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TOPICAL

## **DEQ to strike mentions of 30-day public comment periods**

**Tom Lutey**

Dec 29, 2023

**M**ontana environmental regulators took heat this week for initially giving the public just 10 days to weigh in on a proposed landfill near Shepherd — seemingly at the request of the developer.

The mistake, Montana’s Department of Environmental Quality clarified Thursday, was ever suggesting that there would be more time. The government now intends to strike all references from its permit forms.



Signs encourage residents to contact the Montana Department of Environmental Quality about the proposed Pacific Steel landfill on Shepherd Acton Road at U.S. Highway 87 North.

LARRY MAYER, BILLINGS GAZETTE

“To avoid potential future confusion, given that a 30-day public comment period is not required in statute or rule, this specific narrative will be removed from all applications to allow for DEQ to comply with MEPA and adjust the discretionary public process as appropriate,” said Rebecca Harbage, DEQ’s public policy director.

Observers say that landfill fracas is just the latest example of the public's diminishing opportunities to weigh in on permits concerning clean air and water. A growing number of permit decisions affecting air and water are taking place without any chance for the public to ask for site specific protection.

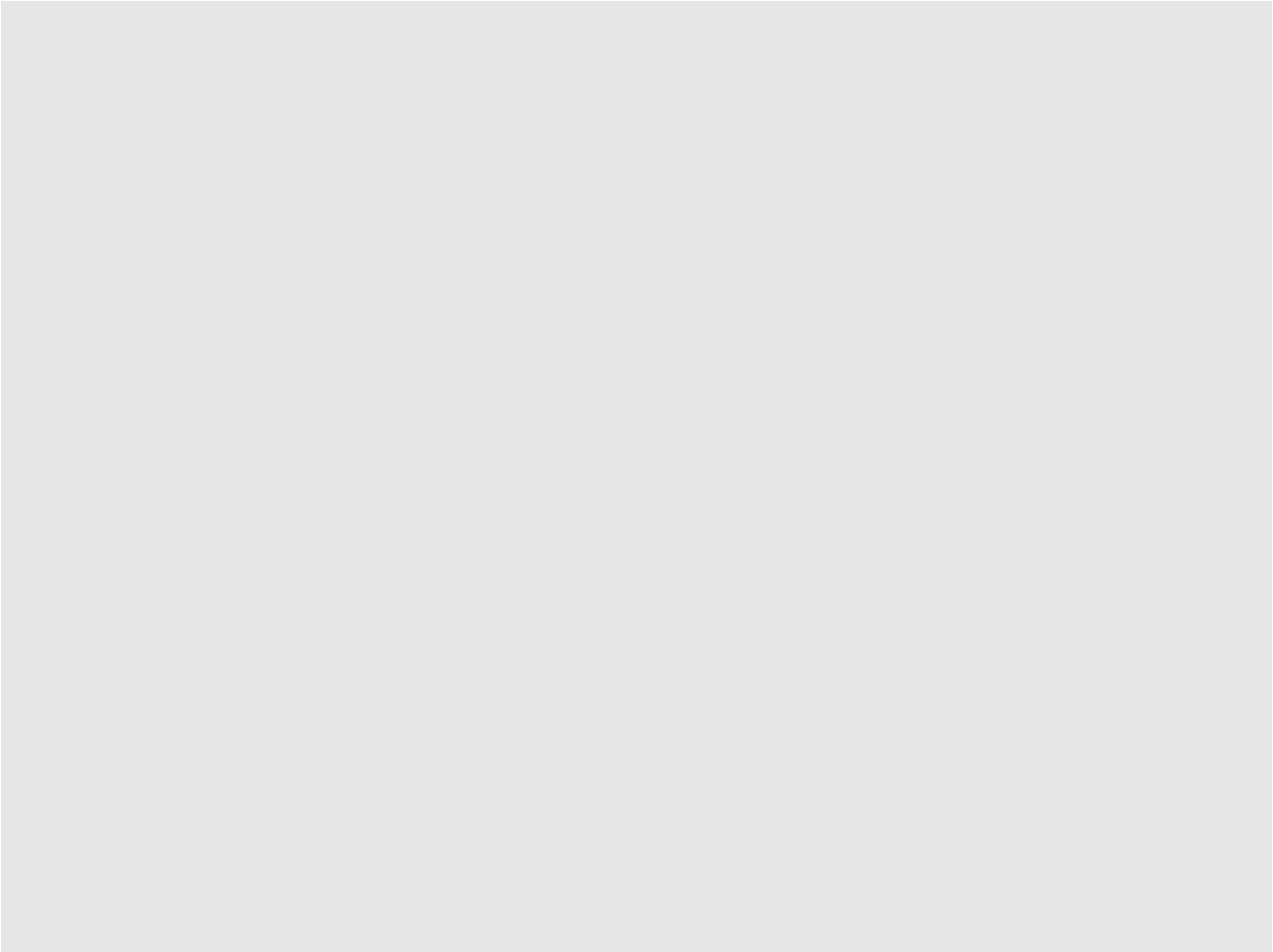
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“Neighbors are not going to be able to add sufficient information to the record to try to make DEQ understand the hydrologic consequences of their actions,” said Anne Hedges, the Montana Environmental and Information Center’s director of policy and legislative affairs. “In 10 days, you can’t hire a hydrologist to give you an expert report and make sure water is protected. Not in 10 days. It’s not possible. And I think that’s the intention.”

