

21 JAN 1976

Mr. Malcolm F. Baldwin
Senior Staff Member for
NEPA Programs
Council on Environmental Quality
722 Jackson Place, N. W.
Washington, D. C. 20006

Dear Mr. Baldwin:

The draft report on the Federal agency environmental impact statement process forwarded by your memorandum of 12 December 1975 has been reviewed by the personnel of this Office who have primary responsibility for technical aspects of Agency environmental impact assessment. Initial review of the draft report indicates that the recommendations therein present no particular technical problems, particularly inasmuch as the Agency does not have major impact statement responsibility.

As you are aware, this Agency does have certain unusual operating procedures because of our internal security practices. It is noted, however, that in Section III.G.(5) it is offered that, "CEQ will work with any agency which believes that modifications of CEQ's guidelines . . . may be desirable for reasons of national security" Per discussions between you and [redacted] of my staff, it is understood that you would be willing to consult with us with regard to our special problems. It is certainly the Agency's intent to comply with the letter and spirit of national environmental policy and, with your assistance, it is believed that this can be accomplished with only minor modification to existing Agency environmental procedures and in a manner compatible with national security considerations.

STAT

Mr. Malcolm F. Baldwin

Your cooperation in this matter is greatly appreciated.
If any additional interim information is required, please
call

STAT

Sincerely,

/s/ Michael J. Malanick

Michael J. Malanick
Director of Logistics

cc: Lt. Comdr. Jay Stevens
EPA Liaison, Office of
Federal Activities

Mr. Lindsey Grant, Director
Office of Environmental
Affairs, Dept. of State

TAB

December 12, 1975

MEMORANDUM FOR FEDERAL AGENCY NEPA LIAISONS

As you know, the Council on Environmental Quality has conducted a review of the federal agency environmental impact statement process over the past year. The attached draft report presents the major findings of that review and makes a number of recommendations for action by CEQ and other federal agencies in order to improve the EIS process.

We intend to issue our final report to the President and to make copies available for the public in February, 1976. Consequently, we would appreciate your careful review of this draft report and the receipt of your agency's comments by January 15, 1976. Please send comments directly to:

Malcolm F. Baldwin
Senior Staff Member
for NEPA Programs
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

REC'D

William Matuszeski
Acting Staff Director

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Attachment (s)

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The EIS Process of Federal Agencies.

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December 12, 1975

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A. Purpose of CEQ NEPA Review

Over the past year the Council on Environmental Quality (CEQ) has conducted a major review of federal agency implementation of the environmental impact statement (EIS) requirement of the National Environmental Policy Act (NEPA).^{*} This review stemmed from CEQ's obligations under §204(3) of NEPA^{**} and CEQ's mandate under Executive Order 11514.^{***} Its purpose was to investigate the experiences of the agencies in seeking to meet the goals of NEPA under existing CEQ EIS guidelines,^{****} to assess trends in agency implementation of EIS requirements and to provide the President, the agencies, the Congress and the public with the Council's findings and recommendations on the EIS process. In particular the review focused on the use of this process in Government decisionmaking; policy and program EIS's; EIS content and quality; the EIS review and commenting process and public involvement in the process.

^{*} 42 U.S.C. §4321 et seq., 83 Stat. 852, P.L. 91-190.

^{**} Section 204(3) of (NEPA) requires CEQ to "review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto.

^{***} Protection and Enhancement of Environmental Quality, Exec. Order No. 11514, 35 Fed Reg. 4247, ELR 45003 (March 5, 1970).

^{****} Council on Environmental Quality, Guidelines for Statements on Proposed Actions Affecting the Environment, 36 Fed. Reg. 20980 (August 1, 1971).

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B. Procedures for Scope of the Review

CEQ began its review in November 1974, by sending a questionnaire on EIS implementation ^{*/} to all federal agencies. Based on the responses received, CEQ staff held meetings with federal agencies having major impact statement responsibilities. In addition, CEQ, in cooperation with the National Governors Conference, submitted a questionnaire to all state officials to determine their experiences with the federal NEPA process. ^{**/} Some 27 states responded. Supplementing these sources of information were CEQ's evaluations of agencies' responses to a questionnaire on NEPA litigation ^{***/} and the results of CEQ's continual monitoring of judicial decisions, legislative initiatives, and federal agency practices, guidelines and environmental impact statements.

The vast amount of information that CEQ received from the agencies and the states has necessarily been distilled in preparing this report. ^{****/} The report is not intended as a comprehensive review of each federal agency

implementation of NEPA generally. Consequently, issues arising

^{*/} See Appendix A.

^{**/} See Appendix B.

^{***/} See Appendix C.

^{****/} The agency and state responses to CEQ's questionnaires are available for public review in CEQ offices.

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out of section 101 of NEPA, which sets forth a number of environmental goals for the federal government, and other parts of section 102(2)(A)(B) and (E) are not discussed. This report focuses instead on the EIS requirement of NEPA in section 102(2)(C) and on the experiences of those federal agencies with the most extensive EIS obligations. The recommendations made, however, are intended to address subjects relevant to all federal agencies. These recommendations follow each section of the report. Major recommendations are summarized below.

C. Summary of Major Recommendations

- The most necessary reform of the impact statement process is to make it more useful to agency planning and decision-making. This need, which federal and state agencies and environmental business and labor organizations have frequently expressed to the Council, is the subject of a number of many specific recommendations made throughout this report. For while experience over the past 6 years shows that environmental assessments and impact statements have significantly improved government decisions, the impact statement process has not consistently served the needs of decisionmakers. Consequently, agencies should make major efforts to see that the EIS process focuses on the issues of concern to agencies and to members of the public. EISs should be more manageable in size and analytical in content. The most important part of the EIS should be its analysis of the impacts of the proposed action and the impacts of reasonable alternatives. Efforts to improve EIS content should include measures

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to reduce and reference descriptive material that is not necessary to an understanding of the significant impacts and issues or of the choices available.

- It continues to be essential that more agency leaders, as well as other agency operating personnel, understand the potential of the EIS process as a management tool. Toward this end each agency having major EIS responsibilities, should support high level, well-staffed offices charged with implementing NEPA, and the EIS process effectively and efficiently. Agency educational programs on NEPA -- its goals and its procedures -- are also necessary for agency leaders who should benefit from the Act and the EIS process.
- More effective guidance is necessary from CEQ and the federal agencies on ways to use the EIS process to help develop and evaluate the environmental effects of agency programs and policies. While agencies have taken important steps to group actions together in program statements on subregional, regional and national bases, conceptual and practical guidance is essential if the EIS process is to address more than project actions effectively.

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- Improvements are needed in the procedures used by agencies to notify other federal, state and local agencies, and members of the public, of important EIS actions. All agencies should prepare regular and timely notices of intent to prepare EISs and lists of negative declarations. Such information should be published in the Federal Register and circulated to the states through their A-95 clearinghouses. The documents themselves should be available to the public.

- To improve the EIS commenting and response process, agencies should establish, in consultation with CEQ, clearer definitions of their commenting expertise and jurisdiction, and the priorities used in making EIS comments. In addition, federal agencies should evaluate their responses to comments received from states and members of the public on draft EISs in order to insure that adequate responses are prepared in final EISs. Other recommendations on these matters are contained in the report.

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- Although the EIS process has contributed significantly to improved government coordination of planning and decision-making through lead and joint agency EISs, more interagency agreements are needed on several subjects to anticipate analytical needs and to avoid unnecessary duplication in complying with NEPA. Other measures to improve government coordination through the EIS process are recommended in the report.

- Continued efforts are needed to improve the quality and content of EISs, so that they meet the information needs of decisionmakers and the general public. CEQ and the federal agencies must make new efforts to help define the "human" environment under NEPA, and the appropriate scope of analysis and level of detail necessary for certain types of impact statements.

- While the evidence available to the Council indicates that the problem of delays caused by inefficiencies in the EIS process is not serious or significant, agencies should continue efforts to integrate

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the EIS requirements into their decisionmaking process. EIS preparation should not be at the tail-end of this process but should be, as in most cases it has been, a part of the technical, economic and other analyses that agencies must make.

- There are a number of special issues arising out of the EIS process which require attention and remedy by CEQ and the agencies. Among these are measures to adapt the EIS process to legislative proposals in ways that are useful to Congress and to agency decisionmakers. Another is the need to improve procedures and guidance for impact statements on federal permit actions, which present difficult problems of timing, intergovernmental coordination and scope. A third need is to apply the EIS process more effectively to significant international activities of federal agencies. These and other specific aspects of the federal EIS process are the subject of a number of recommendations found toward the end of this report.

- The effectiveness of procedures adopted by Federal agencies to promote public participation in the EIS process needs more thorough study and evaluation. This subject will be addressed by the Council in public meetings on NEPA to be held in early 1976.

ANALYSIS AND CONCLUSIONS

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I. Organizing for NEPA

A. Agency Guidelines

Following the passage of NEPA and promulgation of Executive Order 11514, CEQ issued interim guidelines for preparation of environmental impact statements. These guidelines, made final in 1971, were later revised and were promulgated in August 1973. The guidelines establish a basic structure for the operation of the EIS process. However, because federal programs vary so substantially, CEQ guidelines recognized that each agency was also directed under Executive Order 11514 to develop more specific procedures to tailor the EIS process to the particular activities it undertakes.

The major exception to formal compliance with CEQ's 1973 guidelines is the Department of the Interior, whose NEPA procedures were promulgated in September 1971. In addition, agencies with significant environmental effects such as the U.S. Postal Service and the Export-Import Bank have not established EIS procedures. In large part, however, the procedural requirements of NEPA and CEQ's guidelines have been well-established. In the Interior Department, for example, CEQ guidelines have in most respects been followed either explicitly by bureau procedures, or implicitly by the Department.

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Below is a list of agency NEPA guidelines and their

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AGENCY NEPA PROCEDURES, as of November 1, 1975

<u>Agency</u>	<u>Current procedures</u>		<u>Amendments</u>		<u>Proposed revisions (if any)</u>	
	<u>Date</u>	<u>Citation 1/</u>	<u>Date</u>	<u>Citation</u>	<u>Date</u>	<u>Citation 1/</u>
Department of Agriculture						
Departmental	May 29, 1974	39 F.R. 18678				
Agriculture Stabilization and Conservation Service	May 29, 1974	39 F.R. 18678	Dec. 20, 1974	39 F.R. 43993		
Animal and Plant Health Inspection Service	January 29, 1974 ^{2/}	39 F.R. 3696 ^{2/}				
Farmers Home Administration	August 29, 1972	37 F.R. 17459				
Forest Service	May 3, 1973	38 F.R. 20919	Oct. 30, 1975	39 F.R. 38244		
Rural Electrification Administration	May 20, 1974	39 F.R. 23240				
Soil Conservation Service	June 3, 1974	7 C.F.R. Part 650 39 F.R. 19646				
Appalachian Regional Commission	June 7, 1971	36 F.R. 23676				
Atomic Energy Commission						
Regulatory	July 18, 1974	10 C.F.R. Part 51 39 F.R. 26279				
Non-Regulatory	February 14, 1974	10 C.F.R. Part 11 39 F.R. 5620				
Local Zone Government	October 20, 1972	37 F.R. 22669				
Central Intelligence Agency	January 28, 1974	39 F.R. 3579				
Civil Aeronautics Board	July 1, 1971	14 C.F.R. 8399.110 36 F.R. 12513	Aug. 25, 1975	40 F.R. 37181		
Department of Commerce	October 23, 1971	36 F.R. 21368	Feb. 4, 1975	40 F.R. 5175		
NOAA, CZM EDA	August 21, 1974 November 13, 1974	39 F.R. 30153 39 F.R. 40122			February 20, 1975	40 F.R. 8547
Department of Defense	April 26, 1974	32 C.F.R. Part 214 39 F.R. 14699				
Corps of Engineers	April 8, 1974	33 C.F.R. 8209.410 39 F.R. 12737				
Delaware River Basin Commission		39 F.R. 75473				

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Agency	Date	Citation	Amendments		Date	Citation
			Date	Citation		
Environmental Protection Agency	January 17, 1973	40 C.F.R. Part 6 38 F.R. 1696	Apr. 14, 1975	40 F.R. 16813		
Federal Communications Commission	July 24, 1972	37 F.R. 15711	Oct. 21, 1974 Nov. 18, 1974	39 F.R. 37419 Revision of Manual on Review of Federal Actions Impacting the Environment.		
Federal Energy Administration					June 23, 1975	40 F.R. 26279
Federal Power Commission	December 18, 1972	Commission Order No. 415-C 37 F.R. 28412				
Federal Trade Commission	November 19, 1971	16 C.F.R. 81.81-1.85 36 F.R. 22814				
General Service Administration						
Departmental	April 4, 1975	40 F.R. 15131				
Federal Supply Service	December 11, 1971	FSS 1095.1A 36 F.R. 23702				
Transportation and Communications Service	June 30, 1971	TCS 1095.1				
Property Management and Disposal Service	December 30, 1971	FMD Order 1095.1A 36 F.R. 23704				
Public Buildings Service	March 2, 1973	PBS Order 1095.1B			July 1, 1975	40 F.R. 27733
Department of Health, Education and Welfare						
Departmental	October 17, 1973	HEW General Administration Manual -- Chapters 30-10 through 30-16				
Food and Drug Administration	March 15, 1973	21 C.F.R. Parts 5,601 38 F.R. 7001			April 16, 1974	39 F.R. 13741
Department of Housing and Urban Development	July 18, 1973	38 F.R. 19182	July 16, 1975	40 F.R. 29992	February 22, 1974	39 F.R. 6815
Department of the Interior						
Departmental	September 27, 1971	36 F.R. 19343				
Bonneville Power Administration	January 19, 1972	37 F.R. 815				
Bureau of Indian Affairs	September 17, 1970	Departmental Manual Release				
Bureau of Land Management	July 31, 1974	Departmental Manual Release				
Bureau of Mines	February 9, 1972	37 F.R. 2895				
Bureau of Outdoor Recreation	March 24, 1972	37 F.R. 6501				
Bureau of Reclamation	January 18, 1972	37 F.R. 1126				

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<u>Agency</u>	<u>Current procedures</u>		<u>Amendment</u>		<u>Proposed revisions (if any)</u>	
	<u>Date</u>	<u>Citation</u>	<u>Date</u>	<u>Citation</u>	<u>Date</u>	<u>Citation</u>
U.S. Fish and Wildlife	December 1971	37 F.R. 207				
Geological Survey	March 11, 1972	37 F.R. 5263				
National Park Service	July 29, 1974	National Park Service Manual				
Interstate Commerce Commission	March 28, 1972	49 C.F.R. §1100.250 37 F.R. 6318				
Department of Justice (Law Enforcement Assistance Administration)	February 6, 1974	28 C.F.R. Part 19 39 F.R. 4736				
Department of Labor	March 15, 1974	29 C.F.R. Part 1999 39 F.R. 9959				
National Aeronautics and Space Administration	April 10, 1974	14 C.F.R. §1204.11 39 F.R. 12999				
National Capital Planning Commission	August 1972	37 F.R. 16039				
National Science Foundation	January 28, 1974	45 C.F.R. Part 640 39 F.R. 3544				
Federal Business Administration	October 20, 1972	37 F.R. 22697				
Department of State						
Departmental	August 31, 1972	37 F.R. 19167				
International Boundary and Water Commission	March 14, 1974	39 F.R. 9868				
Tennessee Valley Authority	February 14, 1974	39 F.R. 5671				
Department of Transportation						
Departmental	November 1, 1973	38 F.R. 30215			Sept. 30, 1974	39 F.R. 35232
Federal Aviation Administration	June 19, 1973	FAA Order 1050.1A				
Federal Highway Administration	September 7, 1972	FFM 90-1 37 F.R. 21803	Dec. 2, 1974	39 F.R. 41804		
United States Coast Guard	December 11, 1973	38 F.R. 34135				
Urban Mass Transportation Administration	February 1, 1972	DOT Order 5610.1 37 F.R. 22692				
National Highway Traffic Safety Administration	November 10, 1975	40 F.R. 52395 49 C.F.R. 520				
Saint Lawrence Seaway Development Corporation (amended)	November 1971	Procedure SLS 2-5610.1A				

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<u>Agency</u>	<u>Current procedures</u>		<u>Proposed revisions (if any)</u>	
	<u>Date</u>	<u>Citation</u>	<u>Amendments</u> <u>Date</u>	<u>Citation</u>
Department of the Treasury	April 26, 1974	39 F.R. 14796		
Internal Revenue Service	August 12, 1971	36 F.R. 15061		
Veterans Administration	June 17, 1974	39 F.R. 21016	Aug. 25, 1975	40 F.R. 37126
Water Resources Council	February 10, 1971	36 F.R. 23711		

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- 1/ Citations are given to an agency's procedures where they have been published in the Federal Register or otherwise formally issued.
 - 2/ These procedures, while issued in proposed form, are currently being followed on a interim basis.

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B. Agency NEPA Offices

To oversee their NEPA policies and procedures, most federal agencies have established special high level offices or positions responsible for overseeing and helping implement the agency's duties under NEPA. Duties of these offices have usually included: the development of agency procedures to implement NEPA, the development of more detailed substantive guides for agency EIS preparation and review; the organizing and conduct of training programs for agency personnel preparing EISs; the preparation or organization of particularly important EISs; the coordination of internal review and clearance of their own EISs prior to formal release and circulation as draft or finals; and lastly, the coordination of their internal process for commenting on other agencies' EISs.

Agency NEPA offices have proved critical to successful implementation of NEPA although their best achievements are often unnoticed. In the past several years particularly, they have

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- coordinated interagency work on mutual environmental issues and EISs;
- been an important contact and source of information on NEPA issues for state and local agencies and members of the public;
- helped agency leaders use the NEPA process as a management tool by bringing complex and controversial issues to the appropriate decisionmaking level for resolution; and
- worked successfully with agency subunits to avoid EIS procedural problems or substantive defects that might result in poor decisions or needless delays and litigation.

