

MONTANA ADMINISTRATIVE RULES and DEPARTMENT OF ENVIRONMENTAL QUALITY GUIDELINES	Title	17
	Chapter	4
	Effective Date	12/18/00
SUBJECT - DEQ MEPA Procedural Rules and Guidelines		

INTRODUCTION

MEPA MODEL RULES

The Montana Environmental Policy Act (MEPA) model administrative rules were drafted in 1976. They were revised in 1980 and 1989. Each state agency (with some exceptions) adopted the MEPA Model Rules through its own rule-making procedures. There may be some differences between the MEPA Model Rules and individual agency administrative MEPA rules. (To learn more about the creation of MEPA, its structure and implementation, reference [A Guide to the Montana Environmental Policy Act](#), by the Legislative Policy Office, June 1998.

DEQ Introduction

MEPA was created in 1971.- Although patterned after the National Environmental Policy Act (NEPA), MEPA is designed to meet Montana's needs. The Environmental Quality Council (EQC) was created by the act and given the responsibility of coordinating and monitoring state policies and activities that affect the quality of the human environment. According to the EQC, MEPA has two central requirements

- < *That agencies must consider the effects of pending decisions on the environment and on people prior to making each decision; and*
- < *Agencies ensure the public is informed and participates in the decision-making process.*

To accomplish the objectives, an agency needs to: (1) ensure other agencies and the public are aware of a proposed development(s), (2) create a broad-based body of knowledge about the existing environment and possible impacts, and (3) promote public participation. All the elements are collectively aimed at giving those responsible for making decisions the best information possible before they act.

The MEPA process fosters informed decisions and wiser actions by ensuring relevant environmental information is available before decisions are made and actions taken, according to the EQC.

Although it is important to know what MEPA is, it is equally important to know what it is not.

- < *MEPA does not guarantee issues associated with proposed developments will be resolved to the satisfaction of all those involved. It is a process, not a decision.*
- < *MEPA is not an act to specifically site facilities.*
- < *MEPA is not a research project.*

The environmental impact statement (EIS) process does not guarantee potential issues will be resolved to the satisfaction of all parties. People, not information, resolve issues. It is possible to go through the process and not resolve all the issues. However, the environmental review does provide an opportunity to begin resolving issues. The ultimate goal for a state agency is to make an informed decision and provide a complete record of the agency's decision-making process.

Some state laws and regulations specifically mention mitigation and provide agencies the authority to take definite steps to lessen impacts. If mitigating measures are outside the legal purview of the agency preparing the MEPA review, mitigation opportunities can be discussed, but the ability to require such measures maybe limited. Where interagency review has occurred, the agency with the legal authority decides whether or not to adopt the specific measure. There are also instances in which mitigation is possible but does not fall within the scope of any government laws or regulations. In these situations applicants have the discretion to decide whether or not to employ mitigating measures.

The rules say agencies are required to consider "...only alternatives that are realistic, technologically available, and that represent a course of action that bears a logical relationship to the proposal being evaluated" (ARM [17.4.603\(2\)\(b\)](#)). The rules also state that agencies shall discuss in an EIS "...reasonable alternatives of no action and other reasonable alternatives that may or may not be within the jurisdiction of the agency, if any..." (ARM [17.4.617\(5\)](#)).

Any discussion of siting ultimately must consider the resource to be developed and what entity has the legal authority to approve the placement of a proposed development. The state does have some specific siting authority for certain facilities under the department's Major Facility Siting Act. The state also would have the authority to site a proposed development on state land. The federal government has the ability to control the placement of proposed developments on its land.

Montana's legislature has given local government the authority to implement land use planning on private property. The means are available for citizens to institute land use planning, or de facto siting of some activities, if the majority chooses to do so. In the absence of local land use planning or local laws, private property owners can generally develop their land any way they choose.

MEPA and its administrative rules do not require agencies to undertake extensive research projects to generate scientific information. Some efforts to gather the most up-to-date data may be more extensive than others, but this generally depends on the issue and the amount of substantive information available on the subject.

Although much of MEPA is focused on gathering the best available scientific and social information, decision-makers must combine this with professional judgement to produce informed decisions. The professional judgement element, or professional discretion, is the 'art' aspect of MEPA.

Decision-makers need to consider MEPA when proposals within the scope of their administrative

responsibility require them to make decisions. These are often referred to as 'state actions.' Such actions can range from granting or renewing an authorization to issuing a permit or a number of permits.

The majority of environmental assessments (EA) are produced within programs, with the department determining at what level the decision will be made. In the Department of Environmental Quality (DEQ), the director is the legally authorized decision-maker for all EAs and EIS, but may delegate that authority to other management personnel. The director will be the decision-maker for EIS level projects.

In DEQ, the process normally begins with a submittal of an application for an authorization or permit(s) from the department. Submittal of an application signals the start of the process. If an applicant consults with the department prior to submittal, that consultation may also be used to initiate MEPA planning.

If the proposal will require an action by the DEQ, consideration about complying with MEPA should begin. If the proposal is accompanied by an application, one immediately begins thinking about whether an EA or EIS is necessary. In the case of large projects with the potential for two or more department actions, the applicants will often ask to discuss the proposal to determine exactly what type of permits and authorizations may be needed. The DEQ also has an obligation to internally assess what permits and authorizations might be required and determine what programs need to be involved in the review.

The EA is an extremely flexible tool. Its use ranges from a checklist that can be filled out and placed in a file to a mitigated EA. If the department is not sure of the public interest and impacts of a proposal, it can use a variety of options, such as scoping, producing and distributing an EA, and holding a public meeting, to identify interest and help focus the impact analysis.

Sometimes a proposal will generate a great deal of public attention prior to the department being contacted. This attention can be either positive or negative. If a decision-maker knows about this public reaction prior to receiving an application, he or she can begin planning for public involvement and preliminarily evaluate the potential significance of potential impacts. When there is doubt, consideration should be given to preparing an expanded EA for public comment to determine, based on the significance of impacts, whether or not an EIS should be prepared.

So how does one decide whether to do a simple checklist EA, a checklist with some aspects discussed in detail, an expanded or mitigated EA that borders on a small EIS, or an EIS?

Choosing the proper format is not easy. Each proposal must be judged on its own merits. The MEPA rules allow decision-makers a wide range of possibilities. A checklist will suffice if there are no issues of public or agency concern related to the proposal. An expanded EA is used to address various concerns when there are likely no significant impacts and no approval of conditions outside the scope of the primary statute. A mitigated EA would be prepared when there are potentially significant impacts, but the levels of significance are reduced through mitigations adopted by the applicant or requested by the department.

The process allows decision-makers to make informed decisions, but does not guarantee they will make a decision or decisions that will please all parties.

17.4.601 POLICY (1)

The purpose of these rules is to implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA), through the establishment of administrative procedures. In order to fulfill the stated policy of that act, the department of environmental quality shall conform to the following rules prior to reaching a final decision on actions covered by MEPA. It must be noted that the act requires that state agencies comply with its terms "to the fullest extent possible." (History: 2-4-201, 2-15-112, MCA; IMP, 75-1-201, MCA; NEW, 1980 MAR p. 88, Eff. 1/18/80; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.601.Q00 [DEQ – Legal MEPA Considerations](#)

17.4.602 STATEMENT POLICY CONCERNING MEPA RULES (1)

The purpose of these rules is to implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA), through the establishment of administrative procedures. MEPA requires that state agencies comply with its terms "to the fullest extent possible." In order to fulfill the stated policy of that act, the agency shall conform to the following rules prior to reaching a final decision on proposed actions covered by MEPA. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.603 DEFINITIONS

(1) "Action" means a project, program or activity directly undertaken by the agency; a project or activity supported through a contract, grant, subsidy, loan or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.

(2)(a) "Alternative" means:

(i) an alternate approach or course of action that would appreciably accomplish the same objectives or results as the proposed action;

(ii) design parameters, mitigation, or controls other than those incorporated into a proposed action by an applicant or by an agency prior to preparation of an EA or draft EIS;

(iii) no action or denial; and

(iv) for agency-initiated actions, a different program or series of activities that would accomplish other objectives or a different use of resources than the proposed program or series of activities.

(b) The agency is required to consider only alternatives that are realistic, technologically available, and that represent a course of action that bears a logical relationship to the proposal being evaluated.

(3) "The agency" means the department of environmental quality and the board of environmental review.

(4) "Applicant" means a person or any other entity who applies to the agency for a grant, loan, subsidy, or other funding assistance, or for a lease, permit, license, certificate, or other entitlement for use or permission to act.

(5) "Categorical exclusion" refers to a type of action which does not individually, collectively, or cumulatively require an EA or EIS, as determined by rulemaking or programmatic review adopted by the agency, unless extraordinary circumstances, as defined by rulemaking or

programmatic review, occur.

(6) "Compensation" means the replacement or provision of substitute resources or environments to offset an impact on the quality of the human environment. The agency may not consider compensation for purposes of determining the significance of impacts (see ARM 17.4.607(4)).

(7) "Cumulative impact" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.

(8) "Emergency actions" include, but are not limited to:

- (a) projects undertaken, carried out, or approved by the agency to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government entity;
- (b) emergency repairs to public service facilities necessary to maintain service; and
- (c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health, safety, welfare, or the environment.

(9) "Environmental assessment" (EA) means a written analysis of a proposed action to determine whether an EIS is required or to serve 1 or more of the other purposes described in ARM 17.4.607(2).

(10) "Environmental impact statement" (EIS) means the detailed written statement required by 75-1-201, MCA, which may take several forms:

- (a) "draft environmental impact statement" means a detailed written statement prepared to the fullest extent possible in accordance with 75-1-201(1)(b)(iii), MCA, and these rules;
- (b) "final environmental impact statement" means a written statement prepared to the fullest extent possible in accordance with 75-1-201, MCA, and ARM 17.4.618 or 17.4.619 and which responds to substantive comments received on the draft environmental impact statement;
- (c) "joint environmental impact statement" means an EIS prepared jointly by more than one agency, either state or federal, when the agencies are involved in the same or a closely related proposed action.

(11) "Environmental quality council" (EQC) means the council established pursuant to Title 75, chapter 1, MCA, and 5-16-101, MCA.

(12) "Human environment" includes, but is not limited to biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment. As the term applies to the agency's determination of whether an EIS is necessary (see ARM 17.4.607(1)), economic and social impacts do not by themselves require an EIS. However, whenever an EIS is prepared, economic and social impacts and their relationship to biological, physical, cultural and aesthetic impacts must be discussed.

(13) "Lead agency" means the state agency that has primary authority for committing the government to a course of action or the agency designated by the governor to supervise the preparation of a joint environmental impact statement or environmental assessment.

