

## **SB 387**

# **Gutting Environmental Laws and Undermining Public Participation**

SB 387, sponsored by Sen. Keith Bales, (R-Otter), would significantly undermine Montana's air permitting process and its Major Facility Siting Act. This bill would effectively eliminate the ability of the public to challenge agency decisions on permits for "energy development projects." Energy development projects are broadly defined to include everything even remotely related to energy development (with the exception of nuclear facilities).

This bill would essentially eliminate public oversight of Department of Environmental Quality (DEQ) decisions on air permits and Major Facility Siting Act certificates. DEQ would only be accountable to the company requesting the permit, because only the company would be able to effectively challenge a permitting decision by DEQ. That would give companies increased leverage over DEQ's permitting decisions, while barring the public from protecting its health, property and the environment.

Here's what HB 483 does:

- Requires a member of the public who appeals a permit to post a bond for potential costs and damages incurred by the applicant. Consequently only people with significant financial resources will be able to appeal an air permit issued by DEQ, no matter how poor the permit. This would have a chilling effect on the public's right to protect itself, is likely to be unconstitutional, and would favor developers at the expense of the public.
- Says that DEQ's air permitting decision must be given deference and can only be overturned if there is "clear and convincing evidence." This would be a nearly impossible standard to meet.
- Prohibit the public from providing any evidence or information to the Board of Environmental Review or court during an appeal if that exact same information was not first presented during the public comment period on the permit. However, if a company appeals its permit, it is allowed to provide new evidence and information during the appeal. This provision will effectively end public participation.

For an air pollution permit, the public would only have 2- 4 weeks to:

- review the draft permit,
- analyze the company's application, and DEQ's analysis and draft permit,
- hire experts (usually at a cost of tens of thousands of dollars for each type of pollutant emitted by the facility),
- submit expert reports on pollution control technologies, and
- predict whether DEQ might make any changes between the draft permit and the final permit, and provide expert testimony on all potential changes that might be made in the final permit, because even if DEQ completely rewrote the final permit, unless the public submitted expert testimony on those changes it could not appeal based on the new provisions.

- Forces the BER to make a decision on an air permit or MFSA certificate within 120 days (unless the company agrees to an extension). In complex permitting decisions, this is grossly insufficient time for a contested case hearing (trial) on issues that require discovery, interrogatories, motions, hearings, and the BER to issue findings of facts and conclusions of law, especially when the BER, a volunteer board, only meets once every other month.
- Shortens the timeframe to file an appeal of an air pollution permit from 30 to 15 days.
- Allows the company to decide, if it appeals, whether the BER or the district court will hear the case. The public does not get this same choice.
- Allows DEQ to repeatedly waive for one year any “commencement of construction” requirement air permit. In other words, DEQ can allow companies to hold on to their air permits indefinitely regardless of whether there may be new technologies available to better control air pollution. This directly conflicts with federal law.

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 those 3,616 permits only three were appealed. ALL three appeals were initiated 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. Only six of those permits were appealed – 3 by the permit applicant and three by the public.
- In the last three years, DEQ has issued 3,063 water quality permits. Last year only one of the 808 permits that were issued was appealed. In the two years prior there were only six water permits appealed, all by applicants, not by citizens. Citizens have not appealed one water quality permit in 3 years!

Provided by the Montana Environmental Information Center.  
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