

Talking Points on DEQ MEPA Reforms

The Montana Environmental Policy Act (MEPA), or “the people’s law,” is a critical component of environmental permitting and public participation in Montana. It is often referred to as a “look before you leap” law, as it requires state agencies to consider – and **affords the public the opportunity to comment on – the environmental, fish and wildlife, economic, social, and cultural impacts of proposed projects (such as air, water, and mining permits) before their approval.**

Any changes to **MEPA must assure that it still explicitly fulfills the government’s obligation to maintain and improve the constitutional right to a clean and healthful environment as well as the public’s constitutional right to know and participate.** In order to preserve the integrity of the MEPA process, and not turn it into a paper exercise, MEPA cannot be rendered into a procedural, voluntary, non-substantive process. There must be repercussions when industry or the government fail to comply with MEPA. Further, as required under the constitution and noted by the court in *Held v. Montana*, the state must have the ability - and, indeed, has the obligation - to deny permits to protect the public from environmental harm such as the harm occurring right now from climate change.

1. Climate change must be robustly considered in the MEPA process. It is causing profound impacts on Montanans’ health, economy and environment, as found by the court in the *Held* decision. In weighing alternatives under MEPA, moving beyond fossil fuels will save Montanans billions of dollars: “Converting from fossil fuel energy to renewable energy would eliminate another \$21 billion in climate costs in 2050 to Montana and the world. Most noticeable to those in Montana, converting to wind, water, and solar energy would reduce annual total energy costs for Montanans from \$9.1 to \$2.8 billion per year, or by \$6.3 billion per year (69.6% savings). The total energy, health, plus climate costs savings, therefore, will be a combined \$29 billion per year (decreasing from \$32 to \$2.8 billion per year), or by 91%.” (*Held*, Finding of Fact # 275)
2. Calls to reform MEPA center around its modernization, in truth MEPA has been “streamlined” and “modernized” more than a dozen times over the last 25 years. The significant changes to MEPA in 2011 resulted in less rigorous analysis and public disclosure, reduced public participation opportunities, and a reduced ability for the public to challenge agency decisions in court. However, **any change to MEPA must stand up to, and conform with, constitutional requirements.** Notably, two of the changes from 2011 have been found to be unconstitutional by Montana courts.
3. **DEQ currently has the tools, knowledge and ability to analyze the climate change impacts associated with projects. Punting this analysis until after the stakeholder process is a stall tactic.** When asked by the court in *Held* whether DEQ could analyze climate impacts in the MEPA process, DEQ stated, “I do believe we could do this kind of analysis, yes.” Now DEQ seems to be saying that it can’t comply with the court decision until its proposed stakeholder group concludes in late 2024, the 2025 legislature weighs in, and the Supreme Court rules. Instead of “kicking the can down the road,” DEQ must comply with the district court decision and analyze climate impacts of proposed projects such as refineries, coal mines, and coal plants, with currently available tools (for example, utilizing the federal government’s social cost of greenhouse gasses (SC-GHG) analysis).
4. A stakeholder group is unnecessary for developing a robust process for DEQ to analyze climate impacts. As the legislature and Governor move to reduce red tape and to eliminate boards and committees, the DEQ seems to be moving in the opposite direction.