In large departments, such as Interior, DOT, DOD, HEW, HUD and Agriculture, the leadership and coordinating role of the NEPA office can be and has been especially significant.

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In most agencies with major NEPA responsibilities NEPA officials are directly responsible to agency heads, deputies or assistant secretaries. However, where NEPA offices are more remote from agency leaders their impact and efficiency has been impaired.

C. Agency Environmental Training Programs

The proper training and use of environmental expertise is essential to the successful use of NEPA by federal agencies in their planning and decisionmaking. Departments such as Interior, Agriculture, DOT and DOD have stated that such training programs have been extremely important and useful to those charged with preparing an EIS. It is unclear, however, whether the programs that exist have adequately filled the need for agency leaders to understand the value and use of the EIS process in agency planning and decisionmaking.

* * *

Recommendations

Successful implementation of NEPA requires sustained support of high-level NEPA offices, fully staffed to help agency leaders use the NEPA process as an effective management

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tool. Each agency should periodically evaluate how its

NEPA office functions and can be strengthened for EIS
preparation and comment duties.

Particular agency attention should be directed to ways
to improve their NEPA training programs not only for those
preparing and reviewing assessments and EISs but for
those in leadership positions who should use the EIS
process to improve agency plans and decision. Consistent
with other recommendations of this report, agencies should
consider the need for special training programs and materials
on the EIS process emphasizing the ways in which it can
help agency decisionmakers.

A. Defining Types of Proposed Actions Subject to NEPA

1. Programs and individual actions

Basically, federal agencies have applied the EIS process to two types of actions -- individual actions and programs. Individual actions have accounted for by far the largest number of EISs prepared to date. Examples are EISs on right-of-way permits through public lands, leasing of specific coal or OCS tracts, nuclear power plant licensing actions or proposals to fund a particular highway or housing project. However, there has been a growing realization that many federal actions can and should be grouped together for more useful and systematic analyses in program statements. Such groupings are possible on the basis of certain common characteristics, such as actions which occur in and affect a clearly delineated geographic area that is meaningful to agency decisionmaking, or actions repetitive in nature. Less commonly, groupings of actions have been made on the basis of actions which produce a similar output or product or which would cause a similar result, such as areas protected from flooding or air or water standards raised to a certain level.

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when to prepare individual action EISS still have had difficulty defining the kinds of programs for which EISS are appropriate and useful. CEQ's guidelines on program statements have not been greatly helpful since they are extremely broad. Of 19 agencies and departments with major NEPA responsibilities, only 6 have sought to develop program guidance of their own. Nevertheless 13 of these 19 agencies have used or plan to use the program EIS concept. (See Table 1 below.)

Table 1

	<u>Guidelines on Program EISS</u>	<u>Use of Program EISS</u>
Dept of Ag.	yes	yes
F.S.	yes	yes
SCS	no	yes
DOD	yes	yes
Corps	yes	yes
EPA	no	no
ERDA (AEC)	yes	yes
GSA	no	no
Dept. of Int.	yes	yes
BIA	no	yes
BLM	no	yes
BuRec	no	yes
F&WS	yes	yes
NPS	yes	yes
USGS	no	yes
DOT	no	no
FAA	no	no
FHWA	no	no
NRC	no	yes

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The definition of individual or program actions appropriate for analysis through the EIS process differs considerably among the agencies. Thus the National Park Service and the Forest Service determined that their planning proposals for national parks or for units of a national forest should be subjected to the EIS process. EISs on these actions are considered to be small program EISs. The Bureau of Land Management, however, has determined that EISs are not appropriate for its own land management framework plans. (BLM, however, prepares program statements on the basis of generic groupings -- on a coal leasing program or grazing management, or oil and gas leasing.) Again, TVA and the Forest Service have defined their pesticide activities in terms of various large programs subject to the EIS process. The Defense Department, however, does not take this approach with its pesticide actions and sees these as discrete, individual actions.

These differences in defining proposed actions subject to the EIS process may often reflect the variety of decisionmaking processes within the Federal Government. However, there are a number of critical areas, such as land management or pesticide program actions where EISs have not been adequately used to address impacts and alternatives. Another situation where the

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EIS process has not been usefully applied is illustrated when a region or a community may incur significant environmental effects as a result of diverse projects or programs of several agencies. Thus a dam proposal of the Corps of Engineers may affect a land management plan of BLM, the Forest Service or the National Park Service or a highway proposal may interact with a waste water treatment proposal to affect the environment of a community. In these cases several federal actions may cause significant effects that may require joint or lead agency EISs.

Recommendations

More agencies use the program statement mechanism than have program EIS guidance, and CEQ's guidelines do not fill their needs. Consequently, more explicit direction from CEQ should be provided to help agencies determine (1), whether and how actions can be classified and grouped together as programs on the basis of geographical, generic or other common factors and, (2), how, program statements on groups of actions with significant impacts can be usefully timed and organized to tie-in with subsequent statements on related individual actions.

Since one of the purposes of NEPA was to anticipate overall impacts of federal programs and to coordinate the necessary environmental analyses, agencies should recognize the need for impact statements on inter-related actions the impacts of which might not be covered by EISs on individual actions or by better use of program statements. Federal agencies should be particularly receptive to local and state government and other public concerns about the cumulative impacts of different federal actions. CEQ will work closely with federal agencies to identify such situations and will, as necessary, designate lead or joint agencies to prepare any EISs required.

* * *

2. Assessments

Whether agencies group actions together for EIS purposes or handle them separately, they must determine whether the proposed program or individual action meets the test for an EIS under section 102(2)(C). Section 1500.6 of CEQ's guidelines specifies that federal agencies should develop specific criteria and methods for identifying the kinds of actions likely or not likely to require an EIS. Even with this classification, however, individual appraisals

of proposed actions have been essential.

Most federal agencies have found it impractical and misleading to question whether a proposed action or program is "major" under NEPA. Instead, they have focused on whether a proposed action will have a significant impact on the "quality of the human environment." If so, an EIS is required.

The mechanism through which this appraisal is made is the preparation of an environmental assessment. Table 2 lists the numbers of assessments made by federal agencies with major NEPA responsibilities.

The assessment procedure has become a critical part of the EIS process under Section 102(2)(C). It has served to determine which proposed projects should be the subject of an EIS. It has also assisted even where the project was determined not to require an impact statement, by describing ways to mitigate environmental harm, pursuant to section 101 of NEPA and sections 102(2)(A), (B) and (E), and by establishing an administrative record that protects agencies if they are challenged in court to show why no EIS was prepared. In short, assessment procedures have become basic to an agency's implementation of NEPA as a whole. Recognizing this, the

Number of Environmental Assessments Prepared by Agency in
Fiscal Year 1975

USDA - NA

FS - EA's are prepared in the Ranger districts for every action affecting forest resources.

SCS - An environmental assessment is prepared for all watershed projects.

DOD - Estimate of one for every project. Several thousand.

COE - Estimated 10,000.

EPA - NA

ERDA - NA

GSA - NA

DOI - NA

BIA - NA.

BLM - 9,431. Agency prepares EA's on all projects.

BOR - Approximately 2,500. Agency prepares EA's for all grants projects.

BuRec - 136.

F&WS - Approximately 60-65.

NPS - Estimated 150.

USGS - NA

DOT - NA

FAA - 5,500 - Assumption of one for every project budgeted.

FHWA - Approximately 2,500. Agency prepared 250 EISs in FY 75 which represents only about 10% of their total projects. FHWA prepares EA's on all projects.

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use of assessments as part of agency decisionmaking processes has been increasing. Agencies have reported that, in a number of cases, an assessment of a proposal has revealed significant environmental problems, which has in turn caused the agency not to proceed with, or to modify substantially, the proposed action.

Nonetheless, the assessment procedures required by the agencies have not always been consistently followed. A report by the GAO on HUD assessment procedures noted that from NEPA's passage to June 30, 1974, some 30,000 project proposals went through HUD that, by HUD's own regulations, required some form of environmental assessment or clearance. GAO examined 253 of these projects in several HUD offices and found that clearances were actually prepared for only 36% of the total number of projects. ^{*} Lack of trained staff and secretarial commitment to the environmental review process were blamed by GAO for HUD's inability to prepare enough assessments. During the 4 1/2 year period covered by the GAO report, HUD prepared 81 EISs. Other agencies, while not requiring the rigorous clearance procedures in HUD's regulations and not having HUD's huge numbers of project actions, nonetheless suffer similar problems. However,

^{*} Government Accounting Office, Environmental Assessment Efforts for Proposal Projects Have Been Ineffective, Department of Housing and Urban Development, Report No. GAO/OS-75-122, 22, 1975, p. 9.

none of them has been rigorously analyzed by GAO or by CEQ on this particular issue.

There is no specified format for federal agency assessments or established minimum analytical standards. Each agency has developed its own procedures. Consequently, some agencies use assessments to examine alternatives while others only examine the environmental impacts of the proposal.

In some cases, the process of preparing a negative declaration has been confused with the assessment procedure. A negative declaration is a brief summary of the results of an environmental assessment in the situation where no EIS will be prepared. It is one of the two possible outcomes of the assessment process. The other is the preparation of a notice of intent, setting forth the agency's decision to prepare an EIS.

The negative declarations and notices of intent that agencies prepare are frequently not readily available to the public. CEQ guidelines require agencies to prepare lists of impact statements in preparation and to make these lists available to the public. Agencies are also required to prepare lists

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of negative declarations not for all cases where EISs are not required but on projects that might normally require an impact statement but which agencies determine should not be required in that particular case. ^{*/} The Forest Service is one of the few agencies that consistently prepares and publishes lists of impact statements under preparation. Lists of negative declarations are only occasionally prepared by agencies and submitted to CEQ. ^{**/}

However, proposed NEPA procedures of FEA would require their publication of lists of negative declarations in the Federal Register, would invite comments on them and would make them and the related assessments available on request.

* * *

^{*/} Section 1500.6(e). "If an agency decides that an environmental statement is not necessary for a proposed action (i) which the agency has identified pursuant to §1500.6(c)(4)(ii) as normally requiring preparation of a statement, (ii) which is similar to actions for which the agency has prepared a significant number of statements, (iii) which the agency has previously announced would be the subject of a statement, or (iv) for which the agency has made a negative determination in response to a request from the Council pursuant to §1500.11 the agency shall prepare a publicly available record briefly setting forth the agency's decision and the reasons for the determination.*

^{**/} The Department of the Interior does not prepare public lists of negative declarations and notices of intent to prepare an EIS because it does not accept CEQ's guidelines as binding.

Recommendations

CEQ guidance is needed to make clear that: (1) environmental assessments of varying degrees are necessary to determine whether a particular EIS is required; (2) even if an EIS is not required, the assessment should be used to help mitigate environmental harm as required by sections of NEPA other than 102 (2) (C); (3) negative declarations are short statements, based on the assessment, that describe why no EIS is necessary; (4) to provide the federal, state and local agencies and the public with early warning of EIS actions, all agencies should publish monthly lists in the Federal Register of negative declarations prepared for those categories of projects set forth in section 1500.6(e) of the CEQ guidelines; notices of intent to prepare an EIS should be published in the Federal Register each quarter. Agencies should make copies of the environmental assessments associated with negative declarations available to the public on request.

* * *

3. Numbers of EISs

The number of draft statements filed with the CEQ reached its peak in 1971 and has been considerably lower each year since. This situation resulted primarily because NEPA lacked a "grandfather clause", and impact statements were required for projects that were underway prior to NEPA and for projects that had been approved but were not yet begun. The agency most affected by this backlog problem was DOT.

In 1971, DOT made a massive effort to comply with NEPA by filing 1,293 draft environmental impact statements. By 1972, it began to catch up. The trend continues as the pre-NEPA projects of DOT go through the NEPA process and as small highway segments are consolidated into fewer impact statements. Today only 10 percent of all highway projects requires an EIS under the Department of Transportation's NEPA criteria.

Based on agency responses to CEQ's NEPA questionnaire the Council expects a slight increase in the number of environmental impact statements over the next two years. Mitigating against an increase in number of EISs is the reduction in the pre-NEPA backlog problem. However, this reduction is in part countered by the increase caused by NEPA's application to relatively new agencies like FEA, the Consumer Products Safety Commission and the Occupational Health and Safety Administration, and also because of the increasing application of NEPA within the older Departments such as Interior and Agriculture, for example. But the main reason for the increase is the Corps of Engineers' plan to write some 600 draft EISs on its operation and maintenance programs for completed projects. The Corps expects to cut its number nearly in half in fiscal year 1977 as O&M projects are consolidated into program EISs.

The past record and expected trend in EISs is given by agency in Table 3 and by type of project in Table 4.

Table 3

Draft Environmental Impact Statements Filed,
by Agency, 1970-74 and Estimated 1975

Agency	1970	1971	1972	1973	1974	Estimated 1975	January 1- June 30, 1975
DOT	61	1,293	674	432	360	205	108
COE	119	316	211	243	303	332	147
USDA	62	79	124	166	179	259	110
DOI	18	65	107	119	109	117	38
AEC	32	22	65	28	36	—	—
ERDA	—	—	—	—	—	10	4
NRC	—	—	—	—	—	23	11
HUD	3	23	26	22	21	52	37
OOD	5	27	24	19	21	44	11
GSA	3	34	6	24	26	34	12
EPA	0	16	13	26	14	40	13
All Others	16	75	135	66	68	64	39
Total	319	1,950	1,385	1,145	1,137	1,180	330

Table 4

**Draft Environmental Impact Statements Filed,
by Type, 1970-74 and Estimated 1975**

Type	1970	1971	1972	1973	1974	Esti- mated 1975	January 1- June 30, 1975
Watershed, flood control, naviga- tion	97	392	210	263	273	411	195
Parks, wildlife, refuges, forests	2	24	84	111	134	143	49
Roads	41	1,123	543	305	280	155	93
Timber manage- ment	5	1	26	58	24	67	11
Energy	36	59	128	74	114	92	48
Airports	15	141	119	96	66	30	7
Pesticides, herbi- cides	2	15	26	15	14	7	5
All others	121	194	249	223	227	275	122
Total	319	1,950	1,385	1,145	1,137	1,180	530

Recommendations

Agencies should continue their efforts to group projects and programs together into consolidated impact statements wherever agency planning and decisionmaking processes permit.

B. Use of the EIS Process in Federal Decisionmaking

The Council sought a variety of information from the agencies, the states and other sources to minimize the inherent difficulty in estimating the effects of the EIS process on decisionmaking. Necessarily, most of the "hard" data are related to the "action-forcing" EIS process of NEPA and the various documents falling out from it -- environmental assessments, negative EIS determinations, and draft and final EISs.

In reviewing these data, however, the Council was mindful of the fact that the EIS is not an end in itself

and that compliance with NEPA requires much more than a document or response to the procedures of section 102(2)(c).

In fact, it was virtually impossible to measure accurately and indisputably the effect of NEPA on agency decisions since the decisionmaking process is, in any agency, inherently difficult to track. Moreover, each agency has different administrative procedures. Consequently, it was not always possible to determine precisely when, why and by whom a decision was made -- whether, for example, an important environmental decision was made by middle level officials on the basis of a preliminary environmental assessment or whether a certain decision might still have been made even in the absence of NEPA.

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CEQ asked federal agencies to identify the kinds of documents they used to present environmental analyses to decisionmakers and to describe the influence of EISs on the decisionmaking process (see Appendix A, questions 2.01 and 2.02). Agencies found it difficult to answer the first question in meaningful terms because there may be any number of "decisionmakers" along the line, because many important decisions were made on the basis of assessments and because any EISs prepared did, in fact, "accompany" the proposals through agency decisionmaking process whether or not they were actually used. More revealing, but hardly quantitative, were the examples provided by the agencies of EIS effects. Those that CEQ believes are most noteworthy are summarized and attached to this report. ^{*/} Recent examples of the use of EISs include agency decisions to halt construction of I-66 into Washington, D.C., to reexamine nuclear waste disposal in surface storage facilities and to develop a long-range forest and range program. The examples illustrate not only the effect of the EIS process but the substantial differences among the agencies as to when in the process these effects occur, ranging from effects of pre-EIS documents to the final EIS itself.

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*/ See Appendix D.

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With rare exception the federal agencies with major EIS responsibilities reported to CEQ that the EIS process has been an important aid to planning and decisionmaking. Several significant problems are apparent, however, that need more attention. One is the need to improve the analytical quality of EISs and the focus of such analysis on the needs of planners and decisionmakers. This topic is addressed below in section III H of the report. Another vital need, discussed below, is for agency leadership to understand and appreciate the value of the EIS process to the development of sound federal programs and projects.

In many instances NEPA has been better understood and regarded at the middle and lower levels of an agency than at the top. This fact was noted by a task force reviewing the Interior Department's EIS processes in April 1974, which reported candidly that:

There is overwhelming support by nearly all bureaus for NEPA and most people interviewed by the Task Force feel that the benefits of applying NEPA far outweigh any delays or other impacts on their programs. There was also a feeling by many of the employees interviewed that

if there were more visible signs of a positive commitment to NEPA by top management, more positive support would be provided by bureau directors, assistant directors, division chiefs and regional directors.

The problem of leadership understanding and use of the EIS process is not unique to any one agency or department. In the Interior Department, given its critical environmental mission, the commitment of Bureau and Departmental leaders to the use of the EIS as a management tool is particularly important. Many reasons and opportunities exist for improving this use.

In DOD generally the EIS process has received little Departmental emphasis as a policy tool to evaluate and improve wide ranging environmental programs and goals of its various components. Although EIS preparation has contributed to better decisions, DOD has frequently been criticized by local and state agencies and citizen groups for circulating

*/ Task Force Report of the Department of the Interior, A Review of Environmental Impact Statement Processes within the Department of the Interior, April 1974.

draft EISs after decisions have already been made on such matters as DOD bases, or other facilities. (DOD does not circulate any preliminary drafts to state, local or public groups.)

