

35 Years of the Montana Environmental Policy Act

With 2006 almost here, I thought it would be appropriate for this Back Page article to take a 35-year retrospective look at one of Montana's most celebrated and controversial environmental laws—the Montana Environmental Policy Act (MEPA).

As a 14-year staff member of the Environmental Quality Council (EQC), a bipartisan body of legislative members, public members, and a Governor's representative that was created by MEPA in 1971, I have had a front row seat in a surreal MEPA Broadway show that could easily be entitled "*Cats Fighting—Not a Musical*". MEPA, the cornerstone of a series of environmental laws enacted in the early 1970s, has been the focal point in a magnetic vortex of swirling environmental and natural resource policy debates over its 35-year history. Whatever perspective you may have regarding MEPA, you cannot say that it has been a boring ride over the years. The ride may have been passionate, electrifying, contentious, and perhaps frustrating, but never boring.

In organizing this MEPA retrospective Interim article, I thought I would take a shot at addressing some of the most common MEPA questions that legislators have ask me throughout my tenure.¹ Those questions include:

- ⇒ What is the purpose of MEPA?
- ⇒ Why did Montanans decide to enact MEPA?
- ⇒ How does MEPA work and what is the environmental review process?
- ⇒ How do state agencies involve the public in MEPA decisions?
- ⇒ How many environmental reviews have been produced over the years and which state agencies conduct the most MEPA reviews?
- ⇒ How have successive Legislatures dealt with MEPA since its enactment over 35 years ago?
- ⇒ How have the Montana courts interpreted MEPA over the years?
- ⇒ What are the costs and benefits of MEPA?
- ⇒ Is the MEPA process timely and efficient?
- ⇒ Does the MEPA process result in better-informed decisions?
- ⇒ What does the future hold for MEPA?

What is the purpose of MEPA?

The purpose of MEPA is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, and to enrich the understanding of the ecological systems and natural resources important to the state (75-1-102(2), MCA).

Legislative amendments in 2003 to MEPA's purpose statement noted that the Montana Legislature, "mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act" (75-1-102(1), MCA). MEPA is procedural, and it is the Legislature's intent that the requirements of MEPA provide for adequate review of state actions in order to ensure that environmental attributes are fully considered (75-1-102(1), MCA).

MEPA was originally patterned after the National Environmental Policy Act of 1969 (NEPA) and includes three distinct parts. Part 1 is the "spirit" of MEPA. Part 1 establishes Montana's environmental policy. It requires state government to coordinate state plans, functions, and resources to achieve various environmental, economic, and social goals. Part 1 has no legal requirements, but the policy and purpose provide guidance in interpreting and applying the statute.

Part 2 is the "letter of the law". Part 2 requires state agencies to carry out the policies in Part 1 through the use of a systematic, interdisciplinary analysis of state actions that have an impact on the human environment.

¹ Obviously, a treatise could be written in response to these questions. Remember that this is only an Interim article, and my attempt here is to illuminate and inform in a very limited amount of space, which may result in oversimplification and unintended omissions—all of which I take sole responsibility for.

Part 3 of MEPA establishes the Environmental Quality Council (EQC) and outlines the EQC's authority and responsibilities.

To truly understand MEPA's purpose, a brief review of the environmental, public participation, and right-to-know provisions of Montana's 1972 Constitution is necessary. The Legislature enacted MEPA in the spring of 1971 just prior to the Constitutional Convention, which started in November of 1971. The new Constitution was subsequently ratified by Montanans in June of 1972. The language of MEPA is, to some extent, reflected in the Constitution. The noteworthy constitutional provisions include:

Article II, section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include *the right to a clean and healthful environment and the rights of pursuing life's basic necessities*, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, *health* and happiness in all lawful ways. *In enjoying these rights, all persons recognize corresponding responsibilities.* (emphasis added)

Article II, section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Article II, section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Article IX, section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

The purpose of these constitutional provisions mirrors, and is intertwined with, the underlying purposes of MEPA. If implemented correctly, MEPA should facilitate the ability of state agencies to make better decisions. Better decisions should be balanced decisions. Balanced decisions maintain Montana's clean and healthful environment without compromising the ability of people to pursue their livelihoods as enumerated in MEPA and the Constitution. Better decisions should be accountable decisions. Accountable decisions, as required in MEPA, clearly explain the agency's reasons for selecting a particular course of action. Better decisions are made with public participation. Montana's Constitution mandates open government—people have the right to participate in the decisions made by their government. MEPA requires agencies to open government decisions for public scrutiny. The Montana Constitution also recognizes that people have the responsibility to participate in decisions that may affect them.