MEIC, with its expert witness lineup and attorneys well versed in Montana law on tap, couldn’t meaningfully respond to DEQ’s environmental analysis in 10 days, Hedges said.



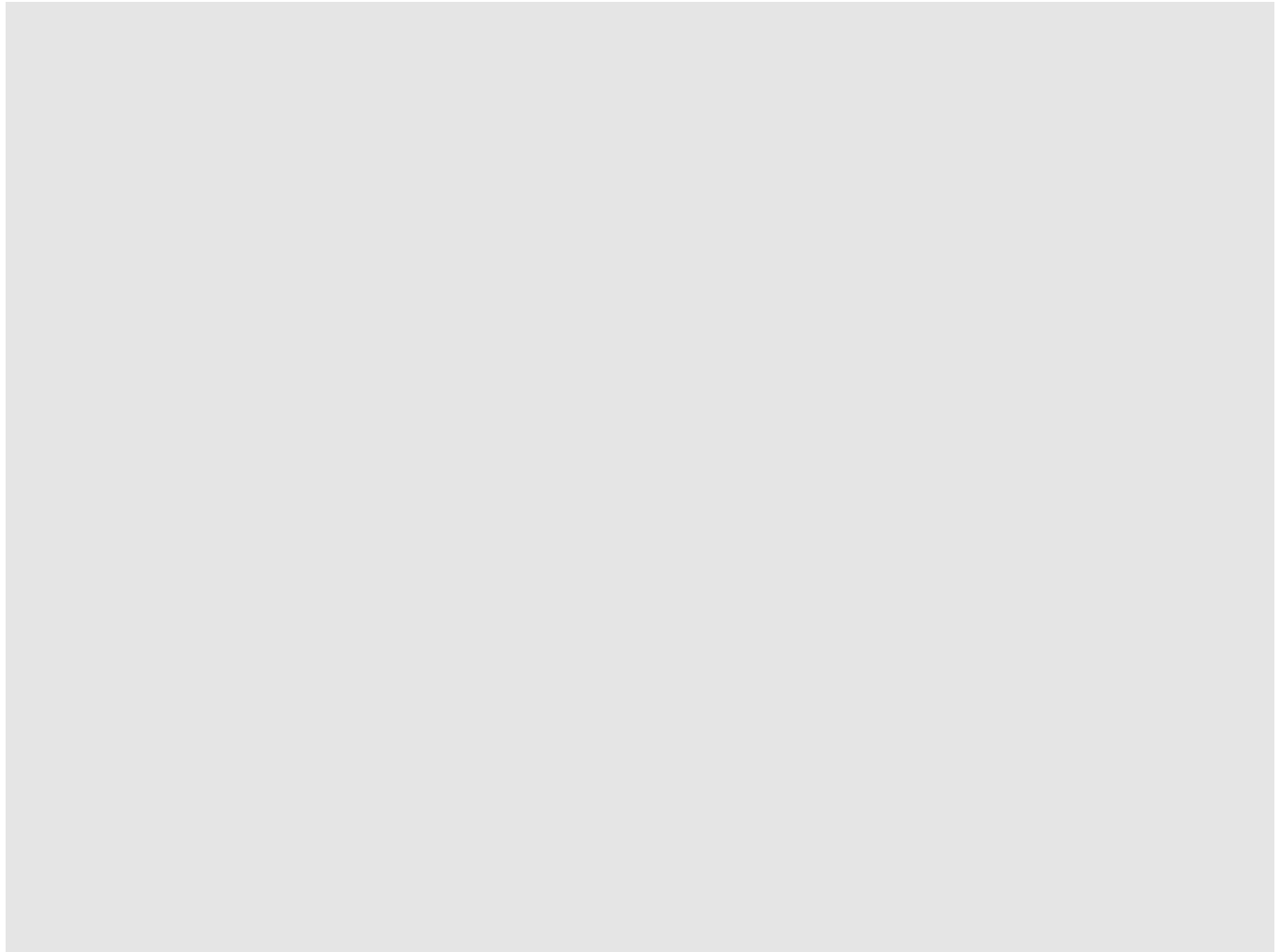
Billings, Lockwood and Shepherd fire departments battle a fire at Pacific Steel and Recycling on Coulson Road in Lockwood in 2019.

