

CQ598

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TO: NEPA Task Force

FROM: David R. Brown

RE: Request for Comments, NEPA Task Force, The Council of Environmental Quality, Federal Register, Vol. 67, No. 131, pp. 45510, July 9, 2002



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NEPA Task Force
P.O. Box 221150
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Re: Request for Comments, NEPA Task Force, The Council Of Environmental Quality, Federal Register, Vol. 67, No. 131: pp. 45510, July 9, 2002

BP is a global energy company active in more than 100 nations worldwide. Our operations in the lower 48 states and the Gulf of Mexico are part of BP America Inc. BP already ranks as North America's leading producer of natural gas. BP is determined to be an environmental leader, demonstrating social responsibility and sound stewardship in all that we do. We have been involved in National Environmental Policy Act (NEPA) actions previously. However, the perspectives contained in this letter will be based upon our involvement with NEPA from the upstream segment of the company, which is more focused on the production of oil and natural gas.

We will address each question posed in the federal register notice.

A. Technology, Information Management, and Information Security

1. *Where do you find data and background studies to either prepare NEPA analysis or to provide input to or review and prepare comments on NEPA analyses?* Typically, as a reviewer to a draft Environmental Impact Statement (EIS) or Environmental Assessment, (EA), we review the information that is either presented in the documents or the support documents that are available in the office where the document was generated. In verifying data, a state or federal agency website can be valuable, but only if the information can be accessed and is of a scale (i.e., maps) that allows for ease in use.
2. *What are the barriers or challenges faced in using information technologies in the NEPA process?* Both electronic and printed versions have been used, although more recently, electronic versions have become more frequent. However, it should be noted that downloading electronic versions of data, particularly files that are large, could be a slow and time-consuming process. As has been done with some recently prepared EIS's, the use of CD's has been useful in avoiding this problem. We would

recommend the practice of using CD's in lieu of having reviewers retrieve documents from a website.

3. *Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific?* We do maintain databases for a time in association with a NEPA analysis for future reference. These are useful in planning future projects and managing existing operations. They can be both standing and project specific. The only problem is that environmental databases are dynamic and can change with time. It requires an effort anytime data is used later to ensure it is still current. It is important that updated databases include a history of changes so that users can be aware of the revisions that have been made. However, users of the data, unless they access it frequently, will not know when changes are made unless advised.
4. *What information management and retrieval tools do you use?* We use our computer systems at work to access the information. However, it still sometimes requires visits to the local field offices of the agencies to get obtain adequate size maps. GIS databases can be very helpful in expediting the acquisition of this information.
5. *What are your preferred methods of conveying or receiving information about proposed actions and NEPA analysis and for receiving documents?* We receive notice of actions in a number of ways. Sometimes as a recipient off a mailing list, the Federal Register, and from contract services that retrieve the information and forward it to me. Contract service companies receive it mainly from Federal Register notices. All are equally effective. In regard to receiving the documents for review, they are received in both hard copies and, more recently, in CD-ROM format. We initially preferred CD-ROM formats, but in order to review draft documents, we need to print the document(s) to prepare comments. We have also seen with some CD-ROM's that some of the information that would be in a hardcopy bound version may be missing. I have also not been able to print some of the maps off CD-ROM's. For offices without color printers, printing color-coded maps is not possible. In those cases, obtaining a hard copy must be pursued.
6. *What information management technologies have been particularly effective in communicating with stakeholders about environmental issue and incorporating environmental issues into agency planning and decision-making? What objections have been raised concerning the use of tools?* This is a question is better answered by agency offices.
7. *What factors should be considered in balancing public involvement and information security.* This is a question is better answered by agency offices.