During an extremely comprehensive 1999-2000 interim study² on MEPA, the EQC noted that MEPA's very core, the policy and purpose of MEPA, is to foster:

- ✓ informed state government decisions;
- ✓ accountable and open state government decisions;
- ✓ balanced state government decisions; and
- ✓ ultimately, better state government decisions.

Why did Montanans decide to enact MEPA?

Backed by a very broad and unanimous coalition of interests (**Table 1**), MEPA was enacted in 1971 by a Republican House (99-0), a Democratically controlled Senate (51-1), and a Democrat in the Governor's

² Environmental Quality Council, *Improving the Montana Environmental Policy Act (MEPA) Process*, Senate Joint Resolution No. 18, Final Report to the 57 Legislature of the State of Montana, (November 2000).

Office. The legislation was sponsored by George Darrow, a Republican representative and petroleum engineer from Billings. Although the legislative record is sparse in detail, it reflects some of the reasons why MEPA was enacted. Selective statements from the legislative record include:

- ✓ MEPA "states the responsibility of the state".
- ✓ MEPA spells out that "each citizen is entitled to a healthy environment".
- ✓ "The intent of the bill is to establish a working partnership between the Executive and Legislative Branch of state government concerning the protection of the environment."
- ✓ MEPA "would coordinate the environmental facts of the state".
- ✓ "Montana's productive age populace is leaving the state for employment in other states, and if we wanted to keep taxpayers in the state, she suggested passage of HB 66 (MEPA)."
- ✓ "A major conservation challenge today is to achieve needed development and use of our natural resources while concurrently protecting and enhancing the quality of our environment."
- ✓ The sponsor of this bill "legislates foreknowledge".
- ✓ MEPA "seeks that often elusive middle ground between purely preservationist philosophy and purely exploitive philosophy, and indeed we must soon find that middle ground".
- ✓ MEPA will "establish a unified state policy pertaining to development and preservation of our environment".
- ✓ "As we guide Montana's development, we must use all of the scientific, technological, and sociological expertise available to us. This is our responsibility We must avoid creating emotionally explosive situations that have occurred in the past and, indeed, are present right now in some of our communities We must establish a state policy for the environment."
- ✓ "Include people in the decisionmaking."
- ✓ MEPA is "a master plan for the enhancement of our environment and promulgation of our economic productivity".
- ✓ MEPA "commits the state, through its agencies, to consider the environmental consequences of its actions".
- ✓ MEPA "says that Montana should continue to be a wonderful place to live and that development of its resources should be done in such a manner that quality of life will be assured to those who follow".

Unfortunately, the legislative record does not include transcripts from the floor debates in the House or the Senate. The votes are the only indicator of MEPA's support in those debates.

MEPA was one of several environmental bills considered by the 1971 Legislature. A competing bill—the Montana Environmental *Protection* Act—would have declared that a public trust exists in the natural resources of this state and that those natural resources should be protected from pollution, impairment, or destruction. To enforce this trust, the Protection Act would have allowed anyone, including nonresidents, to sue the state for failure to perform any legal duty concerning the protection of the air, water, soil and biota, and other natural resources from pollution, impairment, or destruction.

The Protection Act generated public controversy. The votes both in committee and on the floor mirrored the political realities that each bill had endured. The Protection Act received an adverse committee report with a 6 to 5 do not pass vote. When brought up on second reading in the House, the Protection Act was killed by a 49 to 48 vote. In contrast to the Protection Act's much-contested demise, MEPA sailed through the Legislature and on to the Governor's desk.

MEPA's almost unanimous bipartisan approval would, on its face, appear to have reflected a true consensus on the direction of the state's environmental policy. However, at the end of the 1971 regular session, MEPA's \$250,000 appropriation was removed from the state budget, leaving Montana with an environmental policy but no means to implement it. Later, during a second special legislative session in the summer of 1971 and after much debate, the MEPA appropriation was restored, but at a lower level—\$95,000. The battle over MEPA's funding indicates some political division surrounding its enactment that was not reflected in the votes on the House and Senate floors.

