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Two Pivotal Montana Supreme Court Decisions Impact Industry

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On Friday, January 3, 2025, the Montana Supreme Court issued a decision in *MEIC v. DEQ (Laurel Generating Station)*, its second major decision on the Montana Environmental Policy Act (MEPA) in the last few weeks that affects permitting of energy projects in Montana. The *Laurel Generating Station* case provides Montana businesses with more insight into the practical application of the Court's first decision in *Held v. State*, issued on December 18, 2024.

The Held Decision

This case was brought by youth Plaintiffs against the State and several agencies. The Plaintiffs sought wide-ranging relief, much of which the Court rejected. The Court found that:

1. Montana Constitution's “right to clean and helpful environment and environmental life support system includes a stable climate system…”;
2. Plaintiffs had standing to bring the lawsuit even though there was not a particular project or permit at issue in the case; and
3. Montana statutes prohibiting the State from considering greenhouse gas emissions (GHGs) in a MEPA analysis violate the Montana Constitution.

These three holdings mean that:

1. A project that significantly impacts climate will require a full Environmental Impact Statement (EIS), rather than a smaller Environmental Assessment (EA). EIS's require considerable investment of time and money, which impact a project's timeline and budget.
2. It will be easier for Plaintiffs to bring cases against industry projects, particularly those involving fossil fuels; and
3. State agencies must now include a GHG analysis in EAs and EISs. While here the Court did not provide guidance about the level of detail required in an analysis, additional direction is revealed in its *Lauren Generating Station decision,* but we do not know how detailed that analysis must be.

The Laurel Generating Station Decision

This case questioned the sufficiency of an EA that DEQ performed on an air quality permit for a 175-megawatt natural gas power plant. Unlike *Held*, this was a specific project, with a specific EA, and the first practical application of *Held*. The Court found that DEQ was required to conduct a

GHG analysis for this project but put some important sideboards on *Held*.

First, the Court stated, “We did not hold in *Held*, and do not hold here, that DEQ is required to analyze GHG emissions for every potential state action.” This is a very important distinction, as it means that smaller projects (like gravel pits) probably will not be constitutionally required to analyze GHGs in their EAs.

Second, the Court noted some specific facts that it relied on to determine a GHG was required in this case, which we can use to help predict when a GHG analysis will be required in future cases. The Court highlighted that this case “**undisputedly** involves a **significant amount of CO2e emissions**… from a **fossil fuel** [source] and generated **hundreds of public concerns** regarding potential impacts **from those emissions**.” These six facts directly connected this project to climate change. Although the Court will not demand these exact facts in all cases where a GHG analysis is required, it provides some level of reassurance to industry that there will need to be a connection between the project and GHG emissions.

The Court also held that, because the case was brought under MEPA and not the Clean Air Act,“[n]or do we hold that DEQ must regulate GHG emissions in an air quality permit application.” There was concern that this case could have shoehorned in, through MEPA, a requirement that DEQ adopt GHG emission standards, but it did not. The Court also reiterated that “MEPA does not confer regulatory authority beyond what is explicitly provided for in an existing statute.” This is an important reminder that MEPA is purely procedural. The Court also did not require that the permit be vacated while DEQ completes a new MEPA analysis.

Unfortunately for industry, the Court did hold that when a GHG analysis is required, “MEPA requires DEQ to analyze the direct, secondary, and cumulative impacts of this permitted action.” This means that going forward, when a GHG analysis is required, it will likely have a wide scope. However, there is modicum of comfort for industry. The Court found that DEQ's error was not considering “impacts of the climate **in Montana**,” which may mean, for example, that considering the impacts of burning Montana coal in Korea is a step too far. The breadth and depth of the required analysis necessary for any project will certainly be the subject of future litigation.

What Can Industry Do*?*

- Engage with the Montana legislative session which began January 6, 2024. Twelve different bills have already been drafted for the legislature to review.
- Consider conducting a tailored S.W.O.T. analysis of how these bills could affect your specific operations.
- Help DEQ and other state agencies engage in the MEPA analysis of your projects. The first permits issued following these two cases undoubtedly will be targets for litigation. As permit applicants must provide agencies with the information necessary to conduct EAs or

EISs, providing detailed data and GHG analysis to the agency up front may help with project approval.

Sarah M. Clerget was counsel for DEQ on both Held and Laurel Generating Station before joining Holland & Hart as Of Counsel and the Government Affairs Director for Montana.