Several agencies have, however, made new efforts to integrate NEPA into their operations. Recently, the Director of the National Park Service within the Department issued a directive on NEPA to all park superintendents. The directive stressed the Service's strong policy support for the process and its importance to sound decisionmaking. ^{*}/

In August 1975 the Director of the Agency for International Development issued a policy statement to make more effective use of the environmental assessment and statement mechanism for its projects abroad. ^{**}/ AID is currently working on new procedures to implement this policy. The Council believes this effort can be a most constructive step toward integrating NEPA in AID's international program. It is also an important example of the opportunities for more effective federal application of the NEPA process to the significant environmental effects of U.S. operations abroad, ranging from civilian and military assistance programs to international loan programs.

^{*}/ See Appendix E.

^{**}/ See Appendix F.

One test of the utility of the EIS process to agency decisionmaking is the way in which it is used voluntarily. The Environmental Protection Agency announced on May 7, 1974 its determination that it was not required by law to prepare impact statements on its regulatory programs, since it was determined that the environmental analyses prepared under EPA's other statutes by several courts were the functional equivalent of EISs. However, EPA believed that for certain major regulatory or standard-setting actions, the preparation of impact statements would be helpful to decisionmakers. Consequently it proposed procedures for regulatory EISs in October 1974. To date only two such statements have been prepared and issued, although many others are in preparation or are being planned for FY 76. It is too early to tell whether the voluntarily EISs of EPA will be successfully used as part of EDA's planning and decisionmaking process.

* * *

Recommendations:

The manner in which the EIS process helps planning and decisionmaking necessarily differs from agency to agency. Agencies should review the ways in which the NEPA process can be more thoroughly integrated into their administrative operations and consider issuing clarifying directives on this subject. In particular, agencies should consider ways to concentrate their EISs on analyses of impacts and alternatives that are most meaningful to decisionmakers and the public. They should also take steps to insure that the more analytical EISs are also more manageable in size. (See discussion of EIS content and quality p.93.)

C. Time Required to Complete Agency EIS Procedures

In the course of the past year, the Council has been made aware of a number of criticisms that the EIS process was delaying federal decisionmaking. Specific examples of needless delay caused by EIS red tape have been extremely rare and, when they exist, they have seldom been brought directly to CEQ's attention. Most

often CEQ hears about complaints that are extremely general that apparently reflect misunderstandings in and out of the government about the timing and effects of the EIS process.

CEQ guidelines and NEPA procedures of federal agencies call for environmental analyses to be part of agency project planning. The EIS itself should document the analyses and assist planning. Consequently, the EIS process should occur parallel with other technical economic and social analyses required by project or program planning and decisionmaking.

The problem of federal delays caused by NEPA appears to have been considerably overplayed. In the early years of NEPA, several agencies, particularly DOT and to a lesser extent the Corps of Engineers, had a large number of projects well into the planning or construction phase on which significant actions still remained. The consequent need to prepare EISs on these projects did cause considerable delay in some cases. The delay often appeared unnecessary since the EIS prepared generally justified a decision already made. But today this backlog problem is virtually gone and EISs are, increasingly, prepared for actions proposed after the passage of NEPA.

Another factor causing delays in the early years of NEPA involved agencies' reluctance on occasion to take the statute seriously. Attempts to bypass NEPA often resulted in litigation with the result that agencies were frequently required to go back and do the environmental analysis required. Again, as the pre-NEPA proposals diminish, this problem has also diminished.

A third reason for delay, which continues to occur, has been caused by changing expressions of public preference -- as for example the shifts in public opinion away from a desire for urban expressways -- which has often caused local governments to delay their approval or to reverse their initial decision. In such cases the EIS process may be simply interrupted or drawn out, reflecting (but not causing) a lack of public consensus and a consequent need for greater deliberation in federal decisionmaking.

Lastly, there may be important reasons at the federal level for project decisions to be delayed as part of the EIS process. If a proposed action is complicated NEPA requires a careful look at its consequences and thoughtful analysis of public and agency comments in order to arrive

at an informed decision. Under such circumstances delays have been constructive. An example was the decision of the Energy Research and Development Administration in reviewing the proposed surface storage facilities for commercially generated radioactive waste management. After completion of the commenting process on the draft EIS, ERDA decided to prepare a new program statement to investigate these programs further. In a number of other projects, ranging from highways to water resources, delays have resulted from major substantive issues still unresolved or still awaiting the needed analysis.

There are three points in the EIS process when delays can occur -- in preparing a draft EIS, in preparing a final EIS after receipt of comments, and after the final is issued. In the early days of NEPA agencies often tacked the EIS process onto the end of their planning and decisionmaking processes.

There is considerable variation in administrative procedures and complexity of projects to which the EIS process must adapt, and consequently the time required

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to prepare a draft EIS differs from agency to agency and from project to project. The scope of a project, the experience of the persons preparing the statement, the relationship of the statement to the decisionmaking process and the priority accorded by the agency management to the statement and the project itself are all critical factors in determining the time required to prepare a draft EIS.

CEQ asked federal agencies to estimate the time required to prepare a draft EIS. The results for agencies with major NEPA responsibilities are shown in table 5.

It is evident that considerable differences exist among the various agencies. The Department of the Interior, with its great range of actions and internal administrative procedures, estimates that draft statements on simple projects prepared by experienced personnel require some 3 to 5 months, which time should be reduced in the near future. Complex projects, or simple ones prepared by the inexperienced, may double the time required, while complex projects prepared by inexperienced personnel may take up to 18 months to prepare. If a project or program is not considered to be on what Interior considers to be

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Table 5

Time Required for Draft EIS Preparation in FY 75 (mos.)

<u>Agency</u>	<u>MN</u>	<u>MX</u>	<u>AV</u>
<u>USDA</u>			
FS	1	24	13
SCS	36	60	48 ^{*/}
<u>DOD</u>	2	24	5
<u>COE</u>	2	24	9
<u>EPA</u>	3	6	3
<u>ERDA</u>	9	13	11
<u>GSA</u>	4	11	5
<u>HUD</u>	3	6	3
<u>DOI</u>	3	6	5
BIA	4	6	5
BLM	2	38	20
BOR	4	12	7
BuRec	8	28	14
F&WS	3	12	8
NPS	12	24	14
USGS	12	24	15
<u>DOT</u>			
FAA	1	9	7
FHWA	5	16	10
<u>NRC</u>	3	26	10

*This period reflects time for entire project planning, not simply EIS preparation.

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the critical path of its decision process, as may be the case for some water resources and land management plans, then more time may be taken. The same is true in other agencies, as, for example, the Corps and SCS; for some of their projects and programs it may take many years to develop a draft EIS. Significantly, the SCS has begun to link the draft EIS with its watershed workplan on a project in a single decisionmaking document.

The time required to prepare a final EIS after issuance of a draft also differs with the type of action, its complexity and the agency involved. Most EISs are revised after comments are received and they are issued in final form in less than one year after release of the draft. (See table 6 below.) For example, the average time between releasing a draft and a final EIS in 1974 was approximately six months for the Bureau of Land Management, 7 1/2 months for the Environmental Protection Agency, nine months for the Forest Service, 10 1/2 months for the Corps of Engineers, and just less than one year for the Federal Highway Administration. However, for particularly complex and environmentally significant projects the time required to evaluate and respond to comments, and to make any necessary project or EIS revisions, may take longer.

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Table 6

Average Time between Filing of DEIS and FEIS in Calendar
Year 1974 (mos.).

Department of Agriculture

FS	9.1
SCS	12.7

DOD	N/A
-----	-----

COE	10.5
-----	------

EPA	7.4
-----	-----

ERDA	6.1
------	-----

GSA	6.5
-----	-----

HUD	5.2
-----	-----

DOI

BIA	3.6
-----	-----

BLM	5.7
-----	-----

BOR	6.1
-----	-----

BuRec	11.7
-------	------

F&WS	19.8
------	------

NPS	13
-----	----

USGS	6.7
------	-----

DOT

FAA	8.9
-----	-----

FHWA	11.9
------	------

NRC	N/A
-----	-----

Agencies may hold off from issuing a final EIS while resolving controversies. Time taken here is not for EIS preparation but for problem resolution, which might otherwise occur after issuance of a final.

CEQ asked a number of federal agencies and states to evaluate the proposal that final EISs be issued within a specified time after the draft. The general response was that a proposed maximum time limit was unnecessary. Some respondents feared that a specified limit might, in fact, become the minimum time, and that the states and agencies really needed the time they took to analyze comments thoroughly. It was generally believed that time should be taken at this stage to resolve differences or controversies brought out by the draft EIS and that the time saved in not making this effort might be lost if unresolved controversy lead to protracted public controversy or litigation.

One cause of delay in the filing of a draft or a final EIS is the procedure used by the agency in clearing the document through its Washington Office. In developing

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such procedures, the major question is the extent to which agencies seek to use the EIS process as a part of the decisionmaking process and as a way of bringing the most critical environmental issues directly to the attention of the agency leadership.

After a final EIS has been filed decisions may be delayed by litigation based on NEPA. Effects of NEPA-related litigation on agency decisions, which have in many cases been beneficial to the environment and to improved federal decisionmaking, have not been substantial in terms of numbers of decisionmaking delays. To put the matter into perspective, of the tens of thousands of federal actions with environmental effects taken since 1970 only some 6,500 draft and final EISs have been filed with the Council by federal agencies. In contrast there were an estimated 829 cases brought to court in which compliance with NEPA was one, though not necessarily the most important, issue raised.

*/ This estimate includes the maximum estimates of DOT's NEPA-related cases. However, responses to CEQ's litigation questionnaires have not yet been received from FHWA, which estimates from 200 to 300 NEPA cases.

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TABLE 6
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 NEPA-Related Cases as of June 30, 1975

<u>Agencies</u>	<u>Settled</u>	<u>Pending</u>
Agriculture	33	30
Dept. of Defense (except COE)	12	8
Corps of Engineers	34	29
Environmental Protection Agency	12	12
Energy Research and Development Admin.	0	4
General Services Administration	7	9
Dept. of Housing and Urban Development	46	48
Dept. of Interior	22	61
Nuclear Regulatory Commission	<u>17</u>	<u>11</u>
Agency Total	179	212
<hr/>		
Total all Agencies Except DOT	<u>240</u>	<u>255</u>

As shown on Table 6, for all federal agencies except DOT there were 505 NEPA-related cases as of June 30, 1975, of which 240 had been terminated. Preliminary analyses have been made of 9 federal agencies, again excepting DOT, with a total of 391 NEPA-related cases, of which 179 had been settled by June 30, 1974, and 212 were pending. Table 7 summarizes the claims and dispositions of these cases.

Table 7

<u>Legal Action</u>	<u>Form A</u>		<u>Form B</u>	
	<u>Cases Settled</u>		<u>Cases Pending</u>	
	<u># of cases</u>	<u>% of cases</u>	<u># of cases</u>	<u>% of cases</u>
Claim by plaintiff				
no EIS and/or	112	63	92	43
EIS deficiency	82	46	67	32
Disposition <u>*/</u>				
EIS prepared	21	12	25	12
EIS adequate (Govt wins) <u>**/</u>	39	22	5	2
Temporary Injunction	35	20	33	16
Permanent Injunction	0	0	4	2
Temporary injunction where no EIS	23	13	21	10
Permanent injunction where no EIS	0	0	1	.5
TOTAL	179		212	

*/ Because of settlement or court direction.

**/ Includes permanent injunctions reversed on appeal.

* * *

Recommendations:

The problem of delays caused by the EIS process has been considerably overplayed. Usually such complaints have reflected misunderstanding about the agency decision-making process as well as NEPA. Inefficiencies can occur, however. Consequently, at the request of agencies experiencing delays in their preparation of a draft or final statements, or after the filing of final statements, CEQ will work out with the agency appropriate timing of agency decisions under NEPA in the context of that agency's particular programs. It will also help develop estimates of the resources necessary to help the agency meet its NEPA responsibilities.

CEQ will also continue to solicit and be receptive to any specific complaints of delays caused by inefficiencies in the EIS process. It will then follow up the matter with the appropriate agency.

D. Joint and Lead Agency EISs

CEQ's EIS Guidelines state that where more than one agency (1) directly sponsors an action, or is directly involved in an action through funding, licenses, or permits, or (2) is involved in a group of actions directly related to each other because of their functional interdependence and geographical proximity, consideration should be given to preparing one statement for all the federal actions involved. ^{*} Such an EIS could be the result of joint agency efforts or of a designated lead agency. Where a lead agency prepares the statement, the other agencies involved in the effort should assist through the provision of research and analysis with respect to their particular areas of expertise. This cooperative approach has been a major benefit of NEPA.

The statement should contain an environmental assessment of the full range of federal actions involved, should reflect the views of all the participating agencies, and should be prepared before major or irreversible actions have been taken by any of the participating agencies.

* Guidelines, Section 1500.7

Analysis of agency responses to CEQ's questionnaire shows that the agencies having the most experience with lead or joint agency EISs are Forest Service, Corps of Engineers, EPA, NRC, Department of Transportation, and the Department of the Interior. Most other agencies have had little experience with the lead or joint agency EIS concept.

Within the Interior and Agriculture Departments, the lead agency concept has worked well, as it did when BLM prepared, with the help of the Forest Service, an EIS on phosphate leasing in the Osceola National Forest. ^{*} Agencies such as EPA and the Corps have sought to improve their agency permit roles on matters such as fossil fuel power plants by negotiating a formal memorandum of understanding on lead agency EIS questions. An agreement has nearly been completed between EPA and NRC on similar issues regarding nuclear power plants. CEQ has helped foster both negotiations. This determination of lead agency duties by advance agreement has also been used successfully by NRC with the Corps of Engineers (on offshore nuclear power facilities), the Coast Guard and TVA.

^{*} U.S. Department of the Interior, Bureau of Land Management, Environmental Impact Statement "Phosphate Leasing on the Osceola National Forest, Florida" (Final, June 27, 1974).

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Agency responses to CEQ's question regarding the benefits of and problems with the lead agency concept revealed a number of similarities. Benefits cited included:

1. A reduction in time and costs.
2. A better understanding of other agencies' problems.
3. Better access to necessary technical expertise.
4. A reduced chance of litigation and delay if all ~~agencies cooperate initially in preparing a comprehensive EIS.~~
5. Agencies can participate in a decisionmaking process on the proposed project prior to the time that they would otherwise be involved.
6. Decisions reached are more visible.
7. Agencies can provide substantive contributions to an EIS before its release to public.

Problems cited with the lead agency EIS process included:

1. A lack of commitment by subordinate agencies to the final product.
2. Difficulty of lead and subordinate agencies insuring that the data provided by the other is accurate and adequate.

3. Administrative timing differences among agencies.
 4. Adverse publicity is generally directed only toward lead agency.
 5. Difficulty in assuring that the action by the subordinate agency is sufficiently covered in the EIS so as to meet the requirements of NEPA for a "detailed statement."
 6. Difficulty in allocating EIS costs and in obtaining a commitment of personnel and support from the subordinate.
-

From the responses to the agency questionnaire and CEQ discussions with agency staff, it is apparent that there is some confusion as to the meaning of "lead agency" and "joint" preparation. Some respondents did not distinguish between the terms, but most agencies inferred that being lead agency meant taking the bulk of responsibility for EIS preparation. Joint preparation indicates fairly equally shared responsibilities of the agencies involved.

Joint preparation may prove beneficial in coordinating agency planning, in contrast to the result where one of the agencies is more independent and predominant in the preparation of the EIS. Consequently, the Forest Service, which considers the EIS process to be an integral part of its

decisionmaking process, frequently prefers the joint to the lead agency approach as a way of insuring that all agencies put their best efforts into and benefit equally from EIS preparation.

* * *

Recommendations:

To date, the most productive method for resolving difficulties in joint and lead agency EISs has been by explicit agreement between the agencies on their mutual responsibilities in the preparation of an EIS. The agreements mentioned above go a long way in resolving potential problems before they arise. Still, a number of situations exist, such as the construction of oil and gas pipelines, electric transmission lines and other energy facilities where lead or joint agency EISs have been neglected or delayed and where formal, advance agreements are desirable. Upon request, CEQ will assist agencies in developing lead agency and joint agency agreements and in resolving problems that may arise in implementing such an agreement.

* * *

E. The EIS Comment and Response Process

Section 102(2)(C) of NEPA requires that federal agencies with jurisdiction and expertise and state and

prepared by federal agencies. The procedure for draft EISs was established by CEQ to meet this NEPA requirement.

CEQ's review of agencies' practices under NEPA, however, indicates that nearly all agencies solicit views of other agencies, either within the Executive Branch as a whole or within the same department, prior to filing a draft EIS. A number of agencies within Interior circulate a preliminary draft EIS to other federal and state and local agencies. SCS and NPS regularly include the public in this review. (See Table 8.) The Corps of Engineers accomplishes a similar result for new projects by formally circulating a draft, a revised draft and a final EIS. FHWA and UMTA, however, have procedures requiring state and local review before circulation of a draft EIS to federal agencies. For these reasons the formal commenting process after release and circulation of the draft EIS should not be considered the sum total of the EIS commenting process at least for federal and state agencies and frequently for the general public as well.