(14) "Mitigation" means:

- (a) avoiding an impact by not taking a certain action or parts of an action;
- (b) minimizing impacts by limiting the degree or magnitude of an action and its implementation;
- (c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
or
- (d) reducing or eliminating an impact over time by preservation and maintenance

- (e) operations during the life of an action or the time period thereafter that an impact continues.
- (15) "Programmatic review" means an analysis (EIS or EA) of the impacts on the quality of the human environment of related actions, programs, or policies.
- (16) "Residual impact" means an impact that is not eliminated by mitigation.
- (17) "Scope" means the range of reasonable alternatives, mitigation, issues, and potential impacts to be considered in an environmental assessment or an environmental impact statement.
- (18) "Secondary impact" means a further impact to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.
- (19) "State agency", means an office, commission, committee, board, department, council, division, bureau, or section of the executive branch of state government. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.603.Q00 DEQ Definitions

17.4.603.Q01 "Issue" means a problem that may occur should the proposed action or alternative action be implemented. (also reference *Defining Issues and Determining How to Address Them* (17.4.608(1).Q01), [flow chart](#) and [EQC reference](#))

17.4.603.Q02 "Impact" means any change from the present condition of the environment that may result from a proposed action or an alternative action being implemented. (also reference *Assessing Impacts* (17.4.617(4).Q00), [flow chart](#) and [EQC reference](#))

Rules 17.4.604 through 17.4.606 reserved

17.4.607 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS

Section 75-1-201, MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

17.4.607.Q00 [DEQ Permits and Authorizations Subject to MEPA Reviews](#)

17.4.607.Q01 [Montana Index of Environmental Permits](#), Montana Environmental Quality Council, 1998.

17.4.607(1)

The agency shall prepare an EIS as follows:

- (a) whenever an EA indicates that an EIS is necessary; or
- (b) whenever, based on the criteria in ARM 17.4.608, the proposed action is a major action of state government significantly affecting the quality of the human environment.

17.4.607(1).Q00 DEQ Guidance – Reference DEQ [17.4.607.Q00](#)

17.4.607(2)

An EA may serve any of the following purposes:

- (a) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;
- (b) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;
- (c) to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;
- (d) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and
- (e) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by ARM 17.4.620 to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

17.4.607(2).Q00 *Any Additional DEQ Purposes – Reference DEQ [17.4.607.Q00](#)*

17.4.607(3)

The agency shall prepare an EA whenever:

- (a) the action is not excluded under (5) of this rule and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;
- (b) the action is not excluded under (5) of this rule and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2)(a) and (d) of this rule through a similar planning and decision-making process; or
- (c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

17.4.607(3).Q00 *Other Instances in which the DEQ Shall Prepare an EA - Reference DEQ [17.4.607.Q00](#)*

17.4.607(4)

The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

17.4.607(5)

The agency is not required to prepare an EA or an EIS for the following categories of action:

- (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS;
- (b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;
- (c) minor repairs, operations, or maintenance of existing equipment or facilities;
- (d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;
- (e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
- (f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.607(5).Q00 *The DEQ Will Not Prepare an EA or EIS for the Following Actions:*

17.4.607(5).Q01 *Air and Waste Management Bureau*

17.4.607(5).Q01.00 *AQA*

17.4.607(5).Q01.00.00 *Activities not Reviewed under MEPA:*

- < ***Inspection and Enforcement and Monitoring***
- < ***Fee Calculation and Assessments***
- < ***Title V Permits***
- < ***Open Burning Permits***
- < ***Tax Certification Reviews***
- < ***Asbestos Worker Accreditations***
- < ***Asbestos Abatement Projects***
- < ***Asbestos Sampling***
- < ***Technical Assistance***
- < ***Training Course Reviews, Approvals, Audits***
- < ***Educational Activities***

17.4.607(5).Q01.01 *HWUSTA*

- 17.4.607(5).Q01.01.00 *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement*
 - < *Registration of Transporters and Generators*
- 17.4.607(5).Q02 *Community Services Bureau*
- 17.4.607(5).Q02.00 *SWMA*
- 17.4.607(5).Q02.00.00 *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement*
 - < *Renewals*
 - < *Registration of Landfarms and Composters*
- 17.4.607(5).Q02.01 *PWSA*
- 17.4.607(5).Q02.01.00 *Activities Not Reviewed Under MEPA:*
 - < *Inspection (Sanitary Surveys) and Enforcement, Monitoring, and Emergency Response*
 - < *Biannual testing and W&WW Operator Certification (276 new certifications to 151 operators and 1,339 certificate renewals) - pursuant to the Water Treatment Plant Operators Act*
 - < *Educational Activities*
- 17.4.607(5).Q02.02 *Motor Vehicle Recycling and Disposal Act*
- 17.4.607(5).Q02.02.00 *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement*
 - < *Recycling Contracts*
 - *Grants and Technical Assistance*
 - *License Renewals*
 - < *Financial Audits of County Programs*
- 17.4.607(5).Q03 *Environmental Management Bureau*
- 17.4.607(5).Q03.00 *MFSA*
- 17.4.607(5).Q03.00.00 *Activities Not Reviewed Under MEPA: (based on regulation or prior analysis)*
 - < *Inspection, Enforcement and Monitoring*
 - < *Facilities below the threshold requiring regulation*
 - < *Modifications in facilities which do not result in any material change in impacts or the location of all or a portion of the facility.*
- 17.4.607(5).Q03.01 *MMRA*
- 17.4.607(5).Q03.01.00 *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement and monitoring*
 - < *Small Miners Exclusion*
 - < *Grand Fathered Small Miner Cyanide Exploration Renewals*
 - < *Minor revisions and amendments of <10 acres or resulting in <5% change in permit area - whichever is less.*
- 17.4.607(5).Q04 *Industrial and Energy Minerals Bureau*
- 17.4.607(5).Q04.00 *Strip and Underground Mine Reclamation Act*
- 17.4.607(5).Q04.00.00 *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement*
 - < *Exploration renewals*
 - < *Operating permit renewals*
- 17.4.607(5).Q04.01 *Open Cut Mine Reclamation Act*
- 17.4.607(5).Q04.01.00 *Activities Not Reviewed Under MEPA:*

- < *Inspection and Enforcement*
- < *License Renewals*
- 17.4.607(5).Q04** *Water Protection Bureau*
- 17.4.607(5).Q04.00** *Water Quality Act*
- 17.4.607(5).Q04.00.00** *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement*
 - < *Determinations of nonsignificance*
 - < *Educational activities*
- 17.4.607(5).Q04.01** *Sanitation in Subdivisions*
- 17.4.607(5).Q04.01.00** *Activities Not Reviewed Under MEPA:*
 - < *Inspection and Enforcement*
 - *Determinations of Nonsignificance*

17.4.608 DETERMINING THE SIGNIFICANCE OF IMPACTS

17.4.608(1)

In order to implement 75-1-201, MCA, the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare an EIS and also refers to the agency's evaluation of individual and cumulative impacts in either EAs or EISs. The agency shall consider the following criteria in determining the significance of each impact on the quality of the human environment:

- (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
- (b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
- (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
- (d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;
- (e) the importance to the state and to society of each environmental resource or value that would be affected;
- (f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
- (g) potential conflict with local, state, or federal laws, requirements, or formal plans.

17.4.608(1).Q00 *Other DEQ Guidance for Determining Issues and Significance*

17.4.608(1).Q01 *Defining Issues and Determining How to Address Them*

A variety of issues will be identified as any proposal is reviewed. Issues are concerns about a proposal that may be expressed by the general public, resource professionals, department specialists, decision-makers or project leaders.

DEQ is responsible for identifying all relevant considerations. The failure of the public or another agency to raise the concern in scoping will not relieve the department from its responsibility to consider the concern later if it is raised during a comment period.

Careful review of a proposal is necessary to sort out all the issues. Public, agency and specialist comments, as well as comments from the decision-maker will all be used to develop issues. A clear understanding and development of issues is critical to charting a plan for developing the environmental review.

Typically there will be a variety of comments regarding a proposal. Some of the comments may have enough importance to be considered on their own merit. Other comments may be grouped into more comprehensive issues needing a set of mitigations to resolve.

Once the issues have been sorted and grouped, describe them clearly and specifically. Contact the people who raised the issues to be sure they have been correctly defined. Be as specific as possible. Clear, concise issue statements are essential to an efficient analysis.

A good description of an issue should include:

- < The specific project-related action that would cause the effect to occur;*
- < The specific effect on a resource that would cause a change from the existing condition;*
- < The specific location of the action and the specific location of the effect;*
- < When the action will occur and when the effect will occur;*
- < Cause and effect manner in which the action would cause the effects to occur. Effects could be direct, indirect or cumulative.*

Also see the [A Guide to the Montana Environmental Policy Act](#) (“What is an Issue?,” “How are Issues Identified?,” and “Which Issues are Relevant?.”) for a discussion of issues.

The primary purpose of this comprehensive issue development is to provide a framework for environmental analysis tasks needed to complete the MEPA document.

The issue development work will help clarify the issues and incorporate the completed analysis work into the various chapters of the document. Note that in an EA or EIS, issues should be described so that it is clear this is a concern raised by someone and not a statement that the effect will, in fact, occur. Reserve that conclusion for the analysis or finding.

Issues will fall into two general categories: those that will not be used to develop alternatives for the EA or EIS, and those that will lead to alternatives.

< Issues That Do Not Lead To Alternatives

These issues lack significance in the context of:

- a. There are no remaining unresolved conflicts.*
- b. It is reasonably certain that the understanding of the resources and the impacts is correct. There is little doubt regarding the effectiveness of the proposed mitigation measures.*

- c. *The department is confident that no significant impacts will result through implementation of proposed mitigations.*
- d. *The issues are beyond the scope of the decision (e.g., the effect of a proposed development on the greenhouse effect);*

Some resources, such as cultural resources, endangered species, wetlands, noxious weeds, to name a few, are important or controversial enough that they should not be ignored, even if they have not been raised as issues by the public and would not be affected by the proposed project.

In such cases, the description should be brief, only enough to satisfy the reader that the resource was not ignored and an extended discussion is not necessary.

< *Issues That Lead to Alternatives*

These are substantive issues with potentially significant impacts that can be mitigated.

Issues that will not be used to develop alternatives still require follow-up. Follow-up involves both issue resolution, and documentation.

Issues can be resolved by negotiations, analysis procedures, developing mitigations, applying resource management standards and through decisions made by the project leader and decision-maker. The range, difficulty and complexity of the resolution will determine the amount of documentation (if any) needed to address the issue in an EA or EIS.

If issues are beyond the scope of the DEQ's decision, explain why. This may appear in the document if it is an important concern, or simply have correspondence in the project file.

If an issue is easily resolved through minor alterations of the proposal, all that is necessary would be to include the mitigations in the description of the action alternative.

As the resolution becomes more involved, additional documentation will be needed. Some specialist analysis may be needed to determine significance of effects, and several mitigations may be developed to resolve the issue.

As still more complexity is added in the form of more than one interested person, several facets of one issue, additional analysis, groups of specialists, combinations of mitigations, etc., the documentation will more closely resemble that needed for issues that lead to alternatives. This would include a description of the affected environment, descriptions of analysis methods, tabulation of results, a discussion of environmental effects and any needed mitigation. As a general rule, enough information is needed so the readers can sort out how to resolve the issue - more complicated solutions will naturally need more explanation.

If an understanding cannot be reached regarding how to resolve an issue, the department must decide whether to consider this as an unresolved conflict that must be addressed in the alternatives. If the DEQ understands the issue, and the impacts can be satisfactorily mitigated under the proposed action, then the department does not have to address the issue in its alternatives. If this decision is made, an

explanation needs to be made as to why DEQ is not developing an alternative around this issue

It is important to remember the goals are to address each substantive issue and to make the most informed decisions possible. This does not mean each concerned party gets what it wants. The DEQ must evaluate all issues and use the best information available to address each substantive issue and create appropriate alternatives.

