



CQ462

NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

Re: *Federal Register Notice and request for comments, July 9, 2002*

The comments are submitted on behalf of the membership of the Montana Logging Association (MLA) all of whom own and operate family-owned timber harvesting and log hauling businesses. MLA's members are directly affected by Federal environmental and land management policies including the National Environmental Policy Act (NEPA).

We have organized these comments relative to the questions posed in the above referenced *Federal Register* notice. We are also submitting some additional comments for your consideration.

A. *Technology, Information Management, and Information Security.*

We suggest that technology has a place in improving both the creation and critique of detailed and other statements (EA's – EIS's). It may be time for a complete re-vamp of the way these documents are produced. The current process of creating large, printed documents is cumbersome and expensive. The media used – plain text – is dull and does little to capture the interest of the affected publics with interest in the project area. In general, these existing documents are only reviewed by paid specialists representing special interests. Innovations could include on-line EIS's with interactive hot links to the various scientific papers referenced. Embedded graphics and photographic files could be used to illustrate existing and desired future conditions that the project alternatives seek to implement. This media could also be published on CD-ROM discs with included software to allow the viewer to run the programs. These CD's could be used for interested groups to review the EIS in a collective and interactive setting. While this is not a specific task for CEQ, we suggest that agencies be directed to take the necessary steps to be able to produce informative disclosure media that the affected public can use. CEQ should concentrate its efforts with its role to help improve NEPA by recommending changes to NEPA and revising its regulations at 40 C.F.R. 1500-1508.

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?

Currently, we rely on the analysis within the NEPA document itself to provide our critique. Occasionally we will seek out referenced data and studies to discover and substantiate issues that are significant to our interests. This can be a very time consuming exercise. As mentioned above, interactive links to referenced materials would be very helpful.

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?

CAET RECEIVED  
SEP 23 2002

Barriers or challenges include the skill level and available hardware/software of the affected and interested public, the accuracy of the data used to build models and the interpretation of the expressed data. Often, anecdotal data from specialists is used which is not validated by peer review or other validation processes. This is particularly true in the Biological Assessment and Biological Opinion phase of the ESA Section 7 consultation process.

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 protocol or standardization efforts that you feel should be utilized in the development and maintenance of these systems.
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?
5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents? Explain the basis for your preferences.
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? What objections or concerns have been raised concerning the use of tools?

Please see our comments under A above.

7. What factors should be considered in balancing public involvement and information security?

No comment.

*B. Federal and Inter-governmental Collaboration.*

Currently, there are no empowerment mechanisms for collaboration. Until collaborative processes are empowered under NEPA, the Appeals Reform Act and “standing” issues with judicial review of NEPA decisions, they are a functional waste of time. Even though collaboration has immense value in building trust and relationships, individuals, interest groups and other collaborating parties are disenfranchised when the final product does not get implemented - or gets dismantled by administrative appeals or litigation by third parties not involved in the collaborative effort.

For collaboration to be successful there must be a higher degree of protection for the final product. Outside parties that choose not to participate or simply don't like the outcome must face a higher threshold to challenge than actions not done through collaboration. We suggest changing the “standing” status of the Appeals Reform Act and NEPA process litigation standing for those not involved in the collaboration. Also reforms to the Equal Access to Justice Act to eliminate incentives (court cost remuneration) for litigation by parties external to the collaboration should be considered.

With respect to joint-lead or cooperating agency status, we defer to those with more knowledge of this possibility. While we see this as a benefit to better decisions, there

could be significant delays in process if cooperating agencies are not timely in their involvement.

C. *Programmatic Analysis and Tiering.*

Agencies have created too many layers of environmental analysis, which delays the site-specific environmental analysis necessary to ultimately support taking action. Because the programmatic documents take years to prepare, by the time the environmental document is finally prepared for the project, the information in the programmatic EIS is outdated and cannot be used in the project level environmental document. The project level environmental document must then stand on its own analysis, or repeat the inadequate or outdated analysis in the programmatic EIS. This is analysis paralysis at its worst. We suggest that programmatic analysis over wide areas only make sense when done at the watershed scale and are immediately used to help implement projects.

D. *Adaptive Management/Monitoring and Evaluation Plan.*

This is a good concept but NEPA’s threshold of “complete information” creates a problem because it’s never complete and thus a target for litigation! The concept of adaptive management as a tool to alter the trajectory of a project’s implementation – because of new information derived from the monitoring effort – is admirable, but requires that the project get underway in the first place. We suggest changing the threshold in NEPA for “complete information”.