Table 1. Persons and Interests That Supported or Opposed MEPA During the House and Senate Legislative Hearings in 1971. (Source: House and Senate Minutes, 1971)

Person/Organization	Supported MEPA	Opposed MEPA
Ted Schwinden, Commissioner of State Lands	X	
R.W. Beehaw, Board of Natural Resources	X	
John Anderson, Executive Officer of the Department of Health	X	
Winton Weydemeyer, Montana Conservation Council	X	
Zoe Gerhart, Citizen	X	
Dennis Meehan, Citizen	X	
Wilson Clark, Professor at Eastern Montana College, Billings/Yellowstone Environmental Council	X	
Jan Rickey, Citizen	X	
Polly Percale, Assistant Professor at Eastern Montana College	X	
Ted Reineke, Eastern Montana College Wilderness Club	X	
Chris Field, Montana Scientist Committee for Public Information	X	
Marilyn Templeton, Gals Against Smog and Pollution (GASP)	X	
Cecil Garland, Montana Wilderness Society	X	
Robert Holding, Montana Wood Products Association	X	
Dorothy Eck, League of Women Voters	X	
Robert Fischer, Montana Chamber of Commerce	X	
Ben Havdahl, Petroleum Industry, Rocky Mountain Oil and Gas Association, Montana Petroleum Association	X	
Don Boden, Citizen	X	
Joe Halterman, Good Medicine Ranch	X	
Calvin Ryder, Citizen	X	
Gordon Whirry, Bozeman Environmental Task Force	X	
R.E. Tunncliff, American Association of University Women	X	
Kirk Dewey, Montana Council of Churches	X	
Pat Calcaterra and Margaret Adams, Montana Sierra Club	X	
Don Aldrich, Montana Wildlife Association	X	
David Cameron, Professor at Montana State University	X	
Mons Teigen, Montana Stockgrowers	X	
Jim Posowitz, State of Montana Fish and Game Commission	X	
Frank Griffin, Southwestern Miners Association	X	

How does MEPA work and what is the environmental review process?

According to MEPA's sponsor, George Darrow, MEPA requires state agencies to think through their actions before acting. MEPA provides a process that should help ensure that permitting and other agency decisions that might affect the human environment are informed decisions—informed in the sense that the consequences of the decisions are understood, reasonable alternatives are evaluated, and the public's concerns are known.

MEPA requires state agencies to conduct thorough, honest, unbiased, and scientifically based full disclosure of all relevant facts concerning impacts on the human environment that may result from agency

actions. This is accomplished through a systematic and interdisciplinary analysis that ensures the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking. This analysis usually takes the form of a categorical exclusion (CE), an environmental assessment (EA), or an environmental impact statement (EIS).

Before making a decision to implement an action that might affect the human environment, MEPA generally requires the agency to generate and organize information, in the EA or EIS, that at a minimum:

- ✓ describes the need for the action or the agency's proposal (purpose and need);
- ✓ explains the agency's intended action (proposed action);
- ✓ discusses other possible options to the proposed action (alternatives);
- ✓ analyzes the potential consequences of pursuing one alternative or another in response to the proposed action (impacts to the human environment); and
- ✓ discusses specific procedures for alleviating or minimizing adverse consequences associated with the proposed actions (mitigation).

How do state agencies involve the public in MEPA decisions?

MEPA compels state agencies to involve the public through each step of the decisionmaking process. This is accomplished by:

- X telling the public that an agency action is pending;
- X seeking preliminary comments on the purpose and need for the pending action (scoping);
- X preparing an environmental review (CE, EA, or EIS) that describes and discloses the impacts of the proposed action and evaluates reasonable alternatives and mitigation measures;
- X requesting and evaluating public comments about the environmental review; and
- X informing the public of the agency's decision and the justification for that decision.

The level of public participation is dependent on what type of environmental review the agency is conducting.