At this point, a determination can be made as to whether to prepare an EIS right away, rather than going through the EA process first. If a decision is made to do an EA, however, the results of that analysis could still result in a determination of significant impacts or identify sufficient uncertainty that would then require the preparation of an EIS. (MEPA Guidelines For Forest Management Activities, Department of Natural Resources and Conservation, Revised November 1996.)

17.4.608(1).Q02 Determining Significance

If there is any doubt whether a review is necessary, consult with a program supervisor or manager and the DEQ Legal Unit. If there ultimately is a doubt, err on the side of caution and do a review.

The two choices of type of review are:

EA--Which either concludes that an EIS is needed, or documents the reasoning why an EIS is not needed. It may be as simple as a checklist or almost as detailed as an EIS.

EIS--Which is prepared whenever an EA, or common sense, leads to the conclusion that a pro-posed action may have "significant" impacts. (17.4.608(1))

If the proposed action does not qualify for categorical exclusion (ARM [17.4.607\(5\)](#)), the next step is to decide whether an EIS is necessary. MEPA requires that an EIS be prepared on any proposed action which may significantly affect the quality of the environment.

"Significance" is a subjective threshold to be determined based on information in the EA. ARM [17.4.608\(1\)](#) provides seven criteria for determining the significance of impacts (including direct, secondary, and cumulative impacts) on the quality of the environment.

An EIS is required if there may be any significant adverse impact even though it appears that the overall effect, on balance, will be beneficial (ARM [17.4.608\(2\)](#)).

If an action may cause significant impacts under any one of the seven criteria, an EIS should be considered. However, it is possible that slight impacts would be expected according to each of several of the criteria with no major impact expected in any one area. In that case, a judgement must be made as to whether the combined effect would be considered significant.

The criteria for determining when an action is "significant" are not intended to be exact. The final decision that results from an EA, as to whether an EIS is required, will always be a matter of informed professional judgement. Some projects will be either so clearly significant, or so clearly insignificant that the decision will be fairly obvious. Part of the purpose of preparing an EA is to document the process of estimating "significance" in those cases that are less obvious.

In cases where the proposed action has obvious effects, the decision to prepare an EIS can be made immediately, without completing an EA. In cases where those criteria indicate that an EIS does not appear to be needed, or where there is substantial doubt as to that need, an EA should be prepared. Once the EA is finished, a final determination should be made as to whether an EIS is needed.

In order to find that the proposed action will not significantly affect the environment, the EA must demonstrate with reasonable certainty that no substantial questions remain as to whether the project may have a significant impact. The EA must demonstrate that all relevant issues have been considered. (MEPA Guidelines For Forest Management Activities, Department of Natural Resources and Conservation, Revised November 1996.)

17.4.608(2)

An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.609 PREPARATION AND CONTENTS OF ENVIRONMENTAL ASSESSMENTS

17.4.609.Q00 [DEQ EA Flow Chart](#)

17.4.609.Q01 Record Keeping When Preparing an EA or EIS

The following will be kept when preparing an EA or EIS:

- < *All written recommendations and directions from departmental managers and all written requests for such recommendations and directions.*
- < *A record of all announcements (legal or press release) for public participation activities, including a copy of the announcement the date of the announcement, the medium or source used to make the announcement (newspaper, magazine, television or radio).*
- < *A record of each major public participation activity should be kept, including the date and location of the activity, names of participants and contributors, purpose of the activity, and summary of accomplishments of the activity (public comments, questions, suggestions and decisions or agreements). Include transcripts or tapes, and written minutes.*
- < *Any work product or other document if it is clear that a) that it was used in the planning and decision-making process or b) that it was circulated externally for comment.*
- < *All transmittal memorandums or letters enclosing or documenting circulation of any of the above products should be kept.*
- < *All decision documents and circulation or mailing lists.*
- < *Draft, final and supplemental EISs, Record of Decision (ROD), EA, decision notice, decision memo and any maps, charts, and summaries made publicly available with these documents.*
- < *Documents referenced in an EA, draft, supplemental or final EIS and ROD. If the references are lengthy, include a copy of the cover and the specific chapter, section or*

page referenced, along with identifying information including the author, title and date. Documents which are not readily available should be included in their entirety.

- *All completed work products, which may or may not be marked as final, including specialist or resource reports, studies, inventories or study plans prepared by the DEQ or other entities.*
- *Electronically stored data used in decisions should be maintained. Include electronically generated data in the planning record either as hard copy or on electronic storage media, such as disks or tapes suitable for producing a hard copy on demand.*
 - < *Forms indicating the location and physical description (title, dimensions, number of pages, color, edition and so forth) of any document not physically included in the planning record due to size, bulk, volume or availability and examples of such documents, if available.*
 - < *A dated copy of all final agreements with tribal governments and state and federal agencies.*
- *Keep final computer runs used in any analysis.*
- *The above records should be retained for an appropriate duration as required by state and DEQ records management policies and by statutes of limitations. The final EA or EIS should be retained in the project file for the life of the project pursuant to the above policies.*

(Shipley Associates, How to Apply the NEPA Process, Franklin Quest Co., Bountiful, UT 1995)

17.4.609.Q02 Public Access to DEQ Information Used to Prepare EAs and EISs

Information used to prepare EAs and EISs is, primarily, public information and available for review by interested persons (2-6-101, et.seq., Montana Codes Annotated [MCA]). This includes access to information provided by contractors.

*Although draft EAs and EISs can be reviewed upon request, they do not reflect official DEQ positions or preferred alternatives until the documents are printed and ready for distribution.
(Legal Unit)*

17.4.609(1)

The agency shall prepare an EA, regardless of its length or the depth of analysis, in a manner which utilizes an interdisciplinary approach. The agency may initiate a process to determine the scope of issues to be addressed in an EA. Whenever the agency elects to initiate this process, it shall follow the procedures contained in ARM 17.4.615.

17.4.609(1).Q00 DEQ Guidance for Determining Scoping Issues

17.4.609(1).Q01 Reference ARM [17.4.615](#)

17.4.609(1).Q02 Scoping for EAs should be in proportion to the level of public interest and involvement. A checklist EA will normally be adequate when:

- < *The proposed action is a simple one.*
- < *The area where the action is proposed is not particularly sensitive.*
- < *It is relatively certain the proposed action will not result in significant environmental*

- impacts.*
- < *Little mitigation is needed to avoid impacts, and such mitigation is relatively simple to apply.*

Examples in which a checklist EA is generally appropriate include:

- < *Licenses for new motor vehicle wrecking yards.*
- < *Storm water plan approvals.*
- < *Subdivision reviews.*
- < *Prospecting for minerals and precious metals.*
- *Permits to install, repair, modify, close or remove underground storage tanks. A more fully developed EA will normally be required for projects where sensitive and complex issues are raised or where public sensitivity is high. In these instances scoping (as discussed in ARM [17.4.615](#)), is an appropriate consideration in defining the important issues to be addressed in the EA.*
- *Plan and specification reviews for public water supplies.*
- *Permit renewals where no substantive changes in plans and conditions have occurred.*

Initial scoping (DEQ 17.4.609 (1).Q02 and ARM [17.4.615](#)) generally determines the range of issues. – You may identify these issues based on public concerns, internal and other agency concerns or DEQ objectives.

The depth of treatment should be that which is necessary to address the issues raised during initial scoping. The depth of treatment you choose should also be based on your evaluation of the proposed action using the criteria listed in ARM [17.4.609\(2\)](#) :

Key elements to keep in mind in determining the appropriate depth and breadth of analysis are:

- < *Failing to address a resource issue that the public or another agency considers important,*
- *Feeling an obligation to write something about a topic whether or not any person, agency, or management personnel indicates that it is an issue, and*
- *Failing to address issues which are always relevant, such as, cultural resources, endangered species, wetlands and noxious weeds.*

(MEPA Guidelines For Forest Management Activities, Department of Natural Resources and Conservation, Revised November 1996.)

17.4.609(2)

For a routine action with limited environmental impact, the contents of an EA may be reflected on a standard checklist format. At the other extreme, whenever an action is one that might normally require an EIS, but effects that otherwise might be deemed significant are mitigated in project design or by controls imposed by the agency, the analysis, format, and content must all be more substantial. The agency shall prepare the evaluations and present the information described in (3) of this rule as applicable and in a level of detail appropriate to the following considerations:

- (a) the complexity of the proposed action;
- (b) the environmental sensitivity of the area affected by the proposed action;

- (c) the degree of uncertainty that the proposed action will have a significant impact on the quality of the human environment;
- (d) the need for and complexity of mitigation required to avoid the presence of significant impacts.

17.4.609(2).Q00 *DEQ Guidance*

17.4.609(2).Q01

If the DEQ's activity is an 'action', as defined in ARM [17.4.603\(1\)](#), and is not excluded from the need for review under ARM [17.4.607](#), then some form of environmental review is required if there is a potential impact from the proposed action on the human environment.

MEPA requires a systematic, interdisciplinary environmental review for planning and decision-making which may impact the human environment. The 'human environment' includes the biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment (Reference ARM [17.4.609\(3\)\(e\)](#)). According to the DEQ MEPA Rules, 'an impact may be adverse, beneficial, or both.' Therefore, if the proposed action potentially impacts the human environment in anyway--either beneficially or adversely--the department must conduct some form of environmental review.

If the proposed action does not qualify for categorical exclusion, the next step is to decide whether an EIS is necessary. MEPA requires that an EIS be prepared on any proposed action which may significantly affect the quality of the environment.

"Significance" is a subjective threshold to be determined based on information in the EA. DEQ MEPA Rule ARM [17.4.608](#) provides the criteria for determining the significance of impacts (including primary, secondary and cumulative impacts) on the quality of the environment.

17.4.609(2).Q02 [DEQ Standard Checklist Format](#)

17.4.609(2).Q03 *Appropriate Documentation*

There is no magic formula for determining the appropriate level of environmental review. This does not mean it is impossible to make certain generalizations or to categorize various classes of state actions according to the level of review that would typically be appropriate.

There are two key factors that most heavily influence the decision as to what form of environmental review is necessary, and it is virtually impossible to apply them except on a case by case basis. First, the agency must appraise the scope/magnitude of the project, program, or action contemplated. Second, the characteristics of the location and resources where the activity would occur must be assessed. The DEQ must consider both of these factors together in determining the relative significance of impacts that the proposed action has on the human environment. The DEQ MEPA Rules further clarify these two factors--detailing specific significance criteria (ARM [17.4.608](#)).

When a proposed action is a major one significantly affecting the quality of the human environment, the department's statutory obligation is clear--an EIS must be prepared.

However, the DEQ MEPA Rules note two exceptions to this general rule. First, if the proposed action has significant impacts but agency statutory authority requirements do not allow sufficient time for an agency to prepare an EIS, then an agency must prepare an EA. Second, if the action is one that might normally require an EIS, but effects that might otherwise be deemed significant can be mitigated below the level of significance through enforceable design or control measures, the DEQ may (at its own discretion) prepare a 'mitigated EA' (ARM 17.4.607(4)).

The department's discretion in choosing to prepare a mitigated EA as opposed to an EIS is limited. The agency will be allowed to prepare a mitigated EA only if it can demonstrate that:

- < All impacts of the proposed action have been accurately identified;*
- < All impacts will be mitigated below the level of significance; and*
- < No significant impact is likely to occur (ARM 17.4.607(4)).*

If it is unclear whether the proposed action may generate significant impacts, then an agency may prepare an EA in order to make a significance determination (ARM 17.4.607 (3)). If the EA determines that the proposed action could have significant impacts, then either an EIS or mitigated EA must be prepared (staff will consult with DEQ management to decide whether to do an EIS or mitigated EA).

