

CQ467



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Subject:

Please accept the attached paper in response to the FR invitation for comment from the CEQ NEPA Task Force.

I am available at your convenience to provide any additional information.

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Early Planning in National Environmental Policy Act Compliance1.doc

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Early Planning for National Environmental Policy Act Compliance

Comment to The Council On Environmental Quality National Environmental Policy Act Task Force

Peter W. Havens, CEP¹
September 20, 2002

Introduction

The Council on Environmental Quality (CEQ) has established a National Environmental Policy Act (NEPA) Task Force to evaluate several issues related to compliance efficiency and effectiveness. A full description of the invitation to comment including specific topics to address was published in the Federal Register, July 9, 2002. This paper responds to the invitation topic *F, Additional Areas for Consideration*.² These comments are indirectly related to topics *A, Technology, Information management, And Information Security; B, Federal and Intergovernmental Collaboration; and C, Programmatic Analyses and Tiering*.

This paper addresses Early Planning as a focal issue for the production of effective and efficient Environmental Documents. The author relates recent experiences to underscore improved document effectiveness and efficiency. The Environmental Planning Strategy is introduced as a specific action tool that emphasizes early planning.

The views of the author are based on 20 years experience with Environmental Planning for Navy Military Construction Program projects. They do not necessarily represent the views of the Navy.

Background

Implementing regulations³ address in detail the characteristics of Environmental Documents prepared in compliance with NEPA. Individual agencies have followed the CEQ rules with additional information about the nature of the Environmental Document.⁴ These rules implement the basic NEPA requirement for a Statement for a particular class of proposed actions.⁵ Thus, many action proponents see the Environmental Document as a compliance requirement that once achieved allows the project to go ahead. We ask on the other hand: what is the best process to follow that results in effective and efficient Environmental Documents that support excellence in decisionmaking.

The Environmental Document may be understood as a report of a process. It reports the substance of previously conducted environmental planning. The document and subsequent agency approvals culminate a planning process. When the environmental planning process is fully conducted, preparation of the report summarizing that process is relatively easy.

¹ Mr. Charles Eccleston, CEP, provided invaluable comment and support in the preparation of this paper.

² Federal Register 67:131:45510-45512

³ Code of Federal Regulations 40:1500

⁴ For example, Department of Navy Rules at Code of Federal Regulations 32:775

⁵ National Environmental Policy Act, Section 102(c)

To initiate the NEPA process the action proponent must develop several fundamental concepts. These concepts, including the proposed action along with underlying needs and anticipated purposes are presented in the first two chapters of the Environmental Document. The effectiveness of the introductory logic presented in the Environmental Document is an important aspect of its success. For example, the root cause for failure to consider appropriate alternatives could be an incomplete development of the proposed action, a lack of understanding of the actual need for the proposed action, or failure to recognize one or more significant environmental issues.

Over the years, the community has focused on the acceptable Environmental Document and its preparation as a defensive measure. The reason for this is simple. When we have a good document, we can do our project. In doing so the community has been skewed toward the side of excellence in document production rather than excellence in decision making.⁶ Rather than a means to a decision, the document is viewed as a compliance permit. Instead of an assessment and comparison of environmental effects, it is viewed as an environmental preservation device. Sometimes, the resulting document can appear not as a report summarizing thoughtful planning of the proponent, but a *pro-forma* ticket. Unfortunately, many forget, or do not understand that the document is only as good as the underlying procedural compliance. Because the NEPA process is itself the compliance feature, conducting that process will result in acceptable Environmental Documents.

Early planning during the NEPA process is a point in the NEPA process that has not received equivalent emphasis. As has been shown time and time again, early planning not only increases the quality of NEPA compliance, but also results in increasing efficiency and effectiveness in the Environmental Document. By focusing on early planning, practitioners are reminded of its benefit and proponents are taught why it is a necessary step that works as well as it does.

Discussion

Emphasizing early planning creates an atmosphere in which the intended excellence in decision-making can occur. The following discussion presents several examples in which the inclusion of early planning in the NEPA process has greatly promoted effective documentation. The examples also illustrate the success of early planning techniques and management practices.

Aircraft Carrier Homeporting

The Navy began planning for facilities development for the newest aircraft carriers homeports on the west coast early in the Military Construction Program funding process. Through the involvement of Environmental Planners in San Diego, Pearl Harbor, and the Pacific Northwest, common needs and purposes were identified for several proposed facilities. The Navy supported a Pacific Fleet-wide environmental assessment of homeporting the new aircraft carriers and the facilities that would be needed to provide acceptable homeports.

The development of a strategic plan of action was a watershed event in the early planning for this NEPA compliance effort. An interdisciplinary team had been established, but little progress had been made toward preparing a NEPA document. After prolonged discussion with the help of a

⁶ See Code of Federal Regulations 40:1500.1(c)

consultant, the working team agreed there were a multitude of potential alternatives that met the purpose and need of the proposal. Thus, the Navy strategy called for a planning study to identify which alternatives were reasonable to pursue in further analysis by the NEPA document.