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Table 8

Agencies that Circulate a Pre-Draft EIS for Comment

Dept. of Agriculture

FS	infrequently
SCS	to both federal agencies and the public

Dept. of the Interior

BIA	only to agencies with expertise
BLM	to other federal and state agencies
BOR	circulates all wild & scenic rivers and trail studies
BuMines	only to agencies with expertise
BuRec	only within Interior
F&WS	rarely
NPS	to both federal agencies and the public
USGS	to other federal agencies

Dept. of Transportation

FHWA	to state and local agencies before circulation of draft EIS
UMTA	

Most agencies have reported a noticeable improvement in the quality of comments received on their EISs over the past few years. Nevertheless, they still cite examples of comments that are neither constructive nor, if potentially so, adequately supported by useful or relevant data. Moreover, many of these same agencies cite their own problems of limited staff to prepare consistently constructive and substantive comments on other agency EISs. In many cases these difficulties reflect agencies' decisions to allocate the minimum amount of staff time to EIS commenting, as opposed to EIS preparation.

Time constraints on commenting have also caused problems. The 45 days usually permitted for draft EIS comments flies by quickly when large Departments solicit their opinions from their most relevant experts, which frequently are in various regional or field offices, and then seek to coordinate a single Departmental comment. Table 9 below indicates whether comments are prepared in Washington or the field. It shows that for the vast majority of agencies with major NEPA responsibilities the comments are mostly prepared in the field and in more than half they are either cleared or filed in D.C.

Table 9

Whether EIS Comments are Prepared in D.C. or Field

USDA

FS All field prepared - clearance in D.C.

SCS 80-90% field prepared and filed.

DOD

AF Most in D.C.

Army Most in D.C.

COE Most field prepared and filed.

Navy Most common from field, clearance in D.C.

EPA 90-95% field prepared and filed.

ERDA Most prepared in D.C.

GSA Approximately 50% in D.C. and 50% in the regions

HEW Most field prepared and cleared in D.C.

HUD On projects - field prepares; on policy -
D.C. prepares.

DOI

BIA 90-95% field prepared - dept. response.

BLM 90% field prepared - dept. response.

BuRec 80% field prepared - dept. response.

BuMines 60% prepared in D.C.

BOR 44% field prepared and filed.

F&WS 70% field prepared and filed.

NPS 90% field prepared and filed.
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USGS 65% field prepared - dept. responses.

Whether EIS Comments are Prepared in D.C. or Field (Con't)

DOT

FAA Most field prepared and filed.

FHWA Most field prepared and filed.

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EPA is the only federal agency that regularly comments on all EISs, draft and final, based on its obligations under NEPA and under §309(b) of the Clean Air Act. In order to improve the quality of its comments, EPA has prepared a number of substantive guides for commenting on particular issues. These guides are to be particularly valuable to EPA's regions, which prepare 90-95 percent of EPA's EIS comments and should improve the substantive quality of EPA's comments. However, EPA often confronts a problem of inadequate time to prepare detailed, substantive comments, and occasionally it has not received EISs until considerably after their filing with the Council. EPA faces a special problem on final EISs, on which most federal agencies do not comment formally. In many cases, however, the 30 days permitted for such comments has limited EPA's ability to conduct thorough and timely reviews of final EISs.

Time constraints have also proved troublesome among the states commenting on EISs. Frequently they have received EISs considerably after the comment period has officially begun and have reported difficulty in obtaining waivers for additional review time. These and other problems of the States are discussed in Section 78M02660R000800080019-3

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The quality of EISs has occasionally suffered from the failure of many agencies to develop priorities for their EIS review and commenting process based on the relation of the issues raised to their own particular jurisdiction and expertise. The failure to develop such criteria may reflect an agency's unwillingness to devote sufficient resources to the commenting process. However, the need for such priorities was recently recognized by the FEA, whose proposed NEPA guidelines state that FEA will give priority to effects of proposed actions on energy supply and conservation.

A general complaint about the commenting process -- by federal, state, and local agencies and the public alike -- is that comments do not receive adequate response from the initiating agency. The Fish and Wildlife Service and EPA have experienced considerable frustrations from a lack of an adequate response. CEQ's review of state comments on the NEPA process indicates that states also share a common

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feeling that federal agencies do not give their comments due regard; cursory responses and apparent unwillingness to accept state data have often discouraged states from reviewing final EISs for their attention to state criticisms of the draft EIS.

From the federal agency point of view, the weakness in insuring adequate responses to comments may often result from the failure of the commenting agency to follow-up its comments. Many agencies give only a cursory review of final EISs to see if their comments on the draft were accommodated. However, no procedural mechanism exists for agencies to insure that their comments are, in fact, accommodated not only in the final EIS but in the final action taken. Even if an agency responds to comments by amending its ultimate action, NEPA does not establish a monitoring procedure to insure that any environmental safeguards are actually employed.

* * *

Recommendations:

In order to improve the value of EIS comments to informed federal decisionmaking, several steps should be taken.

(1) Federal agencies should define, after consultation with CEQ, their expertise and jurisdiction for purposes of commenting on specific issues and topics of EISs. These determinations should then be published in the Federal Register by CEQ.

(2) Federal agencies should develop, in consultation with CEQ, priorities for devoting commenting time and resources to particular issues and topics in EISs. These priorities should be published by CEQ in the Federal Register along with agency statements of expertise and jurisdiction.

(3) Federal, state and local agencies should alert CEQ to any comments made on an EIS which in their judgment received inadequate response from the agency preparing the EIS. CEQ will then follow up the matter with the initiating agency and recommend action if necessary.

(4) Federal, state and local agencies should alert CEQ to problems of EISs received notably after the comment period has begun so that CEQ can take timely action with

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(5) Federal agencies should alert CEQ to any comments received which were particularly helpful in improving the EIS and/or the pending decision.

(6) Federal agencies should periodically make their own internal evaluations of their comment and response procedures.

F. NEPA-Related Costs

For a number of reasons it has not been, and may never be, possible, or indeed worth the effort, to determine the precise costs of federal compliance with the EIS process. First, some agencies -- such as the Forest Service -- developed environmental procedures and staff in accordance with laws passed prior to NEPA. For them NEPA simply elaborated upon and modified an older resource management system, so that much of the planning and decisionmaking whose costs are

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now attributable to the EIS process in fact preceded NEPA.

Other agencies, such as the Corps and the former AEC, analyzed specific environmental issues, radiological or water quality effects of projects, for example, prior to NEPA.

These costs too have become part of their EIS-related cost accounting.

Second, federal agencies are affected by laws like the Fish and Wildlife Coordination Act of 1934^{*/} as amended, the Federal Water Pollution Control Act of 1972,^{**/} and the Clean Air Act of 1970;^{***/} they require some special environmental analyses that may make cost estimates specific to NEPA difficult.

Third, many agencies, such as ERDA, Commerce, the Forest Service, DOT, and HEW, have no established method of determining EIS process costs because the costs are a part of their administrative planning and decisionmaking. Consequently, their estimates can be considered only approximate.

Finally, the agencies that do determine EIS-related costs, e.g. the Corps, NRC, SCS, and the Department of Defense, reckon them quite differently. Within Interior, each bureau determines costs in accordance with its own needs. BLM's cost accounting system includes the preparation and review of impact statements as well as the environmental

^{*/} 16 U.S.C. ff 561 et. seq.
^{**/} Approved For Release 2004/11/30 : CIA-RDP78M02660R000800080019-3
^{***/} Pub. L. 91-604, 84 Stat. 1676

analyses, whereas BOR identifies the costs associated with reviewing but not preparing EISs because the latter is considered a cost of doing business.

Unless these differences are constantly born in mind comparisons among the agencies can be quite misleading.

Estimated costs of preparing and reviewing EISs are shown in Table 10. They are relatively small compared to annual budgets or to the costs of major construction or licensing projects. For example, the Corps of Engineers estimates that in fiscal year 1974 it spent about \$21.9 million on EIS, which is approximately 1.25 percent of its annual operating budget. The NRC estimates that it spent \$14.9 million on NEPA in 1975, which is about 2.2 percent of the cost of one nuclear power plant.

These cost figures do not, however, include the costs of environmental assessments. In addition, the cost data shown do not include the non-federal costs of EIS preparation and review incurred by the states or municipalities, pursuant to their applications for federal highway or sewer grants.

Lastly, it should be noted that some agencies can,

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Federal Agency Costs of EIS Preparation and Review and Commenting

TABLE 10

Agency	Does the agency have formal processes for determining NEPA costs?	FY 1974 estimated EIS preparation costs. ^{1/}	FY 1974 cost of review and comment process. ^{1/}	FY 1974 total EIS cost and review/comment cost. ^{1/}	FY 1974 total costs as percentage of operating budget. ^{2/}	FY 1975 EIS preparation costs - estimated. ^{1/}
		(a)				(a)
COE	yes	\$21,933,832	\$ 76,000	\$22,009,832	1.2%	\$27,057,447
USDA						(b)
FS	no-use estimates	27,000,000	225,000	27,225,000	2.7%	27,000,000
SCS	no-use estimates	3,500,000	360,200	3,860,200	1.0%	3,500,000
APHIS	no-use estimates	125,000	NA	125,000	NA	85,000
REA	no-use estimates	117,190	11,295	128,485	.73%	161,630
DOC	no-use estimates	342,000	1,174,000	1,516,000	.1%	526,680
DOD	no-use estimates	5,200,000	NA	NA	NA	4,200,000
^{3/} DOI	no-use estimates	15,200,000	5,500,000	20,700,000	.1%	23,400,000
BLM	yes	3,544,243	305,000	3,849,243	1.3%	NA
BOR	yes	575,000	995,400	1,570,400	1.4%	600,000
BuRoc	no-use estimates	3,796,000	390,000	4,186,000	.63%	4,050,000
FWS	no-use estimates	NA	1,849,000	NA	NA	NA
NPS	no-use estimates	1,900,000	545,000	2,445,900	.54%	2,013,600
USGS	no-use estimates	2,400,000	800,000	3,200,000	1.85%	5,000,000
DOT	no-use estimates	31,746,000	250,000	31,996,000	.18%	36,550,000
EPA	yes	1,280,000	1,600,000	2,880,000	.048%	6,300,000
^{4/} ERDA	no-use estimates	NA	NA	NA	NA	3,400,000
FEA	no-use estimates	NA	NA	NA	NA	330,000
FPC	yes	1,481,419	70,000	1,551,419	5.4%	1,333,000
GSA	no-use estimates	1,600,000	5,000	1,605,000	.18%	2,235,000
HEW	no-use estimates	40,000	100,000	140,000	.0001%	80,000
HUD	no-use estimates	6,000,000	275,000	6,275,000	.07%	NA
^{4/} NRC	yes	NA	NA	NA	NA	14,900,000

NA = Not Available
^{1/} From responses to a NEPA questionnaire distributed by CEQ to all federal agencies in November 1974.
^{2/} Operating Budgets determined from Federal Budget Figures for FY 1976.
^{3/} Figures for DOI include all Interior agencies including those noted in this Table.
^{4/} ERDA and NRC were established in 1975 and thus have no figures for FY 1974.

- (a) Costs include: in-house and contractor staff, inventories, impact assessments, DEIS, FEIS, Supplements, public meetings.
- (b) Costs include in-house and contractor staff only.
- (c) Costs include in-house staff only.
- (d) Costs include: in-house and contractor staff, travel costs, research costs, administrative costs, and public hearings but do not include costs of environmental assessments.
- (e) Costs include preparation of all environmental assessments.
- (f) Costs include: in-house staff, program services, leave, and other indirect costs for all environmental assessments and EIS's.

in some circumstances, charge fees for federal EIS preparation from project applicants. Specific provisions for certain agencies to charge such fees have been made in three major cases

BuRec For small reclamation project loans under the Small Reclamation Project Loan Act, Pub. L. 84-984, as amended by Pub. L. 85-47, Pub. L. 89-533 and Pub. L. 92-

BLM For applicants for rights-of-way across public lands and the outer continental shelf, under Sections 201 and 204 of the Public Lands Administration Act (43 USC 1371, 1374) and Section 28(1) of the 1973 amendments to the Mineral Leasing Act (87 Stat. 567,579).

COE The applicant may be responsible for providing certain data or for paying for special studies required. See 33 CFR 209.120, para. (h)(2)(vi).

NRC General licensing fees cover EIS preparation.
See 10 CFR part 170.

(See page 80 for further discussion of EIS cost recovery by the agencies.)

* * *

Recommendations

Given the considerable differences in agency procedures and statutory environmental obligations and NEPA's mandate that the EIS process be thoroughly integrated in agency planning and decisionmaking processes, institution of a standard method of agency EIS cost-accounting would be extremely difficult. However, agencies may find it useful to develop their own specific cost accounting procedures for individual aspects of the EIS process such as the EIS commenting and response process.

* * *

G. Special Problems in Applying NEPA(I) Legislative EISs

NEPA requires that agencies "include in every recommendation or report on proposals for legislation" likely to have a significant environmental effect a detailed environmental impact statement. Although there have been a number of legislative EISs over the past few years it is a requirement "more honored in the breach than the observance." There are several reasons.

1. While the ordinary project impact statement is appropriate for site-specific legislative proposals (such as water resource or wilderness proposals) it would be onerous to prepare such an EIS for "every recommendation or report" submitted by an agency on proposed legislation with significant impacts.
2. Impact statements on broad legislative programs submitted by the Administration to Congress are usually developed after, not along with the proposal, and they have become an exercise to justify rather than to influence the resulting bill.
3. Congressional committees neither prepare impact statements for their own bills reported out nor do they apparently use those EISs prepared and submitted by the Executive Branch. FEA's draft EIS on the Energy Independence Act -- a whole package of bills -- received little attention on the Hill.
4. The concept of draft and final EIS's has little meaning for such EIS's, since once a draft is prepared and sent to Congress, along with the proposed bill, there is no obvious purpose served in preparing a final EIS on a bill that may soon bear little resemblance to the original.

5. Impact statements on appropriation requests have not been practical to prepare because (a) the budget line items seldom correspond with administrative actions on which agencies have a duty to prepare EISS and would consequently create a difficult administrative burden, and (b) the process of determining budget levels has been an internal, confidential Executive Branch process, which would be inhibited by public circulation of draft EIS and the resulting pressure of lobbying efforts by business, labor and environmental groups.

The conclusion expressed by most agencies regarding legislative impact statement requirements, therefore, is that simpler procedures should be established to establish and reconcile the clear informational needs of Congress and the public with practical and not wholly speculative analyses.

Recommendations

Specific CEQ guidance on legislative EISs are needed to clarify the different treatment appropriate for different types of legislative proposals so that environmental analyses are more useful to decisionmakers and the public. Distinctions now exist between site-specific legislative proposals of the agencies and other proposals for broad programs. Site specific legislative proposals falling within a particular agency's jurisdiction and existing programs, such water resource projects requiring congressional action or proposals for wild and scenic rivers or wilderness, should continue to follow present EIS procedures. In contrast, the precise shape of broader legislative proposals frequently depends on unforeseeable Congressional action; moreover, their impact may, in any event, be largely speculative until regulations or policies or specific proposals and EISs are prepared after enactment. Consequently, and in light of agency experiences noted above, new EIS procedures are needed for all recommendations or reports on proposed legislation, excepting site-specific matters, whose impacts are likely to be significant.

CEQ guidance should provide that (1) agencies should prepare environmental assessments to be circulated with any proposed legislation in the OMB review process for comment from other agencies (2) a final, detailed EIS should be prepared on the basis of the analysis and interagency review if the impacts are deemed significant and have not otherwise been analyzed in the EIS process, (3) the EIS should be submitted to the Congress, other federal agencies and the public with the legislative proposal, or as soon thereafter as possible but, in any event, 15 days before any Congressional hearings, (4) federal agency, state and local government and public comments on the EIS should be sent to the initiating agency, which will forward them to the relevant Congressional committee, (5), on the request of the committee, the initiating agency will respond to the comments received on the final EIS.

To help remedy the administrative problem posed by requiring EISs on appropriation legislative proposals, agencies should develop procedures to analyse budgetary levels and their impacts in program EISs. Provision for

annual updates, or EIS supplements, should be made to address any budgetary changes that would have significant environmental impacts. Recommended CEQ guidance on program EISs will necessarily address appropriation analysis as well.

* * *

(2) Permit Impact Statements

The impact statement process affects private parties, who initiate a proposal and then seek permission from a federal agency to proceed. Agencies like the NRC and FPC are by statute specifically in the business of licensing particular kinds of facilities -- nuclear power plants, hydroelectric and LNG terminals -- and have elaborate, routine procedures for pursuing their licensing mandates. Other agencies, such as BLM, FS, the Corps, the Coast Guard, and the State Department also must grant permits -- for pipeline crossings of international borders, crossing federal land with transmission lines and pipelines, or crossing or otherwise affecting navigable waters of the U.S. with bridges or piers. Permits like these may require impact statements if they are needed for the construction of such facilities as fossil fuel plants, paper mills, major housing or recreation projects, each of whose environmental effects may be significant.

(a) Use of Applicant Information

In response to CEQ's questionnaire, all relevant agencies noted that environmental reports submitted by applicants for licenses, permits, etc., are used as basic information for the agency's impact statement after agency verification. However, the extent and type of information sought from applicants by agencies varies considerably. Applicants for long pipelines requiring a number of federal, state and local permits and a federal impact statement usually provide extensive environmental reports with their application. Similarly, applicants for federal permits to build fossil fuel plants or other large industrial facilities have submitted such reports to Interior, the Corps, and the Forest Service. These agencies have used these reports then as the basis for their impact statements. Thus, for large industrial concerns, or for large recreation companies (such as the Disney Corp. seeking permission from the F.S. for the Mineral King Recreation Project) the agencies can stipulate, or may routinely receive, vast amounts of useful information from the applicants in the form of an environmental report. Such information is

routinely sought by the NRC and the FPC for their license actions. It is also sought by the NPS, by BLM and, in specific cases, by the Corps. But no uniform assessment criteria for similar projects have been established for all the agencies that would help the private parties anticipate the EIS information needs of the federal government.