How many environmental reviews have been produced over the years and which state agencies conduct the most MEPA reviews?³

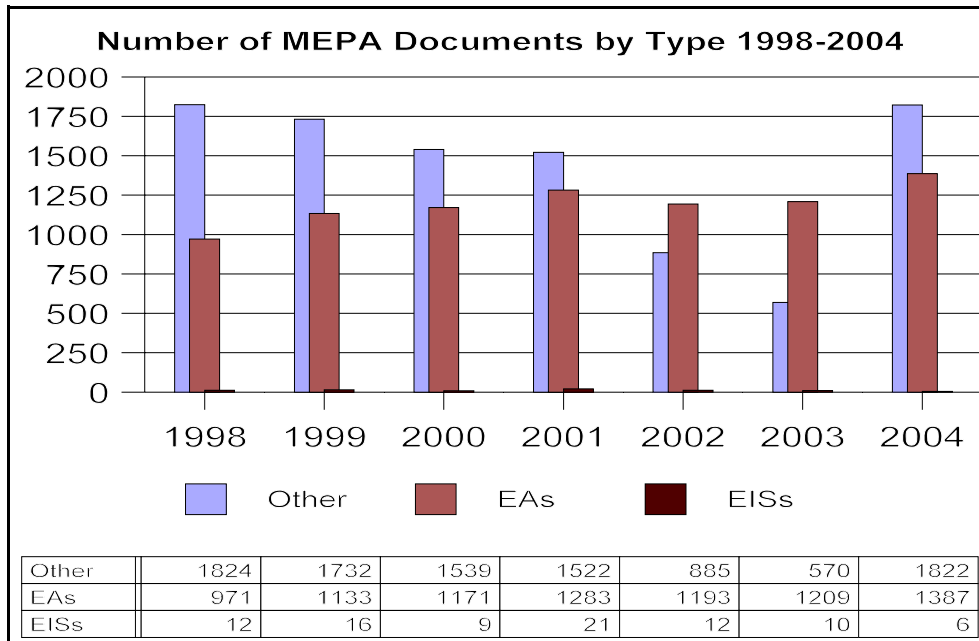
How many MEPA documents have been produced since MEPA's enactment in 1971? This is a question that I get asked a lot, but it is a tough question to answer with any certainty. Montana state agencies are required to send MEPA documents to the EQC, but not all MEPA documents that have been prepared have been received by the EQC.⁴ From October 26, 1971, through November 9, 2005, the EQC has logged 39,000 MEPA documents into the EQC MEPA database. Since 1971, state agencies have produced 392 EISs and 35,664 CEs and EAs.

The information in **Figure 1** shows the type of MEPA documents that were reported to the EQC for the past 7 calendar years and further separates them into three categories (EIS, EA, and other).

³ I want to thank Maureen Theisen for all of her time and effort in teasing these numbers out of the EQC MEPA database and for generating the graphs in this article.

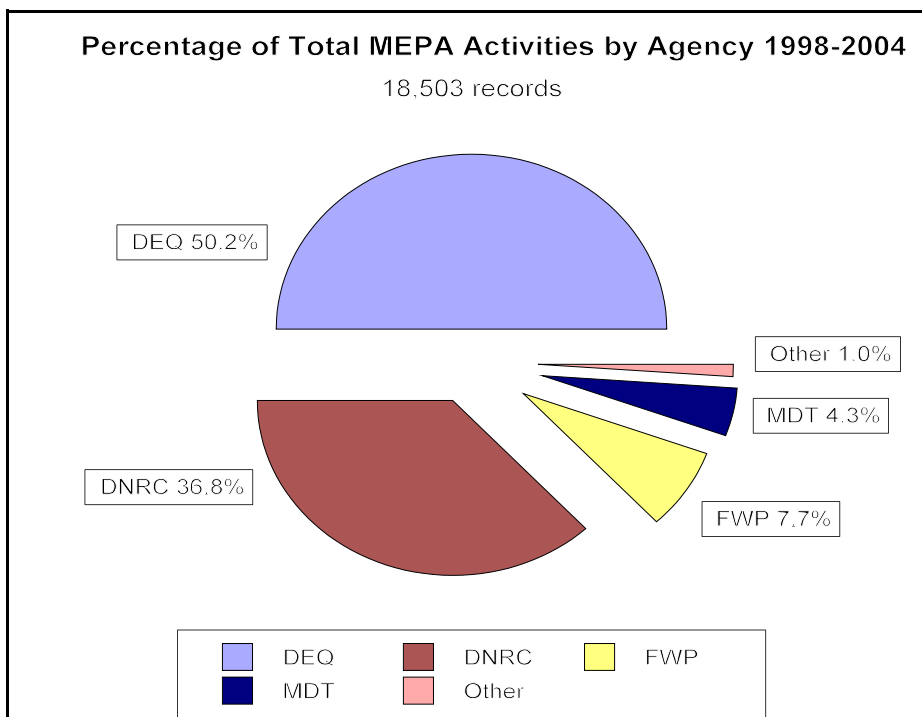
⁴ What are the "MEPA documents" reported to and logged into the EQC database? Documents prepared by agencies conducting an environmental review of proposed agency actions take many forms depending on the nature of the proposed action. The type of documents submitted to and logged into the EQC database include environmental assessment checklists, preliminary environmental reviews, categorical exclusions, environmental assessments, draft or final environmental impact statements, records of decisions, public notices, and a historic laundry list of other administrative MEPA decision statements that some agencies have reported over the years. MEPA activities that are submitted to the EQC are logged into the EQC database by the date on which they are received.