The preparation of the EIS that followed these discussions was effective and efficient in achieving Navy goals. Significant issues were identified and analyzed. The public commented extensively on controversial issues involving alternative selection. Very few, if any, serious issues arose regarding the fundamental purpose and need, or alternative development. Responding to comment on the fundamentals of the decision was a matter of the action scope, which had been well established in the early planning. Stakeholders generally supported the logic flowing from the statement of the proposed action through the alternatives listing. Thus, this EIS document was relatively easy to produce and complete. In the northwest, the EIS formed a solid basis for obtaining the necessary permits including integration of Clean Water Act and CERCLA requirements.⁷

Fire Fighting Facility

A Fire Fighting training facility had been proposed for construction at a base in the Seattle area. In early planning, a team including proponent representatives concluded the purpose of the proposed facility was to service all Navy employees in the region, not just at the base where it was slated to be located. The team agreed after clearly identifying the proposed action and purpose and need that one action alternative would be to use existing State and Local fire fighting facilities.

In conclusion, the proponent withdrew the proposed Military Construction project in favor of revising the location and timing of training activities. The proponent's needs were met and the purposes were achieved by continuation of ongoing activities.

Waterfront Security Barrier

A proponent working team was established to plan environmental compliance for installing and operating a floating security barrier to protect against potential water-borne threats. During this time, several barrier types were in consideration and the actual location for the barrier was unknown. The team charged with preparation of an Environmental Assessment (EA) developed the proposed action and purpose and need from the limited amount information available before design had been conducted. The early planning allowed the proponent to clearly see the combinations of barrier type and location available for consideration. The details of the individual barrier design were not significant issues in the NEPA analysis.

In this effort, the deliberative evaluation of real alternatives reduced risk of controversy, thus allowing consideration of real issues. The alternative structure was consistent with concurrent engineering and economic evaluations also. Thus, in the true spirit of NEPA, the decision to

⁷ The proposed facilities including dredging were located at a site listed on the National Priority List as a "Superfund Site" of submerged sediments, within the habitat for endangered salmon, and within an area under the environmental stewardship of a Native American Tribe. Navy managed a program integrating compliance with Clean Water Act (404/401), Rivers and Harbors Act, Coastal Zone Management Act (Washington Shoreline Management Act) and Endangered Species Act, as well as with Native American interests. Facilities construction and the CERCLA Proposed Plan were conducted at several million dollars of savings from the congressionally approved military construction budget. The success of this program was, in part, due to the effectiveness of the supporting EIS.

install a specific security barrier considered potential environmental effects and included innovative design constraints to avoid adverse effect on listed endangered fishery species. The Environmental Document was an effective equal partner in presenting decision factors to the decision maker. It formed a solid basis for compliance with the Endangered Species Act and the Rivers and Harbors Act. Stakeholders supported the effort.

Assessment

From experiences such as these, the successes of early planning and proponent involvement suggest guidelines for continued procedural improvement. The decision maker must be open to environmental input. During these discussions, a trusting atmosphere appears which is a first step toward quality environmental planning. These factors help simplify the preparation of the Environmental Document and allow decision makers to focus on real issues.

Mutual Respect

When early planning is imposed as a basic step in the NEPA Process, a typical team is established. The proponent has an opportunity to explain the real purpose and need for the proposal. Likewise, environmental planners can develop a respect for the proponent's authority to make decisions once factual environmental information is considered. The proponent can see the environmental planner as a problem solver rather than hindrance. Internal controversy is minimized and real issues become the focus of resolution.

For example, the aircraft carrier EIS addressed four separate Naval Bases located in San Diego, Puget Sound, and Hawaii. Five actual vessels were to be homeported. The complexity of executing such a decision includes serious engineering, logistic and economic considerations. The supporting EIS had to address the facilities requirements at the alternative sites for various numbers of homeported vessels. Regardless of the complexity and size of the EIS, internal Navy controversy during preparation of the EIS was relatively minimal. Debate focused on the real decision of how many vessels would go to which homeports.

Early planning in this case allowed time to identify a satisfactory compliance strategy. The working teams deliberated long and hard about the fundamental structure of the EIS in support of this important Navy decision. Environmental planners took time to understand the proponent's views. The proponent was an involved player understanding the basics of NEPA procedural compliance. By following the basic NEPA procedure, the team was able to design an effective compliance strategy without the addition of superfluous project constraints or poorly thought out mitigation measures.

Familiarity with NEPA

An educated proponent who understands the utility of the types of NEPA documentation is able to consider the decision clearly within a procedural framework required by law. Rather than simply preparing a document and checking the box, the proponent can integrate environmental considerations into a decision along with logistic, economic, and engineering input. This is the utility of the NEPA process. In the Fire Fighting Trainer example, the decision to withdraw the construction project and to use existing facilities came as a result of the proponent's involvement in determining which Environmental Document would be appropriate for the proposal.