Most agencies do not seek help from applicants to cover directly the costs of their impact statement preparation. NRC and BLM do so routinely as permitted by their laws and regulations. The Corps does not do so, however, and other agencies such as the Forest Service lack such specific statutory authority to obtain direct compensation from the applicant. EPA, in beginning its EIS program for the issuance of new source effluent discharge permits has, in the case of the proposed Pittston Refinery at Eastport, Maine, sought to work, along with other agencies, directly with the consultant hired by Pittston to write an environmental report. This information will be evaluated prior to EPA's preparation of a draft EIS. More recently EPA initiated a procedure for a permit applicant to pay a consultant to work closely with EPA in developing an impact statement.

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In all these cases, however federal agencies are required by NEPA to evaluate and verify independently any information received from a permit applicant, and cannot delegate the actual preparation of an EIS. In agencies like the Interior Department, Forest Service, the Corps, and EPA, considerable staff capability is usually available to allow an independent agency role. But in any given case agency work priorities and time constraints may mean that the applicant's figures and analyses are uncritically accepted in the draft EIS. Because, unlike the NRC and FPC, these agencies have a variety of other operating duties and have no easy means of anticipating and planning for the receipt of permit applications, the staff problem can be acute.

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(b) Determining Reasonable Alternatives

The determination of reasonable alternatives to analyze in the EIS should reflect the agencies' planning and decisionmaking process. However, special problems arise when agencies are called on to evaluate a permit application when the federal environmental analysis has been late or when the applicant has gathered little or no information on alternatives. Neither problem should exist in the case of a federal project on which the NEPA process, and the orderly federal analysis of alternatives, can begin early. Agencies such as the Corps of Engineers, EPA, BLM and the Forest Service face considerable difficulty in determining how to analyze and how much time and money to spend analyzing, alternatives that their permit applicants have never considered, let alone proposed.

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(c) Timing

With rare exception, agencies do not begin formally to establish a work plan on a project's impact statement until after a formal application has been received. The Corps has done so on a few occasions, and BLM more frequently, but it is the formal application that nearly always triggers the need to make an agency decision on a permit, and which indicates the seriousness of the applicant's intentions. It is at that point that the agency will determine whether it needs more information from the applicant, and, if so, what precisely is needed.

More difficult questions arise when an agency receives an application but is unsure whether the project will be allowed by other levels of government. Federal agencies required to give permits naturally prefer not to commit themselves to the extensive work and considerable expense involved in preparing an impact statement on the project while necessary local and state approval remains in doubt. As in other cases, however, the timing of federal involvement is usually decided by the applicant, who may submit formal applications to the various levels of government simultaneously or in series, based on the applicant's own analysis of the costs or benefits to him of each particular approach.

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timing, new problems arise for the NEPA process, when simultaneous or serial applications are made for state and federal permits. Many states, such as New York, California, Maryland, and Maine have siting, EIS or land use statutes and procedures of their own which require information from the applicant and analyses and documents from the state government that are similar to federal requirements. Each state's laws and procedures are different from the others. Yet every effort should be made to avoid duplication of information and analysis by the applicant and by the state and federal agencies. EPA has sought to avoid this problem in New York state by working with state officials and utility companies on ways to anticipate both state and federal requirements for information on fossil fuel power plants, to permit some simultaneous federal and state analyses of data, and to minimize duplication. NRC has initiated efforts with different states to avoid unnecessary duplication of effort in its nuclear licensing procedures. As states take an increasing role in land use, the problem of making sure that questions vital to the federal EIS process are asked at the earliest appropriate time by state and federal agencies will become increasingly important.

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Recommendations:

CEQ should work closely with the agencies and consider further agency guidance for (1) determining the kind and amount of information to be sought from applicants when first requesting a permit, (2) allow applicants to pay consultants to work closely with the federal agency in ways that will insure objective agency evaluation of data and continuous control over and participation in the environmental analyses or EISs produced, (3) determine the scope of analysis and the reasonable alternatives to be addressed in the NEPA process (4) determine when to begin the permit EIS process and when to complete the final EIS, keeping in mind the need to coordinate federal and state EISs.

* * *

(3) Grant Actions

Several federal agencies, most notably DOT, HUD, BOR, and EPA, make grants which can require impact statements. Many of their EIS problems are similar to those of permit agencies because grant projects start with an application from another level of government. These problems involve the appropriate scope of an EIS, the analytical needs of the agency, and the appropriate timing of the EIS.

Grant EISs also present questions that differ from those of permit EISs. One difference is that grant applications are often based on state or municipal plans which are called for by federal law or regulation. For example, BOR approves state recreation plans under the Land and Water Conservation Fund Act of 1965, as amended, ^{*/} and state applications for Land and Water Recreation funds are to be consistent with such plans. BOR, however, rarely prepares an impact statement on state applications, although it does receive assessments prepared by the state, and apparently has found little utility in the EIS mechanism. Nor has BOR used the EIS process effectively in its evaluation and approval of the state recreation plans.

Under Pub. Law 94-83, a federal agency with a statewide grant program is specifically allowed to delegate EIS preparation to offices with statewide jurisdiction over the program, so long as the federal agency guides and participates in the preparation and approves the document before its public release. Federal agencies like BOR can, therefore, transfer EIS preparation duties to statewide recreation agencies for both state action plans and individual

^{*/} P. L. 88-578.

Land and Water Conservation Act grants. Whether such transfer will result in improved environmental review for Land and Water Conservation Fund actions remains to be seen.

State highway departments, have under P.L. 94-83 been permitted to continue their long-standing practice of preparing EISs for FHWA on their own highway grant proposals. They also prepare state "action plans" on transportation or highway systems for the state, as required by DOT's interpretation of §109(h) of the Federal Aid Highway Act of 1970. EISs of a program nature have not been prepared by FHWA because it believes there is no direct federal involvement early in highway planning. Consequently, EISs on highway grant proposals have

continued to be based on specific projects in individual states rather than on highway programs or a highway corridor through several states as; for example, the proposed widening of Route 7 going through Connecticut, Massachusetts, and Vermont.

* / This project was the subject of Conservation Society v. Vermont, _____ F.2d _____ (2nd Cir. 1975).

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* * *

Recommendations:

The application of Public Law 94-83 to federal state grant programs should be carefully monitored by CEQ to determine its effects and whether delegation of EIS preparation should be authorized in other circumstances.

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(4) Water Resource Actions

A major unresolved issue in water resource planning and decisionmaking is the relationship of the EIS process to the Principles and Standards (P&S) of the Water Resources Council (WRC). The Departments of the Army, Interior, and Agriculture are primarily concerned with this integration since many of their programs are covered by the P&S as well as by NEPA. CEQ is currently working with the agencies via a WRC task force to develop and consider options for improving the planning and decisionmaking process, avoiding unnecessary duplication of documents, and using the EIS process constructively to display the analyses underlying the application of the Principles and Standards.

These same agencies could also take independent steps toward resolving this issue. The Soil Conservation Service has already modified its planning process so that an EIS is developed and circulated jointly with its Watershed Work Plan, thereby eliminating much of the previous duplication of information contained in these two documents. The Corps of Engineers and the Bureau of Reclamation are considering similar possibilities.

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A second issue in water resources planning which involves the EIS process is the extent to which federal agencies develop and consider flood plain management alternatives in designing projects for flood control. Development of plans involving nonstructural measures to achieve flood damage reduction while making appropriate use of flood plain lands is consistent with both the Flood Disaster Protection Act of 1973 (P.L. 93-234) and Section 73 of the Water Resources Development Act of 1974 (P.L. 93-251); however, such alternatives have not received adequate treatment in most EISs and other agency planning documents to date.

* * *

Recommendations

Water resource agencies should implement one or more of the options for EIS-P&S integration being developed by the WRC task force, and should consider similar options for integrating the EIS into the planning process for actions not covered by the P&S.

Planning of federal actions which involve flood control measures should regularly include the development and consideration of floodplain management plans which include non-structural measures. Such plans should be explicitly set forth and discussed in the environmental impact statements for these proposed actions

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(5) International Actions

Over the past year the application of NEPA and the EIS requirement to federal actions abroad has received considerable attention from the State Department, AID and CEQ. CEQ has taken the position that NEPA and CEQ's guidelines apply to all federal agencies wherever their actions take place. The State Department has agreed with CEQ to the extent that actions abroad which may have a significant impact in the U.S. are subject to EIS procedures. ^{*/} AID, however, recently issued a Policy Determination under which the EIS process would apply fully not only to overseas actions with significant effects on the U.S. but also to actions which "would significantly affect the environment of areas outside any nation's territorial jurisdiction (e.g., the oceans)." For other actions, where the environmental impact falls in the territory of states receiving aid, or on adjacent states, AID's policy is to prepare environmental assessments which would consider alternatives and which would otherwise conform with the "concepts embodied in NEPA." A particularly important part of AID's NEPA policy involves the plan to develop environmental capabilities in recipient countries.

^{*/} A Federal Court recently disagreed with this limited construction of NEPA's application when it ordered DOT to prepare an EIS on the effects of the proposed Darien Gap Highway in Columbia and Panama (connecting link of the Pan-American Highway) on the environment of the U.S. as well as on the other two countries. Sierra Club v. Coleman, Civ. No. 75-1040 (D.C. D.C. October 17, 1975).

AID is now developing its NEPA regulations which will spell out the precise scope and procedures for its new EIS and environmental assessment policy. The new law and procedures being developed for U.S. international actions will have important implications for all U.S. agencies operating abroad, such as the Export Import Bank, which has not established NEPA regulations.

* * *

Recommendations

NEPA applies to all federal agencies. Those agencies operating abroad should develop EIS procedures providing for environmental analyses of impacts falling outside as well as inside the U.S. CEQ will work with any agency which believes that modifications of CEQ's guidelines calling for prior public disclosure are needed. Such modifications may be desirable for reasons of national security or because special foreign policy complications may arise from prior disclosure of an assessment when the environmental impacts of a project proposed by another country are localized.

H. Quality and Content of the EIS

The use of the EIS process in federal planning and decisionmaking has depended to an important degree on the quality and proper focus of EIS data and analyses. Although over the past six years much of the legal and administrative emphasis on the EIS requirement has been procedural, the content of EISs has improved considerably. To continue this trend many agencies have developed general and specific substantive check lists and guidelines for analyzing the impacts of certain specific kinds of projects.*/ However, efforts to improve the substantive quality and utility of EISs must address several problems requiring more difficult analysis. One is how to determine the appropriate scope of analysis of EISs given the need to consider impacts on the "human", not simply the physical environment. Another

*/ Selected examples of substantive guides completed by federal agencies are: Guidelines for the Environmental Impact Assessment of Small Structures and Related Activities in Coastal Bodies of Water (Corps of Engineers); Preparation of Environmental Statements: Guidelines for Discussion of Cultural Resources (Department of the Interior, NPS); Environmental Impacts Associated with Electric Transmission Lines (NRC); Guidelines for Review of Environmental Impact Statements, Vol. I, Highway Projects (EPA); and Social Impacts, Highways (DOT). A larger number of similar impact guides are being prepared in these and other federal agencies.

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problem is how to use environmental information in the EIS process in ways that are most meaningful to the decisionmakers evaluating a proposed action and its alternatives. Since neither of these problems has been defined specifically in

NEPA or in CEQ's guidelines federal agencies have generally sought to determine their own standards of analytical adequacy on a case-by-case basis.

(1) Scope of Analysis

Although the "human environment" is not defined in Section 102(2)(C) of NEPA, CEQ and federal agencies have construed the goals of the Act in Title I to require a definition that includes the social as well as the physical environment. Thus OSHA, for example, has sought to apply the EIS requirement to the indoor work environment and the effects of occupational health stipulations. However, the extent to which agencies analyze primary (direct) or secondary (indirect) social impacts varies considerably with the type of action proposed. The Armed Services have devoted considerable attention in EISs to the effect on employment, school and public services of a proposed action to relocate or close certain facilities. DOT has similarly analyzed the social impacts of highway EISs, and the FS and several Interior bureaus have analyzed effects of various land management actions on community and cultural values.

For all agencies, however, the problem of measuring and

predicting social impacts is substantial.

Economic analyses can be and are included in EISs. CEQ guidelines provide that where agencies conduct an economic cost/benefit analysis of proposed actions it should be attached to or summarized in the environmental impact statement, along with an indication of "the extent to which environmental costs have not been reflected in such analyses." ^{*} Under present practices 7 of the 19 federal agencies with major EIS responsibilities regularly include cost benefit analyses in their EISs (see Table 11). The Corps of Engineers, the Nuclear Regulatory Commission, the Energy Research and Development Administration, and, occasionally, several others prepare such economic analyses and include or refer to them in their impact statements. (Not shown in the table but strongly favoring the inclusion of economic as well as environmental analysis in EISs, is the Commerce Department.) Other agencies, notably the Department of the Interior and the Environmental Protection Agency, generally do not prepare

^{*} Section 1500.8

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Table 11

Whether Agencies prepare Economic Benefit/Cost Analyses
of Projects

Dept. of Agriculture

F.S.	Yes
SCS	Yes
DOD	
AF	No
Army	Yes
Navy	Yes, on occasion
COE	Yes
EPA	No
ERDA	Yes
GSA	Yes
DOI	
BIA	No
BLM	Occasionally
BOR	No
BuRec	No
F&WS	No
NPS	No
USGS	No
DOT	No
NRC	Yes

such analyses. If on occasion they do, they do not include them in their impact statements. Consequently, considerable diversity exists among the agencies with respect to their approach to economic analyses of proposed projects and the inclusion of such analysis in the EIS. This is due to their different administrative procedures and to their somewhat different definitions of the "human environment."

Frequently federal agencies have found that the most important impacts direct or indirect, of a proposal are more related to the social and economic than physical environment. Consequently DOD, for example, has frequently been pressed by Congressmen and local communities to address social and economic effects of proposed actions on Defense facilities because these effects seem to be the most controversial and because the EIS seems to be the only way that the public can obtain information on them. Thus, whereas the inclusion of social and economic impact analyses might in some cases dilute the emphasis on environment, as the Department of the Interior fears, the Defense Department has found it expedient, but troublesome, to provide the public with information on economic and social issues critical to a decision. In these, usually controversial, cases the EIS

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has filled a need of the public for information about social and economic impacts on the human environment -- information that without the EIS process, would at least be more difficult to obtain. Nevertheless, because methods of social, if not economic, impact analyses are undeveloped or obscure it has been difficult for federal agencies to determine what kind and degree of analyses are reasonably required by NEPA.

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2. Level of Analysis

Once an impact statement is to be written federal agencies have also faced difficulties in determining the appropriate level of their analyses and the relationship of the analyses to any previous or subsequent EISs on related actions. Agencies such as ERDA, Commerce, Forest Service, HEW, DOD, the Interior Department and EPA recognize various levels, or a hierarchy of EISs. At each of these levels the type of analysis has necessarily differed, depending on the kind of information appropriate to an informed decision on the proposed action. The hierarchy of the Forest Service EISs illustrates the principles involved. Its recently completed draft impact statement on its long-range program (pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974)^{*/} was designed to address broad national and regional impacts and alternatives. However the second tier of Forest Service environmental analyses involves a large number of impact statements on units or planning areas of individual national forests, each unit covering an area of some 20,000 to 200,000 acres. A third tier of impact statements may be required by the Forest Service to analyze the impacts of more site-specific actions such as road construction, some major timber sales, or land acquisitions.

^{*}/
*/ P. L. 93-378.

While at each level the Forest Service has received occasional criticism that the EISs prepared had insufficient detailed analyses the focus of the three-tiered approach has been on information needed for the agency's program and/or land use planning decisions and the EISs have served a definite administrative purpose.

In many cases agencies have confused the purpose of their EIS approach so that the documents produced are overladen with detailed description at the expense of analyses related to the proposed action and its alternatives. Consequently, EISs have often been unweildy and virtually unusable for decisionmakers and the public.

CEQ guidelines state that EIS descriptions should be succinct and that the discussion of impacts and alternatives should be the heart of the EIS. ^{*/} These guidelines have not, however, been followed by all agencies for a number of reasons -- because of a misconception by some EIS preparers that the EIS should be a comprehensive, highly technical and scientific document, because of the agencies receipt of voluminous material from an applicant or consultant that is too time consuming to edit, or because the agencies lawyers recommend that, to cover every possible contingency, if the agency should be sued, the adequacy of the EISs must be determined by its detail and, consequently, its length.

* * *

Recommendations

CEQ should work with the agencies in developing more general agency guidance to

- (1) Determine basic parameters for defining the "human environment", and the reasonable limits for analyses of social, economic and all secondary impacts.
- (2) Determine, in conjunction with the development of guidance on program impact statements, general guidance for determining the appropriate level of analysis necessary for various types of EISs.
- (3) Focus EIS data needs and environmental analyses on the particular environmental issues and concerns of decisionmakers proposing an action, to insure in particular that EISs focus on impacts and impacts of reasonable alternatives.

- (4) Make the EISs more manageable in scope and more useful aids to decisionmaking by insuring that all environmental conclusions expressed in an EIS are supported by references to standard texts, optional appendices, or by material within the statement or by supporting material that is readily available to the public.

New research may be necessary for substantive guideline development. CEQ is preparing a description and ranking of NEPA research needs which will be updated periodically.

Because federal agencies have made little effort to conduct post-EIS analyses in order to improve their EIS processes federal agencies should develop programs for monitoring projects and programs previously analyzed in EISs to determine the accuracy of predictions, and to improve forecasting in future EISs. (An example of such a meaningful effort by BLM is noted in Appendix E.)

I. Effect of NEPA on State Governments

As part of its questionnaire to the states, (Appendix B) to which 27 states replied (see Table 12) CEQ asked how the federal EIS process affected their decisions. The response varied among the states and within the state governments, ranging from considerable effects to none at all. But by far the most common answer was that the EISs were valuable to state decisionmakers. These judgments, along with the few negative comments received, are quoted in Appendix G ^{*}.

