

In Productive Harmony

Environmental Impact Statements
Broaden the Nation's Perspectives



“**T**he Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans.”

THE NATIONAL ENVIRONMENTAL POLICY ACT

How It Started

On January 1, 1970, the President signed into law the National Environmental Policy Act (NEPA), which declared a national policy to encourage productive and enjoyable harmony between man and his environment.

In signing the bill, the President remarked that it was particularly fitting as his first official act of the new decade not only because it gave disparate Federal environmental efforts organization and direction, but because, "the 1970's absolutely must be the years when America pays its debt to the past by reclaiming the purity of its air, its waters and our living environment. It is literally now or never."

NEPA established in the Executive Office of the President a Council on Environmental Quality (CEQ), charged with responsibility to study the condition of the Nation's environment, to develop new environmental programs and policies, to coordinate the wide array of Federal environmental efforts, to see that all Federal activities take environmental considerations into account and to assist the President in assessing environmental problems and in determining ways to solve them.

To ensure that environmental amenities and values are given systematic consideration equal to economic and technical considerations in the Federal decision-making process, *NEPA requires each Federal agency to prepare a statement of environmental impact in advance of each major action, recommendation or report on legislation that may significantly affect the quality of the human environment.* Such actions may include new highway construction, harbor dredging or filling, nuclear power plant construction, large-scale aerial pesticide spraying, river channeling, new jet runways, munitions disposal, bridge construction and more.

What is an Environmental Impact Statement?

An environmental impact statement is the heart of a Federal administrative process designed to ensure achievement of national environmental goals. *Each statement must assess in detail the potential environmental*

impact of a proposed action, and all Federal agencies are required to prepare statements for matters under their jurisdiction.

As early in the decision-making process as possible, and in all cases prior to agency decision, an agency prepares a *draft* statement for review by appropriate Federal, State and local environmental agencies as well as the public. After comment from the agencies and interested parties, the statement is prepared in final form, incorporating all comments and objections received on the draft and indicating how significant issues raised during the commenting process have been resolved. Both draft and final statement are filed with CEQ and made available to the public.

Impact statements are popularly called 102 statements, an abbreviated term for NEPA's Section 102(2)(C) which requires them.

Purpose of the Statement

The statement's primary purpose is to disclose the environmental consequences of a proposed action, thus alerting the agency decision-maker, the public and ultimately Congress and the President to the environmental risks involved. An important and intended consequence of this is to build into a Federal agency's decision-making process a continuing consciousness of environmental considerations. This, in turn, ensures to the fullest extent possible that the agency directs its policies, plans and programs so as to meet national environmental goals.

What Actions Must Statements Cover?

The actions for which agencies must prepare impact statements must be "major" and "environmentally significant," such as:

1. Agency recommendations on their own proposals for legislation.
2. Agency reports on legislation initiated elsewhere but concerning subject matter for which the agency has primary responsibility.
3. *Projects and continuing activities* which may be
 - a. undertaken directly by an agency;

- b. supported in whole or in part through Federal contracts, grants, subsidies, loans or other forms of funding assistance; or
 - c. part of a Federal lease, permit, license, certificate or other entitlement for use.
4. Decisions of policy, regulation and procedure-making.

All of the following actions are considered major and/or environmentally significant.

- 1. Actions whose impact is significant and highly controversial on environmental grounds.
- 2. Actions which are precedents for much larger actions which may have considerable environmental impact.
- 3. Actions which are decisions in principle about major future courses of action.
- 4. Actions which are major because of the involvement of several Federal agencies, even though a particular agency's individual action is not major.
- 5. Actions whose impact includes environmentally beneficial as well as environmentally detrimental effects.

Contents of the Statement

Each environmental impact statement must include:

- 1. A detailed description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact.
- 2. Discussion of the probable impact on the environment, including any impact on ecological systems and any direct or indirect consequences that may result from the action.
- 3. Any adverse environmental effects that cannot be avoided.
- 4. Alternatives to the proposed action that might avoid some or all of the adverse environmental effects, including analysis of costs and environmental impacts of these alternatives.
- 5. An assessment of the cumulative, long-term effects of the proposed action including its relationship to short-term use of the environment versus the environment's long-term productivity.

