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cc: "Thiel, Jim" <jim.thiel@dot.state.wi.us>  
Subject: WisDOT Comments - Fed. Register Notice and Request for Comments

08/22/02 01:32 PM

I have attached a copy of our comments on the questions in the "Notice and request for comments, Federal Register: July 9, 2002 (Volume 67, Number 131)". The consideration of the fundamental underpinnings of our current practices in light of the original spirit and intent of NEPA is crucial to the efficiency of government. Over the years NEPA has been used variously, from a decision-making exercise to an exercise in obstruction avoidance. The passions and perceptions of the citizenry are echoed in the agencies where they become fine-tuned to focus on narrow interpretations of their public service. This tunnel-vision stifles innovation, limits progress, and slows vital services to the very public we are serving.

It is time to assess how the NEPA of the 1960's and 70's is functioning in the 21st century and to make the necessary course corrections that will result in all agencies of all levels of government being better able to serve the public. It is imperative for government to catch up (as much as it is able) with the people. This request for comments represents an opportunity to accomplish the changes that are needed for government to improve its service.

Thank you for the opportunity to comment.

Sincerely,

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**COUNCIL ON ENVIRONMENTAL QUALITY**  
National Environmental Policy Act Task Force

AGENCY: Council on Environmental Quality.

ACTION: Notice and request for comments.

SUMMARY: The Council on Environmental Quality (CEQ) has formed a National Environmental Policy Act (NEPA) task force (Task Force) composed of representatives from a variety of Federal agencies. The purpose of the NEPA Task Force is to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. Federal agencies' planning and decision-making processes (analyses conducted and documents produced) using NEPA can obtain higher levels of efficiency, clarity and ease of management through the improved use of existing authorities; better information management; improved interagency and intergovernmental collaboration; and the use of new technologies. CEQ invites comments on the proposed nature and scope of NEPA Task Force activities identified in this notice and solicits examples of effective NEPA implementation practices to develop a publication of case studies including examples of best practices.

DATES: Written comments should be submitted on or before August 23, 2002.

ADDRESSES: Electronic or facsimile comments are preferred because federal offices experience intermittent mail delays from security screening. Electronic written comments can be sent to the NEPA Task Force through the NEPA Task Force link on the CEQ web site at <http://www.whitehouse.gov/ceq>. Written comments may be faxed to the NEPA Task Force at (801) 517-1021. Written comments may also be submitted to the NEPA Task Force, P.O. Box 221150, Salt Lake City, UT 84122. Public comments received by the NEPA Task Force will be available via the NEPA Task Force link on the CEQ web site at <http://www.whitehouse.gov/ceq>. after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon at (202) 456-5432.

SUPPLEMENTARY INFORMATION: On May 20, 2002, CEQ established a NEPA Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; interagency and intergovernmental collaboration including joint-lead processes; programmatic analyses and subsequent tiered documents; and adaptive management. In addition, the NEPA Task Force will look at other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and implementation practices that would benefit other agencies. CEQ envisions the information gained and disseminated by the NEPA Task Force will help federal agencies update their practices and procedures and better integrate NEPA into federal agency decision making. At the end of six months, the NEPA Task Force will prepare a publication highlighting case studies and any best practices that prove worthy of broad dissemination. Additionally, the NEPA Task Force will make

recommendations to CEQ regarding potential guidance and potential regulatory changes based upon the information collected. Any regulatory changes would require public notice and comment and be published in the Federal Register.

To further the work of the NEPA Task Force, CEQ requests public input on certain aspects of Federal agencies' implementation of the National Environmental Policy Act. To make the best use of comments and further refine the initial topic areas on which the Task Force will focus, please respond to the following questions to help the NEPA Task Force identify current best practices and specific opportunities to enhance the NEPA process. If you are submitting a proposed case study or best practice, please provide a short description of the case or practice and how it responded to the relevant questions below. If you are sending attachments or supporting documents with your comment, please send a hard copy of the documents or an e-mail with them directly attached to ensure delivery and receipt. While URL and web-site links are helpful, please provide the information in your comment and do not rely on URL and web-site links alone. To facilitate managing the comments, please identify the question number(s) to which you are responding in study areas A through F below.