Similarly the most frequent state response to CEQ's questionnaire was that the benefits of the EIS process to decisionmaking outweighed the administrative burdens and uncertainties. ^{**} This was noted even though states generally receive no direct federal compensation for the time and staff required to review and comment on federal EISs. ^{***}

* / See Appendix G.

** / See Appendix H.

*** / See Appendix I.

Table 12

States Responding to CEQ's Questionnaire and whether they have State EIS procedures.

<u>States</u>	<u>Whether EIS Requirements</u>
Alaska	No
Arkansas	No
California	Yes - legislative
Connecticut	Yes - legislative
Delaware	Yes - special CZM projects
Florida	No
Georgia	No, except in limited cases
Iowa	Only for special FHWA purposes
Louisiana	No
Minnesota	No
Mississippi	No
Missouri	No
Nebraska	Only for special Dept. of Roads proj
North Dakota	No
New Jersey	Yes - administrative
North Carolina	Yes - legislative
Ohio	No
Oregon	No
South Carolina	No
South Dakota	Yes - legislative
Tennessee	No

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Table 12 (Con't)

Utah	No
Vermont	No
Virginia	Yes - legislative
Washington	Yes - legislative
<u>Wisconsin</u>	Yes - legislative
Wyoming	No

Along with this belief that the EIS process is generally beneficial, however, the states also believe that the process can be more valuable to them if a number of changes and improvements are made. One of the major problems that the States have noted is that federal agencies have not consistently used the existing system of State Clearinghouses, established by Office of Management and Budget Circular No. A-95, to give states and local governments early warning of EIS actions. Notices of intent to prepare an EIS and lists of negative declarations have not been sent to these clearinghouses, making early state or local participation in the EIS process extremely difficult.

Frequently this lack of an early warning system has meant that state and local government may only participate in the process after a draft EIS has been prepared. Even this participation, however, has been made unnecessarily difficult and time-consuming when federal agencies have only sent EISs to their counterpart state agencies and not, as recommended in Appendix IV of CEQ guidelines, to the A-95 clearinghouse as well.

States also stressed the need for EISs to be manageable in size, focussing on issues meaningful and important to decisionmakers and the general public. The complaint was frequent that the quality and format of EISs varied considerably among the agencies, and that individual agency definitions of terms important to the EIS process such as the "human" environment, and "significant" impacts often seemed to be inconsistent.

Finally, states generally shared a strong concern, however, about the inadequate attention being given to their EIS comments. States believed that these comments were frequently relegated to EIS appendices and that their content was too readily dismissed in the light of different, and allegedly more accurate, federal data.

* * * *

Recommendations

Federal agencies should regularly and promptly send to clearinghouses lists of negative declarations and notices of intent to prepare EISs. In addition, agencies should send copies of all draft and final EISs to these clearinghouses, whether or not they also send copies to individual state or local agencies.

Federal agencies should also reevaluate their procedures for responding to state and local government comments on draft EISs and take steps to insure that specific issues raised by state are carefully considered and directly answered in the final EIS.

CEQ has already made plans to work closely and regularly with the states, through the National Governors Conference, to help resolve specific problems of the EIS process and to assess more general measures that might be necessary to improve the utility of the process to local and state as well as federal decisionmakers.

J. Public Involvement

Public involvement in the EIS process is difficult to measure accurately for several reasons. It is difficult to generalize about the "public." In fact, the "public" includes a number of different groups, from chambers of commerce to national environmental organizations. The conclusions below, however, reflect general conclusions based on CEQ's agency NEPA review:

- ° All the agencies with major NEPA responsibilities seek some degree of public involvement prior to and during the preparation of the draft EIS;
- ° Most agencies routinely send copies of EISs to state clearinghouses and to well-known national environmental organizations; additional copies are usually sent to state or local agencies depending on the nature of the project;
- ° All agencies distribute EISs free of charge;

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- The agencies normally make sufficient numbers of the EIS available; the amount is typically determined by the size of the project and the potential public interest;
- All agencies have made some attempt to integrate public hearings with the NEPA process. The agencies typically use the public contribution from such meetings in the EIS and in the decision-making process;
- The agencies have held a number of public hearings, workshops, or public meetings on draft EISs in FY 1974. _____

It was not possible from the agency information sought and received to measure the effectiveness of agency efforts to involve the public in the EIS process. How various public interests use the EIS process, the extent to which the public hearings or meetings are effective avenues of communication and how citizen groups can become more helpfully involved in federal decisionmaking can only be answered after further study.

CEQ found that federal agencies have numerous questions about the extent of material wanted by public interest groups and required for full public disclosure under NEPA. Several agencies, believed that some environmental groups often seemed to want more information than was possible or necessary for an informed agency decision. The Corps of Engineers has, in fact, advocated a summary EIS to serve the purposes of public information, with detailed appendices available on request. The existence of any serious conflict between the EIS as an aid to decisionmaking and as a full disclosure of information to the public needs further analysis and comment by business labor, and environmental groups.

Recommendations

CEQ did not seek or receive from the agencies an evaluation of whether meaningful public participation in the NEPA process actually occurs. For that CEQ should seek information directly from representatives of the public in one or more public hearings and informal meetings with citizen leaders. CEQ should also help develop research programs to evaluate public participation in the EIS process.

Questionnaires on NEPA Litigation Sent to all Federal Agencies

TURN TO: Approved For Release 2004/11/30 : CIA-RDP78M02660R000800080019-3
UNCIL ON ENVIRONMENTAL QUALITY
2 JACKSON PLACE, N.W.
SHINGTON, D.C. 20006

FORM A

NEPA LITIGATION REPORT:
CASES TERMINATED AS OF JUNE 30, 1975

See Attached Instructions

NAME OF CASE (as stated in state or federal reporters, or first named plaintiff and defendant)

FEDERAL AGENCY OR AGENCIES INVOLVED AS NAMED PARTIES (Include the agency of an agency official who is the named party. Put asterisk next to agency filling out this form)

DATE COMPLAINT FILED 4. COURT(S) (by district, circuit, or otherwise, all state and federal courts involved)

DOCKET NUMBER(S)

DESCRIPTION OR NAME OF ACTION CHALLENGED:

- NEPA ISSUE(S): a) NO EIS
- b) INADEQUATE EIS
 - 1) PROCEDURAL DEFECT(S)
 - 2) DEFECT(S) IN CONTENT
- c) SUBSTANTIVE CHALLENGE TO FEDERAL ACTION UNDER NEPA
- d) OTHER PROCEDURAL NEPA ISSUE(S) (SPECIFY _____)

FINAL DISPOSITION OF NEPA ISSUE(S)
(Identify issue(s) from Item 7 above and mark next to appropriate category. See instructions.)

DISMISSED SETTLED DECISION ON MERITS (For P For D
 OTHER (Specify: _____)
 CASE DECIDED ON NON-NEPA ISSUES (Specify: _____)

NATURE OF RELIEF GRANTED OR SETTLEMENT BY PARTIES:
(Mark S (Settlement), TC (Trial Court), CA (Appeals Court), SC (Supreme Court), next to appropriate item. See instructions.)

PREPARATION OF EIS REVISION OF EIS
 OTHER AGENCY ACTION UNDER NEPA (Specify: _____)
 INJUNCTION (If so, describe each injunction granted, its duration, note whether or not it was issued on the basis of NEPA, and name court(s) which issued or modified it: _____)

I. General Questions.

Numbers of EIS Prepared and Time Required

I.01 How many EIS's does your agency now estimate that it will prepare and help prepare in FY 75 and FY 76. Please specify in terms of your own working substantive categories, such as agricultural production, communications, energy-related projects, health regulations, international projects, pollution regulation, public buildings, public land management, research and development, transportation, urban development, water resources. Please specify the bureaus or sub-units of the agency likely to be involved.

I.02 For each category specified above, approximately how long, on the average, does your agency estimate it will take to prepare a draft EIS, from the EIS's inception to its public release, in FY 75 and FY 76? Please specify ranges as well as averages.

Cost of NEPA Process

I.03 Has your agency developed a means of determining NEPA-related costs? If so, please describe briefly the system of cost determination that is used.

I.04 What was the approximate level of staff commitment and cost for preparing and circulating draft EIS's in FY 74? Please specify for each bureau or sub-unit of the agency. What are the estimates for FY 75? How are these costs divided between in-house work and work by independent contractors. Please specify how these NEPA-related costs have been separated from other agency planning, administrative or decisionmaking processes.

I.05 In FY 74, what was the cost and level of staff commitment in Washington and in the regions for review and commenting on other agencies' EIS's.

Lead and Joint Agency EIS's

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- 1.06 What experience, including both benefits and problems, has the agency had with the EIS "lead agency" concept either as a participant or as the lead agency?
- 1.07 Has participation been limited to the submission of data to the lead agency or has it included analysis and written material for incorporation into the EIS?

1.08 What kind of interagency planning mechanism is the agency using or planning to use to provide more accurate and useful EIS's and improved Federal planning

1.09 To what extent has your agency participated in "joint statements" with other agencies covering similar or related agency actions affecting the same project?

EIS Analysis of Energy Consumption and Energy Supply

- 1.10 To what extent has the agency sought to analyze the effects of a non-energy development proposal on energy consumption and/or on energy supply, (a) in the preparation of EIS's and (b) in the review of EIS's?
- 1.11 Does the agency have, or is it planning to develop, guidelines or procedures providing for such analyses in EIS preparation and review?

EIS Analysis of Inflationary Impact

1.12 What effort has the agency made or contemplated making to assess the inflationary impact of a given proposal in the EIS?

2. Use of NEPA in the Agency Decisionmaking Process

2.01 What documents are used by the agency to present environmental analyses to decisionmakers; the EIS itself, executive summaries, decision memoranda?

2.02 Please describe the influence of the EIS on your agency's decisionmaking process. Please use as Approved For Release 2004/11/30 : CIA-RDP78M02660R000800080019-3

2.03 How might the draft and final EIS be made more

3. Policy and Program EIS's

- 3.01 Do your agency's NEPA procedures recognize various levels, or a hierarchy of EIS's?
- 3.02 Has the agency developed procedures to integrate various projects or programs, either on the basis of geographical areas or common environmental problems, into policy or program EIS's in ways that might reduce the number, or redefine the scope of individual project statements that would otherwise be filed by the agency? What EIS's of these types are being contemplated for FY 75 and FY 76?
- 3.03 Have policy or program EIS's served, or how do you envisage that they might serve, a different purpose from project EIS's in the decisionmaking process?
- 3.04 What steps are being taken to develop procedural and substantive guidelines for the delineation and writing of policy or program EIS's?
- 3.05 Does the agency use the policy or program EIS (1) to help assess alternatives, (2) to help assess cumulative effects of similar or otherwise related projects involving one or more agencies, (3) to serve as guides to subsequent project-level EIS's, or (4) to serve several or all of such purposes?
- 3.06 Is there a backlog of pre-Jan. 1, 1970 projects, or other large group of pending projects, for which EIS's have not been prepared? If so has the agency considered whether or not it would be appropriate to prepare consolidated program EIS's for such projects?

4. EIS Content and Quality

Use of Applicant Information

- 4.01 Does the agency have, or is it planning to develop, requirements for detailed environmental reports to be submitted by applicants for permits or licenses or insurance which are used in preparation of EIS?
- 4.02 How are such reports integrated by the agency into the agency planning/decisionmaking structure?
- 4.03 Does your agency charge applicant fees to help meet the cost of EIS preparation?
- 4.04 Are such charges provided for by regulation?
- 4.05 Has the agency prepared or initiated preparation of an EIS prior to receipt of an application for permits, licenses, or insurance. Under what circumstances has this been done?

Use of Contractor Information

- 4.06 Have independent contractors been used for EIS preparation?
- 4.07 What is the relationship between such contractors and the agency staff in the preparation process?

Expertise within the Agency

- 4.08 What expertise is most needed in the agency in preparing EIS's?
- 4.09 What steps have been taken to obtain such expertise for use in the NEPA process? What new employees were added for NEPA purposes in FY 74? What employee training programs has the agency run for NEPA purposes in FY 74? Please describe briefly the extent and nature of these programs.
- 4.10 What use has your agency made of interdisciplinary teams and interagency teams to prepare EIS's?

Pre-Draft EIS Circulation

- 4.11 Does your agency usually obtain the views of other agencies on the environmental analysis of a proposed project prior to your formal filing of a draft EIS?
- 4.12 Is a "preliminary" draft EIS often circulated to other agencies of special expertise and the public to elicit such comments? Please give examples.

Substantive Guideline Development

- 4.13 What efforts has your agency made to develop substantive methods and guidelines directly related to the environmental impact analysis?
- 4.14 What projects has the agency underway, or planned, to develop general methods for, handbooks on or general research in environmental impact analysis? Please list all such specific projects or studies and publications describing briefly their purpose, scope, funding and expected date of completion.

Cost-Benefit Analysis

- 4.15 Does the agency prepare economic benefit-cost analyses for projects subject to EIS's? Are such analyses included in the EIS? If not, why not?
- 4.16 Do benefit-cost analyses employed by the agency in, or in addition to, the EIS reflect the reduction or elimination of benefits provided by the existing ecosystem, such as fish and wildlife, recreation or open space or by other social amenities?

Project Monitoring

4.19 What efforts has the agency made to monitor projects on which an EIS has been written (a) to ensure that any conditions for the project or mitigation measures described in the EIS were actually followed up; (b) to determine whether the analysis and forecasts of the EIS were accurate and helpful; and (c) to improve subsequent environmental analyses of a similar kind?

5. Review and Commenting Process on EIS's for Other Agencies

5.01 Does your agency have formal or informal policies and criteria and priorities for EIS review and commenting? If so, please provide the Council with a description of such policies and criteria.

5.02 How does your agency seek to invoke its jurisdictional and special expertise responsibilities in the EIS commenting process?

5.03 Does your agency usually inform the initiating agency of the nature of any substantive criticisms of a draft or final EIS prior to your formal submission of your EIS comments?

5.04 What procedures, if any, exist for following-up the preparing agency's response in the final EIS? Is your agency consistently receiving such final EIS's?

5.05 What proportion of comments are prepared at field level and in Washington? If comments are prepared at the field level under what circumstances does review or consolidation occur at the Washington level?

5.06 What skill level and kind of expertise is required and devoted to agency review and commenting efforts?

5.07 What is the agency policy regarding requests from other agencies and from the public for extension of the commenting time on draft EIS's? Please specify the instances in which the agency granted more than 45 days for comment on ~~Approved For Release 2004/11/30 : CIA-RDP78M02660R000800080019-3~~ permitted more than a 30-day delay in taking final action after issuance of a final EIS.

5.09 Are the review criteria for draft and final statements similar? If not what are the differences?

6. Public Involvement

6.01 To what extent has the agency sought advance citizen involvement in planning for and preparing of draft or final EIS's before the formal release of the EIS?

6.02 To which public organizations or individuals are your draft EIS's routinely or automatically distributed for comment?

6.03 What procedure does your agency follow in publicizing the availability of draft EIS's for comment?

6.04 Are your EIS's mailed to citizen groups at the same time as they are mailed to CEQ and other Federal agencies?

6.05 Are copies of EIS's distributed free of charge? If not, for whom and/or under what conditions are charges made?

6.06 How many free EIS's are normally available from the agency for public distribution?

6.07 What has the agency done to integrate public hearing procedures with the NEPA process?

6.08 What formal public hearings, workshops or public meetings has the agency held during FY 74 on draft EIS's after their issuance?

CEQ Questionnaire for States on the Federal EIS Process

Approved For Release 2004/11/30 : CIA-RDP78M02660R000800080019-3

1. State Assistance in Preparing Federal EIS's

101. For what type of projects (i.e. roads, airports, dams, nuclear power plant construction, etc.) has the state helped prepare EIS's for federal agencies?

102. How many Federal EIS's did the state help prepare in FY 1974? Please specify by type of project. How many are estimated for FY 1975?

103. What kind of assistance has been provided (submission of data or analysis and written material)?

104. What state agency is responsible for organizing state help in the preparation of Federal EIS's?

105. Has the state used independent contractors in assisting with the preparation of Federal EIS's? If so,

(a) What percent of work is done by the contractor as compared to the work done by the internal staff?

(b) What kind of work is done by the contractor (i.e.: collection/submission of data, preparation of report, etc.)?

106. In FY 1974, what was the cost of assisting in the preparation of Federal EIS's? Please specify whether actual or estimated. What was the cost for internal staff, external contractor fees, and other costs directly related to the preparation of EIS's? What were the number of staff-hours expended?

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107. What is the estimated cost and number of staff hours involved in the preparation of Federal EIS's in FY 1975?

2. State Review of Federal EIS's

201. To what extent does the state review and comment on Federal EIS's affecting the state: always, sometimes, rarely?
202. Does the state have a formal or informal process for the review of Federal EIS's? If so, please explain this process briefly.
203. Is there a state mechanism to coordinate the review process and the state comments when more than one state agency reviews the Federal EIS? Please explain.
204. In FY 1974, what was the cost of reviewing Federal EIS's? Please specify whether actual or estimated and in terms of:
- (a) Cost in dollars.
 - (b) Number of staff required.
 - (c) Staff-hours expended.
205. What priority is given by the state to the review and commenting process for Federal EIS's? Are EIS's reviewed by the state only when time is available or when certain kinds of projects or impacts are involved?
206. Does the state follow-up on final EIS's to determine whether state comments were incorporated into the statement?
207. What areas of particular weakness does the state agency find in Federal EIS's (i.e. content, type of analysis, attention to comments from other agencies, etc.)?

208. Does the state agency monitor or follow-up on the project itself to determine whether the EIS was accurate and the extent to which any mitigating measures are being or could be employed? If so, please give examples.

3. Use of Federal EIS's in State Procedures and Decisions.

301. To what extent does the state use the Federal draft or final EIS in its decisionmaking process? Please give examples.