6. Any irreversible or irretrievable commitment of resources that might result from the action or which would curtail beneficial use of the environment.

A *final* impact statement must include a discussion of problems and objections raised by other Federal, State and local agencies, private organizations and individuals during the draft statement's review process.

What Does a Statement Look Like?

An environmental impact statement may consist of a few pages or a few hundred pages depending on the complexity of the proposed action under review. Each statement ordinarily is introduced by a summary sheet suggesting the nature of its contents; e.g.:

Environmental Impact Statement

Draft _____ Final _____

Name of responsible or principal agency and appropriate operating division.

1. Administrative action _____
Legislative action _____.

2. Brief description of action, indicating States and counties particularly affected.

3. Summary of environmental impact and adverse environmental affects.

4. List of alternatives considered.

5. For *draft* statement, a list of all Federal, State and local agencies from which comments have been requested.

For *final* statement, a list of all Federal, State and local agencies and other sources from which written comments have been received.

6. Dates draft and final statements are filed with CEQ and made available to the public.

When is a Statement Prepared?

A draft statement must be prepared and circulated for comment at least 90 days before the proposed action. A final statement must be made public at least 30 days before the proposed action. Any agency unable to meet these requirements must consult with CEQ.

Each agency must identify at what stage or stages in a series of actions relating to a particular matter, that an environmental impact

statement will be prepared. Often it may be necessary to write a statement both in the development of a national program and in the review of proposed projects within a national program. A duplicate clearance process is not always mandatory, but when actions being considered differ significantly from those that have been reviewed already, a new statement should be written.

It is the responsibility of each agency to obtain views of other agencies and interested parties at the earliest feasible time in the development of program and project proposals.

To the maximum extent practicable, impact statements must be prepared for continuing major Federal actions significantly affecting the environment even though they arise from projects or programs initiated prior to enactment of NEPA. Where it is not practicable, it is still important that further incremental actions be shaped to minimize adverse environmental consequences and to account for environmental consequences not fully evaluated at the outset of a project or program.

The greatest use should be made of existing interagency and intergovernmental review procedures.

How Does an Agency Prepare a Statement?

NEPA directs each agency to establish procedures for dealing with environmental impact statements, those prepared inhouse and those reviewed for comment.

Agency procedures must:

1. Identify those agency actions requiring environmental statements.
2. Designate the appropriate time prior to decision to seek comments of other agencies.
3. Describe the mechanisms through which statements are to be made available to the public.
4. Specify general methods for obtaining information required in the preparation of a statement.
5. Designate officials responsible for statements.
6. Establish patterns for consulting with and taking into account the comments of other agencies, particularly EPA.
7. Provide for timely public announcement

of plans and programs with environmental impact.

NEPA goes a step beyond requiring new actions to be environmentally sound by directing all Federal agencies to review their present statutory authority, administrative regulations and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the Act. Still further, agencies must propose "such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes and procedures set forth in this Act."

In other words, agencies must not only begin to meet NEPA requirements for decisions yet unmade, but must seek to realign their standard operating procedures with national environmental goals.

Who Reviews Each Statement?

NEPA requires each Federal agency to "consult with and obtain the comments of any other agency (including State and local as well as Federal) which has jurisdiction by law or special expertise with respect to any environmental impact involved" in an impact statement.

In its guidelines for preparing statements, CEQ lists the agencies which must be consulted on this basis in the following areas:

- air quality and air pollution control
- weather modification
- environmental aspects of electric energy generation and transmission
- natural gas energy development, generation and transmission
- toxic materials
- pesticides
- herbicides
- transportation and handling of hazardous materials
- coastal areas: wetlands, estuaries, waterfowl refuges and beaches
- historic and archeological sites
- flood plains and watersheds
- mineral land reclamation

- parks, forests and outdoor recreational areas
- soil and plant life, sedimentation, erosion and hydrologic conditions
- noise control and abatement
- chemical contamination of food products
- food additives and food sanitation
- microbiological contamination
- radiation and radiological health
- sanitation and waste systems
- shellfish sanitation
- transportation and air quality
- transportation and water quality
- congestion in urban areas, housing and building displacement
- environmental effects with special impact on low-income neighborhoods
- rodent control
- urban planning
- water quality and water pollution control
- marine pollution
- river and canal regulation and stream channelization
- wildlife

The guidelines also require draft statements to be made available for public comment. Many individual agency procedures allow for direct solicitation of such comments from interested parties and private organizations.

