

MEPA/NEPA Differences

1. State Action vs. Federal Action

2. Montana Constitution:

(a) Constitutional Provisions:

Preamble: We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

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.

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.

(b) MEPA's Intent:

75-1-102. Intent -- purpose. (1) The 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. 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.

(2) The purpose of parts 1 through 3 of this chapter 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, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) MEPA's Policy vs. NEPA Policy:

MEPA recognizes that "each person is entitled to a healthful environment. To be entitled to a healthful environment implies that each person in the State of Montana has a right or claim to a healthful environment. This entitlement language is absent in NEPA. NEPA only notes that "each person should enjoy a healthful environment.

(4) Scope of MEPA vs. NEPA:

NEPA recognizes "worldwide and long-range character of environmental problems" in order to prevent a "decline in the quality of mankind's world environment." MEPA is silent on global environmental problems and impacts.

(5) Regulatory Impact Analysis: MEPA requires it and NEPA does not.

(6) Project Sponsor Impact on the Environmental Review Process:

MEPA allows project sponsors to request a review of certain agency determinations by a third-party board. For example, disputes over the reasonableness of an alternative selected for analysis, determinations regarding the significance of impacts, general problems with environmental review consultants or agency staff, agency decisions to extend time limits for the preparation of environmental reviews, and disputes over the level of design information requested from the project sponsor may all be taken to an agency oversight board for an advisory opinion.

(7) Scope of Alternatives:

MEPA narrows the scope of alternatives that may be analyzed in an environmental review and includes the comments of the project sponsor in the determination of reasonableness and feasibility. It also requires a review of the beneficial aspects and the economic advantages and disadvantages of a proposed project and a discussion of the beneficial and adverse environmental, social, and economic impacts of a project's noncompletion.

(8) Substantive vs. Procedural:

MEPA states that it may not be used to withhold, deny, or impose conditions on a permit or other authority to act without the concurrence of the project sponsor. NEPA makes no such statement.

(9) Time Frames:

MEPA imposes specific timeframes for the completion of environmental reviews. NEPA rules do not impose limits but state that agencies should adopt rules that establish timeframes for the various elements of the environmental review process. Note that if a state agency is conducting a joint environmental review with a federal agency, the state agency is not bound by the statutory time frames imposed in MEPA.

(10) Mitigated EAs and Agency Statutory Requirements:

When a proposed action may significantly affect the quality of the human environment, both NEPA and MEPA require the agency to prepare an EIS. The MEPA Model Rules define two exceptions that are not authorized by the CEQ regulations. The MEPA Model Rules allow agencies to prepare a generic EA when the proposed action has significant impacts but agency statutory requirements do not allow sufficient time for an agency to prepare an EIS. The MEPA Model Rules also include provisions for the preparation of a mitigated EA.

(11) Significance Criteria:

Public controversy is included in the NEPA significance criteria. It is not apart of the MEPA significance criteria.

(12) EQC v. CEQ