



Environmental
Review for
Grant Projects

Montana Coal Board Webinar



Montana Environmental Policy Act

- 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
- MEPA is a problem solving tool
 - First objective: full disclosure of all relevant facts
 - Second objective: public participation

A Guide to the Montana Environmental Policy Act (2015)

“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

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

1. Administrative actions (routine clerical or similar functions, including but not limited to administrative procurement, contracts for consulting services, or personnel actions);
2. Minor repairs, operations, and maintenance of existing equipment or facilities;
3. Investigation and enforcement; data collection activities; inspection of facilities or enforcement of environmental standards;
4. Ministerial actions (in which the agency exercises no discretion and rather acts upon a given state of facts in a prescribed manner);
5. Actions that are primarily social or economic in nature and that do not otherwise affect the human environment;



Continued Exclusions

6. Projects that will be partially funded by, or for which the applicant must obtain a permit from, a state or federal agency which, by reason of its funding or permitting function, has primary responsibility to consider the environmental impacts of the project under MEPA or the National Environmental Policy Act;
7. Activities which do not involve or lead directly to construction, such as planning studies, scientific research and analysis, surveys, or engineering;
8. Projects primarily involving the acquisition of capital equipment;

Continued Exclusions

9. Projects where the footprint of the proposed structures, pipelines, or other infrastructure would be substantially unchanged from existing conditions, and there is no increase in the population served by the facility; or
10. Emergency repairs, reconstruction, restoration, retrofitting, or replacement of an existing facility that is in operation or under construction when damaged and the action:
 - a) (i) occurs within the existing facility footprint and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - b) (ii) is commenced within six months after the date of the emergency.

Exclusions...public meeting

If the proposed project qualifies for an exclusion then the applicant should submit documentation that the environmental process (including public review process) is complete and the applicant has formally approved its determination that the project qualifies for an exclusion.

An exclusion may not be appropriate if:

- significant public controversy exists over the project's potential effect on the quality of the human environment;
- the proposed project shows some potential for causing a significant effect on the quality of the human environment; or
- the project might possibly affect sensitive environmental or cultural resource areas or endangered or threatened species and their critical habitats.

Determination made a public meeting and documentation provided in the application.

Exclusions...except when

If information available to the board indicates that a proposed project may involve one of the following situations, the board may, in its sole discretion, require an applicant to prepare an environmental assessment or environmental impact statement as may be appropriate.

- 1) The proposed project involves a significant public controversy over the project's potential effect on the quality of the human environment;
- 2) The proposed project might have a significant effect on the quality of the human environment; or
- 3) The project might affect sensitive environmental or cultural resource areas or endangered or threatened species and their critical habitats.

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 applicant must consider all substantive comments received and decide at a properly noticed public meeting which of the following applies:

- (1) accept the EA and environmental process has been sufficiently completed;
- (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, Environmental Quality Council (EQC), state and federal agencies, interested persons
- Minimum of 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

- Documentation that public had opportunity to review and comment on the exclusion or draft EA or EIS
 - 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 Compliance and Coal Board Grant Application

- Environmental Review Form (exclusion, EA, and EIS)
- Environmental Checklist (EA)
- EIS Process – more complete study

Other considerations:

- The Board may categorically exclude projects from MEPA requirements which apply to Coal Board regulations and will not normally prepare either an environmental assessment or an environmental impacts statement in considering applications for grants to finance projects.
- This determination is not something Commerce determines, therefore our staff report includes comments that reflect the completion of the process.



MEPA Review Process is Complete!!

- Under state law, individuals generally have 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, it documents that the public had knowledge and opportunity to object.
- After grant awarded, move forward with other start-up conditions and get project completed!

QUESTIONS? CONCERNS?

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