

**MEPA Workgroup: Process and Applicability Subcommittee:  
Session 2**

March 11, 2024 / 1:00 pm – 4:00 pm

Join via Zoom:

[https://mt-gov.zoom.us/j/87547372126?  
pwd=UFE5TzhLMmpQakg4NExyVXNkaEJxQT09](https://mt-gov.zoom.us/j/87547372126?pwd=UFE5TzhLMmpQakg4NExyVXNkaEJxQT09)

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**Agenda:**

**1:00 p.m. Welcome, Introductions and Outline of Immediate Tasks**

*(Co-chairs Darryl James and Krista Lee Evans)*

**Intended Work Product:**

With an eye towards providing more ***clarity, consistency, predictability and transparency*** in the application and defensibility of the MEPA process, provide:

- A clear and concise problem statement regarding MEPA Process and Applicability as employed by DEQ, and
- Preliminary solutions and/or next steps for further discussion and analysis

**Framework for Discussion:**

- Review and confirm previous findings
- Review existing regulatory structure and identify potential problems
- Review applicable caselaw to identify possible disconnects between legislative intent and judicial interpretation
- Identify potential solutions and/or need for further analysis

**1:20 p.m. Review Core Intent of MEPA**

*Review and confirmation of previous findings*

- At its core, MEPA is a ***procedural statute*** intended by the Legislature to foster more informed decision-making on state actions involving potential social economic and environmental impacts. MEPA is procedural – not substantive – and provides for disclosure without dictating outcomes.

Review existing regulatory structure

- Constitutional provisions
- Statutory provisions
- Rules

Review applicable caselaw

- Overview of MEPA and NEPA litigation history to understand interpretation challenges.

Discussion to identify next steps / potential solutions

- Is there a need to further clarify the procedural nature of MEPA? If so, what would that clarification look like?
- How do we harmonize substantive permitting statutes with the procedural social, economic and environmental review required under MEPA, both of which are intended to support the rights and responsibilities outlined in the Constitution?

**2:00 p.m. Review structural inconsistencies between stated Rule/Statute, Definitions, Legal Interpretations**

Review and confirmation of previous findings

- Some **definitions** of terms are inconsistent.
- There are **discrepancies between regulatory review timeframes** required under MEPA and under individual permits.

Review existing regulatory structure

- Rules
- Guidance documents

Review applicable caselaw

- Overview of MEPA and NEPA litigation history to understand any real or perceived structural inconsistencies.

Identify next steps / potential solutions

- Do MEPA timelines and individual permitting timelines allow for proper implementation of both requirements?
- Is there a need to further clarify the scope of MEPA and the dominance of permitting timelines?
- Are there other ambiguities/inconsistencies between statute and rule that should be addressed?
- Are MEPA “definitions” a challenge? Should updated definitions be reviewed and provided for:
  - Significance
  - Primary, Secondary, Indirect and Cumulative Impacts
  - Others

**2:40 p.m. Break**

**2:50 p.m. Review procedural execution of the MEPA Process**

Review and confirmation of previous findings

- **Existing statute and rule** provide opportunities and direction for the preparation of an EA, EIS, programmatic review, and categorical exclusion under specific circumstances.
- Applicants, NGO's and the general public often **struggle with understanding the rationale** for determining what level of environmental review (Cat Ex, EA or EIS) is appropriate.

Review existing regulatory structure

- Brief overview of Programmatic Reviews used at DEQ – specific criteria on why and how, and when updates are necessary.
- When is a statutory categorical exclusion appropriate?
- When is a “checklist EA” appropriate?
- When is an EIS clearly required?

Review applicable caselaw

- Are there consistent and defensible triggering mechanisms and supporting case law for determining what level of environmental review is required?

Identify next steps / potential solutions

- What changes could be made to clarify and provide for more consistency in the procedural implementation and application of MEPA across state government?
- What opportunities are there for more transparency to the public, applicants, and stakeholders in the MEPA process?
- Are changes needed in statute, rule, or guidance to address either general confusion or specific judicial findings?
- Should the subgroup take a deeper dive into the different levels of MEPA analysis and provide clarification?
- What changes could be made to clarify and provide for more consistent interpretation and application of MEPA?

**3:30 p.m. Public Comment**

**3:50 p.m. Next Steps**

- Review framework provided by DEQ for report format
- Assign any follow-up tasks and research needs

**4:00 p.m. Adjourn**

*Scan QR code with your phone's camera to access meeting materials on DEQ's website.*