E. *Categorical Exclusions.*

1. *What information, data studies, etc. should be required as the basis for establishing a categorical exclusion?*

Categorical Exclusions should be based on basic site-specific information that clearly illustrates that the proposed action will not have a significant effect upon the quality of the human environment. Over the years, this threshold has blurred. For example, today, USFS proposed actions that take place in an area that contains a listed specie under the ESA will likely not be categorically excluded as the mere presence of a listed specie can be construed as “Extraordinary Circumstances”. Please clarify that the new definition of Extraordinary Circumstances – Federal Register P. 48412 *et seq.* 09/20/01 – has been codified and provides clear direction to the USFS. Similarly, under the ESA Section 7 Consultation process, clarification is needed to allow projects to be categorically excluded, with automatic USFWS/NMFS concurrence, when the USFS specialists determine that the proposed action will either have “no effect” or “may effect – will not adversely effect” a listed specie.

2. *What point 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?*

We are not familiar enough with agencies other than the USFS, but anecdotally, there appears to be a higher threshold for categorically excluding projects that involve forest management action – especially the harvest of trees – than any other actions. An internal example of inequity within USFS actions would be the categorical exclusions adopted for ski area permit actions - that may have a more significant effect upon the quality of the human environment than a proposed salvage logging project to recover timber damaged in a 250 acre wildfire area. We suspect that there are even greater thresholds of inequity

CP462

between different agencies. For instance, we suspect that USDOT road maintenance projects can be categorically excluded at a much higher tolerance of effect upon the quality of the human environment than a proposed USFS tree thinning or other forest management project.

3. *Are improvements needed in the process that agencies use to establish a new categorical exclusion?*

We have limited knowledge of the existing process and would defer comment to others better versed in the nuances of the existing process. We believe this is one of the primary tasks for CEQ and it should be their direction to agencies as to the necessary process to establish new categorical exclusions. The fundamental question is how does one determine that a proposed action will not have a significant effect on the human environment if you don't do the analysis? A possible solution would be to research similar actions that have been analyzed and implemented to establish the significance of these actions and the parameters of similar, proposed projects that could be confidently deemed as not having a significant effect on the quality of the human environment.

**Additional Comments:**

You should consider mechanisms to clarify accelerated environmental review of important projects through the use of "Alternative Arrangements" under 40 C.F.R. § 1506.11 to deal with an emergency situation. Since 1980 the emergency provision of the CEQ regulations has been rarely used but would be particularly useful for USFS projects requiring prompt action to **avoid** further significant effects on the quality of the human environment. This is particularly true for fire salvage logging projects where the immediate removal of burned trees (during the winter following the fire) can not only expeditiously recover the value of the burned timber, but also facilitate necessary erosion control measures **before** the first runoff season following the fire.

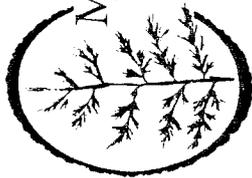
As a practical matter, President Bush could issue an executive order directing CEQ to streamline the NEPA process, to more actively use its powers to develop alternative arrangements for satisfying NEPA requirements in emergencies, or to develop procedures to promptly process "actions needing urgent review" that are short of emergencies.

The thousands of EA's prepared each year for proposed actions without significant effect on the quality of the human environment are not required by NEPA. This truly is analysis paralysis. Please see our comments on Categorical Exclusions. The NEPA statute requires no study at all of proposals that do not have significant environmental effects – so why perform all these EA's each year? (The EA requirement was imposed in the CEQ regulations). Modern NEPA regulations need to ultimately be structured to reveal whether a project either has a significant effect on the quality of the human environment, or it does not. This is the relevant question. Thank you for the opportunity to comment on this vitally important issue.

Sincerely,



Patrick Heffernan, MLA Staff Forester

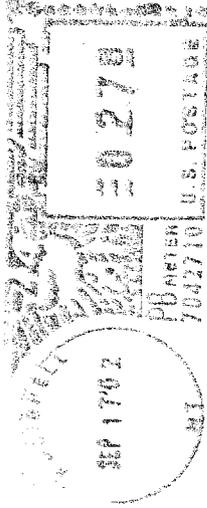


**MONTANA  
LOGGING  
ASSOCIATION**

P.O. Box 1716  
Kalispell, MT 59903

*Address Service Requested*

PROVIDE RETURN ADDRESS



**CAET RECEIVED**

**SEP 23 2002**

**CP462**

NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

615-4EM5 84122

