



# Environmental Review for Grant Projects

Montana Coal Board  
December 2014

# Montana Environmental Policy Act

- Enacted in 1971 by a Republican House (99-0), Democrat Senate (51-1), and a Democratic Governor Forrest Anderson.
- Bill was sponsored by George Darrow, a Republican representative and petroleum engineer from Billings.
- Procedural statute only - provides a *process* by which agencies are informed about the potential consequences of, alternatives to, and public concerns about decisions they intend to make that might affect the human environment

# A Guide to the Montana Environmental Policy Act (2013)

“MEPA is *not* an act that controls or sets regulations for any specific land or resource use. It is *not* a preservation, wilderness, or antidevelopment act. It is *not* a device for preventing industrial or agricultural development. If implemented correctly and efficiently, **MEPA should encourage and foster economic development that is environmentally and socially sound.** By taking the time to identify the environmental impacts of a state decision before the decision is made and including the public in the process, MEPA is intended to foster better decision-making for people and the environment.”

<http://leg.mt.gov/css/Services%20Division/Lepo/mepa/default.asp>

# MEPA - Applicability

"State-sponsored project" includes a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies. (Section 75-1-220(8)(a)(iii))

"Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government. (Section 2-15-102)

**\*\*Coal Board grants are subject to MEPA\*\***

# Levels of Environmental Review

MEPA specifies three different levels of environmental review, based on the significance of the potential impacts:

- (1) Statutorily exempt or categorically excluded from MEPA review;
- (2) Environmental assessment (EA), and
- (3) Environmental impact statement (EIS).

# Coal Board Categorical Exclusions

In 1991, the Coal Board adopted the following categorical exclusions for projects for which it would not *normally* prepare an EA or an EIS in considering applications for project grants where:

- (a) partially funded by, or for which the applicant must obtain a permit from, a state or federal agency which has primary responsibility to consider the environmental impacts of the project under MEPA or the National Environmental Policy Act; or
- (b) primarily involving the
  - (i) acquisition of capital equipment;
  - (ii) planning studies or scientific research and analysis; or
  - (iii) the provision of human services.

# Exclusion from the Exclusion

If information available to the board suggests that a proposed project in one of these categories *may* significantly affect the quality of the human environment, the board *may* require an applicant to prepare an EA or EIS.

# Commerce MEPA exclusions

1. Actions that qualify for a categorical exclusion by rule or programmatic review. The agency shall identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS;
2. *Administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;*
3. *Minor repairs, operations, or maintenance of existing equipment or facilities;*
4. Investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;
5. Ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
6. Actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

# Commerce MEPA exclusions

Modifications to Department MEPA exclusions:

- Add new construction or rehabilitation of existing facility or facilities that remains within footprint of existing facility or facilities (replace existing water or sewer lines, upgrade existing water or sewer plants, rehabilitate existing roads, etc.
- Add purchase of equipment – already in CB rules
- Add partial funding behind other agencies with primary review authority – already in CB rules

# Environmental Assessment

- For those projects that are not statutorily exempted or categorically excluded, first step is to complete an "Environmental Checklist"
- Checklist provides initial evaluation and determination of significance of impacts
- Draft checklist plus environmental review form are circulated for public review and comment as the Draft EA
- No specific requirements for public review: should "match the complexity and seriousness of environmental issues associated with a proposed action and the level of public interest in the action."

# Environmental Assessment

After public review of the draft EA, the project proponent must consider all substantive comments received and decide at a properly noticed public meeting:

- (1) an EIS is not necessary, and approve proposed action (submitting grant application)
- (2) the EA did not adequately reflect all environmental issues and must be revised; or
- (3) an EIS is necessary.

# Environmental Impact Statement

- Required whenever EA indicates EIS is necessary, or proposed action may significantly affect the quality of the human environment
- Must distribute draft EIS to Governor, EQC, state and federal agencies, interested persons
- 30 days for public comment on Draft EIS

# Contents of EIS

1. Describe the proposed action;
2. List the state, local, or federal agencies with jurisdiction over the project;
3. Describe the current environmental conditions in the project area;
4. Describe the impacts on the quality of the human environment of the proposed action, including: cumulative impacts; growth-inducing impacts; irreversible commitment of resources; economic and environmental benefits and costs; and the relationship between short-term uses and long-term productivity of the environment;
5. Analyze reasonable alternatives to the proposed action, including no action and other reasonable alternatives, whether or not within the agency's jurisdiction;
6. Discuss mitigation, stipulations, or other controls committed to and enforceable by the grant recipient or other government agency;

# Contents of EIS

7. Discuss any compensation related to impacts stemming from the proposed action;
8. Explain the tradeoffs among the reasonable alternatives;
9. Identify the preferred alternative on the proposed action and why its preferred;
10. List the names of those individuals or groups responsible for preparing the EIS; other agencies, groups, or individuals who were contacted or contributed information; and source materials;
11. Summarize the draft EIS; and
12. Provide any other sections required by other statutes, the National Environmental Policy Act, or other federal statutes governing a cooperating federal agency.

# Final EIS

- After public review, agency must summarize and respond to substantive comments received
- Final decision on action must take place at least 15 days after Final EIS is transmitted to Governor and EQC

# Changes to Project

- If substantial changes to the project are proposed anytime *after* application but *before* final drawdown of grant funding, grantee must ensure that the environmental review (exclusion, EA, or EIS) still adequately identifies impacts of the project as modified
- Grantee must demonstrate public process was followed in making a decision as to whether the changes require further environmental analysis
  - best method is to prepare a new environmental checklist focused only on the proposed changes and any changed circumstances

# MEPA Compliance and Coal Board Grant Application - Next Steps

- Modify Department MEPA rules to include existing Coal Board exclusions
- Modify Coal Board ARM to reflect modified Department MEPA rules (with new exemption)
- Require environmental review to be completed before submission of the grant application. Applicant provides:
  - 1) Copy of final environmental review document (letter noting exclusion, Final EA, or Final EIS)

# MEPA Compliance and Coal Board Grant Application

- Documentation that public had opportunity to review and comment on the draft document
  - Copy of published or posted notice of availability of document for review, and how to obtain a copy
  - Letters, emails, summary of comments received
- Documentation that public meeting was properly noticed
  - Copy of published or posted notice of public meeting at which document would be discussed and environmental decision made
- Documentation that final decision on the environmental document was made at a properly noticed public meeting
  - Copy of published or posted meeting agenda
  - Copy of meeting minutes documenting action taken (exclusion or EA adequate, no EIS needed; approve submission of grant application)

# MEPA Review Process is Complete!!

- Under state law, individuals have generally 30 days from the date of decision on the environmental document to legally challenge the decision. After that, the decision really cannot be challenged unless the individual can show the public had no knowledge.
- If grant applicant follows the procedural due process above, documents that the public had knowledge.
- Local governments and grantees understand location, project, and impacts better than bureaucrats in Helena.\*\*
- After grant awarded, move forward with other start-up conditions and get project completed!

# QUESTIONS? CONCERNS?

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