



Environmental Update #16

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Basics of the National Environmental Policy Act

In 1970, President Nixon signed the National Environmental Policy Act (NEPA), which, in conjunction with the establishment of the U.S. Environmental Protection Agency, reflected the country's concern for protecting the natural environment. NEPA is not a regulatory act in the traditional sense of the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) in that it does not require the promulgation and enforcement of rules and regulations. NEPA's real strength comes from its requirement that federal agencies consider the environmental impact of a major project before finalizing a proposal to move forward with the plan.

The NEPA Process

During project planning, an agency must determine if an Environmental Impact Statement (EIS) is needed. NEPA requires an EIS for "proposals for legislation or other major federal actions significantly affecting the quality of the human environment." A "federal action" includes actions by federal agencies, activities that require a federal permit, and, generally, activities by nonfederal agencies using federal dollars to finance a project. The determination of when an EIS is needed and how thorough that EIS is, are at the center of challenges to NEPA compliance.

Projects fall into one of three categories that will determine the necessity of an EIS. First, projects that have been predetermined to have no significant environmental impact will not need an EIS (for example, administrative enforcement actions by an agency). Second, some projects will fall into a category in which an EIS must be prepared (for example, construction of a new interstate highway). Finally, situations will arise where it is unclear whether an EIS must be prepared, in which case an environmental audit (EA) must be done. The EA will evaluate the project's environmental impact and determine if an EIS is needed. If the EA results in a finding of no significant impact (FONSI) from the project, the project will proceed as planned with no EIS.

EIS Content

NEPA established the Council on Environmental Quality (CEQ) to provide the White House with general advice on environmental issues (www.whitehouse.gov/ceq). The CEQ issued regulations that describe the basic structure and content of the EIS:

- A summary of the project.
- Information on the purpose of the agency's proposed action and why the agency feels the action is necessary.
- A description and comparison of alternatives to the project. NEPA requires that an agency consider alternatives that can be used to meet the goals of a project. Primary alternatives are actions that will achieve results similar to those proposed in the original project. Secondary alternatives are different ways an agency can complete the originally proposed action.
- A description of how the environment will be affected by the proposed action, including both direct and indirect affects, and ways to lessen the environmental impact.
- Analysis of the environmental impacts of the proposed action and the alternatives.

The EIS is first completed in a draft form and distributed to other federal, state, and local agencies, and to the public for comments. A public meeting is held to provide all parties with a chance to comment publicly or in writing on the EIS. Comments must be considered by the agency, and the agency can either modify the project plans or continue with the final EIS. The final EIS must address each comment received, modify the analysis where necessary, and provide an authority or basis for final determination. Should new or additional information, circumstances, or data arise during the draft or final impact statement review, an agency may be required to prepare a supplemental EIS (SEIS).

The U.S. EPA maintains a national EIS filing system and publishes weekly notices in the Federal Register (www.gpoaccess.gov/fr/index.html) of environmental impact statements available for review and comment.

Finally, NEPA requires the President to submit an annual Environmental Quality Report. This report includes the environmental status and condition of the air, land, and water; trends in the quality, management, and use of these environments; and a review of current environmental protection programs and a plan for improving any deficiencies in these programs.