the decision-making process.

An environmental impact statement informs both the decision-maker and the public. It explores known consequences of, and alternatives to, a planned major action. It allows a more complete idea of the effects of a choice before the cost is incurred, and whether or not a proposed action and its alleged benefits are worth their price.

Impact assessment serves as an action-forcing device to insure that the policies and goals defined in current environmental laws are incorporated in the programs and actions of government agencies. It also encourages public participation and provides a vehicle for citizen challenge to government decisions.

Both federal and Montana state environmental law intended to insure that impact statements be used as a decision-making tool by providing impact information on proposed projects and programs to the public and to government agencies before major projects are approved.

Clearly, the greater the public interest and participation, the greater the force exerted through the law and the courts on administrative agencies.

ORIGINS OF ENVIRONMENTAL LAW

Contemporary environmental awareness and impact assessment has its origins in the concept of preserving land from destructive human activities. Setting aside Yellowstone Park in 1872 was the first such land reserve. At the turn of the century, millions of acres of land were closed to private development by the Forest Service. This was followed by the activities of agencies like the Civilian Conservation Corps and Soil Conservation Service. These actions started a conservation and management tradition.

Wildlife conservation followed the same trend as land and resource preservation. Game laws and refuges evolved, as did efforts to acquire and manage land for wildlife habitat. As environmental awareness and concern grew, so did regulation and control.

Concern for ecological problems accelerated during the 1960's as a result of books like Rachel Carson's *Silent Spring*, Paul Ehrlich's *Population Bomb*, and *Science and Survival* by Barry Commoner. Concern about rapid human population growth and what it may mean for the future proliferated. Perspectives were formed regarding the faulty use of specific technologies. The waste and misuse of resources and energy resulted in the careful examination of unpaid costs, as did the destruction of life support systems. *A good background in these issues and continued homework in current literature insures an understanding of the meaningfulness of impact assessment.*

The resulting ethic became the basis for federal and state programs concerning the environment. Environmental impact assessment did appear in some of the earlier pollution laws, but it was carefully confined and constrained. *Identification and full disclosure* of impacts was lacking, as was a *holistic approach* of considering more than one kind of impact from a single cause. Cost/benefit analysis did not include *intangible values (unquantified amenities)* and were therefore not part of the accounting system. Exploration of *alternatives* to an impact was missing and thus was not part of the *decision-making process*. Conspicuously missing was *public involvement*.

The emphasized words in the preceding paragraph are concepts that are incorporated in today's environmental review process. It is an attempt *to subject the true costs of environmental destruction to proper accounting*. Attainment of this objective has been difficult to assess, and only time will reveal the usefulness of the idea as it is applied to environmental protection.

However, to some observers, it is questionable whether these concepts in federal and state environmental law have subsequently brought about the necessary changes in environmental policy intended by the law-makers who wrote and passed the laws.

THE LAWS

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) 1969.

This legislation is the basic national charter concerning impact assessment of federal actions. It establishes policy, sets goals, and provides means for carrying out the policy. NEPA procedures must insure that environmental information is available to governmental officials and the public before decisions are made and before actions are taken. This then, is the fundamental mandate for environmental review and the environmental impact statement.

Implementing the procedural provisions of the act is the responsibility of the Council on Environmental Quality (CEQ).

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) 1971.

Montana, like many other states, followed suit by passing the Montana Environmental Policy Act in 1971. Its language concerning impact assessment differs (in general) little from NEPA, but exists independent of federal involvement. It requires that every major action of state government having a significant impact on the quality of the human environment be preceded by a "detailed statement" discussing the environmental impact of the proposed action.

Rules implementing this act are administered by the Montana Commission on Environmental Quality (MCEQ).

MAJOR FACILITY SITING ACT (MFSA) 1973.

This act provides for the comprehensive review of the siting and construction of major facilities engaged in the generation, distribution, or conversion of energy. Such facilities must receive a certificate of environmental compatibility and public need from the Board of Natural Resources and Conservation.

MONTANA ADMINISTRATIVE PROCEDURE ACT (MAPA) 1971.

