

Environmental Analysis and NEPA

Historical bases for environmental analysis in U.S.

- Frontier spirit vs. environmental damage
- Industrial development, 1850-1950 vs. conservation movement (Thoreau, Leopold, et al.)
- Bureaucratic isolation vs. post-1960 environmental concerns and activism
- Participatory democracy; citizen concern for communities and environment

Legal bases for environmental analysis

- NEPA = National Environmental Policy Act, 1969/1970
- SEPA's = State Environmental Policy Acts; SEQRA, New York, 1978
- Laws put environmental concerns up-front in decision-making processes
 - Integrate and balance economics and ecology

General definitions

- Environmental Analysis = a study of probable changes in the characteristics of an environment resulting from a proposed project
- Environmental characteristics are:
 - Biophysical = biological, chemical, geological aspects of a project area
 - Socioeconomic = human communities, monetary base, and institutions of a project area
- Impact = any (+) or (-) change in the environment

General milieu in which environmental analysis is done

- Who does environmental analysis?
 - Government agencies, academics, consultants, businesses, developers
 - Lead agency depends on law, type of analysis, type of project
- State and federal laws provide authority for EA
 - Agencies define procedures for their areas of responsibility
- Relevant subjects decided by "scoping" and professional judgement
- Commitments of money, time, personnel depend on project magnitude

Content of NEPA, PL 91-190, 1969

- 1970-72 was the golden era for U.S. environmental law
 - NEPA, CWA, CAA, ESA (TSCA, 1976)
- Purposes of NEPA
 - Declare a national policy which will encourage productive and enjoyable harmony between man and his environment
 - Promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man
 - Enrich understanding of ecological systems/natural resources important to nation
 - Establish a Council on Environmental Quality

Title I: Declaration of a National Environmental Policy

- Section 101: federal government responsible to "minimize adverse environmental impacts and to preserve and enhance the environment as a result of federal plans and programs"

Section 102: procedural requirements to make sure that projects will have "full and adequate analysis of all environmental effects of project implementation"

Section 102(1): all federal policies, public laws and regulations shall be interpreted/reinterpreted in accordance with the policies of NEPA

Section 102(2): directs federal agencies to follow a series of steps to insure NEPA goals are met

Systematic/Interdisciplinary Approach will be used to ensure the integrated use of social, natural, and environmental sciences in planning and decision-making

U.S. agencies, in consultation with CEQ, will identify and develop procedures and methods such that "presently unquantifiable environmental amenities and values may be given appropriate consideration in decision-making" along with traditional technical and economic considerations

All Environmental Impact Statements (EIS's) must include detailed statements for a project on:

Anticipated environmental impacts of the proposed actions

Unavoidable adverse environmental impacts if project implemented

Alternatives to the proposed project

Relationships between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity

Any irreversible or irretrievable commitments of resources that would result from carrying out a proposed action

Section 103: all federal agencies must review their regulations and procedures and bring them in line with NEPA

Title II: established CEQ as the environmental advisory body to Executive

CEQ produces Executive Orders and carries out NEPA provisions

3 CEQ appointees

Small staff of lawyers, scientists do research

President must submit annual Environmental Quality Report summarizing:

Status/condition of major natural, man-made, altered environmental classes in the nation

Current and foreseeable trends in the quality, management and utilization of such environments and the socioeconomic impacts of these trends

The adequacy of available natural resources

Governmental and non-governmental activities in relation to the environment and natural resources

A program for remedying deficiencies and recommending appropriate legislation

CEQ issues specific guidelines for fulfilling EIS criteria

Each federal agency required to devise its own EIS procedure re: format, content, coordination, instructions, approval/review hierarchy

Courts also have issued specific guidelines and clarifications

CEQ requires eight major topics to be addressed in a federal EIS [See "Preparation of EIS's: Guidelines, Federal Register, 38, No. 147, Part II: 20550-20562 (8/1/73)]

Description of the proposed action; Statement of project purpose/environmental setting

Relation of the proposed action to land-use plans, policies or controls in affected areas

List probable, especially unavoidable adverse, environmental impacts (+,-) on an area

Alternatives to the proposed action, including those not within the existing authority of the responsible agency

List of unavoidable adverse impacts and how they will be mitigated

State relationship between local, short-term uses of the environment and long-term productivity

State irreversible/irretrievable commitments of resources, including natural and cultural

Indicate other interests/considerations thought to offset adverse effects

Beneficial impacts of NEPA

Reassess/upgrade most federal/state programs impacting the environment

Judicial review set precedents beyond the original requirements of NEPA, particularly on "compliance/circumvention" and citizen access/participation

Brought national policies in line with modern concerns for environmental protection and enhancement

Provided systematic way to deal with problems transcending parochial federal agencies and interest groups

Full disclosure provisions opened government and some private activities to public scrutiny and participation

Helped to staff government agencies with multi-disciplinary, environmentally knowledgeable staff

Provided a mechanism for including environmental costs in decision-making

Allowed citizen suits to help enforce NEPA

Deficiencies of NEPA

Mostly problems with circumvention and compliance in early years; e.g.,

EIS not ready before agency approval of project

EIS biased to meet pre-determined decisions

Agencies ignored conclusions of adverse EIS's

Public access and participation problems

Resolved by the courts in favor of public

Mostly solved circumvention/compliance problems

Major problems today:

EIS's prepared in "mechanical" vs. "spiritual" compliance with NEPA

Secondary impacts and intangible environmental values often ignored

Do's and Don'ts

Use EIS's as tools to provide balanced consideration of environmental, socioeconomic and project objectives

Do Not use an EIS as a justification for a pre-conceived program decision

Do Not use an EIS as a vehicle to delay projects