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The 10-day window to respond had Shepherd's concerned but inexperienced neighbors scrambling to find a lawyer, hire any experts and research the more than 800 pages of landfill information, including the state's 37-page environmental assessment.

Eventually, DEQ added another 30 days for the public to respond, but not without first getting permission from landfill developer Pacific Steel and Recycling. Harbage said state law allows DEQ 135 days to work on a permit before making a decision. Regulators were beyond deadline by the time DEQ produced an environmental assessment neighbors could look at.

“Thirty days was a scramble! We had a crew of approximately 10 people working on different tasks for at least 4-5 hours a weekday and 10-12 hours each day of the weekends. I stayed up till 1-2AM almost every night during the public comment period,” said Anellise Reynolds Deters.



VICTOR ADY/Gazette Staff

Included in Deter’s to-do list was filing a public records request to see what was transpiring between DEQ and Pacific Steel and Recycling behind the scenes. The records weren’t cheap, but what Deters found was Pacific Steel asking DEQ to expedite the public comment period to accommodate a company board meeting where Pacific’s directors would be deciding whether they would fund its private Shepherd landfill. Emails show DEQ ready to oblige Pacific, Deters said, which the neighbors found infuriating.

The DEQ's landfill permit applications flatly state there will be a 30-day public comment period, with no exceptions stated. But there is no requirement for a 30-day comment period, Harbage said. DEQ has an administrative rule to adjust the time allowed for public review of the department's environmental assessments depending on the complexity of the environmental issues and public interest.

Initially, DEQ said that the 10-day comment period on the landfill seemed appropriate because of community outreach done by Pacific Steel, although the DEQ's environmental assessment — the sole purpose for the comment period — wasn't available for Pacific to share with neighbors. And the burden of making the environmental assessment available to the public is DEQ's alone.

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What's concerning Hedges said, is that there is a growing number of DEQ permitting categories for which clean air and water decisions are made without any opportunity for the public to comment. These were what's known as "general permits" that approve general pollution practices, but don't assess the air or water pollution created by a specific project, or how that pollution might harm a specific location.

Over several legislative sessions, the number of pollution activities covered by general permits has increased. Asphalt batch plants, crematoriums, gravel pits, landfill open burning, are just some of several dozen pollution activities that qualify for general permits without analysis of how the specific project will affect its neighbors.

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"You get someone coming in next door to you saying they have a gravel pit that they want to operate. You never get to comment on a lot of the air permits or water permits for gravel pits because they already wrote the general permits years ago," Hedges said. "Open cut (sand, gravel, and asphalt pits) is a perfect example. DEQ told the Legislature when they removed air and water analysis from open cut permitting laws, 'don't worry, they still have to comply with air and water discharge permits.' But

they didn't say those are general permits and there's no public comment period. DEQ do these general permits and the public is left without any opportunity to comment on site specific potential problems."

## Pacific Steel seeks DEQ approval for auto shredder residue landfill north of Billings

Hedges said she expects the lack of public comment opportunities will catch up to DEQ when someone who doesn't have a chance to comment sues.

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