

Environmental Law Institute

NEPA & Fundamentals of Environmental Law Summer School Series – June 13, 2013

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NEPA = Magna Carta of the Environment

- “Disclose and discuss” requirements made environmental issues a part of every federal agency’s activities.
- State Environmental Protection Acts
 - California Environmental Quality Act
- The first of over a dozen major federal environmental statutes, including:
 - 1972 - Clean Water Act
 - 1973 - Endangered Species Act
 - 1977 - Clean Air Act
 - 1980 - CERCLA/Superfund Act

An Introduction to NEPA

- NEPA = The National Environmental Policy Act [42 U.S.C. 4321 et seq.]
- Law became effective on January 1, 1970, signed by President Richard Nixon(!)
- The Act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the federal agencies.
- Creates environmental impact statement requirements for major federal projects
- NEPA also establishes the Council on Environmental Quality (CEQ).

NEPA At A Glance

- Title I = Declaration of National Environmental Policy.
 - Requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony.
 - Federal agencies must incorporate environmental considerations in their planning and decision-making through a systematic, interdisciplinary approach.
 - All federal agencies are to prepare detailed environmental impact statements (EISs) assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment.
- Title II of NEPA establishes the Council on Environmental Quality (CEQ).

What is a Major Federal Action?

- “Major federal action” has been interpreted to include most things that a federal agency could prohibit or regulate.
- A project is required to meet NEPA guidelines when:
 - A federal agency provides any portion of the financing for the project.
 - The project is on or involves federal land.
 - A federal agency must approve or permit the project.
- NEPA does not apply to purely private or purely public state action.

NEPA Oversight by CEO

- Council on Environmental Quality oversees NEPA analysis and implementation
 - Headed by a fulltime Chair, supported by professional staff.
- Duties and functions of the Council are listed in Title II, Section 204 of NEPA:
 - Gathering information on the conditions and trends in environmental quality
 - Evaluating federal programs in light of the goals established in Title I of the Act
 - Developing and promoting national policies to improve environmental quality
 - Conducting studies, surveys, research, and analyses relating to ecosystems and environmental quality.

