



ENVIRONMENTAL REVIEWS

Projects undertaken or funded by the federal government that could have significant environmental consequences receive analysis and public comment on their effects and possible alternative approaches. This fundamental protection—a process that ensures accountability for environmental impacts and informed participation by the public—was created by the National Environmental Policy Act (NEPA). Many states now also have their own versions of NEPA for state activities.

I. PRIMARY STATUTE

Considered our country's "environmental Magna Carta," NEPA was passed overwhelmingly by Congress in 1969 and signed into law by President Nixon. The law was prompted in part by concerns from communities that felt their views had been ignored in setting routes for the interstate highway system, on which work began in the 1950s. NEPA also established the White House Council on Environmental Quality (CEQ), which sets guidelines for the environmental review process throughout the government and advises the President. NEPA's primary provisions include:

■ PUBLIC ENVIRONMENTAL REVIEW

NEPA is designed to ensure that the public has informed access and input into federal agency decisions that could affect the human or natural environment. It mandates environmental impact statements (EISs) for major projects, which examine the before and after state of the environment. EISs are first released in draft form, allowing the public and other agencies and levels of government to comment on decisions they care about, provide outside scientific opinion, and ask for improvements. In final EISs, agencies have to respond to reasonable input and explain any rejection of outside expert views. Smaller projects are reviewed through a less extensive Environmental Assessment (EA) process.



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■ CONSIDERATION OF ALTERNATIVES

The heart of NEPA review is getting agencies to consider alternatives to project designs. This heads off tunnel vision and can show how to save money and reduce impacts. It also gives members of the public a voice in project design, letting them request consideration of their alternatives. That promotes collaboration in planning and buy-in for final decisions.

■ STREAMLINING FOR SMALL PROJECTS

NEPA review scales with a project's impacts. Many need only an EA, and agencies can avoid preparing an EIS by designing mitigation measures into projects. Moreover, many projects do not need any review because they qualify for "categorical exclusions" the agencies create, exempting whole classes of low impact projects from even an EA (for instance small scale construction outside sensitive habitats).

■ EMERGENCY PROCEDURES

Agencies never have to do NEPA review before responding to emergency threats to human health or safety, or to valuable natural resources. Step-by-step CEQ guidance shows how to complete appropriate environmental review as expeditiously as possible without delaying emergency response.

■ OVERARCHING NATIONAL POLICY

NEPA establishes a national policy that the federal government, cooperatively with other governments and organizations, "use all practicable means ... 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."

II. MAJOR POSITIVE EFFECTS

■ Much of NEPA's success lies in low visibility improvements to countless projects conducted or funded by federal agencies (for some examples, see http://ceq.hss.doe.gov/nepa_information/ARRA_NEPA_Benefits_List_May122100.pdf). It also keeps really harmful projects off the drawing board altogether. NEPA review creates eyes-wide-open decisions, reducing later regrets. And because lower impacts often mean lower costs, NEPA promotes fiscal as well as environmental prudence.

■ NEPA informs and empowers citizens, encouraging more and better participation in agency decisions that affect them and their interests. It provides for early, formal cooperation with state, local, and other federal agencies, and Tribal governments. In addition to real collaborative results, it also creates accountability for federal managers. They know that NEPA makes their decision legally vulnerable if they try to sweep environmental issues or impacts under the rug, withhold background information, fail to develop green alternatives, or ignore outside science.

III. MAJOR CONCERNS

■ UNDERFUNDING OF CEQ

Staffing at CEQ is less than half what it once was, and its budget is only \$3 million. At that level, the office has little ability to oversee environmental conflict resolution among federal agencies, develop guidance to make environmental review more efficient and effective, and provide the reporting and analytic functions assigned to it by statute.

■ CAPACITY LOSS AT AGENCIES

Many federal agencies have suffered dramatic cuts to their in-house NEPA capacity. They have lost essential expertise, for example in analyzing and responding meaningfully to citizen input. And they suffer lengthy delays in completing review, for lack of trained staff. This slows up authorizations and funding for the private sector, and builds pressure to shortchange responsible consideration of public input and environmental consequences.

IV. UPCOMING ISSUES

The NEPA process is extremely well established, and successfully followed in the large majority of cases. However, legislative efforts to waive or constrain it for specific projects or categories appear with increasing frequency.

Sponsors of such measures claim that:

- It is too costly and slow. But the long-term costs of ignoring environmental factors are much greater.
- Agencies have internalized environmental values and don't need NEPA anymore. But only NEPA keeps them from shortchanging the environment and public input, in the face of political and budgetary pressure.
- NEPA blocks emergency response. But existing rules used scores of times provide for immediate and large-scale response to true emergencies like Katrina.
- Their projects are already green. But even green projects can have much greener alternatives, and many turn out to be less than green in the bright light of conscientious public review.