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NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122

Subject: Suggestions to Improve the NEPA Review Process - Need to Define NEPA Requirements under Delegated Programs

NEPA Task Force Members:

This letter is in response to the Council on Environmental Quality (CEQ's) July 9, 2002 *Federal Register Notice and Request for Comments* requesting comments and/or recommendations to improve the NEPA Review Process.

As a former USEPA Region 2 employee and an active Environmental Professional in the private sector (with over 27 years of direct experience), I offer the following comments and/or recommendations for your consideration:

Defining NEPA Requirements under Delegated Federal Programs

Background

In an effort to help streamline government programs and reduce duplication of efforts, many Federal Agencies/Department are "Delegating" review and approval authorities to state or tribal resource agencies. Such delegated authority is common at the US Army Corps of Engineers, US Environmental Protection Agency, US Department of Agriculture and US Department of Commerce. Program Delegation is normally accomplished via a formal Delegation Agreement and subsequently implemented at the state or tribal level through complex Standard Operating Procedures (SOP's) that have been approved by the Federal Agency. In most cases delegation agreements and the resulting SOP's are very program specific and singular in purpose and perspective.

Although NEPA recognizes and encourages cooperation and streamlining between the various Federal Agencies, the need for similar actions at the delegated program level is unclear. As a result when both a delegated state/tribal action and a federal action are required there is no mechanism for establishing lead or cooperating status with the non-federal office. In many cases, this results in a duplication of reporting, public notice and legal reviews.

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For example:

“Under a delegated Section 401 program a state office conducts a NEPA level project review, issues a public notice, may hold a public hearing and then issues a Record of Decision in the form a permit, letter of authorization, etc. following Standard Operating Procedures approved by USEPA. In many cases, Section 401 Program certifications are associated with a US Army Corps of Engineers permit action that may have been delegated to a totally independent third party. The Army Corps or its delegated partner are conducting their own NEPA level reviews, issuing public notices, holding public hearings, etc. in accordance with Standard Operating Procedures approved by the Corps of Engineers. That is two NEPA level reviews taking place on the same project.”

The potential duplication of effort and lack of coordination is evident. There are cases where one federal level approval is granted with one set of conditions and another federal level approval being granted with contradictory conditions.

Recommendation

NEPA should be clarified and sections added to require Federal Agencies to include a section regarding NEPA compliance, cooperation in cases of multiple actions, and streamlining in all state/tribal Delegation Agreements. Federal Agencies should also be required to make certain that Delegation Agreements and SOP adequately cover multiple level reviews and that they require state/tribal offices to eliminate duplication of NEPA level reviews at both the state and federal levels.

The Delegation Agreements and SOPs should also be required to make delegated state/tribal offices acknowledge and abide by the NEPA determination that have already been made by another delegated program and/or Federal agency.

For example:

“If one delegated office has already made a NEPA determination on a project and that project requires a permit from another delegated department and/or Federal agency approval, then the subsequent agency/office should honor the original NEPA determination, and not start a new or independent NEPA review process.”

By requiring Delegation Agreements and SOPs to formally address multiple level reviews and honoring previously made NEPA determinations, it may be possible to reduce project schedule by several months and even years.

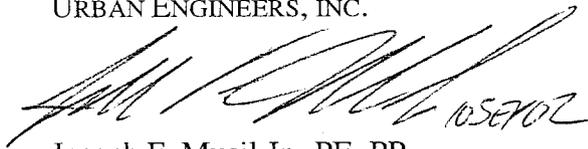
Closing

There are many ways of improving the NEPA Review Process without decreasing the importance and value of sound environmental planning. Implementing the above recommendation would help to expedite and simplify NEPA reviews. It is important to note that NEPA reviews are not limited to Federal or Federal EIS projects. NEPA affects almost every level and degree of development taking place in America and it extends all the way down to local level NEPA-delegated permits and approvals.

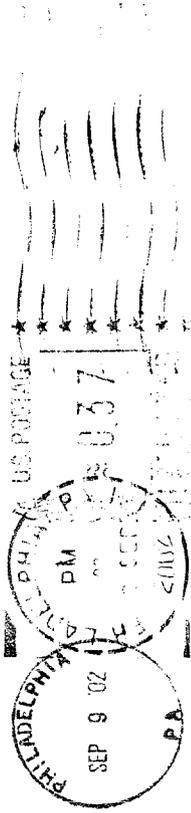
If you have any questions on the above or would like additional information on NEPA review problems, please feel free to contact me at 1-215-922-8080 x 1266.

Sincerely,

URBAN ENGINEERS, INC.



Joseph F. Musil Jr., PE, PP
Environmental Project Manager



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