HB 483
Deregulating Public Involvement in the Permitting Process

HB 483 has one purpose – and that is to place roadblocks in front of the public when it tries to protect itself and its right to a clean and healthful environment. In a nutshell the bill:

- Prohibits the public (but not the company) from raising an issues during an appeal that it did not raise during the public comment period – even if DEQ changed the permit after the public comment period
- Allows BER and district court to impose bonds on the public for appealing a permit
- Could potentially limit the ability or organizations, like MEIC, from filing an appeal
- Allows DEQ to perpetually extend air permits regardless of the availability of new technology
- Only requires the permit applicant to comply with the laws that exist when it applies for a permit (except for federal law changes). Any change in state law resulting from court decisions, laws, and rules do not have to be considered if they occur after the permit is applied for but before the permit is issued
- Shortens the timeframe for filing appeals from 30 days to 15 days
- Makes it more difficult for a court to overturn a permitting decision by DEQ

More specifically, the problems with HB 483 include the following:

- Prohibits the public from being able to challenge any changes that DEQ makes in an air permit or energy project approval, if the public did not raise the issue during the public comment period. This could seriously limit the public's ability to protect itself. If DEQ issues a draft air permit that has adequate pollution emissions limits and monitoring requirements but then decides to weaken the emission limit or monitoring requirement in the final permit, the public would be prohibited from appealing that change because they failed to comment on it during the public comment period. The same prohibition does not apply to company's challenging their own permits. If a company challenges its own permit, it is allowed to raise any issue it wants whether it raised it during the public comment period or not.

- Makes it harder for citizens to challenge State agency decisions on air pollution permits by forcing them to meet a much higher standard of review. Currently the Board of Environmental Review cannot overturn a DEQ permitting decision unless the public proves by a "preponderance of evidence" that DEQ made a mistake. This bill would raise that standard to "clear and convincing evidence" – a much more difficult standard for the public to meet.

- Limits who can legally challenge permits. Currently, a person or organization challenging a permit must prove that it has standing to sue by showing that the permit will impact its rights. This bill limits who is able to challenge a permit by creating a new, undefined standard. This unclear language will provide companies seeking permits to pollute another opportunity to argue that particular citizens or organizations do not have a right to appeal.

- Shortens the time for the public to file appeals from 4 weeks to 2 weeks. Two weeks is simply not enough time for the public to thoroughly review a final permit and submit a document that details every technical and legal concern the public has with a permit.

- Allows the Board of Environmental Review to decide whether a member of the public has to post a bond to challenge an air or water quality permit. This bill could allow a politically appointed board or an elected judge in the county where the facility is proposed, to require the member of the public challenging a permit to post a bond for costs and damages that the facility may incur because of the delay. This could prevent members of the public with meritorious claims from challenging a permit because that person cannot afford to post a bond to protect their health.

- Allows a company to hold on to an air pollution permit indefinitely regardless of innovations in pollution control technology because DEQ will be allowed to continually extend a permit deadline. Currently permits have deadlines to make sure a company is building a facility with the most current pollution control technology. This bill would allow DEQ to indefinitely extend deadlines, thereby allowing companies to hold on to permits for many years and eventually build a facility using out-of-date technology.

- Forces the BER to issue decisions on permit appeals in 5 months regardless of the complexity of the case. This bill would make it even harder for the BER to meet this new timeframe because a good portion of time will now be spent arguing over whether a member of the public still has standing to appeal and whether they must now post a bond when they appeal. Furthermore, it will be nearly impossible for the parties to comply with this expedited timeframe in complex cases and still allow for discovery, depositions, motions, a hearing with expert witnesses and the board to issue findings of fact and conclusions of law. The BER is a 7 member, volunteer board that meets once every 60 days. This bill requires that board to make a decision on a complex issue in about 3 meetings and still conduct its normal business of considering and adopting rules and hearing other appeals.

THE FACTS ABOUT PERMITTING AND APPEALS

Finally, this bill is simply unnecessary. The facts do NOT justify such a gross rollback of public health and environmental protections:

- Last fiscal year DEQ issued 589 air pollution permits, 808 water pollution permits, and 2,219 solid and hazardous waste permits. Out of 3,616 permits, three were appealed. ALL three appeals were by the applicant for the permit.

- Montana has the fastest air permitting process in the nation. In the last three years DEQ issued 1,210 air pollution permits. Six were appealed – 3 by the permit applicant and three by the public.

- In the last three years, DEQ issued 3,063 water quality permits. Last year only one of the 808 permits was appealed. In the two years prior, six water permits appealed, all by applicants. Citizens have not appealed one water quality permit in 3 years!

DEQ has issued 4,273 air and water permits in the last three years. Of the 12 that were appealed, nine were appealed by the permittee, and three by the public.

Provided by the Montana Environmental Information Center.
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