This act provides for public participation in the operation of governmental agencies prior to the final decision of an agency. It permits and encourages public comments, data, arguments, and responses. The act also provides judicial review of agency decisions and is thus an action-forcing device of environmental law.

NOTE:

Other federal and state laws are certainly applicable to the environmental review process but are beyond the scope and intent of this brochure.

ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

Environmental impact assessment is usually done as a one-time procedure in response to a specific land use or development proposal. If the proposal could significantly effect the quality of the human environment, MEPA requires preparation of a "detailed statement". The purpose of the statement is to describe how the proposal will effect the human environment.

MEPA defines the human environment as the "biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment."

PRELIMINARY ENVIRONMENTAL REVIEW (PER)

The state agency having primary permit jurisdiction over the proposed project is usually designated as lead agency. The lead agency subsequently prepares a preliminary environmental review (PER) of the possible environmental consequences of the project proposal. The purpose of the PER is to determine whether the proposal will significantly affect the quality of the human environment and therefore requires a draft environmental impact statement (draft EIS).

The PER is a brief written statement which employs a checklist evaluation of the immediate, cumulative, and secondary impacts on the physical environment and human population. It is a public document and may be inspected or obtained upon request.

If the PER shows a significant impact, a draft EIS will be prepared on the proposal. If not, a negative declaration is filed.

ACTIONS REQUIRING PREPARATION OF A DRAFT EIS

Actions which normally require the preparation of a draft EIS are those which:

- * may significantly affect environmental attributes recognized as being endangered, fragile, or in severely short supply,
- * may be either significantly growth inducing or growth inhibiting,
- * may substantially alter environmental conditions in terms of quality or availability, or
- * will result in substantial cumulative impacts.

EIS FEE SCHEDULES

The lead agency adopts and prescribes fee schedules for the EIS preparation. The fees are paid by the applicant proposing the development and are adjusted to the size and complexity of the project. Fees are not assessed unless the permit will result in the agency incurring expenses in excess of \$2500 or when the application is filed under the provision of the Major Facility Siting Act (MFSA). Fees collected are deposited in the state earmarked revenue fund.

The lead agency then allocates and disburses money to other participating agencies which require funds for the completion of the necessary work. All unexpended fees are refunded without interest, together with a proper accounting of expenditures.

Agencies however, rarely collect the entire fee at once. Instead they bill for anticipated expenses in advance on a quarterly basis.

THE "DETAILED STATEMENT"

MEPA requires that the "detailed statement" (EIS) include:

- (1) The environmental impact of the proposed action.
- (2) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (3) alternatives to the proposed action,
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

THE DRAFT EIS

Preparation of a draft EIS can take considerable time to complete, depending upon the complexity of the project proposal. The lead agency coordinates the preparation of the draft EIS and may request the participation of other state agencies which have jurisdiction or special expertise in areas which should be addressed in the draft EIS.

CONTENTS OF A DRAFT EIS

A draft EIS is a comprehensive identification and disclosure of impacts of a proposed land use development. It is as complete and accurate as possible and is required to include:

- (1) a description of the nature and objectives of the proposed action;
- (2) a description of the current environmental conditions in the area significantly affected by the proposed action, including maps and charts, where appropriate;
- (3) a description of the impacts on the quality of the human environment by the proposed action including:

- (a) an evaluation of the immediate, cumulative, and secondary impacts on the physical environment and human population in the area to be affected;
 - (b) primary, secondary, and cumulative impacts;
 - (c) potential growth inducing or growth inhibiting impacts;
 - (d) irreversible and irretrievable commitments of environmental resources, including land, air, water, and energy;
 - (e) economic and environmental benefits and costs of the proposed action;
 - (f) the relationship between local short-term uses of man's environment with the effects on maintenance and enhancement of the longterm productivity of the environment;
- (4) a description of reasonable alternative actions that could be taken;
 - (5) the proposed agency decision on the proposed action, if appropriate;
 - (6) source material used in the preparation of the draft EIS;
 - (7) the names of those individuals or groups responsible for compiling the draft EIS and the names of those individuals or groups contributing to the EIS;
 - (8) a brief summary of the EIS, made available for distribution separate from the EIS.