Figure 1.



The information indicates that the number of MEPA documents reported to the EQC has ranged from 1,700 to 2,700 a year. What agencies conduct the most MEPA reviews? The answer to this question, based on the number of MEPA documents submitted to the EQC between 1998 and 2004, is shown in **Figure 2**. The chart shows that four state agencies⁵ accounted for 99% of the total MEPA document activity between 1998 and 2004, with the DEQ accounting for over half, or 50.2%, of the total.

Figure 2.



⁵ Those state agencies include the Department of Environmental Quality (DEQ), the Department of Natural Resources and Conservation (DNRC), the Department of Fish, Wildlife, and Parks (FWP), and the Montana Department of Transportation (MDT).

How have successive Legislatures dealt with MEPA since its enactment over 35 years ago?

Since MEPA's enactment in 1971, successive Legislatures have struggled to determine the role of MEPA in directing state environmental policy. Seventy-three pieces of legislation have been introduced that have proposed to modify or study MEPA in some way. Forty-two of those bills have been enacted. Up until 2001, proposed legislation, ranging from significantly limiting the scope of MEPA to significantly expanding MEPA's breadth and influence, was frequently introduced and subsequently killed. In 2001, the Legislature made some significant changes to MEPA. A closer look at the legislative history reveals some interesting trends and highlights.

The Legislature has introduced 22 bills that specifically involved or affected the EQC. The bills that have been enacted over time have significantly increased the statutory responsibilities of the EQC. The trend has been to give the EQC additional specific and general agency oversight functions.

The Legislature has introduced 15 bills over a 35-year period that attempted to exempt specific activities from MEPA review. Twelve out of the 15 bills passed, creating 13 statutory exemptions. Eight out of the 13 statutory exemptions are for specific land management activities.

Juxtaposed with the exemptions described above, three bills were enacted that clarified that transplantation or introduction of fish species, Montana University System land transactions, and Department of Fish, Wildlife, and Parks management plans are specifically subject to MEPA review.

Six bills passed by the Legislature impact MEPA litigation issues. As a result of these bills, the Legislature over time has made it tougher for a MEPA plaintiff both to litigate a MEPA case and to win a MEPA case against a state agency.

In 1995, the Legislature enacted Senate Bill No. 231 that clarified that it is the state's policy under MEPA to protect the right to use and enjoy private property free of undue government regulation. MEPA had always required an economic and social impact analysis, but Senate Bill No. 231 further specified that when agencies conduct that analysis, regulatory impacts of private property rights and alternatives must be considered.

The watershed year of legislative changes to MEPA occurred during the 2001 legislative session. Of the nine bills affecting MEPA that were introduced during the 2001 legislative session, eight bills were enacted. Senate Bill No. 377 and House Bill No. 473 and 459 were perhaps the most significant MEPA bills enacted during the session.

Senate Bill No. 377 established time limits and procedures for conducting environmental reviews; it defined specific terms used in MEPA; it required that legal challenges to actions under MEPA may be brought only in District Court or federal court within 60 days of a final agency action; and it provided an exception to the permitting time limits if Board review of certain agency decisions is requested.

