



# National Environmental Policy Act of 1969

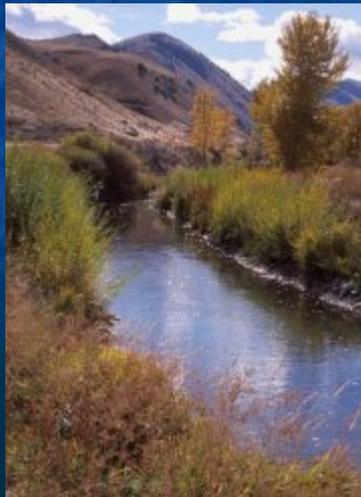


# Purpose of NEPA

- NEPA was developed to declare a **national policy** to encourage **preservation of the environment**.
- Through NEPA the **Council on Environmental Quality** was established. CEQ issues regulations to ensure federal agency compliance.
- NEPA requires that **significant environmental impacts** of proposed Federal actions be **disclosed to the public** prior to taking the action.
- NEPA **does not** require a specific decision, but **requires** that the **agency do the analysis and disclose to the public** the action and the impacts of that action

# Agencies Role

- All federal agencies must use **systematic, interdisciplinary approach** to evaluate their plan and decision making which may have an impact on the environment.



# NEPA Documentation

- **Categorical Exclusion**
- **Environmental Assessment**
- **Environmental Impact Statement**

# Categorical Exclusion

A category of actions which **do not** individually or cumulatively **have a significant effect** on the human environment **and** which **have been found to have no such effect** in procedures adopted by a Federal agency.

# Environmental Assessment

A brief document that allows the agency to decide if its proposal would have significant impacts.

- If there are **no significant impacts**, the agency can issue a **“finding of no significant impact”** (FONSI).
- If the agency finds that a proposed action might have **significant** impacts, then it must do a full **environmental impact statement (EIS)**.

# What is Significant?

- An EIS should be prepared where the impacts are **controversial** referring to where there is a **substantial dispute as to size, nature, or effect of major federal action.**
- An agency should be required to **review** the proposed action **in light of** the extent to which the action will cause adverse environmental effects in excess of those created by **existing uses.**

# What is Significant? (cont.)

- There are two components: **context and intensity**
  - Context: refers to the **setting** in which the proposed action takes place
  - Intensity: the **severity** of impact
- **When in doubt, an EIS should be prepared** than risk the delay and expense of protracted litigation on what is significant.

# Environmental Impact Statement

A detailed document that explains the **purpose and need** of the action, the **affected environment**, and a **comparison of the alternatives** of the proposal.

- Alternatives;
- Environmental impact;
- Any adverse environmental effects which cannot be avoided;
- Relationship between short term use, the maintenance, and enhancement of long-term productivity; and
- Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

# Save our Ecosystems v Clark (9<sup>th</sup> Cir. 1984) 747 F.2d 1240

- The U.S. Forest Service had determined that certain herbicides could be used for reforestation activities, relying solely on EPA's registration under FIFRA.
  - The 9<sup>th</sup> Circuit Court of Appeals held that the EPA registration process for herbicides under FIFRA is inadequate to address environmental concerns under NEPA
  - Instead the Agency must conduct independent research on the safety of the herbicides it proposes to use.

<http://www.fs.fed.us/foresthealth/pesticide/risk.shtml>

# Basic Template for an EA/EIS

- Purpose and Need
- Alternatives
- Affected Environment\*
- Environmental Consequences
- Cumulative Effects
- Highly Uncertain or Unknown Risks\*
- Threatened & Endangered Species
- EO's

\* Not required for EA's but may be helpful in this context

# Purpose and Need

In this section the purpose of the action is how it furthers the need for the agency. Why are we doing the proposed action – what mission or goal does it meet.

- Define **who** wants to do **what, where** and **why** the Agency is proposing the action
- Demonstrate that an **Agency need** exists
- Explain the **linkage to other NEPA documents**
- **Define the decisions** to be made

# Alternatives

The alternatives section **describes** what would happen under each alternatives. Effects of the action should not be listed.

- No Action – status quo
- Preferred alternative
- Least Environmentally Damaging Practicable
- Any other reasonable alternatives

# Affected Environment

The affected environment should describe **existing conditions or the baseline data** against which the potential impacts can be measured. It should cover a broad range of environmental factors.

- Air quality
- Water quality
- Habitat Conditions
- Fish & Wildlife Resources
- Cultural Resources
- Human Health
- **Rule of Thumb: If you talk about it in the Affected Environment it should be discussed in all the alternatives. If an effect is analyzed in the environmental consequences section the baseline should be established under the Affected Environment Section.**

# Environmental Consequences

The environmental consequences section should evaluate any potential environmental concerns with the deregulation or granting of the permit. This includes things such as:

- Potential impacts on air quality
- Potential impacts on water quality
- Potential impacts to habitats
- Potential impacts to fish & wildlife resources
- Potential impacts to cultural resources
- Potential impacts to human health

# Cumulative Effects

An Agency must look at environmental effects of connected and similar actions together.

- *Cumulative impact* is the impact on the environment which results from the incremental impact of the action when added to other past, present, **and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal)** or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

# Highly Uncertain or Unknown Risks

This is a section in the EA that spells out what are the highly uncertain or unknown risks.

- What do we not know?
- What still needs to be researched?
- What may hypothetically happen that science has not proven or confirmed will happen?

# Where Agencies Have Prevailed

The Agency demonstrate they had given a **hard look** at potential environmental consequences of the proposed action and alternatives:

- Used **best scientific evidence**
- Made **reasonable judgments**
- Used **sufficient data and information**

# Where Agencies Have Failed

- **Did not provide** adequate public comment
- **Ignored** opposing evidence
- **Demonstrated bad faith**

# Administrative Procedure Act

## 5 U.S.C. 706

- Allows courts to:
- Compel agency action that is unlawfully withheld or unreasonably delayed;
- Hold unlawful and set aside agency actions, findings, and conclusions that are found to be —
  - arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - contrary to constitutional right, power, privilege or immunity;
  - in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - without observance of procedure required by law....

# Standards of Review under the Administrative Procedure Act

- **Hard Look Test**

- Must spell out the assumptions used in conducting the analysis;
- Explain inconsistencies
- Disclose methodologies
- Present clear cause and effect relationships
- Rebut contradictory evidence
- Record is soundly grounded in science
- Unsupported conclusions are eliminated
- Must be readable

# Summary

- Any NEPA document that is prepared regarding the use of pesticides should consider all potential environmental compartments where the impacts of the pesticide may be felt;
- Any NEPA document that contemplates the use of pesticides in or near habitat for trust resources should be subjected to “The Hard Look Test.”
- NEPA documents should utilize the best scientific evidence should be used to support a determination that an environmental effect will or will not occur.
  - Contrary evidence should be disclosed and disputed
  - If there are unknown or highly uncertain effects those should also be disclosed.
- Any past, present, or future actions should be examined if they may impact the effects from the proposed action.