If it is clear that the proposed action will not have a significant effect on the human environment, the DEQ program may prepare an EA (ARM 17.4.607 (3)).

The DEQ may prepare a programmatic review to facilitate program efficiency whenever it is contemplating a series of similar actions under its jurisdiction (ARM 17.4.628(1)) and (ARM 17.4.628(2))

Impact significance is the key to determining what form of environmental review is appropriate under the circumstances. Once that initial determination is made, MEPA and the DEQ MEPA Rules clearly delineate which document should be prepared. (Montana Environmental Policy Act Handbook, Montana EQC, 1992)

17.4.609(3)

To the degree required in (2) of this rule, an EA must include:

17.4.609(3)(a)

a description of the proposed action, including maps and graphs;

17.4.609(3)(b)

a description of the benefits and purpose of the proposed action. If the agency prepares a cost/benefit analysis before completion of the EA, the EA must contain the cost/ benefit analysis or a reference to it;

17.4.609(3)(c)

a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction or

environmental review responsibility for the proposed action and the permits, licenses, and other authorizations required;

17.4.609(3)(d)

an evaluation of the impacts, including cumulative and secondary impacts, on the physical environment. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including, where appropriate: terrestrial and aquatic life and habitats; water quality, quantity, and distribution; geology; soil quality, stability, and moisture; vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air and energy;

17.4.609(3)(e)

an evaluation of the impacts, including cumulative and secondary impacts, on the human population in the area to be affected by the proposed action. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including where appropriate, social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; locally adopted environmental plans and goals; and other appropriate social and economic circumstances;

17.4.609(3)(f)

a description and analysis of reasonable alternatives to a proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternative would be implemented;

17.4.609(3)(g)

a listing and appropriate evaluation of mitigation, stipulations, and other controls enforceable by the agency or another government agency;

17.4.609(3)(g).Q00 DEQ Guidance - Impacts to the Applicant's Private Property

The legislature directs the DEQ to prepare a detailed statement on any regulatory impacts to the applicant's private property rights, including whether alternatives that reduce, minimize or eliminate the regulation of private property rights have been analyzed. The analysis in 75-1-201(1)(b)(iv)(D), MCA, need not be prepared if the proposed action does not involve the regulation of the applicant's private property.

17.4.609(3)(h)

a listing of other agencies or groups that have been contacted or have contributed information;

17.4.609(3)(i)

the names of persons responsible for preparation of the EA; and

17.4.609(3)(j)

a finding on the need for an EIS and, if appropriate, an explanation of the reasons for preparing the EA. If an EIS is not required, the EA must describe the reasons the EA is an appropriate level of analysis. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.610 PUBLIC REVIEW OF ENVIRONMENTAL ASSESSMENTS

17.4.610(1)

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors.

17.4.610(2)

An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to the agency. If the document is out-of-print, a copying charge may be levied.

17.4.610(2).Q00 *Various Means for Obtaining a Copy of a DEQ EA*

The MEPA Rules specifically address public review of an EA. The public review process may be viewed as the last opportunity for public comment prior to initiating the action. While it is clear that all EAs are available for public review upon request, the rules also recognize the level of public interest varies with each proposal. Because of that variability, the DEQ MEPA Guidelines direct the agency to adjust its public review process accordingly (DEQ's [Public Notification Procedures](#)).

There are several methods of providing opportunities for public review. DEQ decision-makers can select any or a combination of the following methods:

- < ***All EAs and EISs will be available electronically on the DEQ's home page (www.deq.mt.gov).***
- < ***EAs are available for inspection and copying upon request for an action with limited environmental impact and little public interest.***
- < ***Letters can be sent to interested parties notifying them that the EA is complete and available upon request.***
- < ***The EA can be sent to those who have expressed interest in the project.***
- < ***Prepare news releases for newspapers and broadcast media of general circulation in the***

vicinity of the proposed action, announcing the availability of the EA.

< *Prepare news releases for newspapers and broadcast media of general circulation in the vicinity of the proposed action and, if appropriate, purchase a display advertisement in the newspaper closest to the proposed action, announcing the availability of the EA. If a legal advertisement is required, it can be placed in the display ad.*

• *If it is decided a public meeting or meetings would be helpful in explaining the EA and gathering additional public comments, news releases to newspapers and broadcast media should contain notices of the meeting(s), and if appropriate, make the notice part of a display advertisement in the newspaper(s) closest to the proposed action.*

• *All DEQ news releases will be available on the department's home page (www.deq.mt.gov), as well as in [Montana NewsLinks](#), the state's news release Internet service.*

17.4.610(3)

• The agency is responsible for providing additional opportunities for public review consistent with the seriousness and complexity of the environmental issues associated with a proposed action and the level of public interest. Methods of accomplishing public review include publishing a news release or legal notice to announce the availability of an EA, summarizing its content and soliciting public comment; holding public meetings or hearings; maintaining mailing lists of persons interested in a particular action or type of action and notifying them of the availability of EAs on such actions; and distributing copies of EAs for review and comment.

17.4.610(4)

For an action with limited environmental impact and little public interest, no further public review may be warranted. However, where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by the agency, public involvement must include the opportunity for public comment, a public meeting or hearing, and adequate notice. The agency is responsible for determining appropriate methods to ensure adequate public review on a case by case basis.

17.4.610(4).Q00 Public Involvement for DEQ EAs Ranging from a Checklist to a Mitigated EA

Scoping is generally not required for EAs, however, it is encouraged as an effective means for identifying issues for more involved or mitigated EAs.

In addition to public involvement for mitigated EAs mentioned in the MEPA rules, the DEQ can:

< *Continue to inform interested parties as the project develops and welcoming further response;*

• *Invite interested parties to tour the proposed project, with the applicant's approval;*

• *Create newsletters and other forms of printed informational material;*

< *Invite members of the public to meetings; and*

< *Include members of the public on task forces or planning committees.*

In addition to the DEQ's responsibility to submit quarterly reports of all the EAs completed by the department to the Governor and EQC (ARM [17.4.610\(5\)](#)), the DEQ will send copies of all EAs

to the Governor and EQC as they are produced for their information and review and comment.

There is no set time for circulating EAs. Although review times are discretionary, the standard period of time for a review is 30 days. Requests for extensions are up to the discretion of the decision-maker.

If the review results in the program receiving substantive comments, the comments need to be considered. If they will not affect the proposed decision, a letter should be sent to the interested party explaining the program's assessment of the comment(s) and noting that it did not change the proposed decision. If the substantive comment(s) do change the proposed decision, the program should write an amended EA and send it to all the parties that received the original EA, with a clear understanding of the comments and the rationale for the new decision. If there are no legal time frames involved, the program may want to provide a comment period to review the amended EA.

17.4.610(5)

The agency shall maintain a log of all EAs completed by the agency and shall submit a list of any new EAs completed to the office of the governor and the environmental quality council on a quarterly basis. In addition, the agency shall submit a copy of each completed EA to the EQC.

17.4.610(5).Q00 DEQ's EA Log

The DEQ will submit quarterly reports to the governor and EQC. The reports will be sent on July 1, October 1, January 1 and April 1. Each division will be responsible for submitting the names and dates of the EAs published during the quarter to the Director's Office one week before the transmittal date to the EQC. The information will be compiled into a single document and sent to EQC.

17.4.610(6)

The agency shall consider the substantive comments received in response to an EA and proceed in accordance with one of the following steps, as appropriate:

- (a) determine that an EIS is necessary;
- (b) determine that the EA did not adequately reflect the issues raised by the proposed action and issue a revised document; or

(c) determine that an EIS is not necessary and make a final decision on the proposed action, with appropriate modification resulting from the analysis in the EA and analysis of public comment. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

Rules 17.4.611 through 17.4.614 reserved

17.4.615 DETERMINING THE SCOPE OF AN EIS

17.4.615 (1)

Prior to the preparation of an EIS, the agency shall initiate a process to determine the scope of the EIS.

17.4.615 (2)

To identify the scope of an EIS, the agency shall:

- (a) invite the participation of affected federal, state, and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups;
- (b) identify the issues related to the proposed action that are likely to involve significant impacts and that will be analyzed in depth in the EIS;
- (c) identify the issues that are not likely to involve significant impacts, thereby indicating that unless unanticipated effects are discovered during the preparation of the EIS, the discussion of these issues in the EIS will be limited to a brief presentation of the reasons they will not significantly affect the quality of the human environment; and
- (d) identify those issues that have been adequately addressed by prior environmental review, thereby indicating that the discussion of these issues in the EIS will be limited to a summary and reference to their coverage elsewhere; and
- (e) identify possible alternatives to be considered. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.615(2).Q00 DEQ EIS Scoping Considerations

17.4.615(2).Q01 Reference previous discussions related to scoping: ARM [17.4.608\(1\)](#) and DEQ [17.4.608\(1\).Q00](#), DEQ [17.4.609\(1\).Q00](#) and DEQ [17.4.610\(4\).Q00](#)

17.4.615(2).Q02 Scoping

'Scoping' is done to determine what substantive issues need to be addressed in the EA or EIS. Each proposed action is unique. The proposal will dictate the level and degree of scoping required. As the complexity, number of substantive issues, and number of people and agencies affected increases, the scoping process must in turn be more comprehensive.

The objectives of scoping are to:

- < *Involve the affected public;*
- < *Identify potentially substantive issues;*
- < *Identify issues that are not likely to involve significant impacts;*
- < *Identify existing environmental reviews and other related documents; and*
- < *Identify possible alternatives.*

Sometimes scoping enables the agency to identify serious problems with the proposed action that can be easily resolved by the applicant modifying the proposed plan. This can be an added benefit of the process. An agency may use the results of the scoping to:

- < *Decide what interdisciplinary approach to undertake;*
- < *Identify interested agencies;*
- < *Decide on the proper public involvement strategy;*
- < *Refine issues;*

- < *Guide analysis and documentation;*
- < *Explore preliminary alternatives;*
- < *To encourage the applicant to refine the project design;*
- < *Determine information needs;*
- < *Formulate analysis and decision criteria; and*
- < *Receive public reaction to the proposed action.*

The Council on Environmental Quality, the federal agency responsible for coordinating the implementation of the National Environmental Policy Act, developed a set of guidelines for the scoping process. While they are not legal requirements, they can be useful when designing a scoping process.

- < *Scoping should begin after enough information has been gathered to have a clear idea of what is being proposed. Scoping can occur once the DEQ knows enough about the proposed action to identify most of the affected parties, and to present a coherent proposal and an initial list of environmental impacts and alternatives.*
- < *Assemble a brief summary or fact sheet consisting of a description of the proposal, an initial list of impacts and alternatives, maps, drawings, and any other references that can help the interested public understand what is being proposed.*
- < *There is not established or required procedures for scoping. The process can be accomplished by public meetings, small group meetings, telephone conversations, written comments, or a combination of all four.*
- < *The information pertaining to the proposal will help determine the most appropriate and effective type of public notice.*
- < *The comments derived from the scoping process must be evaluated to determine which are significant and which are not. The environmental review is the DEQ's responsibility. Through scoping, the agency will know what interested participants consider principal areas for study and analysis. The persons preparing the review should be guided by those concerns, or prepare to explain why they do not agree. Every issue that is raised as a priority during scoping should be addressed in some manner in the EIS, either by in-depth analysis, or at least a short explanation showing that the issue was examined, but not considered substantive for one or more reasons. Be sure to use the significance criteria contained in [ARM 17.4.608](#) and [DEQ 17.4.608\(1\).Q00](#).*

*Scoping is valuable in helping direct the environmental review. The depth can range from a few telephone calls for an EA to numerous formal public meetings for an EIS. Regardless of the level of scoping, the process ensures that real problems are identified early and properly studied. (Montana Environmental Policy Act Handbook, *Montana EQC, 1992*).*

17.4.615(2).Q03

Scoping is an ongoing process. If major changes in the proposal occur after initial scoping has taken place, the agency needs to assess the significance of the changes and decide whether additional scoping and analysis are appropriate.