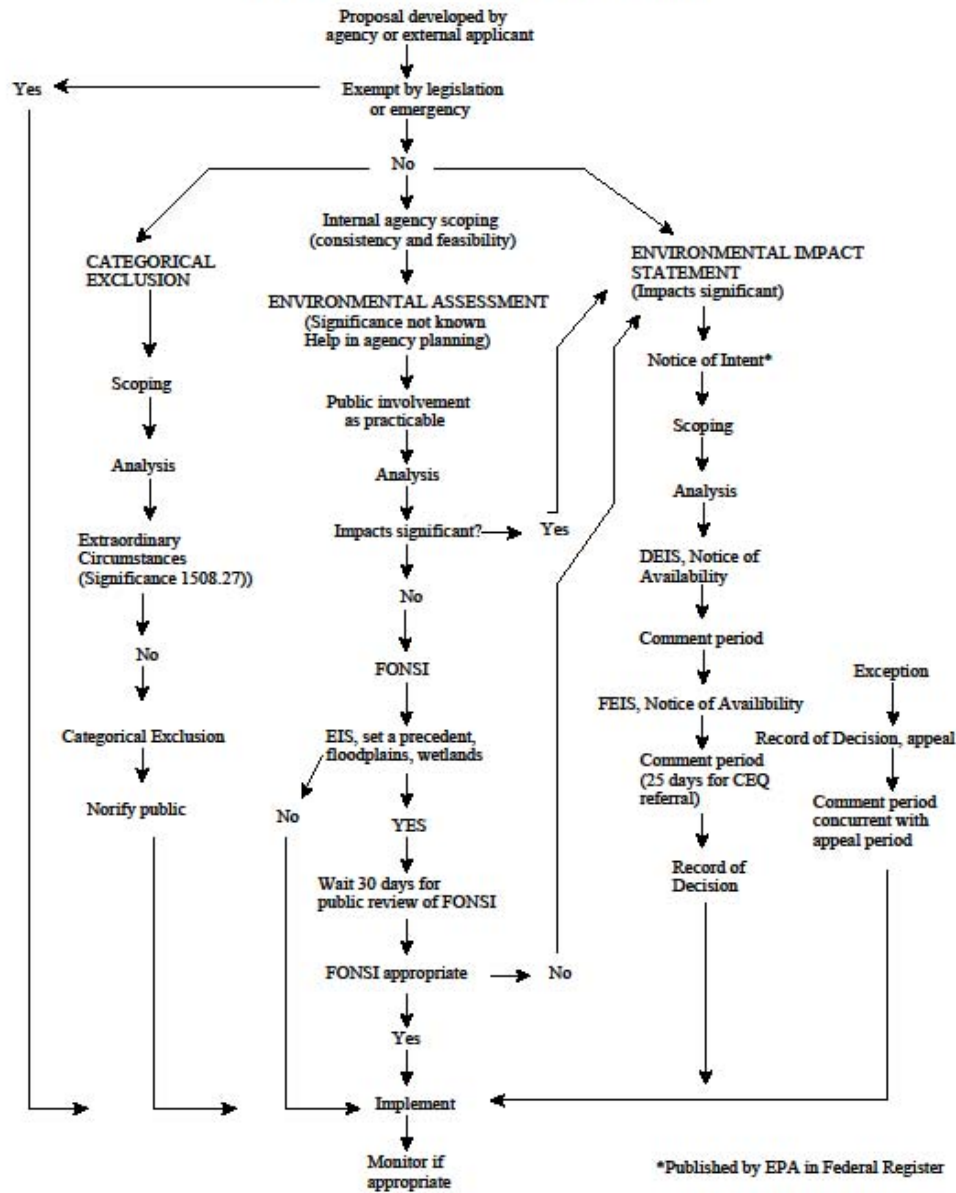
Implementing Regulations & Guidance

- In 1978, CEQ promulgated regulations [40 CFR Parts 1500-15081] implementing NEPA which are binding on all federal agencies.
 - Regulations address the procedural provisions of NEPA and the administration of the NEPA process, including preparation of EISs.
 - CEQ has also issued guidance on various aspects of the regulations.
- Most federal agencies have promulgated their own NEPA regulations and guidance which generally follow the CEQ procedures but are tailored for the specific mission and activities of the agency.

NEPA Review Process

- The NEPA process consists of an evaluation of the environmental effects of a federal undertaking including its alternatives.
- There are three levels of analysis:
 - Categorical Exclusion determination;
 - Preparation of an environmental assessment/finding of no significant impact (EA/FONSI);
 - Preparation of an environmental impact statement (EIS).
- In 2009: 6,300 EAs versus 715 EISs. 161,000 total NEPA reviews

Select the Appropriate Level of NEPA Documentation



Level 1: Categorical Exclusions

- An undertaking may be categorically excluded from a detailed environmental analysis if it meets certain criteria which a federal agency has previously determined as having no significant environmental impact.
- Many agencies have developed lists of actions which are normally categorically excluded from environmental evaluation under their NEPA regulations.
- Approximately 50-70,000 NEPA determinations every year – most result in CE.

Level 2: EA/FONSI

- If no Categorical Exemption applies, a federal agency prepares a written environmental assessment (EA) to determine whether or not a federal undertaking would significantly affect the environment.
- If the EA determines that there will be no significant impact, the agency issues a finding of no significant impact (FONSI).
- The FONSI may address measures which an agency will take to mitigate potentially significant impacts.
- If the agency anticipates that an undertaking may significantly impact the environment, or if a project is environmentally controversial, it may choose to prepare an EIS without having to first prepare an EA.

Level 3: Environmental Impact Statement

- If the EA determines that the environmental consequences of a proposed federal undertaking may be significant, an EIS is prepared.
- An EIS is a more detailed evaluation of the proposed action and alternatives.
- The public, other federal agencies and outside parties may provide input into the preparation of an EIS and then comment on the draft EIS when it is circulated for review.
- After final EIS is prepared, the federal agency prepares a public Record of Decision (ROD) addressing how the findings of the EIS, including consideration of alternatives, were incorporated into the agency's decision-making process.

JUDICIAL REVIEW OF NEPA ACTIONS

- Federal civil action can be filed pursuant to the Administrative Procedure Act
- Citizen suit – “standing” requirements are very low
- 6-year Statute of Limitations (180-days for transportation projects)
- Action against Federal Agency – project developer may not be a party
- Typically less than 100 NEPA lawsuits per year

Case Study:

ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY



- ACTA is a joint-powers authority formed by the Cities and Ports of LA and Long Beach to build and manage rail lines, roads and other infrastructure for goods movement.
- Alameda Corridor – ACTA constructed the \$2.4B Corridor, a 20-mile-long rail expressway linking the Ports to the national rail network near Downtown Los Angeles.
- Schuyler Heim Bridge Replacement and SR-47 Truck Expressway – Litigation against the combined CEQA/NEPA document for the \$700M project.

Case Study: LOS ANGELES STREETCAR PROJECT

- Proposed 4-mile urban circulator located within Downtown Los Angeles.
- Will be owned and operated by the City of Los Angeles; developed in partnership with private sector.
- Federal grant funding requested: 50% of \$125M capital costs (15% of total costs).



QUESTIONS?

Thanks for your time and attention!