If an agency is in doubt as to the proper recipients of its request for comments, CEQ will advise on an appropriate routing.

The Role of CEQ

CEQ is the central Federal force behind the impact statement process. CEQ assists other agencies whenever and wherever necessary in determining the applicability of NEPA to agency actions and in promulgating agency procedures to meet NEPA requirements. CEQ also assists in resolving any conflicts that may arise.

The Council's role is a coordinating one; it is not a commenting agency in the sense that its comments are attached to impact statements. Thus no inference of either approval or disapproval is to be drawn from CEQ's failure to comment on either draft or final statements.

As long as a statement is made available to CEQ, that agency will be able to fulfill its role of internal adviser to the Executive Branch and to the President as contemplated by NEPA.

CEQ's guidelines for preparing 102 statements on proposed Federal actions affecting the environment were issued April 23, 1971 in the Federal Register.

The Role of EPA

EPA reviews environmental impact statements touching any aspect of its responsibilities centering around air and water pollution, drinking water supplies, solid waste, pesticides, radiation and noise. In addition to reviewing statements filed by Federal agencies, EPA frequently reviews statements filed by States and other jurisdictions as a technical service.

Periodically, EPA lists in the Federal Register statements it has reviewed and commented on, coding the nature of its comments. The code generally indicates endorsement of the proposed action, request for more information to determine environmental damage or objection to the action on environmental grounds.

EPA's obligation to review proposed Federally supported actions extends beyond that of other agencies because of its role as the principal Federal regulator of pollution control matters.

Under Section 309 of the Clean Air Act, EPA must "review and comment in writing on the environmental impact" of any legislation, action or regulation proposed by any Federal agency if it affects matters related to EPA's jurisdiction. If EPA determines that any proposed activity is unsatisfactory from the standpoint of public health or welfare or environmental quality, that determination must be published and the matter referred to CEQ.

EPA notifies the public of these comments in the same manner that notification is made of comments on impact statements. Generally, EPA has no authority to stop a project sponsored by another Federal agency; it acts only in an advisory capacity to other agencies, CEQ and the President.

Impact Statements and the Public

The impact statement procedure affords the public an opportunity to participate in Federal decisions that may affect the human environment. Each draft statement must be made public by the responsible agency at the time it is circulated for comment, a date not less than 90 days before the proposed action. Comments must be made available also, and the final statement must include a discussion of the objections and problems raised in comments on the draft. The final statement must be made public at least 30 days prior to the proposed action.

Statements are announced in the Federal Register, although many agencies have supplementary procedures to reach interested citizens. EPA, for example, generally notifies the press (1) when a decision is reached to issue an impact statement, (2) when a draft or final statement is prepared and (3) when comments on other agencies' statements are issued. Interested parties may view EPA's own impact statements or EPA's comments on the statements of other agencies by contacting EPA headquarters in Washington, D.C. or any of its ten regional offices. The agency welcomes public comment.

EPA does not distribute impact statements prepared by other agencies. These are available directly from the agencies bearing primary responsibility.

Interested people may submit comments to agencies on any impact statement issued by them. If an individual believes a *draft* statement to be inadequate, he may offer written comments on the *draft*. If he believes the disposition of his comment in the final statement to be inadequate, he may so notify the agency involved and inform CEQ. In addition to these mechanisms for public participation, many agencies provide for public hearings not only at various stages during the performance of their statutory missions but during the impact statement process itself.

The importance of the role citizens play in the impact statement process has been recognized by the courts. In many cases, the courts have upheld the right, or standing, of citizens to sue on environmental grounds.

Impact Statements and the Courts

By September 1972 more than 200 cases had been filed against Federal agencies in courts throughout the nation alleging violation of NEPA's Section 102(2)(C). Initially, cases involved suits to require the writing of statements which agencies had deemed unnecessary, often because of confusion over the application of NEPA to projects begun before the Act was passed. More recent cases show a trend toward suits that assert the insufficiency of statements already written.