17.4.616 ENVIRONMENTAL IMPACT STATEMENTS--GENERAL REQUIREMENTS

The following apply to the design and preparation of EISs:

- (1) The agency shall prepare EISs that are analytic rather than encyclopedic.
- (2) The agency shall discuss the impacts of a proposed action in a level of detail that is proportionate to their significance. For other than significant issues, an EIS need only include enough discussion to show why more study is not warranted.
- (3) The agency shall prepare with each draft and final EIS a brief summary that is available for distribution separate from the EIS. The summary must describe:
 - (a) the proposed action being evaluated by the EIS, the impacts, and the alternatives;
 - (b) areas of controversy and major conclusions;
 - (c) the tradeoffs among the alternatives; and
 - (d) the agency's preferred alternative, if any.

(History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.616.Q00 [DEQ EIS Flow Chart](#)

17.4.617 PREPARATION AND CONTENTS OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS

If required by these rules, the agency shall prepare a draft environmental impact statement using an interdisciplinary approach and containing the following:

17.4.617(1)

a description of the proposed action, including its purpose and benefits;

17.4.617(1).Q00 DEQ Description of the Proposed Action

The description of the proposed action should include: Name of applicant, proposed action, location, disturbance, duration, land ownership, size/capacity of proposed facility (acres or service connections or etc.) to be disturbed/constructed, reclamation if appropriate, employment, and any specific project proposal information necessary to support impact discussion. Identify any previous analyses being tiered to and concurrent permitting processes.

17.4.617(2)

a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction and a description of their responsibility for the proposed action;

17.4.617(3)

a description of the current environmental conditions in the area affected by the proposed action or alternatives, including maps and charts, whenever appropriate. The description must be no longer than is necessary to understand the effects of the action and alternatives. Data analysis must be commensurate with the importance of the impact with less important material summarized, consolidated, or simply referenced;

17.4.617(4)

a description of the impacts on the quality of the human environment of the proposed action including:

17.4.617(4).Q00 Assessing Impacts

Direct (primary), secondary and cumulative impacts are evaluated. Direct impacts occur at the same time and place as the proposed action. Secondary impacts occur at a later time or distance from the action. Cumulative impacts are impacts which may be minor for a specific project, but when viewed in relation to other past, present and future (under concurrent State agency consideration) projects, collectively may result in significant impacts. Primary and secondary impacts are often analyzed together.

Once issues have been identified (DEQ [17.4.608\(1\).Q01](#)), the assessment of impacts can be completed. A good deal of work should have already been done by the time assessing impacts occurs. Reviewers will have:

- < Identified issues associated with the proposed action;*
- < Identified the important activities that will cause impacts, and quantified their extent for each alternative.*
- < Identified the primary resources that will be affected by these actions;*
- < Developed one or more alternatives.*

When developing an analysis, project personnel must support and quantify the information. This can be done by:

- < The description of the issue will lead to the appropriate focus for any impact.*
- < Impacts should be connected to the activities that cause them.*
- < The resources that will be affected will also help direct the analysis efforts.*
- < The extent of impacts will be different based on how activities vary between alternatives.*

For each issue, work with the appropriate resource specialist to determine the criteria by which to measure the impact. These individuals may be DEQ employees, other state agency persons, or local, federal or hired contract personnel.

The project leader and specialists must also work together to identify the need for additional information, analysis methodologies, depth of analysis, and coordination with other specialists. Assessment of impacts will frequently require written documentation from a specialist. The project leader should inform specialists when they need documentation or references to support their assessment of impacts.

Cumulative Impacts are defined as the collective impacts on the environment of the proposed action when considered in conjunction with other past and present actions that are related to the proposed action by location or generic type (ARM [17.4.603\(7\)](#)). Related future actions must also be considered when these actions are under concurrent consideration by any state agency through environmental analysis or permit processing procedures.

Cumulative effects analyses should be completed for all resources that are raised as issues, and that may be cumulatively affected by a proposed activity. The initial scoping process will help identify resources that may be cumulatively impacted by the proposed activity.

The analysis of cause and effect relationships will rely heavily on available literature, interdisciplinary specialist interaction, and characteristics of the sites. Cite references to the major sources which provide a basis for opinions. Particular emphasis should be placed on identifying specific components of a resource that may be impacted by a specific action.

The cause and effect relationships should be quantified whenever reasonably practical. In some cases, the state of knowledge or the availability of data may limit a person's ability to provide quantitative comparisons. Express these limitations and provide the best qualitative comparisons possible.

In instances where there are opposite scientific or technical opinions, with no clear answers based on the best available information, present both assessments and let the readers draw their own conclusions.

An appropriate cumulative effects analysis will likely be different for each resource being reviewed. The area to be encompassed by the analysis for each resource would be determined through literature review, the interaction of resource specialists, and on-site characteristics.

In assessing cumulative impacts, you must consider relevant past, present and future (under concurrent State agency consideration) activities. Past and present activities should include those within the analysis area regardless of ownership or what person or agency is undertaking those activities. All activities occurring at the time of the analysis and up to the final decision on the project should be included in the analysis.

Activities that would occur after a final decision on the proposed action may also have to be considered in a cumulative effects analysis. An activity must be considered if it is under concurrent consideration by an agency of the State of Montana through pre-impact statement studies, a separate impact statement, or permit processing procedures.

If a new project develops within the proposal area during the MEPA analysis, consideration for the new proposal should be incorporated into the cumulative effects analysis. The difficulty is that often the initial proposal is not detailed enough to provide sufficient information for conducting a meaningful cumulative effects analysis on your current project. In this case, you should follow these procedures for documenting cumulative effects in your project document:

- < state that an initial proposal has been developed;*
- < at the time of the current analysis (provide date), this is what is known about the new project (location, type of action, any other specifics);*
- < there are some generally expected impacts that can be extrapolated from the limited information available at this time and they are....; and*
- < a more detailed cumulative effects analysis will be done in the evaluation of the new project, which will take into account the impacts of your current project.*

For an EA, most of the data generated from the analysis of cumulative effects on each resource and a

listing of pertinent literature references should be incorporated in the project file. Only a summary of the results for each analysis should be incorporated into the environmental assessment. Since an EIS is usually a more detailed document, data and references should be added as an appendix to the EIS. Place emphasis on displaying results in a manner that would most clearly distinguish the differences in effects of each alternative for comparison by the public and decision-maker(s). A narrative discussion of cumulative effects may be effectively supplemented by use of a matrix to provide a brief comparison among alternatives. (MEPA Guidelines For Forest Management Activities, Department of Natural Resources and Conservation, Revised November 1996.)

17.4.617(4)(a) the factors listed in ARM 17.4.609(3)(d) and (e), whenever appropriate;

17.4.617(4)(b) primary, secondary, and cumulative impacts;

17.4.617(4)(b).Q00 DEQ Guidance - Reference DEQ [17.4.617\(4\).Q00](#)

17.4.617(4)(c) potential growth-inducing or growth-inhibiting impacts;

17.4.617(4)(c).Q00 DEQ Guidance - Reference DEQ [17.4.617\(4\).Q00](#)

17.4.617(4)(d) irreversible and irretrievable commitments of environmental resources, including land, air, water and energy;

17.4.617(4)(d).Q00 DEQ Guidance - Reference DEQ [17.4.617\(4\).Q00](#)

17.4.617(4)(e) economic and environmental benefits and costs of the proposed action; and

17.4.617(4)(e).Q00 DEQ Guidance - Reference DEQ [17.4.617\(4\).Q00](#)

17.4.617(4)(f) the relationship between local short-term uses of man's environment and the effect on maintenance and enhancement of the long-term productivity of the environment. When a cost-benefit analysis is prepared by the agency prior to the preparation of the draft EIS, it shall be incorporated by reference in or appended to the EIS;

17.4.617(4)(f).Q00 DEQ Guidance(?) - Reference DEQ [17.4.617\(4\).Q00](#)

17.4.617(5)

an analysis of reasonable alternatives to the proposed action, including the alternative of no action and other reasonable alternatives that may or may not be within the jurisdiction of the agency to implement, if any;

17.4.617(5).Q00 Developing Alternatives

Developing reasonable alternatives provides options to proposed actions which may involve unresolved conflicts to uses of available resources. The MEPA rules require that the agency consider only ". . . alternatives that are realistic, technologically available, and that represent a

course of action that bears a logical relationship to the proposal being evaluated" (ARM [17.4.603\(2\)\(b\)](#)). This means the development of a range of realistic and reasonable alternatives. The decision-maker and the project leader should determine the appropriate alternatives that will address the issues, plus the No Action alternative. If too few alternatives are developed, the result may not be addressing the issues or providing a reasonable range of alternatives for consideration. If too many alternatives are developed, the EA may become an exercise in needless analysis. In an EA, the depth of analysis and alternative development must be appropriate to address the issues associated with a proposal. The MEPA rules define several types of alternatives:

- < *The No Action or denial alternative should always be evaluated* (ARM [17.4.603\(2\)\(a\)\(iii\)](#)).
- < *Identify design alternatives and evaluate effects* (ARM [17.4.603\(2\)\(a\)\(ii\)](#)).

Reviewing a proposal, scoping, and an inter-disciplinary review should reveal issues that will influence the development of alternatives. These issues normally develop as a result of some unresolved conflict concerning a problem associated with an action. Many problems can be eliminated through a revised project plan. Issues involving these resolved problems rarely drive alternative development or are carried through the analysis.

It may not be possible to resolve conflicts associated with some problems. Sometimes, a resolution that will satisfy one side of the conflict will not meet the project objectives or will affect the other side's needs. This type of problem action can develop into an issue requiring alternative development and decision-making to be resolved in ways that have the least environmental effects. Mitigating these issue-producing problems is the basis for alternative development.

Remember that two of the main purposes of an EA are "to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action," and "to determine the need to prepare an EIS through an evaluation and determination of the significance of impacts associated with a proposed action" (ARM [17.4.607\(2\)\(b-c\)](#)). These conditions, stipulations and modifications are normally the basis for avoiding significant impacts and eliminating the need for an EIS. Conditions, stipulations and modifications are grouped under the term mitigations, and generally include the following types of measures:

- < *Avoiding the impact by not taking a certain action or parts of an action.*
- < *Minimizing impacts by limiting the degree or magnitude of the action.*
- < *Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.*
- < *Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.*

Alternatives can be developed by mitigating problems using these steps:

Step 1 *Clearly identify issues, affected resources and problems.*

Review the issues, along with the affected resources associated with those issues, as a first

step toward identifying alternatives. Methods for identifying issues and affected resources have been previously discussed (DEQ [17.4.608\(1\).Q01](#)). Issues and affected resources must be clearly defined so that analysis of effects and alternative development can be done systematically.