A. Technology, Information Management, and Information Security: The NEPA Task Force will explore opportunities for utilizing information management technologies to enhance the effectiveness and efficiency of the NEPA process. Specific examples of innovative technical approaches to the assessment and communication of potential environmental impacts are sought. Examples include use of geographic information system (GIS) software, document creation and comment management systems. The handling of sensitive infrastructure and operational information will be reviewed. The Task Force seeks your input on this topic and requests responses to the following questions.

1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form. Examples include but are not limited to species or wetlands inventories, air quality data, field surveys, predictive models, and trend analyses. WisDOT uses all reasonable means at its disposal to find data and background studies during preparation of our EISs. For any given EIS project WisDOT has obtained information from the census, regional and local statistics, our own data bases and those of our Department of Natural Resources, EPA, Army Corps of Engineers, Fish and Wildlife Service, National Parks Service, State and local resource agencies, plus academia and the public. WisDOT developed and maintains a Wetland inventory and an archeological database. WisDOT staff or consultants conduct and document field surveys of natural and cultural resources. As necessary and appropriate, WisDOT uses predictive models, such as the "gravity model" and trend analyses to anticipate direct and indirect social and economic effects of our projects.
2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information? Information technology is underutilized because of "turf" barriers around critical data

or the lack of data not available electronically. Also, the majority of resources are not adequately nor even correctly identified or positioned. This requires "ground truthing" of the resources to verify their conditions. Models dependent on assumptions are second-guessed as well as the assumptions they are based on. The factors that we must focus on are those that provide accuracy not those that provide unsupportable precision. That is, qualitative factors such as "quality of life" must be measured qualitatively and indirect effects such "potential for economic development" can only be discussed as a potentiality not as a probability.

3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems. WisDOT maintains a wetlands database and another for archeological resources. We also have access to other databases
4. What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems? WisDOT uses electronic information management and retrieval tools such as GIS, in-house databases, databases of other state and federal agencies, e-mail, internet, intranet, extranet, and FTP servers for gathering data and reporting the analyses. These tools are supplemented with appropriate field studies, consultations, and public involvement. The key function of these tools is to provide and display useable data. The tools may be characterized as the "first-cut" since most data, even that from an agency charged with the protection of a resource, is not precise enough for the resource agency to provide the detailed review they desire. This is very frustrating. We would like agencies to accept their own data for decision-making rather than requiring us to do additional fieldwork.
5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD-ROM, web-site, public meeting, radio, television)? Explain the basis for your preferences. WisDOT has no preference as to how we transmit or receive information. We are, of course, a steward of public funds and required to be prudent when spending them. We have had projects where we have used all the methods shown in the above example and others that used only one or two. WisDOT bases its preference for any or all of the suggested methods on community needs and a project's effects to social, economic, and environmental conditions in the area of the project's influence.
6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning

and decision making (e.g., web sites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)? WisDOT has had mixed success in communicating with stakeholders about environmental issues. We have had more success incorporating environmental values into our agency's planning and decision-making. We have used internet web sites to inform the public about our EISs. We have provided EISs on CD-ROM as well as hard copy versions. We continue to send routinely 20 to 30 hard copy versions of our EISs to a variety of state and federal agencies. WisDOT uses a variety of public and agency involvement techniques including foreign language news articles, interpreters, sign language, accessible public hearing sites, and face-to-face meetings to both give and receive information. Concerns have been raised about the tension between the need to communicate with specificity with stakeholders without revealing location information regarding Indian burial sites and other sensitive information that may jeopardize resources or adversely affect cultural values, traditions or relationships.

7. What factors should be considered in balancing public involvement and information security? Wisconsin is an "open records" state. For all intents and purposes our information is available to whomever upon request. Some resource agencies have protected their information by not providing positional details. For example, a resource may be identified as existing at a less than precise location such as a section or quarter section to preclude public pressure on the resource. Here is a recent example of what may happen.



statement on tribal  
burial sit...