B. Federal and Inter-governmental collaboration

The questions in this section are more directed at agency offices, but we would like to provide some of our perspectives. We have noticed that agencies, whether they are state or federal, are reluctant to participate because of a lack of understanding about how they could be affected by a project or proposal subject to NEPA. It has been an observation that the criteria between agencies that may assume the lead role and how cooperating agencies or joint-lead arrangements function is not always clear. It would be helpful to at least provide

consistent guidance, then follow-up with a Memorandum of Understandings so that each participating party is clear about their roles, responsibilities and how the decisions of a given NEPA analysis may or may not affect them.

C. Programmatic Analysis and Tiering

1. *What types of issues best lend themselves to programmatic review and how can they best be addressed in programmatic analyses to avoid duplication in subsequent tiered analysis?* Programmatic reviews are valuable for broader type land management programs as implemented by the U.S. Bureau Of Land Management and the U.S. Forest Service. The efficiencies are realized in subsequent project analysis that can tier off the programmatic document such as realty actions and permits to drill.
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.* BP does have environmental management systems and is certified under ISO 14001 for our onshore U.S. properties. Although this question is probably more directed at agencies, the programmatic analyses under NEPA could benefit EMS by providing pertinent data from programmatic analyses such as conditions of approval, seasonal or conditional surface use stipulations or compliance obligations. This information could be input into an EMS system used by a company to assist in planning and compliance.

D. Adaptive Management/Monitoring and Evaluation Plans:

1. *What factors are considered when deciding to use an adaptive management approach?* We support performance-based parameters for incorporation into NEPA analysis. It is unclear whether performance based standards are synonymous with adaptive management as described in this Federal Register notice. Using performance-based parameters encourages innovation to deal with changing conditions and new technological advancements. Monitoring is critical to measuring the effectiveness of these parameters. Adaptive management techniques must be specific enough so that the project proponents fully understand the expectations at the time a permit is issued. We do not support performance based or adaptive management/monitoring that is unspecified and results in later to be determined mitigation and compliance requirements. This would cause project proponents serious problems in scheduling and meeting compliance, as well as having to deal with unanticipated costs that could affect the economics of a given project.

We are aware of "work groups" that have been used in the past with adaptive management. However, the work group concept is of concern to us based upon our past experience. We have seen this process involve individuals with very little technical expertise making recommendations for monitoring. Project proponents, though, must accept these recommendations and absorb the costs to conduct the monitoring. Changes needed relative to the work group concept are:

- The individuals on a work group must have scientific and working knowledge of the issues being addressed as well as an understanding of the type of industry subject to the monitoring under consideration.
 - Project proponents must be represented on a work group.
 - Costs associated with any monitoring must be considered by the work group, along with the input of the project proponent, prior to implementing any recommendations.
 - A balanced approach to managing all resources must be an integral part of the process.
 - An open dialogue with public participation should be used.
2. *How can environmental impact analyses be structured to consider adaptive management?* For those resources where adaptive management is properly used, include a discussion in the environmental consequences chapter describing the process and how adaptive management will be used.
 3. *What aspects of adaptive management may, or may not, require subsequent NEPA analyses?* Those activities that are not within the scope of the original analysis and the consequences to environmental impacts are not known may require additional NEPA analysis.
 4. *What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and level of monitoring intensity is appropriate during the implementation of an adaptive management regime?* The level of monitoring should be based upon sound scientific techniques combined with a thorough understanding of the value that will be derived from collecting the data. All of the examples shown above are valid considerations that must be considered. We would still emphasize that a cost benefit analysis be used to determine appropriate monitoring. If a decision is made to monitor, a commitment must be made to analyze the data in a manner that allows for subsequent use decision making and determining whether future monitoring is useful. *How does this differ from current monitoring activities?* In some cases, monitoring is performed, but the data is not adequately used.

E. Categorical Exclusions

1. *What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?* The basis for using categorical exclusions should reflect projects that have been subject to environmental analysis and a subsequent decision has been rendered. Further, projects that have been shown to have little environmental impacts, either through previous environmental analysis or by the very nature of the activity, should be exempted from analysis. There are also a number of administrative type approvals that should utilize the categorical exclusion process. Examples of projects are listed below:
 - a. Approval of minor modifications or variances from activities described in approved development/production plans.
 - b. Approval of unitization agreements, communitization agreements, drainage agreements or development contracts.