Identify and list each problem. Include where and how it would occur in space and time. Categorize the list by issue and resource.

Step 2 Fully develop and describe the No Action alternative.

The No Action alternative should be developed as a baseline to compare the effects of action alternatives.

The description of the No Action alternative is similar to the description of the Affected Environment, because both cases focus on the parts of the environment affected by the issues and problems. The difference between the two descriptions is that the No Action alternative will often include a characterization of management activities, normally not found in the Affected Environment discussion. The No Action alternative is how the current conditions described in the Affected Environment will progress over time, without implementation of the proposed action.

If the existing conditions are understood, the effects of an action can be evaluated as the amount of change from the no action conditions. Where No Action might demonstrate existing habitat conditions and a natural progression of change over time, an action alternative would demonstrate the habitat conditions resulting from some combination of activities in the same habitat for the same time.

No Action usually means continuing present management activities by not doing the proposed project. Under No Action, environmental effects will still occur because the existing environment is not static.

The geographic area discussed under the No Action alternative will vary based on the resource or issue being evaluated. For example, a watershed boundary may be the basis for evaluation of hydrologic resources, while the existing view from a highway or subdivision may be the basis for evaluating aesthetics issues.

An example of how the No Action alternative could be developed for one resource is as follows: A timber sale is proposed that includes 320 acres of clearcuts. What would be the environmental effect on the watershed? An analysis only makes sense if the analyst (and eventually the EA/EIS readers) understand: 1) The issue (if water yield limits are exceeded, sedimentation and channel scouring could result), 2) The baseline for comparison (investigation has shown that the watershed has already had harvesting and 100 more acres will reach the calculated water yield limits), and 3) The problem (320 acres of clearcuts will exceed available water yield increase limits). The No Action alternative would include information about current sedimentation and channel condition, existing and available water yield increase, and the expected watershed recovery process as trees grow. This provides a basis by which to gauge the significance of exceeding the limits, and also allows development of alternatives that propose ways of

avoiding or lessening those impacts.

Step 3 *Develop action alternatives.*

For each identified problem, one or more options for mitigation need to be developed. This process normally takes place in the field when the proposal is being reviewed with resource specialists. Once mitigation options have been developed for all problems, options can be combined to create alternatives.

The resulting alternatives are the framework for the final analysis of impacts. The analysis can focus on the differences between the effects of the various alternatives, and avoid the need for broad brush approaches that cover all resources. This process clearly and systematically ties mitigation to affected resources and forces consideration of the full array of reasonable and available mitigation.

Any alternative actions that the public or resource specialists suggest that are not built into an alternative package fit into a category of "alternatives considered but eliminated from detailed review." These alternative actions should be briefly described in the EA/EIS, along with the rationale for why they were eliminated from detailed consideration.

After the alternatives have been developed, they should be reviewed by the decision-maker. (MEPA Guidelines For Forest Management Activities, Department of Natural Resources and Conservation, Revised November 1996.)

17.4.617(6)

a discussion of mitigation, stipulations, or other controls committed to and enforceable by the agency or other government agency;

17.4.617(6).Q00 *DEQ Guidance - Reference DEQ [17.4.609\(3\)\(g\).Q00](#) regarding the preparation of a detailed statement on any regulatory impacts to private property rights.*

17.4.617(7)

a discussion of any compensation related to impacts stemming from the proposed action;

17.4.617(7).Q00 *DEQ Guidance*

17.4.617(7).Q01 *Reference DEQ [17.4.608\(1\).Q00](#)*

17.4.617(7).Q02 *Reference DEQ [17.4.617\(5\).Q00](#)*

17.4.617(8)

an explanation of the tradeoffs among the reasonable alternatives;

17.4.617(8).Q00 *DEQ Guidance - Reference DEQ **17.4.617(5).Q00***

17.4.617(9)

the agency's preferred alternative, if any, and its reasons for the preference;

17.4.617(9).Q00 *The DEQ will generally choose a preferred alternative. It does reserve the option not to list a preference, but in most cases, identifying a preferred alternative gives those reviewing the EA or EIS an idea of the agency's preliminary conclusions resulting from the analysis and the legal requirements for decision-making.*

17.4.617(10)

a section on consultation and preparation of the draft EIS that includes the following:

17.4.617(10)(a)

the names of those individuals or groups responsible for preparing the draft EIS;

17.4.617(10)(b)

a listing of other agencies, groups, or individuals who were contacted or contributed information; and

17.4.617(10)(c)

a summary list of source materials used in the preparation of the draft EIS;

17.4.617(11)

a summary of the draft EIS as required in ARM 17.4.616; and

17.4.617(12)

other sections that may be required by other statutes in a comprehensive evaluation of the proposed action, or by the National Environmental Policy Act or other federal statutes governing a cooperating federal agency. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.618 ADOPTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT AS FINAL

17.4.618(1)

Depending upon the substantive comments received in response to the draft EIS, the draft statement may suffice. The agency shall determine whether to adopt the draft EIS within 30 days of the close

of the comment period on the draft EIS.

17.4.618(1).Q00 DEQ Guidance - Substantive Comments

MEPA requires the DEQ to consider substantive comments or comments that pertain specifically to issues, as opposed to persons indicating whether or not they like a proposed development. Simply voicing personal opinions for or against an EIS does not substantively add to the base of knowledge.

Testimony from the public hearings and letters are reviewed by department personnel to identify substantive comments. Some comments are similar, but stated differently from author to author.

There are also "points of contention." These are based more on how people feel or think rather than on facts.

17.4.618(2)

In the event the agency determines to adopt the draft EIS, the agency shall notify the governor, the environmental quality council, the applicant, if any, and all commenters of its decision and provide a statement describing its proposed course of action. This notification must be accompanied by a copy of all comments or a summary of a representative sample of comments received in response to the draft statement, together with, at minimum, an explanation of why the issues raised do not warrant the preparation of a final EIS.

17.4.618(3)

The agency shall provide public notice of its decision to adopt the draft EIS as a final EIS.

17.4.618(4)

If the agency decides to adopt the draft EIS as the final EIS, it may make a final decision on the proposed action no sooner than 15 days after complying with (1) through (3) of this rule. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.619 PREPARATION AND CONTENTS OF FINAL ENVIRONMENTAL IMPACT STATEMENT

Except as provided in ARM 17.4.618, a final environmental impact statement must include:

17.4.619(1)

a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;

17.4.619(2)

a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the agency (in all cases, a representative sample of comments must be included);

17.4.619(3)

the agency's responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved;

17.4.619(4)

data, information, and explanations obtained subsequent to circulation of the draft; and

17.4.619(5)

the agency's recommendation, preferred alternative, or proposed decision together with an explanation of the reasons therefor. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.620 TIME LIMITS AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS

17.4.620(1)

Following preparation of a draft EIS, the agency shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, if any, and persons who have requested copies.

17.4.620(1).Q00 DEQ Guidance

17.4.620(1).Q01

Consideration should also be given to sending copies to persons and organizations that have shown interest in the preparation of the draft document; adjacent landowners; local state legislators and interested congressional representatives, and local, state and federal government officials.

17.4.620(1).Q02

Draft and final EISs are available on the DEQ Home Page (www.deq.state.mt.us).

17.4.620(2)

The listed transmittal date to the governor and the EQC must not be earlier than the date that the draft EIS is mailed to other agencies, organizations, and individuals. The agency shall allow 30 days for reply, provided that the agency may extend this period up to an additional 30 days at its discretion or upon application of any person for good cause. When preparing a joint EIS with a federal agency or

agencies, the agency may also extend this period in accordance with time periods specified in regulations that implement the National Environmental Policy Act. However, no extension which is otherwise prohibited by law may be granted.

17.4.620(2).Q00 *Electronic Replies*

Electronic replies (e-mail or fax) will be accepted. Persons should be notified in the EA or EIS cover letter that DEQ accepts comments sent by e-mail and should also be informed that if there is a delay between servers or if a server or fax machine is not functioning properly, electronic replies may not be received prior to the close of the public comment period. Comments must be received by the close of the comment period. Reviewers should be further notified that e-mail replies should be sent in Microsoft Word (through 7.0), WordPerfect (though 6.1) or plain text format.

17.4.620(3)

In cases involving an applicant, after the period for comment on the draft EIS has expired, the agency shall send to the applicant a copy of all written comments that were received. The agency shall advise the applicant that he has a reasonable time to respond in writing to the comments received by the agency on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may waive his right to respond to the comments on the draft EIS.

17.4.620(4)

Following preparation of a final EIS, the agency shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, if any, persons who submitted comments on or received a copy of the draft EIS, and other members of the public upon request.

17.4.620(5)

Except as provided by ARM 17.4.618(4), a final decision must not be made on the proposed action being evaluated in a final EIS until 15 days have expired from the date of transmittal of the final EIS to the governor and EQC. The listed transmittal date to the governor and EQC must not be earlier than the date that the final EIS is mailed to other agencies, organizations, and individuals.

17.4.620(6)

All written comments received on an EIS, including written responses received from the applicant, must be made available to the public upon request.

17.4.620(7)

Until the agency reaches its final decision on the proposed action, no action concerning the proposal may be taken that would:

17.4.620(7)(a) have an adverse environmental impact; or

17.4.620(7)(b) limit the choice of reasonable alternatives, including the no-action alternative.

(History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.621 SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS

17.4.621(1)

The agency shall prepare supplements to either draft or final environmental impact statements whenever:

- 17.4.621(1)(a) the agency or the applicant makes a substantial change in a proposed action;
- 17.4.621(1)(b) there are significant new circumstances, discovered prior to final agency decision, including information bearing on the proposed action or its impacts that change the basis for the decision; or
- 17.4.621(1)(c) following preparation of a draft EIS and prior to completion of a final EIS, the agency determines that there is a need for substantial, additional information to evaluate the impacts of a proposed action or reasonable alternatives.

17.4.621(2)

A supplement must include, but is not limited to, a description of the following:

- 17.4.621(2)(a) an explanation of the need for the supplement;
- 17.4.621(2)(b) the proposed action; and
- 17.4.621(2)(c) any impacts, alternatives or other items required by ARM 17.4.617 for a draft EIS or ARM 17.4.619 for a final EIS that were either not covered in the original statement or that must be revised based on new information or circumstances concerning the proposed action.

17.4.621(3)

The same time periods applicable to draft and final EISs apply to the circulation and review of supplements. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

Rules 17.4.622 through 17.4.624 reserved

17.4.625 ADOPTION OF AN EXISTING EIS

17.4.625(1)

The agency shall adopt as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS that has been previously or is being concurrently prepared pursuant to MEPA or the National Environmental Policy Act if the agency determines:

- 17.4.625(1)(a) that the existing EIS covers an action paralleling or closely related to the action proposed by the agency or the applicant;
- 17.4.625(1)(b) on the basis of its own independent evaluation, that the information contained in the existing EIS has been accurately presented; and
- 17.4.625(1)(c) that the information contained in the existing EIS is applicable to the action currently being considered.

17.4.625(2)

A summary of the existing EIS or the portion adopted and a list of places where the full text is available must be circulated as a part of the EIS and treated as part of the EIS for all purposes, including, if required, preparation of a final EIS.

17.4.625(3)

Adoption of all or part of an existing EIS does not relieve the agency of the duty to comply with ARM 17.4.617.

17.4.625(4)

The same time periods applicable to draft and final EISs apply to the circulation and review of EISs that include material adopted from an existing EIS.