- B. **Federal and Inter-governmental Collaboration:** The NEPA Task Force will identify current best practices with regard to collaboration among Federal agencies and on an inter-governmental basis with Tribal, State and local governing entities in developing environmental analyses and participating in the NEPA process. The Task Force seeks your input on this topic and requests responses to the following questions (when answering the following questions, please indicate your role and experiences with NEPA).
  1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions. The characteristics of an effective joint-lead or cooperating agency relationship include the recognition of each agency's governmental mandate, e.g., WisDOT's mandate is the provision of fast safe and

efficient transportation. WisDOT has implemented cooperative agreements with other State and federal agencies and is currently pursuing a statewide agreement to establish the framework for project-level agreements that, it is hoped, will speed the environmental reporting and review processes. Benefits of these agreements include better inter and intra-governmental relations and increased attention to avoidance and minimizing adverse effects. The cooperative agreements state that each agency will cooperate to achieve their respective mandates without precluding one or the other. WisDOT also finances numerous positions within the Wisconsin Department of Natural Resources to help speed up their review processes.

The concepts of joint-lead or cooperating have had mixed success for WisDOT. The Army Corps of Engineers may develop another EIS for the "public interest review" requirements of Section 404, this in spite of their being a cooperating agency. Also, contrary to the CEQ regulations at § 1501.6 some agencies have refused to be cooperating agencies, thereby maintaining or reinforcing an adversarial relationship.

2. **What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?** The major barrier is each agency's narrow focus on its own mission. Resource agencies do not want to be associated with WisDOT on projects that affect resources under their jurisdiction. Their rationale seems to be a false desire to maintain their perspective or authority and avoid being accused of caving in to transportation interests. Also, negotiations in the permit process may lead to mitigation blackmail. WisDOT has, on numerous occasions been denied 401 water certification until we acceded to demands unrelated to Section 404 at other locations on the same project. Here is an example of a failure of federal agencies to honor the umbrella NEPA joint and cooperating agency process.



Secretary Streamline  
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3. **What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?** The specific area that needs to be emphasized through training and education is the concept of effective government. Whenever one agency is at loggerheads with another, it serves no governmental purpose to resort to stonewalling. Too often the public views government as indecisive or, worse, ineffective because of interagency squabbles. Agencies need to realize that we are all part of government and need to cooperate to accomplish our separate mandates for being. Some agency people view their role with tunnel vision and foster an us versus them mentality that precludes meaningful cooperation. In some resource agencies people also view their agency's regulatory role as the antithesis of cooperation. Transportation agencies

also need to know that resource agencies have different values that are as valid as their own.

- C. Programmatic Analysis and Tiering: Opportunities to facilitate timely planning and decision-making to reduce or eliminate redundant and duplicative analyses through the use of programmatic and tiered analyses will be explored. To date, Federal agencies have used programmatic analyses to address a range of issues from facility and land use planning to broad categories of actions, or to sequencing or staging actions. All of these analyses may have subsequent tiered analyses. The Task Force seeks your input on this topic and requests responses to the following questions.
1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analyses, and the efficiencies realized by the analysis or in subsequent tiers. WisDOT has made attempts to tier environmental documentation but has dropped them because resource agencies perceive that they lack the level of detail they need to make comments. On the other hand, we have developed and obtained FHWA approval on a programmatic Environmental Report for those road rehabilitation and minor bridge projects that require federal concurrence. While tiering EISs has been a bust, the programmatic for road rehabilitation and minor bridge replacements has been a boon. Projects documented using the programmatic checklist encounter virtually no transmittal or review time from either FHWA or WisDOT's Central Office. WisDOT developed a checklist that immediately lets the author know whether additional data is needed to complete the concurrence process. The completed checklist indicates that all pertinent environmental issues and concerns have been considered and there are no significant effects. The checklist is placed in the project files
  2. Please provide examples of how programmatic analyses have been used to develop, maintain and strengthen environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses. Examples of an environmental management system may include but are not limited to systems certified under ISO 14001 (further information on ISO 14001 can be found on the Web at <http://es.epa.gov/partners/iso/iso.html>). WisDOT has not developed an environmental management system.
- D. Adaptive Management/Monitoring and Evaluation Plans: The CEQ report, "The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years", recognized that by incorporating adaptive management into their NEPA analyses, agencies can move beyond simple compliance and better target environmental improvement. An adaptive environmental management approach can respond to uncertainty and the limits of knowledge and experience in making decisions. Such an approach allows for approval of an action with uncertain outcomes by establishing performance-based