- c. Approval or suspensions of operations, force majeure suspensions, and suspensions of operations and production.
 - d. Issuance and modifications of regulations, orders, standards, notices to lessees and operators and field rules where the impacts are obviously limited to administrative, economic or technological effects and the environmental impacts are minimal.
 - e. Approval of production measurement methods, facilities and procedures.
 - f. Approval of off-lease storage in or on existing facilities.
 - g. Establishment of terms and conditions in Notices of Intent to conduct geophysical exploration of oil and gas pursuant to 43 CFR 3150 where road building and long term (greater than one year) surface damage is not expected.
 - h. Offering and issuance of onshore competitive oil and gas leases where the issuance of the lease is determined using existing land use plans and the associated EIS.
 - i. Approval of an Application for Permit To Drill (APD) in the following circumstances: 1) re-entry or modification of an existing well bore, 2) approval of a new well drilled from an existing well pad and 3) approval of an in-field development well where multiple prior environmental assessments (EA's) have found no significant impacts, the well is within the scope of an existing Reasonable Development Scenario (RFD) and the total disturbance of the APD is less than 5 acres.
 - j. Approval of disposal of produced water in accordance with Federal and State regulatory requirements.
 - k. Routine hydraulic fracturing of rock formations to enhance production or injection.
 - l. Approval of Sundry Notices and Reports on Wells for administrative or reporting purposes or where the surface disturbance is less than 5 acres.
 - m. Approval of on lease linear facilities (e.g.) when placed in existing corridors or areas of prior disturbance.
 - n. Grants of rights of way within an existing right of way or RMP approved corridor.
 - o. Issuance of authorizations where there is minimal or no surface disturbance.
 - p. Remediation of soils or groundwater where all activity is conducted on-site.
 - q. Exceptions to lease terms or conditions of approval that do not result in involve surface disturbance.
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 agencies that share responsibility for the same types of activities should compare categorical exclusion information. A good example is fluid mineral activity. Both the Department of Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service, are involved in onshore fluid mineral activities. In this case, the agencies can establish a dialogue with one another on why a certain exclusion is used and whether it has applicability elsewhere.

3. *Are improvements needed in the process that agencies use to establish a new categorical exclusion? If so, please describe them?* The only method we are familiar with agencies establishing categorical exclusions is through the Federal Register. A less formal process may be possible if the categorical exclusion was specific to a local geographic area and was proposed by a local office of a particular agency. In these cases, a posting in the local office or notice via a mailing list could be used to obtain input. For categorical exclusions for agency-wide use, the Federal Register may be the most efficient process available.

F. Additional Areas For Consideration

We would like to provide comment, as requested, on the appropriate utility of and structure of a format for environmental assessment documents. Our experiences have shown that EA's can be either concise or can resemble an Environmental Impact Statement. However, the more extensive type EA's seem to be driven more by public controversy, either directly expressed or anticipated, than technical complexity or anticipated environmental impacts. While the concerns of the public must be considered and should be addressed in the environmental analysis, too often the agencies are driven by a motivation to write documents that will withstand either a legal or administrative challenge. A general belief is that quantity vs. quality of an EA will determine the success with this objective. What seems to get lost is the main goal of the NEPA process, which is determining whether a significant environmental impact exists with an EA that would warrant preparing an environmental impact statement.

EA's should simply be structured to 1) describe the project, 2) list mitigation that will be used to reduce impacts and 3) provide information on why the parameters being addressed will not result in a significant impact on the environment. For most projects, a checklist format could be used. It does not need to follow the format of an EIS, especially for the majority of land use projects with little actual environmental impact.

Thank you for considering our comments.

Sincerely,

