



INNOVATE

NEPA, ESA and Fundamentals of Environmental Law (ELI Summer School, 2018)

June 12, 2018

National Environmental Policy Act of 1969



- 42 U.S.C. §§ 4321-4370m-12; 40 C.F.R. Parts 1500-1508
- The “Magna Carta” of U.S. environmental law
- Signed January 1, 1970
- Approximately half of the states have NEPA-esque statutes
- Principles exported to over 160 countries

NEPA – Purposes



The purposes of this Act are:

To declare a national policy which will encourage productive and enjoyable harmony between man and his environment to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

42 U.S.C. § 4321.

NEPA - Framework



- § 4331 – Congressional declaration of national environmental policy
- § 4332 – Cooperation of agencies; reports; availability of information; recommendations; international and national coordination efforts
- § 4333 – Conformity of administrative procedures to national environmental policy
- §§ 4342-47 – Establishment and administration of the Council on Environmental Quality

NEPA – Environmental Review



- Applies to “major federal actions significantly affecting the quality of the human environment”
- Requires a “hard look” by the agency
- Allows for public comment
- Enforcement through judicial review
- Procedural – not substantive – statute
- Average time is 3 to 5 years

NEPA DECISION MAKING



NEPA – CEQ



- Sits in the executive office of the president
- Three members appointed by the president and confirmed by the Senate
- Initially directed to issue guidelines to assist agencies in implementing NEPA
- 1978: CEQ issued regulations

NEPA – Updates



- February 2018: Legislative Outline for Rebuilding Infrastructure in America (<https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf>)
 - \$200B in new spending
 - “One Agency, One Decision”
- Revisions to NEPA
 - Goal is to trim the NEPA process to two years
 - Directs CEQ to issue new rules to streamline the NEPA process
 - Designate a lead agency to produce a single, combined review document and decision document
 - Establish firm deadlines for deliverables
 - Eliminate USEPA’s review of other agencies’ EISs (CAA § 309)
 - Reduce statute of limitations to 150 days

NEPA - Resources



- CEQ:
www.NEPA.gov
<https://ceq.doe.gov/>
- USEPA:
<https://www.epa.gov/nepa/national-environmental-policy-act-policies-and-guidance>
- USFWS
<https://www.fws.gov/r9esnepa/draft%20550a.htm>

Thank You



LEGAL DIVISION

References





The National Environmental Policy Act (NEPA) established the Council on Environmental Quality (CEQ) within the Executive Office of the President to ensure that Federal agencies meet their obligations under NEPA. President Nixon signed NEPA into law on January 1, 1970. NEPA was the first major environmental law in the United States and is often called the "Magna Carta" of Federal environmental laws. NEPA is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act.

- <https://www.whitehouse.gov/ceq/>



Deck References

- <https://elr.info/news-analysis/39/10675/nepa-and-state-nepas-learning-past-foresight-future>
- <https://www.nrdc.org/experts/amanda-jahshan/nepa-magna-carta-environmental-law>
- <https://www.eenews.net/stories/1060073597>
- <https://elr.info/news-analysis/47/10067/environmental-impact-assessment-china-and-united-states-comparison>
- <https://www.eli.org/research-report/judging-nepa-hard-look-judicial-decision-making-under-national-environmental-policy-act>
- <https://www.eli.org/research-report/rediscovering-national-environmental-policy-act-back-future>



Other References

- <https://www.ecfr.gov/cgi-bin/text-idx?SID=826876211cd88703868c43d55f53dc97&mc=true&tpl=/ecfrbrowse/Title40/40chapterV.tpl>
- <https://www.troutmansandersenergyreport.com/2017/04/trump-executive-order-rescind-ceq-ghg-guidance-withdraw-social-cost-carbon-analysis-review-clean-power-plan/>
- <https://www.whitehouse.gov/ceq/initiatives/>