302. How might the content of the EIS or the EIS process improve in order to make the document more useful in the state decisionmaking process?

303. Does the state require the preparation of environmental impact statements or reports on major state actions? If so, how has the state EIS process related to the Federal EIS process?

304. How might the state and Federal EIS process be integrated and made more complementary?

4. Overall Comments and Suggestions on Ways to Improve EIS Proc

401. Please comment on:

(a) The beneficial and adverse effects of the Federal EIS process on state policies and programs;

(b) The constraints of the state on its participation (i.e. time, money, personnel, expertise, data, methodologies, etc.);

(c) Changes or additions needed in specific provision of NEPA, the state environmental policy act, or the CEQ Guidelines; and

(d) The benefits and costs of NEPA and the EIS process generally.

RETURN TO:

FORM B

COUNCIL ON ENVIRONMENTAL QUALITY

722 JACKSON PLACE Approved For Release 2004/11/30 : CIA-RDP78M02660R000800080019-3

WASHINGTON, D.C. 20006

NEPA LITIGATION REPORT:
CASES PENDING AS OF JUNE 30, 1975

See Attached Instructions

1. NAME OF CASE (as stated in state or federal reporters, or first named plaintiff and defendant)

2. FEDERAL AGENCY OR AGENCIES INVOLVED AS NAMED PARTIES (Include the agency of an agency official who is the named party. Put asterisk next to agency filling out this form.)

3. DATE COMPLAINT FILED
4. COURT(S) (by district, circuit, or otherwise, all state and federal courts involved)

5. DOCKET NUMBER(S)

6. DESCRIPTION OR NAME OF ACTION CHALLENGED:

7. NEPA ISSUE(S):
a) NO SPECIFIC NEPA ISSUE ALLEGED
b) NO EIS
c) INADEQUATE EIS
PROCEDURAL DEFECT(S)
DEFECT(S) IN CONTENT
d) SUBSTANTIVE CHALLENGE TO FEDERAL ACTION UNDER NEPA
e) OTHER PROCEDURAL NEPA ISSUE(S) (SPECIFY)

8. PRESENT DISPOSITION OF NEPA ISSUE(S):
(Identify issue(s) from Item 7 above and mark next to appropriate category. See instructions.)
a) IN TRIAL COURT: DISMISSED SETTLED DECISION PENDING
DECISION ON MERITS (For P For D) OTHER: (SPECIFY)

CASE DECIDED ON NON-NEPA ISSUES (Specify:
b) ON APPEAL: INTERLOCUTORY APPEAL (Describe:
NO APPEAL DECISION PENDING AFFIRMED REVERSED
REMANDED OTHER (Specify:

9. NATURE OF RELIEF GRANTED OR SETTLEMENT BY PARTIES: (Mark S (Settlement), TC (Trial Court), CA (Appeals Court), SC (Supreme Court), next to appropriate item. See instructions.)
PREPARATION OF EIS REVISION OF EIS OTHER AGENCY ACTION
UNDER NEPA (Specify:
INJUNCTION (If so, describe each injunction granted, its duration, note whether or not it was issued on the basis of NEPA, and name court(s) which issued or modified it:

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10. NAME, TITLE AND PHONE NUMBER OF PERSON FILLING OUT THIS FORM:

INSTRUCTIONS

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Please fill out FORM B for each case pending judicial review at any level as of June 30, 1975 in which your agency is a named party¹ and the National Environmental Policy Act (NEPA) is an issue.² Use the reverse side of the form if additional space is needed.

NOTE: If questions or difficulty arise in filling out this form, please contact Ms. Heather Coleman at (202) 382-7061.

Items 1-4: Self-explanatory

Item 5: Include court docket numbers for each level of review

Item 6: Briefly describe or state name of Federal action challenged

Item 7: Check each applicable issue:

- a) includes cases in which it is not yet possible to determine what specific NEPA issue is involved. For example, a generalized NEPA allegation is made in the complaint, challenging an action to which NEPA may apply, however no further action has been taken yet in the case.
- b) includes cases in which no environmental impact statement was filed because of a threshold agency decision that the action was not a "major" action, "significantly affecting the quality of the human environment", as well as those in which the "federal" nature of the action is at issue.
- c) 1) includes cases in which errors were alleged in the procedures surrounding the preparation of the impact statement (such as improper delegation of the preparation of the statement).
2) includes cases in which the impact statement prepared by the agency was challenged for failure to include or adequately discuss issues, alternatives or impacts, as required by section 102(2)(C) of NEPA.
- d) includes cases in which it was alleged that the Federal agency decision or action itself was arbitrary and capricious, or clearly gave insufficient weight to environmental values, in violation of the substantive duties created by NEPA (in sections other than §102(2)(C)).
- e) includes cases in which errors of procedure under NEPA were alleged, other than those described in b) 1) above.

Item 8: Mark the disposition of each NEPA issue checked above in Item 7 as of June 30, 1975 by writing the identifying letter (and number where necessary) of the issue next to the appropriate item. For example, if no EIS was prepared and the trial court dismissed NEPA issue a) (see Item 7), mark a) next to DISMISSED, under IN TRIAL COURT.

¹Include cases in which an agency official, acting in his/her official capacity, is the named party.

²You may omit cases in which the NEPA allegation appears to be insignificant or frivolous.

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If a petition for writ of certiorari has been filed in the U.S. Supreme Court, so indicate and note the issue(s) raised under 8(b) OTHER.

DISMISSED refers to issues which were dismissed by the court without a trial or hearing on the merits.

SETTLED refers to issues for which the parties reached an agreement without a judicial decision on the merits (including a consent judgment approved by the court), issues which were withdrawn, and issues that were rendered inactive or moot because of unilateral action by a party (i.e., the federal agency voluntarily prepared an EIS).

DECISION PENDING refers to issues which are awaiting judicial review in any court, or where the time for filing an appeal has not yet lapsed.

DECISION ON MERITS refers to issues for which the court made a judgment after consideration of the arguments of the parties in a trial or hearing on the merits of the case.

OTHER: Briefly describe any other final disposition of a NEPA issue which cannot be accurately included in the previous categories.

CASE DECIDED ON NON-NEPA ISSUES: Briefly specify any other authority relied upon by the court in its decision if the NEPA issues checked in Item 7 were withdrawn, settled, dismissed or otherwise held inapplicable to the case, or if the court determined that the Federal agency or agencies involved had satisfied the requirements of NEPA.

INTERLOCUTORY APPEAL refers to issues for which an appeal may have been taken on an issue decided by the trial court, pending a decision by the trial court on the remainder of the case.

NO APPEAL: Self-explanatory

AFFIRMED: Self-explanatory

REVERSED: Self-explanatory

REMANDED: Self-explanatory

Item 9: Mark S (for settlement by the parties, see definition of SETTLED in Item 8 above), TC (for relief granted by the trial court), CA (for relief granted by an appeals court), SC (for relief granted by the Supreme Court), next to the appropriate item. If relief granted by the trial court was affirmed on appeal, mark both TC and CA next to the item. If the relief granted was reversed or vacated on appeal, mark an asterisk (*) next to TC. Follow the same procedure for further appeals. For example, if the TC ordered that an EIS be prepared, the CA vacated the order, and the SC reinstated it, mark TC*/SC next to PREPARATION OF EIS. If the relief was modified on appeal, but the modification did not change the essential nature of the relief (i.e. the EIS was ordered to be revised by the court, but in different respects), mark each court next to the appropriate category (i.e. TC/CA next to REVISION OF EIS).

Describe each injunction issued in the case, whether or not based on NEPA, noting briefly the legal basis of the injunction. Please include precise information on what action was enjoined and the dates on which the injunction was issued and dissolved, even if the injunction was subsequently vacated or reversed. Name each court which issued or modified the injunction.

Item 10: Self-explanatory

INSTRUCTIONS

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Please fill out FORM A for each case terminated¹ as of June 30, 1975 in which your agency was a named party² and the National Environmental Policy Act (NEPA) was an issue.³ A report form should be completed even if the case was dismissed, settled, or otherwise terminated without a judicial decision on the merits. Use the reverse side of the form if additional space is needed.

NOTE: If questions or difficulty arise in filling out this form, please contact Ms. Heather Coleman at (202) 382-7061.

Items 1-4: Self-explanatory

Item 5: Include court docket numbers for each level of review

Item 6: Briefly describe or state name of Federal action challenged

Item 7: Check each applicable issue:

- a) includes cases in which no environmental impact statement was filed because of a threshold agency decision that the action was not a "major" action, "significantly affecting the quality of the human environment", as well as those in which the "federal" nature of the action is at issue.
- b) 1) includes cases in which errors were alleged in the procedures surrounding the preparation of the impact statement (such as improper delegation of the preparation of the statement).
2) includes cases in which the impact statement prepared by the agency was challenged for failure to include or adequately discuss issues, alternatives or impacts, as required by section 102(2)(C) of NEPA.
- c) includes cases in which it was alleged that the Federal agency decision or action itself was arbitrary and capricious, or clearly gave insufficient weight to environmental values, in violation of the substantive duties created by NEPA (in sections other than §102(2)(c)).
- d) includes cases in which errors of procedure under NEPA were alleged, other than those describe in b) 1) above.

Item 8: Mark the final disposition of each NEPA issue checked in Item 7 by writing the identifying letter (and number where necessary) of the issue next to the appropriate disposition item: i.e., if no EIS was prepared and the trial court dismissed NEPA issue a) without subsequent appeal, mark a) in the space provided next to DISMISSED.

Where an issue was decided on the merits, mark the Item 7 issue under DECISION ON THE MERITS in the space provided next to the appropriate party in whose favor the final decision was made after all review was completed.

DISMISSED refers to issues which were dismissed by the court without a trial or hearing on the merits.

¹Terminated means that all appeals or further review have been completed, or that the time for filing an appeal or petition for certiorari has lapsed.

²Include cases in which an agency official, acting in his/her official capacity, is the named party.

³You may omit cases in which the NEPA allegation was insignificant or frivolous.

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SETTLED refers to issues for which the parties voluntarily reached agreement without a judicial decision on the merits (including a consent judgment approved by the court), issues which were withdrawn, and issues that were rendered moot or inactive because of unilateral action by a party (i.e. voluntary preparation of an EIS without a court order or formal settlement).

DECISION ON MERITS refers to issues for which the court made a judgment after consideration of the arguments of the parties in a trial or hearing on the merits.

OTHER: Briefly describe any other final disposition of a NEPA issue which cannot be accurately included in the previous categories.

CASE DECIDED ON NON-NEPA ISSUES: Briefly specify any other authority relied upon by the court in its decision if the NEPA issues checked in Item 7 were withdrawn, settled, dismissed or otherwise held inapplicable to the case, or if the court determined that the Federal agency or agencies involved had satisfied the requirements of NEPA.

Item 9: Mark S (for settlement by the parties; see definition of SETTLED in Item 8 above), TC (for relief granted by the trial court), CA (for relief granted by an appeals court), SC (for relief granted by the Supreme Court), next to the appropriate item. If relief granted by the trial court was affirmed on appeal, mark both TC and CA next to the item. If the relief granted was reversed or vacated on appeal, mark an asterisk (*) next to TC. Follow the same procedure for further appeals. For example, if the TC ordered that an EIS be prepared, the CA vacated the order, and the SC reinstated it, mark TC*/SC next to PREPARATION OF EIS. If the relief was modified on appeal, but the modification did not change the essential nature of the relief (i.e. the EIS was ordered to be revised by the court, but in different respects), mark each court next to the appropriate category (i.e. TC/CA next to REVISION OF EIS).

Describe each injunction issued in the case, whether or not based on NEPA, noting briefly the legal basis of the injunction. Please include precise information on what action was enjoined and the dates on which the injunction was issued and dissolved, even if the injunction was subsequently vacated or reversed. Name each court which issued or modified the injunction.

Item 10: Self-explanatory

**This report has been cleared in accordance with FPMR 101-11.1 and assigned Interagency Report Control Number 0071-CEQ-OT.

Examples of the Effect of the EIS Process on Federal
Decisions

Interior

Among the earliest effects of the EIS process on federal decisionmaking was the Interior Department's second draft and its final EIS on the 800 mile Trans-Alaska Pipeline. Virtually all parties involved agree that the intensive environmental review of this project prompted important project design changes and other improvements in routing and construction techniques.

Interior has successfully used NEPA and the EIS process to influence its decisionmaking in numerous other situations -- eliminating certain tracts from OCS leasing, improving coal and oil shale operating regulations, and prohibiting jet aircraft from intruding on Grand Teton National Park.

Recently, Interior prepared a widely-respected EIS on the proposed 8th annual 1974 mass motorcycle race of 150 miles across BLM lands from Barstow to Las Vegas. Although BLM permitted that race it made an extensive post race environmental analysis and, on the basis of both analyses, it decided to reject the proposed 9th

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annual race of November 1975 because of the anticipated environmental effects.

A final example within Interior is its EIS, prepared by BLM and the Forest Service, on proposed phosphate leasing on 25,000 acres of the Osceola National Forest, in Florida, issued in final form in May 1974. The EIS prompted a Secretarial decision in the fall of 1975 to defer a leasing decision pending completion of a two-year study of USGS. EPA had earlier recommended to CEQ, pursuant to section 309 of the Clean Air Act, that on the basis of facts and analyses presented in the EIS no leasing be permitted. CEQ's own review had prompted a similar recommendation to Interior.

AEC

Two major radioactive waste disposal proposals of the former Atomic Energy Commission -- one at Lyons, Kansas, and the other at the Savannah River in South Carolina -- were abandoned because of uncertain environmental impacts identified by AEC and public analyses conducted through the agency's EIS process.

ERDA

In early 1975, the Energy Research and Development Administration, (one of the AEC's two successor agencies) reviewed the criticisms of the AEC draft program EIS on

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commercially-generated radioactive waste management, which had concluded that surface storage facilities offered the best interim solution. ERDA concluded that NEPA and the public interest would best be served by another look at the problem through a new program EIS and thus withdrew its storage facility budget request.

NRC

The other AEC successor, the Nuclear Regulatory Commission, used the AEC EIS on the breeder reactor and its own on the plutonium recycle proposal as definitive bases on which to develop stronger measures to safeguard against the misuse of nuclear materials. Like the former AEC, NRC's reactor licensing directorate has integrated the EIS into its licensing decisionmaking process, and as a result of this environmental work, has modified project decisions in numerous cases.

Corps

The Corps of Engineers decided to drop or abandon work on over a dozen proposed projects because its NEPA process -- not litigation -- revealed that significant environmental damage would result. Eleven other projects have been stopped until environmental analysis is complete. The Corps has also modified or recommended for deauthorization many more projects due in large part to NEPA and the EIS requirement. These

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actions have resulted in widespread environmental benefits which are real and substantial but cannot be tallied in monetary terms.

DOT

Similarly, since 1970, DOT estimates that scores of major highway and airport projects have been abandoned or changed as a result of the EIS process and DOT's resulting capacity and determination to avoid adverse effects. The decision of Secretary Coleman to reject funding for the I-66 extension into Washington, D.C. is a recent example. It is difficult to calculate the social benefits of such project decisions, but the resources saved were available to use for transportation projects that proved more worthy of the taxpayer's money.

DOD

Within the Department of Defense, environmental impact statements have influenced a number of project decisions (in addition to those of the Corps described above). For example, the Air Force used the NEPA process at Eglin Air Force Base to incorporate Federal, state, and local recommendations into a military housing development and preserve existing natural and cultural resources. Similarly, the Navy changed the location of its Atlantic Combat

Maneuvering Range due to possible adverse environmental
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effects. The Army has used the EIS process to affect a number

GSA

The EIS process has also affected projects of the General Services Administration. For example, in 1974 the Kennedy Library Corporation proposed construction of the Kennedy Library and Museum just below Harvard Square. GSA, which was to build and maintain the structure, issued a draft EIS, which focussed on traffic and other adverse effects of the proposal. As a result of the draft EIS and local controversy, the Library Corporation decided against the proposed museum site and is now examining several other alternatives, while planning to keep the Kennedy archives on Harvard University property.

SCS

The environmental analysis, of course, involves much more than preparation of a draft or a final document. For many agencies, such as the Soil Conservation Service of the Department of Agriculture, the major influence of section 102(2)(C) is felt long before a draft is prepared, when the agency conducts environmental assessments, partly to determine whether an EIS is necessary. The SCS has successfully used preliminary draft EIS's to broaden the scope of project alternatives, particularly those involving nonstructural measures.

HUD

The Department of Housing and Urban Development carried out its own NEPA review, noting the effect of pre-EIS environmental analysis on HUD decisionmaking in over 150 situations. HUD reported that "environmental impact assessment procedures have led to the elimination of projects with adverse environmental impacts prior to formal (EIS) processing. All regions report that developers are much more aware of environmental quality and that [as a result] proposed sites are often environmentally more sound."

NPS, FS

Over the past several years the NEPA process has had an increasingly important effect on the extensive land use planning efforts of both the National Park Service and the Forest Service. Environmental assessments and statements have been used routinely by both agencies to evaluate and present to decisionmakers the impacts of various plans and alternatives for the use of national parks and forests.

Perhaps the most far-reaching use of the EIS process has been the work of the Forest Service to develop a long-range program for forest lands pursuant to the Resources

the Forest Service is preparing an EIS on its proposed program, including an assessment of alternative programs. A document outlining possible alternative program goals resulted in substantial agency and public comment in the spring of 1975. The draft EIS addressed the alternative programs that best reflected public and other agency perceptions of realistic program choices. After circulation of the draft statement and evaluation of comments on it, the Forest Service plans to submit its final program recommendations to the Congress in December 1975.