House Bill No. 473 clarified a long-standing and controversial issue—is MEPA procedural or is it substantive? That is to say, does MEPA provide state agencies with additional authority to mitigate or use stipulations on a permit, license, or state-initiated action beyond the agency's permitting, licensing, or state-initiated action statutory or regulatory authority? House Bill No. 473 definitively stated that MEPA is a procedural statute that does not dictate a certain result, but dictates a process. House Bill No. 437 in the 2003 legislative session further articulated that MEPA is procedural by amending MEPA's purpose section to include the following statement: "The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that environmental attributes are fully considered" (75-1-102(1), MCA).

House Bill No. 459 required that any alternative analyzed under MEPA must be reasonable, that the alternative be achievable under current technology, and that the alternative be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor. House Bill No. 459 required that the agency proposing the alternative consult with the project sponsor and give due weight and consideration to the project sponsor's comments. It also provided that a project sponsor could request a review by the appropriate board of an agency's determination regarding the reasonableness of an alternative.

The past 35 years of legislative MEPA activity reveal that the EQC's statutory responsibilities have been substantially increased, the scope of activities subject to MEPA review has been incrementally limited, the Legislature has made it tougher to litigate MEPA cases, the Legislature has clarified that private property considerations should be taken into account, the Legislature has made a policy determination that MEPA is strictly a procedural statute, MEPA documents have statutorily required timeframes, the role of the project sponsor in the MEPA process has been expanded, and MEPA's alternative analysis must be reasonable and economically feasible.

How have the Montana courts interpreted MEPA over the years?

Over MEPA's 35-year history, the Montana Supreme Court has been called upon to review the Act eight times. The state has prevailed in six out of those eight cases or 75% of the cases.⁶ According to EQC and state agency records, MEPA has been litigated and resolved in the Montana District Courts 23 times and the state has prevailed in 13 of those cases with two split decisions. The total number of MEPA cases resolved by state courts over a 35-year period totals 31. The state's total winning percentage in MEPA cases (the court found in favor of the state), excluding two split decision cases, is 69%. Note that many of MEPA cases also litigate other state laws (constitutional provisions, permitting laws, etc.) in addition to MEPA. Ten out of the 31 MEPA cases, or 32%, have been litigated in the last 10 years (1995 to 2005). According to state legal counsel, there have been a total of 13 MEPA cases that have been dropped or settled over a 35-year period. There are currently six cases involving MEPA issues pending in District Courts and two cases pending in the Montana Supreme Court. According to the EQC MEPA database, there have been over 36,056 MEPA EIS, EA, and CE actions taken since 1971. Including pending and settled/dropped MEPA cases, 52 of those 36,056 MEPA actions have involved some type of litigation action.⁷

Each MEPA suit has its own cause and effect, but generally, MEPA issues resolved by the state courts can be lumped into two basic categories:

- (1) Should the state agency have conducted a MEPA analysis (EA or EIS)?
- (2) Was the MEPA analysis (EA or EIS) adequate?

The most commonly litigated MEPA issue (20 out of 31 MEPA cases) is whether the state agency should have conducted a MEPA analysis, usually an EIS. The court decisions have been evenly split on this issue, with 10 decisions holding that the agency either need not have conducted a MEPA analysis or was not required to conduct an EIS. Ten court decisions held either that the agency was required to conduct a MEPA analysis or that the agency should have done an EIS.

The second most commonly litigated MEPA issue (9 out of 31 MEPA cases) is whether the state agency's MEPA review (EA or EIS) was adequate. The courts will review the record to determine whether the agency complied with the statute and its own MEPA rules in writing the MEPA review document. Adequacy issues that the courts have reviewed include cumulative impacts, alternatives, cost-benefit analysis, impact analysis generally, and economic impact analysis. Of special note, the issue of cumulative impacts has been litigated in eight cases. The state has been upheld on its analysis of cumulative impacts in six of those eight cases. The issue of adequate alternatives analysis has been litigated in four cases. The courts upheld the adequacy of the state's alternatives analysis in three of those four cases.

Table 2 illustrates those categories of state actions that elicit the most MEPA litigation. State timber sales rank first, and mining and water quality permits rank second in total number of lawsuits, respectively.

⁶ For the purposes of this litigation analysis, a "MEPA case" is defined as litigation in state court in which a state agency is challenged on a MEPA issue and that legal issue is ultimately resolved by the court.