Cases have been filed in widely varying factual situations. Precise direction is difficult to discern from the varied rulings, but two of the most important decisions rendered by the U.S. District Court of Appeals indicate some of the issues courts are considering.

In *Calvert Cliffs (Md.) Coordinating Committee v. AEC*, the Court ordered the Atomic Energy Commission to give more complete attention to the environment in its internal review process. Not only did the Court order AEC to consider halting construction of nuclear generating plants while environmental factors are being examined, including the backfitting of technological innovations, the Court also refused to permit AEC to accept State or Federal agency certification of water quality, instead of making its own assessment. In this decision, the Court interpreted NEPA as a mandate to achieve a finely tuned and systematically balanced analysis in each instance of environment impact.

The Court broadened even further the range of considerations that must be weighed in Federal projects by ruling in *Natural Resources Defense Council v. Morton* that the Department of the Interior must discuss all reasonable alternatives to a proposed action whether or not such alternatives come within the direct control of that particular department. The case involved a lease sale of offshore oil in the Gulf of Mexico. In its ruling, the Court wrote that Interior should have given greater consideration to potential alternatives to the lease sale, including increased nuclear energy development, Federal legislation or administrative action to obtain State-controlled offshore oil and changing the Federal Power Commission's natural gas pricing policies.

What's Happening?

The impact statement process has been designed to build into Federal thinking an environmental concern not heretofore implemented on a meaningful scale. Just as court interpretations of NEPA are increasing general public environmental awareness, changes are being wrought within the structure of the Federal Government that will have profound influence on future Federal activities.

Half of all environmental impact statements have been written for roadbuilding actions, and a number of planning changes are apparent. Examples include increased landscaping and the creation of hiking and bicycle trails along roadways.

After roadbuilding, the second largest number of statements have been prepared for watershed protection and flood control projects. A portion of these come under the jurisdiction of the U.S. Army Corps of Engineers. Since NEPA was enacted, the Corps not only has established several citizen environmental advisory committees but has increased its interdisciplinary environmental staff by adding recreation resource planners, landscape architects, biologists and foresters. As a direct result of NEPA's review process a number of projects have been suspended and many more have been modified.

As an example, in March 1972, a draft impact statement was prepared for a proposed 1760-foot pier for ocean research which would extend into the Atlantic from Maryland's Assateague Island National Seashore. The area is one of the few remaining natural barriers along the nation's eastern coastline in public ownership. Because of the many opposing comments on the statement, the Corps cancelled all construction plans.

Another project cancelled was a proposed dredging operation to improve safety for barge crossings in the Gulf Intracoastal Waterway from Carrabelle to St. Marks River, Fla. The project was suspended when it was determined that the dredging would adversely affect the natural habitat of shellfish and other fish in the area.

Stimulated partly by the NEPA process, the Department of Housing and Urban Development

is rewriting its minimum design standards for family dwellings to include improved insulation to reduce energy consumption, better control of erosion, sedimentation and siltation at individual homesites, and acoustic materials that will reduce excessive noise.

Problems have arisen, however, on projects that were nearing the construction phase or were under construction when NEPA was passed. In many situations the substantial commitment of resources makes it difficult and expensive to modify such projects to minimize adverse environmental effects. Nevertheless, as environmental considerations are integrated into agencies' plans in the future such problems can be avoided by formulating projects at the outset in a pattern that will reduce adverse effects.

Trends in State and Local Governments

Recognizing the need for broader consideration of environmental consequences at an early date, a number of states have passed statutes requiring environmental impact statements on state actions analogous to the statements required of Federal agencies by NEPA. These states include California, Washington, Delaware, Montana, Wisconsin, North Carolina and Indiana as well as the Commonwealth of Puerto Rico. Hawaii, also, has implemented impact statement requirements through Executive Order, and Arizona requires similar statements with respect to fish and game interests.

Similar action is under consideration by Colorado, Florida, Idaho, Illinois, Kentucky, Massachusetts, Minnesota, Ohio, Oklahoma and New Mexico.

All in all, important innovations in federal and state environmental regulations are taking place. At both levels, the pace of new institutional development in environmental management has quickened beyond expectation.

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