environmental parameters or outcomes and monitoring to ensure that they are achieved. When those parameters or outcomes are not met, corrective changes would be triggered, for instance to ensure that significant environmental degradation does not occur. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What factors are considered when deciding to use an adaptive management approach? WisDOT does not have a formal adaptive management approach. It has been our experience that resource agencies are too limited by regulation to allow for an adaptive approach, though we do something similar to an adaptive management approach for wetland mitigation. In many cases WisDOT has provided for long-term monitoring wetlands it has created. In the face of resource agencies' often persistent and rigid adherence to the regulatory approach, negotiations must focus on meeting the requirements in innovative ways and the possibility of corrective action.
  2. How can environmental impact analyses be structured to consider adaptive management? Resource agencies need to develop more regulatory flexibility in order to explore adaptive management more effectively. Development agencies must focus on the goal of the mitigation and seek to assure the resource agencies that unavoidable adverse effects will be mitigated. One way to move the NEPA process into planning would be to have performance measures and focus on outcomes. This would be a huge change for regulating agencies and DOTs.
  3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses? Any adaptive management measure that generates an effect upon the quality of the human environment requires NEPA analysis.
  4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities? WisDOT can conceive the consideration of a variety of items such as cost, timing, staffing needs, and environmental risks when developing techniques and levels for monitoring. WisDOT would be looking at health of ecosystems, not measuring diversity in a one square meter plot.
- E. Categorical Exclusions: Agencies can identify categories of actions that do not individually or cumulatively have a significant effect on the human environment and which, therefore, do not require preparation of an Environmental Assessment or an Environmental Impact Statement. The NEPA Task Force will consider the bases and process for establishing categorical exclusions. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What information, data studies, etc., should be required as the basis for establishing a categorical exclusion? The information that would be most effective is number Categorical Exclusions receiving FHWA concurrence. Most commonly these are road rehabilitation or minor bridge projects that use minimal or no new right of way. WisDOT uses a checklist to determine whether a project conforms to the programmatic documentation, and if it does, the checklist becomes the de facto environmental document and is placed in the project files.
  2. What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion? The comparison must involve proposals that have the same or similar effects.
  3. Are improvements needed in the process that agencies use to establish a new categorical exclusion? If so, please describe them. WisDOT does not see a problem in this area. The establishment of new categorical exclusions assumes that new activities are being proposed. In the early 1970s WisDOT, as part of the Wisconsin Environmental Policy Act's implementation, defined all its major actions into the three traditional categories of EIS, EA, and CE. The resulting list of actions was detailed but ended up being too restrictive and unwieldy. The solution was to use the more broadly defined CEs as in federal regulations.
- F. Additional Areas for Consideration: In addition to the topics described above, the NEPA Task Force will consider comments on NEPA practices that would improve and modernize NEPA implementation.

For example, the NEPA Task Force requests public comment on the appropriate utility of and structure of format for environmental assessment documents. WisDOT has used a set of forms called the Environmental Evaluation Screening Worksheets or just Screening Worksheets. These sheets contain items that require completion and result in the worksheets becoming the Environmental Assessment. We have used these forms for over 25 years. They have been used to communicate with every resource agency and have been tested in court. These forms hold the promise of consistency and brevity in that the same items are in the same location without extraneous issues and concerns included. We are now piloting their use for EISs. Overall, the EIS format needs to be more flexible and repetition reduced.

The Nepa Task Force will use the information and comments it receives to identify, evaluate, and make recommendations on improving NEPA implementation and to prepare case studies that include examples of best practices.

Public comments are requested by August 23, 2002.

Dated: July 2, 2002.

James L. Connaughton,  
Chairman, Council on Environmental Quality.

[FR Doc. 02-17082 Filed 7-8-02; 8:45 am]

BILLING CODE 3125-01-M