

Montana Environmental Policy Act

Since 1971, MEPA has been Montana's bedrock environmental law. MEPA requires state agencies to consider the environmental, social, cultural and economic impacts of proposals like mines, power plants, subdivisions, and timber sales before the project is approved. The purpose of MEPA is to foster informed state government decisions. Described as a "look before you leap" law, MEPA has resulted in state agencies making better decisions based on community concerns for over 30 years.

A 2000 study done by the Montana Environmental Quality Council at the request of the 1999 legislature found that MEPA has resulted in state agencies making ultimately better and legally defensible decisions. The study noted that state agencies have rarely used MEPA 'substantively,' i.e., to set permitting requirements not specifically covered by the state's public health and environmental protection laws. Examples where agencies used the law substantively - but still allowed projects to go forward - include mitigations to alleviate traffic problems, minimize fish and wildlife impacts, protect public safety, and provide for management of noxious weeds.

Specific examples include:

- Lewis and Clark County landfill: The public was concerned about high traffic on a narrow road, dust on dirt roads and an historic cabin site on the landfill. Although not required to under state law, the state and county agreed to pave the road, require all garbage to be dropped off at the transfer station in town, and to protect the historic cabin site.
- Stillwater mine: The community was concerned about the traffic

volume going to the mine. The State conditioned the permit to require carpooling or bussing to cut down on traffic. The State also required mitigation measures for wildlife habitat impacts.

- Yellowstone Pipeline: DEQ decided to allow the Yellowstone Pipeline to cut an open trench across the Clark Fork River. As a result of the environmental assessment, DEQ put restrictions on the timing of the project to avoid periods when various species of trout were spawning. It also included a laundry list of best management practices for sediment handling and erosion control to minimize sediment and heavy metals impact to water quality.

Despite the EQC study findings, in 2001 the legislature amended MEPA to prevent state agencies from conditioning or denying a permit to protect communities, wildlife and fisheries based on information gathered during the MEPA process unless a specific permitting law allows such conditions. Unfortunately, there are no permitting laws that give agencies the power to generally protect public health, safety, fish or wildlife. This sets up conflicts with our constitutional right to a clean and healthful environment.

Warnings that the change in law would substantially decrease environmental safeguards are proving true. In specific state permitting decisions since then, state agencies have been unable to place conditions on permits to protect fish and wildlife from identified harm associated with a natural gas pipeline under a riverbed, or from a Hutterite colony irrigation permit; to protect public health and safety from gunfire at a shooting range near a school

Resources

On the Web

Montana Audubon

P. O. Box 595, Helena, MT 59624
(406) 443-3949
www.mtaudubon.org

Montana Environmental Information Center

P. O. Box 1184, Helena, MT 59624
(406) 443-2520
www.meic.org

Montana Trout Unlimited

P. O. Box 7186, Missoula, MT 59807
(406) 543-0054
www.montanatu.org

Montana Wildlife Federation

P. O. Box 1175, Helena, MT 59624
(406) 458-0373
www.montanawildlife.com

Government Agencies

MT Environmental Quality Council

P. O. Box 201704
Helena, MT 59620-1704
(406) 444-3742
<http://leg.mt.gov/lepo.asp>

MT Dept. of Fish, Wildlife and Parks

1420 East Sixth Ave.
Helena, MT 59620
(406) 444-2535
www.fwp.mt.gov

Statutory Reference

Specific Montana Statutory References (Montana Code Annotated 2005) can be found at www.data.opi.state.mt.us/bills/mca_toc/index.htm: Montana Environmental Policy Act: Title 75, Chapter 1, Part 1

and several public roads, or from excess industrial traffic, noise, and pollution; or to minimize grizzly bear mortalities.

Examples of areas in which state agencies do not have statutory authority to mitigate health, safety and environmental impacts:

- **Asbestos** - There is no ambient air quality standard at the state or federal level for asbestos or for tremolite asbestos, the type of asbestos found in Libby. Montana Department of Environmental Quality (DEQ) can regulate on-site but not off-site asbestos.
- **Community Traffic and Safety** - Outside of incorporated areas, there is no statute that allows communities to control hours of operation, traffic issues, school safety issues, etc. According to a 2001 memo from John North, chief legal council for DEQ: "DEQ has no authority [to] regulate traffic, school safety, and public road maintenance" for any of its permits.
- **Fish and Wildlife Protection** - There are no statutory protections for wildlife calving areas, spawning areas, winter ranges, sites important for waterfowl protection, or other sensitive wildlife locations. Fish can be protected only indirectly through water quality laws. According to the same memo from John North: "DEQ cannot deny or condition a mine permit to protect wildlife..." The only "conditioning of a permit" DEQ can do for wildlife is to require revegetation of land that is being reclaimed, but it can't require operators to avoid sensitive wildlife areas.

The 2001 Legislature amended the Montana Environmental Protection Act (MEPA) to restrict state agencies from conditioning permits to protect public and environmental health based on information gathered during the environmental review.

Consequently, agencies were forced to grant permits even if they knew communities, fish and wildlife were put in jeopardy. Both the 2003 and 2005 legislatures unfortunately failed to pass measures to restore Montana's ability to condition permits for major industrial projects in order to protect public health and safety, fish and wildlife. In 2005, the bill - SB 281 (Carol Williams, D-Missoula) - fizzled on a tie vote.

Recent Attacks on MEPA

The 2007 Montana Legislature also saw attempts to upend Montana's cornerstone environmental law. House Majority leader Michael Lange (R-Billings) introduced House Bill 405, which defined all energy development as "clean," and exempted projects from the purview of MEPA. Under this bill, regardless of a power plant's emissions of mercury, carbon dioxide and other pollutants, all power production was defined as "clean," with the exception of nuclear power facilities. This bill passed the House, but common-sense ultimately prevailed; HB 405 was voted down in the Senate.

This was not the only attempt to strip the Montana Environmental Policy Act during the 2007 session. Representative Jim Keane (D-Butte) introduced House Bill 610 to render MEPA useless by eliminating public participation and recourse in the decision-making process. HB 610 would have stripped citizens of their

right to sue for violations of MEPA, thus eliminating the incentive for state agencies to thoroughly analyze the impacts of major projects, such as a coalmine. This bill also passed the House, but was defeated in the Senate.

Attacks on MEPA even continued after conclusion of the Legislature. Governor Schweitzer called a 2007 special session to complete a state budget and energy policy. During the special session, Representative Jim Keane, with support from Senator Kelly Gebhardt (R-Roundup) sponsored a motion to gut MEPA, similar to HB 610. Once again, the ill-advised attempt was defeated.

Recommendations for the Future

The 2009 Legislature must restore and continue to protect Montanans' ability to prevent undue harm to our own communities, public health and natural resources when permitting major projects with potentially significant environmental impacts. State agencies must be allowed to use information gathered through an environmental review to make permitting decisions that will protect public health, safety, fish and wildlife. Montanans' have a state constitutional right to a clean and healthy environment. The Montana Environmental Policy Act makes good on this right. MEPA must be upheld and strengthened - not weakened - by those elected to make and oversee state laws.