17.4.625(5)

The agency shall take full responsibility for the portions of a previous EIS adopted. If the agency disagrees with certain adopted portions of the previous EIS, it shall specifically discuss the points of disagreement.

17.4.625(6)

No material may be adopted unless it is reasonably available for inspection by interested persons within the time allowed for comment.

17.4.625(7)

Whenever part of an existing EIS or concurrently prepared EIS is adopted, the part adopted must include sufficient material to allow the part adopted to be considered in the context in which it was presented in the original EIS. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

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17.4.626 INTERAGENCY COOPERATION

17.4.626(1)

Whenever it is the lead agency responsible for preparation of an EIS, the agency may:

17.4.626(1)(a) request the participation of other governmental agencies which have special expertise in areas that should be addressed in the EIS;

17.4.626(1)(b) allocate assignments, as appropriate, for the preparation of the EIS among other participating agencies; and

17.4.626(1)(c) coordinate the efforts of all affected agencies.

17.4.626(2)

Whenever participation of the agency is requested by a lead agency, the agency shall make a good-faith effort to participate in the EIS as requested, with its expenses for participation in the EIS paid by the lead agency or other agency collecting the EIS fee if one is collected. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.627 JOINT ENVIRONMENTAL IMPACT STATEMENTS AND EA'S

17.4.627(1)

Whenever the agency and 1 or more other state agencies have jurisdiction over an applicant's proposal or major state actions that individually, collectively, or cumulatively require an EIS and another agency is clearly the lead agency, the agency shall cooperate with the lead agency in the preparation of a joint EIS. Whenever it is clearly the lead agency, the agency shall coordinate the preparation of the EIS as required by this rule. Whenever the agency and 1 or more agencies have jurisdiction over an applicant's proposal or major state actions and lead agency status cannot be resolved, the agency shall request a determination from the governor.

17.4.627(2)

The agency shall cooperate with federal and local agencies in preparing EISs when the jurisdiction of the agency is involved. This cooperation may include, but is not limited to: joint environmental research studies, a joint process to determine the scope of an EIS, joint public hearings, joint EISs, and, whenever appropriate, joint issuance of a record of decision.

17.4.627(3)

Whenever the agency proposes or participates in an action that requires preparation of an EIS under both the National Environmental Policy Act and MEPA, the EIS must be prepared in compliance with both statutes and associated rules and regulations. The agency may, if required by a cooperating federal agency, accede to and follow more stringent requirements, such as additional content or public review periods, but in no case may it accede to less than is provided for in these rules.

17.4.627(4)

The same general provisions for cooperation and joint issuance of documents provided for in this rule in connection with EISs also apply to EAs. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.628 PREPARATION, CONTENT, AND DISTRIBUTION OF A PROGRAMMATIC REVIEW

17.4.628(1)

Whenever the agency is contemplating a series of agency-initiated actions, programs, or policies which in part or in total may constitute a major state action significantly affecting the human environment, it shall prepare a programmatic review discussing the impacts of the series of actions.

17.4.628(2)

The agency may also prepare a programmatic review whenever required by statute, whenever a series of actions under the jurisdiction of the agency warrant such an analysis as determined by the agency, or whenever prepared as a joint effort with a federal agency requiring a programmatic review.

17.4.628(3)

The agency shall determine whether the programmatic review takes the form of an EA or an EIS in accordance with the provisions of ARM 17.4.607 and 17.4.608, unless otherwise provided by statute.

17.4.628(4)

A programmatic review must include, as a minimum, a concise, analytical discussion of alternatives and the cumulative environmental effects of these alternatives on the human environment. In addition programmatic reviews must contain the information specified in ARM 17.4.617 for EISs or ARM 17.4.609 for EAs, as applicable.

17.4.628(5)

The agency shall adhere to the time limits specified for distribution and public comment on EISs or EAs, whichever is applicable.

17.4.628(6)

While work on a programmatic review is in progress, the agency may not take major state actions covered by the program in that interim period unless such action:

17.4.628(6)(a) is part of an ongoing program;

17.4.628(6)(b) is justified independently of the program; or

17.4.628(6)(c) will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program if it tends to determine subsequent development or foreclose reasonable alternatives.

17.4.628(7)

Actions taken under (6) of this rule must be accompanied by an EA or an EIS, if required. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.629 RECORD OF DECISION FOR ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

17.4.629(1)

At the time of its decision concerning a proposed action for which an EIS was prepared, the agency shall prepare a concise public record of decision. The record, which may be integrated into any other documentation of the decision that is prepared by the agency, is a public notice of what the decision is, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

17.4.629(2)

The agency may include in the final EIS, in addition to a statement of its proposed decision, preferred alternative, or recommendation on the proposed action, the other items required by (1) of this rule, and additional explanation as provided for in (3) of this rule. If the final decision and the reasons for that final decision are the same as set forth in the final EIS, the agency may comply with (1) of this rule by preparing a public notice of what the decision is and adopting by reference the information contained in the final EIS that addresses the items required by (1) of this rule. If the final decision or any of the items required by (1) of this rule are different from what was presented in the final EIS, the agency is responsible for preparing a separate record of decision.

17.4.629(3)

There is no prescribed format for a record of decision, except that it must include the items listed in (1) of this rule. The record may include the following items as appropriate:

- 17.4.629(3)(a) brief description of the context of the decision;
- 17.4.629(3)(b) the alternatives considered;
- 17.4.629(3)(c) advantages and disadvantages of the alternatives;
- 17.4.629(3)(d) the alternative or alternatives considered environmentally preferable;
- 17.4.629(3)(e) short and long-term effects of the decision;
- 17.4.629(3)(f) policy considerations that were balanced and considered in making the decision;
- 17.4.629(3)(g) whether all practical means to avoid or minimize environmental harm were adopted, and if not, why not; and
- 17.4.629(3)(h) a summary of implementation plans, including monitoring and enforcement procedures for mitigation, if any.

17.4.629(4)

This rule does not define or affect the statutory decision-making authority of the agency. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

Rules 17.4.630 and 17.4.631 reserved

17.4.632 **EMERGENCIES**

17.4.632(1)

The agency may take or permit action having a significant impact on the quality of the human environment in an emergency situation without preparing an EIS. Within 30 days following initiation of the action, the agency shall notify the governor and the EQC as to the need for the action

and the impacts and results of it. Emergency actions must be limited to those actions immediately necessary to control the impacts of the emergency. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.633 CONFIDENTIALITY

17.4.633(1)

Information declared confidential by state law or by an order of a court must be excluded from an EA and EIS. The agency shall briefly state the general topic of the confidential information excluded. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.634 RESOLUTION OF STATUTORY CONFLICTS

17.4.634(1)

Whenever a conflicting provision of another state law prevents the agency from fully complying with these rules the agency shall notify the governor and the EQC of the nature of the conflict and shall suggest a proposed course of action that will enable the agency to comply to the fullest extent possible with the provisions of MEPA. This notification must be made as soon as practical after the agency recognizes that a conflict exists, and no later than 30 days following such recognition.

17.4.634(2)

The agency has a continuing responsibility to review its programs and activities to evaluate known or anticipated conflicts between these rules and other statutory or regulatory requirements. It shall make such adjustments or recommendations as may be required to ensure maximum compliance with MEPA and these rules. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.635 CONTRACTS AND DISCLOSURE

17.4.635(1)

The agency may contract for preparation of an EIS or portions thereof. Whenever an EIS or portion thereof is prepared by a contractor, the agency shall furnish guidance and participate in the preparation, independently evaluate the statement or portion thereof prior to its approval, and take responsibility for its scope and content.

17.4.635(2)

A person contracting with the agency in the preparation of an EIS must execute a disclosure statement, in affidavit form prepared by the agency, specifying that he has no financial or other interest in the outcome of the proposed action other than a contract with the agency. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.636 PUBLIC HEARINGS

17.4.636(1)

Whenever a public hearing is held on an EIS or an EA, the agency shall issue a news release or legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the hearing. The news release or legal notice must advise the public of the nature of testimony the agency wishes to receive at the hearing. The hearing must be held after the draft EIS has been circulated and prior to preparation of the final EIS. A hearing involving an action for which an EA was prepared must be held after the EA has been circulated and prior to any final agency determinations concerning the proposed action. In cases involving an applicant, the agency shall allow an applicant a reasonable time to respond in writing to comments made at a public hearing, notwithstanding the time limits contained in ARM 17.4.620. The applicant may waive his right to respond to comments made at a hearing.

17.4.636(2)

In addition to the procedure in (1) of this rule, the agency shall take such other steps as are reasonable and appropriate to promote the awareness by interested parties of a scheduled hearing.

17.4.636(3)

The agency shall hold a public hearing whenever requested within 20 days of issuance of the draft EIS by either:

17.4.636(3)(a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;

17.4.636(3)(b) by another agency which has jurisdiction over the action;

17.4.636(3)(c) an association having not less than 25 members who will be directly affected by the proposed action; or

17.4.636(3)(d) the applicant, if any.

17.4.636(4)

In determining whether a sufficient number of persons have requested a hearing as required by (3) of this rule, the agency shall resolve instances of doubt in favor of holding a public hearing.

17.4.636(5)

No person may give testimony at the hearing as a representative of a participating agency. Such a representative may, however, at the discretion of the hearing officer, give a statement regarding his or her agency's authority or procedures and answer questions from the public.

17.4.636(6)

Public meetings may be held in lieu of formal hearings as a means of soliciting public comment on an EIS where no hearing is requested under (3) of this rule. However, the agency shall provide

adequate advance notice of the meeting; and, other than the degree of formality surrounding the proceedings, the objectives of such a meeting are essentially the same as those for a hearing. (History: 2-3-103, 2-4-201, MCA; IMP, 2-3-104, 75-1-201, MCA; NEW, 1989 MAR p. 226, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.701 FEES: DETERMINATION OF AUTHORITY TO IMPOSE

17.4.701(1)

Whenever an application for a lease, permit, contract, license or certificate is expected to result in the agency incurring expenses in excess of \$2,500 to compile an EIS, the applicant is required to pay a fee in an amount the agency reasonably estimates, as set forth in this rule, will be expended to gather information and data necessary to compile an EIS.

17.4.701(2)

The agency shall determine within 30 days after a completed application is filed whether it will be necessary to compile an EIS and assess a fee as prescribed by this rule. If it is determined that an EIS is necessary, the agency shall make a preliminary estimate of its costs. This estimate must include a summary of the data and information needs and the itemized costs of acquiring the data and information, including salaries, equipment costs and any other expense associated with the collection of data and information for the EIS.

17.4.701(3)

Whenever the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than \$2,500, the agency shall notify the applicant that a fee must be paid and submit an itemized preliminary estimate of the cost of acquiring the data and information necessary to compile an EIS. The agency shall also notify the applicant to prepare and submit a notarized and detailed estimate of the cost of the project being reviewed in the EIS within 15 days. In addition, the agency shall request the applicant to describe the data and information available or being prepared by the applicant which can possibly be used in the EIS. The applicant may indicate which of the agency's estimated costs of acquiring data and information for the EIS would be duplicative or excessive. The applicant must be granted, upon request, an extension of the 15-day period for submission of an estimate of the project's cost and a critique of the agency's preliminary EIS data and information accumulation cost assessment. (History: 75-1-202, MCA; IMP, 75-1-202, 75-1-203, 75-1-205 through 75-1-207, MCA; NEW, 1989 MAR p. 398, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.701.Q00 DEQ Guidance

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201. An agency must determine within 30 days after a

completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. No fee may be assessed if an agency intends only to file a negative declaration (sic – now called an EA) stating that the proposed project will not have a significant impact on the human environment.