CIRCULATION OF THE DRAFT EIS

Upon completion of the draft EIS, the lead agency distributes copies to appropriate state, local and federal agencies, the applicant whose project is being evaluated, and persons who request it.

State agencies allow 30 days for persons to submit written comments on the draft EIS. However, this period may be extended up to an additional 30 days upon application of any person for good cause. All written comments are made available to the public upon request.

PUBLIC HEARINGS

Subsequent to proper notification, public hearings are held after the draft EIS has been circulated and prior to preparation of the final EIS. At the hearing, members of the public may give appropriate testimony and the applicant has an opportunity to respond to oral comments.

FINAL EIS DETERMINATION

Depending upon the nature and number of substantive comments received in response to the draft EIS, the draft statement may suffice. The lead agency must then determine whether a final EIS is necessary. This determination is made within 30 days of the close of the comment period on the draft EIS.

If it has been determined that a final EIS is not necessary, the lead agency submits one copy of all comments or a summary of a representative sample of comments received to appropriate agencies, the applicant, and all commentators. The comments are accompanied by a notice of the decision not to prepare a final EIS and a statement describing the agency's proposed course of action.

FINAL DECISIONS

After complying with the notice not to prepare a final EIS, agencies may then make final decisions on the proposed action. However, until an agency reaches its final decision, no action concerning the proposal can be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives, including the no-action alternative.

THE FINAL EIS

A final EIS is prepared after the draft EIS is published and circulated. It is a composite of the draft and addresses comments received and the agency's response to the comments.

Following preparation, it is distributed to appropriate agencies, the applicant, commentators, and others on request.

CONTENTS OF A FINAL EIS

The final EIS is required to include:

- (1) a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;
- (2) a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by agencies (in all cases, a representative sample of comments are included);
- (3) the agency's responses to substantive comments (these responses include an evaluation of the comments received and a disposition of the issues involved);
- (4) data, information, and explanations obtained subsequent to circulation of the draft;
- (5) the agency's recommendation for the final agency decision on the proposed action, where appropriate.

SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS

Agencies are required to prepare supplements to either draft or final environmental impact statements if:

- (a) the agency or the applicant makes substantial changes in the proposed action; or
- (b) there are significant new circumstances, discovered prior to final agency decisions, including information bearing on the proposed action or its impacts which change the basis for decision.

The same time periods applicable to draft and final EIS's apply to the circulation and review of supplements.

**SCHEMATIC
FLOW CHART**
MONTANA'S
ENVIRONMENTAL
REVIEW
PROCESS

APPLICANT
Proposed Major
Activity

APPLICATION FILED

LEAD AGENCY
Primary Authority
or
Designated by
Governor

DETERMINATION OF EFFECT
OF PROPOSAL ON HUMAN ENVIRONMENT

PER
Evaluation of
Impacts on
Physical Environ'
and
Human Population

FINAL
DECISION ← NEGATIVE
DECLARATION

PREPARE DRAFT EIS

DRAFT EIS
Description
Impacts
Res' Commitments
Benefit Cost
Alternatives

FINAL
DECISION ← NO FINAL EIS

← SUPPLEMENTS & CHANGES

ENVIRONMENTAL
QUALITY COUNCIL
GOVERNOR

CIRCULATION

PREPARE
FINAL EIS

CIRCULATION
COMMENTS

PARTICIPATING
AGENCIES
PUBLIC
COMMENTATORS
APPLICANT

← PUBLIC
HEARING

CIRCULATION

FINAL EIS
Conclusions
Responses
Final Decision,
where appropriate

CIRCULATION

← SUPPLEMENTS & CHANGES

FINAL DECISION

PERMIT-GRANTING AND THE EIS PROCESS

Land use and developments, because of their nature or size, fall under the permit jurisdiction of several state agencies having permit requirements and standards. These laws, implemented before the passage of MEPA, direct how state agencies grant or deny permits for proposed projects. This decision-making authority on environmental issues has allowed for differences in the interpretation of the substantive authority of MEPA and the EIS process.