⁷ Obviously, these statistics do not reflect the scope of specific positive or negative impacts (environmental, economic, social, etc.) that each lawsuit may have generated. These statistics also do not take into account the threat of lawsuits over time.

Table 2. Categories of State Actions Most Subject to MEPA Litigation

State Action	Court-Resolved MEPA Cases	Pending MEPA Lawsuits	Total MEPA Litigation Actions
Timber Sales (State Land)	9	0	9
Mining Permits	5	2	7
Water Quality, Public Water, and Waste Water Permits	2	5	7
Alternative Livestock Ranch/Zoo Menagerie Permits	2	0	2
Air Quality Permits	1	1	2
Facility Siting Certification	2	0	2
Oil and Gas Leases (on State Land)	1	0	1
State Land Grazing Lease	1	0	1
Granting of an Easement on State Land	2	0	2
State Land Development	1	0	1
Subdivision Review	2	0	2
Fishing Access Site	1	0	1
Solid Waste	1	0	1
State Road Construction	1	0	1
TOTAL	31	8	39

In 2000, after an intensive interim study, the EQC concluded that "generally, the MEPA process has resulted in state agencies making legally defensible decisions. It appears that the more complete the environmental document, the more likely the state is to prevail in litigation." The EQC further concluded that the state tends to lose more MEPA cases when the state agency has failed to conduct an EIS. The EQC also noted that "no evidence has been received that the cases were frivolous" and that "there is no information to suggest that legal appeals of agency decisions have not been timely".

What are the costs and benefits of MEPA?

The EQC's interim study in 2000 attempted to address this question, but couldn't answer it. The study noted that the costs and benefits of any state policy or undertaking usually involve the issue of who or what pays the costs and who or what receives the benefits. The EQC concluded that a retroactive cost-benefit analysis of the MEPA process would be very time consuming and would probably not reveal useful information because of reliance on old and incomplete records, the passage of time, and a lack of institutional memory. Given this finding, the EQC was unable to determine whether the MEPA process has resulted in cost-effective decisions. The EQC noted that prospective information on the costs and benefits of MEPA would be useful in helping future Legislatures, state agencies, and Montanans generally to critically evaluate the effectiveness of MEPA policy and process.

Is the MEPA process timely and efficient?

The EQC 2000 interim study concluded that "MEPA timeliness can be improved". The EQC found that in reviewing hard-rock mine permits, timber sales, and game farm (alternative livestock ranch) permits, timeliness was an issue in only a small number of activities, but the delays in those small number of significant activities were substantial. The EQC found that project size and complexity, project impacts and their significance, degree of public interest in the project, and presence of an organized project opposition are all factors that significantly contribute to the length of time required to comply with MEPA and the permitting statutes. The EQC noted that frustration over timeliness issues may be because of agency-required mitigation measures contained within an environmental review document. If the permit applicant thinks that the mitigation is unreasonable, the permitting process can be delayed. The EQC further concluded that for most agency projects, permits, and activities, the state agencies do not have a problem meeting statutory deadlines.

In terms of whether the MEPA process was efficient, the EQC concluded that a majority of all state agency MEPA actions are tied to a permitting process. Coordination and efficiency issues are dependent on and intertwined with the permitting process. The EQC recommended that the EQC itself and state agencies should "investigate the possibility of a one-stop-shopping process for permits and the MEPA process. This could improve the efficiency of both the permitting process and the MEPA process."

Does the MEPA process result in better-informed decisions?

Again, referring to the only comprehensive study conducted on the MEPA process, the EQC found in 2000 that "'yes", the MEPA process is resulting in state agencies ultimately making better decisions". The EQC also noted that "in most cases, the MEPA process results in informed agency decisions. There is no evidence that MEPA results in less information."

What does the future hold for MEPA?

Perhaps the biggest finding of the 2000 EQC interim study was that "the MEPA process can be improved". The study went on to make a number of recommendations. I think that future Legislatures will continue to evaluate and modify MEPA. Recently, the environmental provisions of the Montana Constitution have taken center stage in the Montana courts, upstaging MEPA's traditional role at the environmental epicenter of policy debates.⁸ However, there is no question in my mind that MEPA will continue to play a central role in the natural resource and environmental policy debates in Montana and that the *Cats Fighting—Not a Musical* show will be one of the longest running Montana Broadway shows in history.

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⁸ This is a subject for another Interim Back Page article.