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

17.4.702 FEES: DETERMINATION OF AMOUNT

17.4.702(1)

After receipt of the applicant's estimated cost of the project and analysis of an agency's preliminary estimate of the cost of acquiring information and data for the EIS, the agency shall notify the applicant within 15 days of the final amount of the fee to be assessed. The fee assessed must be based on the projected cost of acquiring all of the information and data needed for the EIS. If the applicant has gathered or is in the process of gathering information and data that can be used in the EIS, the agency shall only use that portion of the fee that is needed to verify the information and data. Any unused portion of the fee assessed may be returned to the applicant within a reasonable time after the information and data have been collected or the information and data submitted by the applicant have been verified, but in no event later than the deadline specified in these rules. The agency may extend the 15-day period provided for review of the applicant's submittal but not to exceed 45 days if it believes that the project cost estimate submitted is inaccurate or additional information must be obtained to verify the accuracy of the project cost estimate. The fee assessed must not exceed the limitations provided in 75-1-203(2), MCA.

17.4.702(2)

If an applicant believes that the fee assessed is excessive or does not conform to the requirements of this rule or Title 75, chapter 1, part 2, MCA, the applicant may request a hearing pursuant to the contested case provisions of the Montana Administrative Procedure Act. If a hearing is held on the fee assessed as authorized by this subsection, the agency shall proceed with its analysis of the project wherever possible. The fact that a hearing has been requested is not grounds for delaying consideration of an application except to the extent that the portion of the fee in question affects the ability of the department to collect the data and information necessary for the EIS. (History: 75-1-202, MCA; IMP, 75-1-202, 75-1-203, 75-1-205 through 75-1-207, MCA; NEW, 1989 MAR p. 398, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.702.Q00 DEQ Guidance

75-1-203. Fee schedule -- maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of \$2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to \$1 million, plus 1% of any estimated cost over \$1 million and up to \$20 million, plus 1/2 of 1% of any estimated cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million and up to \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

17.4.703 USE OF FEE

17.4.703(1)

The fee assessed hereunder may only be used to gather data and information necessary to compile an EIS. No fee may be assessed if an agency intends only to compile an EA or a programmatic review. If a department collects a fee and later determines that additional data and information must be collected or that data and information supplied by the applicant and relied upon by the agency are inaccurate or invalid, an additional fee may be assessed under the procedures outlined in these rules if the maximum fee has not been collected.

17.4.703(2)

Whenever the agency has completed work on the EIS, it shall submit to the applicant a complete accounting of how any fee was expended. If the money expended is less than the fee collected, the remainder of the fee shall be refunded to the applicant without interest within 45 days after work has been completed on the final EIS. (History: 75-1-202, MCA; IMP, 75-1-202, 75-2-203, 75-1-205 through 75-1-207, MCA; NEW, 1989 MAR p. 398, Eff. 1/27/89; TRANS, from DHES, 1996 MAR p. 1497.)

17.4.703.Q00 DEQ Guidance

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state special revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

Rules 17.4.704 through 17.4.719 reserved

17.4.720 FEE ASSESSMENT CATEGORIES: GENERAL REQUIREMENT

17.4.720(1)

The overall estimated cost of a project submitted by the applicant, as required by this rule shall include an itemized list of related costs showing the various component cost breakdown and how the costs were calculated for each component category. If any of the categories listed are not applicable it shall be so noted and explained if necessary. The list of categories is not exclusive but is intended as a basic guide. (History: 75-1-202, MCA; IMP, 75-1-202, MCA; NEW, Eff. 4/15/76; TRANS, from DSL, 1996 MAR p. 1497.)

17.4.720.Q00 *DEQ Guidance* - [Specific Code and Rule Language](#)

17.4.721 FEE ASSESSMENT CATEGORIES: HARD ROCK The Hard Rock Act fee assessment categories are as follows:

17.4.721(1)

Exploration related categories, include, but are not limited to: access rights; land acquisition; application information and preparation; bonding; license fees; resource data inventories; professional services and evaluations; prospecting facilities and construction; equipment; associated disturbance including road construction and renovations; blasting; core drilling; removal and deposition of overburden or other materials; mineral extraction and haulage; water and erosion control measures; and all other exploration activities.

17.4.721(2)

Reclamation related categories, include, but are not limited to: equipment; topsoil and spoil handling; backfilling; regrading; revegetation activities; water and erosion control measures; bulkheads and safety features; and all other reclamation activities.

17.4.721(3)

Contingency costs associated with the project, include but are not limited to the categories listed below: salaries, wages, insurance, fringe benefits, retainers, rents, premiums and all other costs associated with the project.

17.4.721(4)

Mining related activities, include but are not limited to: access rights; land acquisition; application information and preparation; permit fee; bonding; resource data inventories; professional services and evaluations; mining facilities and equipment; blasting; removal and deposition of overburden mine wastes or other materials; associated disturbances including road construction and renovations, leach dumps, conveyor systems, mineral excavation and haulage; water and air pollution controls and all other mining activities. (History: 75-1-202, MCA; IMP, 75-1-202, MCA; NEW, Eff. 4/15/76; TRANS, from DSL, 1996 MAR p. 1497.)

17.4.721.Q00 DEQ Guidance - Metal Mine Licensing Act Language

82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

17.4.722 FEE ASSESSMENT CATEGORIES: OPEN CUT The Open Cut Mining Act categories are as follows:

17.4.722(1)

Costs associated with mining, include but are not limited to: pre-mining activities; access rights; land acquisition; application information and preparation; contract fees; resource data inventories; professional services and evaluations; bonding; equipment; road construction and renovation; core drilling; blasting; removal and deposition of overburden and other materials; mineral extraction and haulage and all other mining activities.

17.4.722(2)

Costs associated with reclamation, include but are not limited to: equipment; topsoil salvage, haulage and redistribution; problem spoil or waste handling procedures; backfilling; regrading; revegetation activities; erosion control measures and all other reclamation activities.

17.4.722(3)

Contingency costs associated with the project, include but are not limited to: salaries; wages; fringe benefits; insurance; retainers; rents; premiums and all other costs associated with the project. (History: 75-1-202, MCA; IMP, 75-1-202, MCA; NEW, Eff. 4/15/76; TRANS, from DSL, 1996 MAR p. 1497.)

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17.4.723 FEE ASSESSMENT CATEGORIES: STRIP AND UNDERGROUND MINE SITING

The Strip and Underground Mine Siting Act categories are as follows:

17.4.723(1)

Costs associated with the siting of facilities include but are not limited to: land acquisition; construction and other disturbance activities; blasting; equipment; all facilities, railroad loops and spurs; road construction and renovation; power and transmission lines; resource data inventories covering the proposed mining acreage for the life of the operation; erection of equipment; professional services and evaluations; application information and preparation; permit fee; bonding; waste disposal areas; treatment ponds; water and pollution control measures and all other cost categories related to facility siting projects.

17.4.723(2)

Costs associated with dismantling and removal of facilities and reclamation of all disturbances shall be identified and itemized. The categories include but are not limited to: facility removal activities; necessary equipment; topsoil salvage storage, haulage, and redistribution; problem material burial; waste disposal areas; backfilling; regrading; water and pollution control measures; revegetation activities; testing and monitoring for bond release; and all other facility and associated disturbance reclamation activities.

17.4.723(3)

Contingency costs associated with the project, include but are not limited to: salaries; wages; fringe benefits; insurance; rents; premiums; retainers; and all other costs associated with the project. (History: 75-1-202, MCA; IMP, 75-1-202, MCA; NEW, Eff. 4/15/76; TRANS, from DSL, 1996 MAR p. 1497.)

17.4.724 FEE ASSESSMENT CATEGORIES: STRIP AND UNDERGROUND MINE RECLAMATION

The Strip and Underground Mine Reclamation Act categories are as follows:

17.4.724(1)

Prospecting categories, include, but are not limited to: access rights; land acquisition; application information and preparation; bonding; license fees; resource data inventories; professional services and evaluations; equipment; all disturbances including road construction and renovations; core drilling; blasting; removal and deposition of overburden and other materials; mineral extraction and haulage; water and pollution control measures; and all other prospecting activities.

17.4.724(2)

Costs associated with prospecting reclamation, include, but are not limited to: equipment; topsoil salvage, haulage and redistribution; problem spoil; cuttings or waste handling procedures; backfilling; regrading; core hole plugging; sealing of artesian wells or other aquifers; subsidence controls; water and pollution control measures; revegetation activities and all other reclamation activities.

17.4.724(3)

Contingency costs associated with the prospecting project include but are not limited to: salaries; wages; fringe benefits; insurance; rents; premiums; retainers; and all other costs associated with the project.

17.4.724(4)

Costs associated with facility construction, include, but are not limited to: land acquisition; construction and other disturbance activities; blasting; equipment; all facilities, railroad loops and spurs; road construction and renovation; power and transmission lines; resource data inventories on the proposed facility; professional services and evaluations; application information and preparation; erection sites; waste disposal areas; treatment ponds; water and pollution control measures; and other facility related component costs.

17.4.724(5)

Costs associated with mining include but are not limited to: land acquisition; application information and preparation; permit fee; bonding; resource data inventories covering the future mining acreage; professional services and evaluations; equipment; road construction and renovation; waste disposal areas; treatment ponds; water and erosion control measures; blasting; overburden removal and deposition; mineral extraction, haulage, and further processing prior to shipment; and all other mining related activities.

17.4.724(6)

Costs associated with mining reclamation include but are not limited to: equipment; topsoil salvage; haulage and redistribution; problem soil; spoil and debris burial; treatment procedures; highwall reduction; backfilling and subsidence controls; regrading; revegetation activities; water and erosion control measures; post mining spoil, vegetation, and wildlife testing and monitoring for bond release; dismantling and removal of facilities; and all other costs associated with reclamation of facility site and mining disturbance.

17.4.724(7)

Contingency costs associated with the mining project include but are not limited to: salaries; wages; fringe benefits; insurance; rents; premiums; retainers; and all other costs associated with the project.

17.4.724(8)

Coal conservation costs are any additional costs to the mining project incurred because of the coal conservation requirements shall be submitted by the applicant. The various costs should be broken down and itemized under the various categories. All categories, including but not limited to those listed below, should be addressed. The categories are: mining of additional seams; removal of pit wedges; change in mining plans and all other related coal conservation categories. (History: 75-1-202, MCA; IMP, 75 -1-202, MCA; NEW, Eff. 4/15/76; TRANS, from DSL, 1996 MAR p. 1497.)

17.4.725 DEPARTMENTAL ASSISTANCE TO APPLICANTS

17.4.725(1)

The department will make every effort to assist the applicant in preparing an estimated cost of a project. Furthermore, the department will make appropriate personnel available to the applicant to discuss the department's estimated cost of compiling the information and data necessary for the EIS. After a fee has been collected and work on the compilation of data and information necessary for the EIS is begun, it is the intention of the department to return all unused or unneeded portions of the fee as promptly as possible. (History: 75-1-202, MCA; IMP, 75-1-202, MCA; NEW, Eff. 4/15/76; TRANS, from DSL, 1996 MAR p. 1497.)