This fragmented approach has resulted in subsequent problems, confusion, and controversy, especially when projects are approved without consideration of all potential environmental impacts allowed by pre-MEPA statutes.

Permit jurisdiction and subsequently the purpose and direction of MEPA was an attempt to implement controls to protect the environment. MEPA's intent was to provide a holistic consideration of unquantified environmental amenities relative to a particular proposal. However, due to conflicts with permitting laws, two fundamental problems remain: (1) Do state agencies have the authority to deny permits on the basis of MEPA, and, (2) are agencies required to base decisions on the findings of environmental impact statements? Because of the political nature of the resource management policy in the state, attempts to resolve these issues in the legislature have failed.

Given the current rate of resource exploitation, ecological constraints, and the economic situation, many observers see a need to, once again, address these problems.

A coordinated permit procedure has been suggested to eliminate the confusing and piecemeal permit-granting process. This, along with clarification of MEPA's substantive authority would (1) improve the quality of development, (2) protect life support systems, (3) increase the efficiency of the use of private and public resources, and (4) increase the fairness of the land use and development decision-making process.

Resolution of the conflicts in Montana's EIS process would bring about the necessary changes in environmental policy intended by the lawmakers who wrote and passed the laws. Environmental impact statements could then provide, as intended, comprehensive data for intelligent and informed decisions on environmental, social and economic problems.

JUDICIAL REVIEW

Equally important as the decision-making process itself is a mechanism for assuring that the process is carried out fairly and in accordance with established policies, plans, standards, and procedures. The right of a party who is aggrieved by the decision of an agency to appeal to a higher authority is an integral part of the legal system.

A party who has exhausted all administrative remedies available within an agency and so is aggrieved by a final decision, is entitled to judicial review. Proceedings for review may be instituted by filing a petition in district court within 30 days after service of the final decision of the agency.

Another action-forcing device may be utilized by appealing the final judgement of a district court to the supreme court. This must be done within 60 days after entry of judgement by the lower court.

The appellate review process thus provides some assurance that an agency does not act arbitrarily or capriciously and that it follows the designated procedures in reaching a decision.

SOURCES OF TECHNICAL INFORMATION

Department of Natural
Resources & Conservation
32 South Ewing Helena
449-3712

Department of State Lands
1625 11th Avenue
Helena
449-2074

Department of Health &
Environmental Sciences
Cogswell Building Helena
449-2544

Department of Fish,
Wildlife, & Parks
1420 E 6th Ave. Helena
449-3186

Department of Community Affairs
1424 9th Avenue
Helena
449-3494

Montana Historical Society
225 North Roberts
Helena
449-2694

Department of Agriculture
1300 Cedar Street
Helena
449-3730

Department of Livestock
Livestock Building
Helena
449-2043

Environmental Quality Council
1209 8th Avenue
Helena, Montana
449-3742

REFERENCES

For those readers interested in a more complete (or legal) coverage of the environmental review process, the following references are suggested.

STATE

MONTANA ENVIRONMENTAL POLICY ACT

(Chapter 65, Title 69 R.C.M. 1947)

MAJOR FACILITY SITING ACT

(70-801 through 829, R.C.M. 1947; Regulations: MAC36-2.8(1)-S800 through 2.8(14)-S8050)

MONTANA ADMINISTRATIVE PROCEDURE ACT

(82-4201 through 4229 R.C.M. 1947)

RULES IMPLEMENTING THE MEPA

(Rules I through XX) Montana Commission on Environmental Quality

RULE III OF MEPA RULES

List of activities or functions that normally require an EIS or do not require an EIS or PER. Administered by state natural resource agencies.

FEDERAL

NATIONAL ENVIRONMENTAL POLICY ACT

(Public Law 91-190)

REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NEPA

Council on Environmental Quality, Executive Office of the President.
Reprint 43 FR 55978-56007, November 29, 1978. 40 CFR Parts 1500-1508.

OTHER

CITIZENS' GUIDE TO NEPA,* MEPA,* AND THE ENVIRONMENTAL IMPACT STATEMENT PROCESS.

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