Original Thought

Consider being tasked to produce an Environmental Document. The tasking may be shortsighted, simply indicating the proponent wishes to have an EA prepared for a particular project. The NEPA practitioner may be forced to invent the environmental planning concepts discussed in the first two chapters of the document. The proponent is not involved in thoughtful development of the fundamental environmental planning concepts. As a result, the purpose and need in the Environmental Document risks being a sham that justifies a pre-determined solution to an undefined problem.

Emphasis on early planning within the NEPA process can help the decision maker consider actual purposes and needs, subsequently improving the fit of the proposed action with the true needs. This kind of realistic evaluation provides the proponent the best opportunity to achieve goals in an efficient manner. Excellent procedural compliance will address significant issues and not analyze insignificant issues in an attempt to avoid litigation.

In the aircraft carrier EIS and the waterfront security barrier EA examples, the early planning allowed the development of actual decision factors and real alternatives considered for implementation. The environmental impact assessment based on a well-developed alternative set was able to provide focused and specific input to a real decision.

Existing Rules and Regulations

In an attempt to improve the success rate of NEPA documentation, agencies may require Environmental Documents avoid errors of the past by addressing all possible issues. Such requirements will include analysis of insignificant issues, elaborate justifications of the proponent's preference, and lengthy discussions of every conceivable environmental effect regardless of its likelihood.

Early environmental planning allows time to thoughtfully consider which issues are important enough to receive analysis and what kind of analysis is appropriate for the level of anticipated impact. Thus, practitioners and the proponent are focused on addressing the significant issues in a compliant manner. The issues will tend to dictate the type of Environmental Document rather than ill-conceived attempts to avoid procedural effort and costs.

Each of the examples provided above included aspects of this factor. Compliance can be streamlined by being tailored to the proposed action when additional time is allowed during early planning. Early planning can include a plan of action to conduct the full NEPA process. Then, the action proponent can take the time early in the process to take the best opportunities to reach the original goal.

Conclusions and Recommendations

Through experience, early planning provides for an understanding a proponent's fundamental needs and options to satisfy those needs and achieve specific purposes. Early planning leads to original thought about a specific action and opportunities to achieve goals. The nature of early planning is to consider environmental issues within context and intensity. Thus, the resulting deliberation of these issues achieves compliance in itself and sets the stage for quality document production.

Environmental Planning Strategy

The Environmental Planning Strategy is recommended for CEQ dissemination as a tool to help comply with the NEPA process. The tool would involve three components: a proponent-based Team, working from a Similar knowledge base about NEPA, producing a report summarizing the compliance information normally contained in Chapters 1 and 2 of the NEPA Environmental Document. The three parts may be as elaborate or as minimal as necessary to support the proposal at hand.

The proponent establishes a working team to conduct the Environmental Planning Strategy. The environmental planning involvement early will encourage original thought. An established team also encourages communication of a plan of action for the NEPA project, the scope for NEPA analysis, and the type of document needed. The team's efforts will develop a point of departure for easier document production.

An Environmental Professional briefs the team on NEPA compliance. The team members will have various understandings about NEPA. The briefing is intended to develop a unified understanding about NEPA and a conceptual framework for the work to come. Information that is usually helpful includes the requirements for, and the utility of EIS's, EA's, and Categorical Exclusions. Amplifying agency rules can be referenced also. The brief should also address the concepts of Proposed Action, Purpose and Need, Alternatives, Significant Issues and how these concepts are related in the Environmental Document.

Following introductory briefings, the Environmental Professional facilitates the team through the NEPA regulations as they apply to the agency, allowing the team to develop a management consensus about the strategies to be used in each case. The team will develop a plan of action for the conduct of NEPA compliance for a specific proposed action. The use of boilerplate strategies is discouraged since it stymies original thought.

Finally, the team will produce a report summarizing team strategy for Environmental Planning compliance. The report should present a brief summary of the Proposed Action, Purpose and Need, Alternatives to be evaluated, Significant Issues, and which NEPA document type is appropriate to the action. The report is essential in accounting for the work of the team and setting a base plan of action for preparing a NEPA document. This report also forms the basis for continued teamwork under the proponent's supervision. Within DOD, such a report may already be required to initiate environmental planning. For example, the Navy requires the proponent to notify the chain of command of the intent to prepare a NEPA document. The Air Force provides a format for this type of notice. In each case, the requirement calls for a brief summary of the basic NEPA concepts identified above.

Additional Recommendations

CEQ may also take a pro-active role in developing professional NEPA training courses that emphasize a balanced approach to decisionmaking. Workers knowledgeable in the balanced application of NEPA can help proponents through the regulatory maze. Unfortunately, many courses currently offered will focus only on document production and the characteristics of the good document. As discussed, planning for document production is an essential activity for effective and efficient documentation.

A common objective for NEPA training should address practical approaches to early planning. The CEQ could take a leadership role by promulgating balanced course objectives. Further, the CEQ could encourage agencies to seek professional NEPA training courses. A database of available courses would be helpful in this regard.

NEPA training normally does not emphasize the meaning of "significance." In regards to EAs and the threshold of significance, practitioners are left to experience a sense of significance. CEQ could also take a leadership role by promulgating guidance to help practitioners identify significance thresholds.