United States Department of the Interior
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NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

L7615-MQ

July 11, 1975

Memorandum

To: All Regional Directors; Director, National Capital Parks;
and Manager, Denver Service Center

From: Director,

Subject: NEPA: A Management Tool

In January of this year, the National Environmental Policy Act was 5 years old. For the past 3 years, the Service has made an all-out effort to comply with both the spirit and intent of the act and in so doing has developed what I believe to be a strong management tool. Most of the objectives NEPA is designed to meet are the same objectives the Service has been meeting for years. Other than the requirement that we prepare an environmental impact statement, under certain conditions, the process NEPA calls for is the same process we use in our decisionmaking; NEPA has simply strengthened and structured that process. I would like to outline the major benefits I see accruing from NEPA implementation.

Managers at all levels can now make better informed decisions. Resource data and comprehensive analysis of this information by staff persons clearly lay out the advantages and disadvantages of a particular course of action. The manager gets staff work which focuses on decisions he must make; he in turn can make decisions which protect and enhance park resources.

Public participation also plays an important role in this decisionmaking process. Through our NEPA procedures, we are able to gain public involvement at important decisionmaking steps--objective, alternative, and plan stages. By involving the public, we are able to assess more completely their needs, feelings about issues, and, of course, obtain information from experts in the field. Similarly, by involving other agencies, Federal, State, and local, we are able to integrate our plans and projects with theirs and benefit from their expert knowledge. In these times of fiscal restraints, we also ensure that we are not duplicating services provided by others and thus spending funds unnecessarily.

Finally, NEPA has sharpened our planning process. It has become more systematic, comprehensive, and provides an umbrella or structure for a

myriad of management actions we must take daily. Long term, this comprehensive planning will reduce costs, minimize labor requirements for operation and maintenance of facilities, and aid us in mitigating our adverse actions as well as provide us with a system for monitoring our past decisions.

Since the passage of NEPA, the Service has prepared 185 environmental statements on actions ranging from park master plans to specific projects. In most cases, these statements have been very useful tools in helping us reach our objectives. I'm convinced that in the future if we use NEPA as a decisionmaking management tool rather than thinking of it as a nemesis, our decisions will be of greater benefit to the resources we manage and the public we serve. I am committed to NEPA compliance and expect all organizational units and managers to fully comply to the spirit and intent of the act.

A handwritten signature in black ink, appearing to read "Gary Eustace", with a horizontal line underneath the name.

August 1, 1975

ENVIRONMENTAL ASPECTS OF DEVELOPMENT ASSISTANCE

It is AID policy:

- to assist in strengthening the indigenous capabilities of developing countries to appreciate and evaluate the potential environmental effects of proposed development strategies and projects, and to select, implement and manage effective environmental protection measures, and
- to ensure that the environmental consequences of proposed AID-financed activities are identified and considered by AID in collaboration with the host country prior to a final decision to proceed, and that appropriate environmental safeguards are adopted. 1/

This policy reflects AID's recognition of the responsibility incumbent on all agencies of the U.S. Government to conduct their operations in a manner that mitigates or avoids any potential short- or long-term deleterious environmental effects of local, regional or global proportions. It also derives from the opportunity to make a special contribution in an area of increasing concern to developing countries, and the world in general, by virtue of the unique scientific and managerial expertise the United States has developed to deal with environmental problems.

1/ Virtually all AID activities concerned with raising basic living standards can be considered "environmental" in a positive sense. However, this and subsequent references to AID's "environmental policy" refer specifically to those precepts, procedures, programs and actions which, by deliberate design, seek to improve or protect the quality of air, water and land resources by: (1) eliminating or mitigating undesirable effects of development projects or commodities financed under the Foreign Assistance Act through better program planning and review; and (2) building and strengthening the indigenous capabilities of developing countries to identify, assess and prevent environmental degradation through programs of education, training, research, and technical advisory services.

AID's environmental policy conforms with concepts embodied in the National Environmental Policy Act of 1969. That Act establishes, as national policy, that the United States will "promote efforts which will prevent damage to the environment and biosphere, and stimulate the health and welfare of man," and calls upon all agencies of the Federal Government to review programs and procedures with "particular reference to their effect on the environment and on the conservation, development and utilization of natural resources." It further directs all government agencies to:

"recognize the worldwide and long-range character of environmental problems, and where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of mankind's world environment....."

It is AID policy to seek consistently to further these broad environmental objectives within the framework of the U.S. bilateral development assistance program -- recognizing that the sovereignty of developing countries as well as their differing priorities, stages of development, cultural and social values, environmental concerns, and sensitivity to external efforts to influence their national development plans make this a difficult and delicate task.

Despite these potential constraints, provision of U.S. bilateral assistance involves decisions by AID which must be taken with full cognizance of all associated costs and benefits (including environmental). AID asserts that quality-of-life improvements in the developing world can be realized and sustained only by the acceptance of the principle that environmental planning must be an integral component of national development plans and programs. Conservation of renewable resources and prevention of harmful environmental effects can often be achieved if incorporated early in the design of overall development strategies and projects. In other cases, negative effects may be unavoidable and, therefore, require difficult choices which should be made on the basis of a clear recognition and analysis of alternative pathways toward the desired development objective.

It is AID policy to seek close collaboration with recipient developing countries in carrying out its environmental responsibilities. In the larger sense, worldwide environmental goals will be achieved only with the willingness and ability of the developing countries to assume the responsibility for anticipating potential effects, carrying out sound planning and project design, and managing and monitoring the activities.

ENVIRONMENTAL ASSESSMENT POLICY

It is AID policy to assess systematically every proposed new development activity at the earliest possible stage for significant potential environmental effects, and to prepare a detailed environmental assessment in each case where significant effects are probable. "Activities" to be assessed include capital development projects (e.g., construction of roads, irrigation systems, ports), technical advisory services, training and education programs, research, and commodity procurement.

In the case of AID activities which are either carried out within or focused on specific LDCs, environmental assessments will be conducted by qualified experts in and with the direct participation of host government institutions whenever possible. Consultations will be held between AID staff and the host government on the results and significance of the completed assessments, and agreement reached on any necessary modifications prior to final approval of the proposed activities. In addition, AID will encourage and assist, if possible, the host government to involve broad elements of the country's citizens in the decision-making process, particularly those potentially most affected by any environmental effects. Subject to authorization by the host government, AID will make the assessments available to interested parties within the United States in advance of final actions on the proposal.

Where the proposed AID activity is not "country-specific", (e.g., research at a U.S. institution), or where it constitutes one of a class of activities (e.g., pesticides procurement), a single environmental assessment will be made in AID/Washington, circulated to AID's overseas Missions and host governments for information, guidance and comment, and made available within the U.S. to interested parties.

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AID will assess and react to situations where the environmental assessment indicates that potential effects may extend beyond the national boundaries of the recipient country. When adjacent foreign nations may be affected, it is AID policy to urge the country requesting assistance to consult with its neighbors in advance of project development and to negotiate mutually acceptable accommodations which will then be reflected in the bilateral agreement reached with AID.

Where an assessment indicates that a proposed activity would significantly affect the environment of areas outside any nation's territorial jurisdiction (e.g., the oceans), or would significantly affect the environment of the United States, AID will, subject to foreign policy considerations, comply with the procedural requirements of Section 102(2)(c) of National Environmental Policy Act, (as amplified by the Guidelines for Federal Agencies under the National Environmental Policy Act, issued by the Council on Environmental Quality, revised May 2, 1973). This requires preparation of an "environmental impact statement" and its circulation for comment within the U.S. prior to any final project decision by the Agency. The impact statement will also be provided to Missions and LDCs for information and comment.

In some cases, AID is only one of several donors for a particular activity. Nevertheless, it is AID policy to factor environmental considerations into its own decision on whether to contribute to a proposed multi-donor activity. When AID is the (or a) major contributor toward an activity which, upon initial examination, may cause significant environmental effects, it will take the lead in ensuring that an environmental assessment is prepared, ideally through the collaborative efforts of the principal donors. When AID's potential involvement is that of a minor contributor, it will look to and encourage the major controlling donor(s) to prepare a comprehensive assessment that meets the needs of both AID and all other participating donor institutions. If potential effects from such multi-donor activities may significantly affect the United States or areas outside national jurisdictions, environmental impact statements will be submitted by AID as prescribed by Section 102(2)(c) of the National Environmental Policy Act. In every instance, the assessments and impact statements will be made available to all donors and the developing countries involved.

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With respect to contributions to international institutions and programs, environmental assessments are required in those cases where the financial commitment can be directly related to a specific activity or program for which AID has the unilateral right to control expenditures. However, assessments are not prepared for core support to an international or regional body, or to an LDC intermediate credit institution, when it is not possible to project and predict the specific end uses of the funding. In the latter situation, AID will work with other donor agencies to develop common and comprehensive policies, strategies, and procedures for addressing the environmental aspects of development, and with LDC governments to help build an environmental consciousness and capability which they themselves can then apply.

Foreign policy considerations, political sensitivities on the part of recipient LDCs, restrictions on United States' access to LDC data, and emergency situations may, on occasion, preclude or constrain AID's ability to carry out a definitive environmental analysis. Situations may also arise where a foreign government may request AID assistance for a specific project, the design of which is already committed. This obviously limits AID's ability or reason to evaluate project alternatives. In such cases, AID's final decision must be based on a less-than-optimal analysis, and possibly limited to consideration of the environmental benefits and costs of the only approach desired a priori by the host country.

Regardless of difficulties, AID's policy is to conduct the best environmental assessment possible -- consistent with the type and overall scale of the activity being considered. The assessments are to be comprehensive and include the following components:

- overview description and analysis of the proposed activity.
- probable significant environmental effects, both beneficial and negative, along with their estimated magnitudes.
- relationship of the activity to land-use policies, plans and controls for the affected area(s).

- an exposition and evaluation of the environmental effects of reasonable alternatives, particularly those that might enhance environmental quality or avoid some or all of the adverse effects.
- significant adverse effects which cannot be avoided.
- anticipated trade-off potential for improving or degrading man's environment (considering the local short-term uses versus the maintenance and enhancement of long-term productivity), and the extent to which the activity forecloses possible future options.
- other interests and considerations of the United States and the host country thought to offset any adverse environmental effects.

When AID unilaterally considers that there is a reasonable risk of significant adverse effects on the environment from an activity proposed to it for support, and where efforts to encourage the incorporation of appropriate safeguards are unsuccessful, AID reserves the prerogative of declining to participate in the activity.

ENVIRONMENTAL ASSISTANCE TO DEVELOPING COUNTRIES

While the international development assistance effort collectively carried out by all multilateral and bilateral donors is significant, it nevertheless supports only a small fraction of the economic development activities conducted in the developing world. Consequently, protecting the environment of developing countries -- and, in turn, safeguarding the U.S. and the world environment from the potential threat of increasing global pollution -- requires more than the application of new environmental policies and procedures by official aid donors. Over the long-term, environmental goals will be achieved only through the commitment, action and abilities of the developing countries themselves. It is, therefore, AID policy to stimulate and assist cooperating countries to develop the knowledge and institutional capabilities necessary to address successfully the environmental aspects of their national development programs.

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AID sponsorship of environmental activities responds to a steadily growing demand by developing countries for U.S. assistance in this area, and recognizes the fact that the U.S. is in an excellent position to make a significant and unique contribution to the international effort by virtue of its past experience and existing capabilities. Also, AID is the only U.S. agency authorized to provide concessional technical assistance to developing countries on environmental matters.

AID assistance in the environmental field both includes and transcends the traditional focus of Agency programs, i.e., coping with the "pollution of poverty" by accelerating economic and social development. It includes support for activities which are principally designed to aid developing countries to identify, assess and mitigate the undesirable secondary impacts of traditional development projects on human populations, land, air, water and other natural resources. Priority is assigned to strengthening national capabilities for identifying potential problems, establishing new environmental policies, laws and institutions, and calculating the costs and benefits of alternative approaches to protecting or rehabilitating the environment. Implementation involves financing of U.S. technical advisors; provision of training for developing country policy makers and managers; dissemination of information, and sponsorship of research and demonstration projects designed to advance the state-of-the-art for pollution control and environmental management in the developing world.

AID recognizes a special responsibility for addressing the undesirable secondary impacts associated with the development activities it finances. Consequently, it is Agency policy to apply routinely the technical expertise needed to help evaluate potential problems associated with proposed AID-financed projects, and to incorporate appropriate safeguards into project design. Further, high priority is accorded to LDC requests for assistance to strengthen their capabilities for monitoring and managing the environmental aspects of those projects which are subsequently implemented. AID is also receptive to LDC requests for U.S. assistance to cope with important environmental problems unrelated to specific AID projects.

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COOPERATION WITH INTERNATIONAL BODIES

AID is committed to working with other international development agencies to seek harmonization of policies, procedures and guidelines for building environmental safeguards into development activities.

Since the United States is the largest financial contributor to the multilateral donors with mandates to conduct environmental programs, AID will continue to join with the Department of State and other U.S. agencies in helping design and influence those programs. Special priority will be given to cooperation with the UN Environment Programme (UNEP) which has lead responsibility to develop a coordinated international environmental program. AID is prepared to consider specific LDC requests for bilateral assistance channeled through the UNEP, UNDP and UN Specialized Agencies.

COLLABORATION WITH THE U.S. ENVIRONMENTAL COMMUNITY

It is AID policy to encourage participation of broad segments of the U.S. public and private sectors in the design and implementation of Agency environmental policies and programs. In the conduct of its environmental-related analyses and projects in developing countries, AID will seek to employ the best U.S. talent available.

AID will also take steps to improve public awareness of the Agency's environmental policies, procedures and projects and to increase opportunities for public input into environmental policy formulation and strategy.



Daniel Parker
Administrator

1 Aug 75
Date

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STATE RESPONSES TO CEQ NEPA QUESTIONNAIRE
ON THE USE OF FEDERAL EIS'S IN STATE PROCEDURES AND DECISIONS

A = Q 301 To what extent does the state use the Federal draft or final EIS in its decisionmaking process? Please give examples.

DELAWARE:

A. "The Draft Environmental Impact Statement on proposed increase in acreage to be offered for oil and gas leasing on the Outer Continental Shelf opened a virtual Pandora's box of potential problems and concerns which might potentially affect this State. Consequently, an assortment of planning activities and other mechanisms were created to help address these problems. Although it is too early to actually identify any profound State decisions which might be traced to this EIS, it is safe to say that the genesis of any future decisions will be traced to this document.

Generally, EIS is useful in controversial projects. It is time consuming and wasteful for most minor projects (example land drainage in areas affected by high water table)."

FLORIDA:

A. The environmental impact statement review process being the only established means for State input on many proposed federal actions or federally regulated activities is highly utilized by the State for this purpose. The Governor and the Cabinet, sitting as the Board of Natural Resources, utilize the State's review of environmental impact statements as basis for decisions on projects and proposals. State agencies primarily utilize the review process as a basis for making decisions on proposed actions. Regional planning agencies and local governments utilize the environmental impact statement review process in much the same manner as the State. Citizens have an equal opportunity to review and comment on proposed federal action through the process. On a few occasions, the State has made substantive recommendations on environmental impact statements which were accepted by Federal agencies based on comments by individuals.

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From the State's prospective, few, if any, other federal laws have been as effective as the NEPA in providing for environmental protection. The success of NEPA in Florida has been a result of the State's straightforward efforts to protect its environment and the federal agencies' desires to carry out the intent of the Act.

Prior to the NEPA and environmental impact statements, for the most part, federal agencies were not required to assess the environmental impact of their proposed actions. Consequently, environmental protection was not necessarily a concern in planning projects and programs and other federal activities. More importantly, prior to the NEPA, no defined process existed to effectively enable other federal agencies, state and local governments and the public to become involved in the decision-making on proposed federal actions. The NEPA rectified these deficiencies.

The following are some types of results derived from the process:

- (1) Major public works projects for flood control, drainage and navigation have been modified, replanned and withdrawn;
- (2) Highways and bridges have been modified, re-designed and withdrawn;
- (3) Dredge and fill permits have been withheld; and
- (4) Electrical powerlines have been re-routed.

GEORGIA:

A. The state's information base is improved and the planners input is on a broader base.

MISSISSIPPI:

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A. "Completely. Tennessee-Tombigbee Waterway, Highway corridors, offshore oil leases and superport licensing. These are only a few of the EIS's that have been used extensively in the decision-making process of the State."

MISSOURI:

A. "There is no evidence of EIS's providing any great service to any (state) agency in making decisions. They do assist a state agency that is affected by the project as to the public's reaction. It also gives appropriate agencies the opportunity to address the issue of environment on major federally sponsored activities in the state."

NEBRASKA:

A. "EIS's are used (by the state) primarily as an advance form of project identification and description. They have served as a means to determine in detail how the project relates to existing and proposed plans and programs. They also have become a means to determine citizen reaction to projects."

NEW JERSEY (Department of Transportation):

A. "EIS's prepared subsequent to 1973 have been an integral part of the decision-making process in the selection of a preferred alternate for a highway.

N.J. Route 15 - The EIS identified potential impacts on water quality of streams on one alignment, plus impacts on businesses. Identification of these impacts resulted in the decision to choose another alignment.

N.J. Route 55 Freeway - The EIS process resulted in the identification of three feasible alignments which were presented to the public. Selection of the preferred alignment was based on public reaction.

NORTH CAROLINA (Department of Natural and Economic Resources):

A. "DNER uses federal EIS's extensively in arriving at decisions regarding departmental positions relative to a particular project. For instance DNER staff considers material presented in EIS's related to water resource development prior to making staff recommendations to the Environmental Management Commission regarding state approval or disapproval of federal water resource activities such as the public works programs conducted by the Corps of Engineers and the Soil Conservation Service.

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In many cases, comments by DNR on an EIS constitute this agency's only opportunity to inject its concerns into the federal decision-making process. Examples of such situations are development of nuclear power facilities and airport and highway development."

NORTH DAKOTA:

A. Some of the data which appears in the EIS can be used in planning for the projects impact.

OHIO (Department of Transportation):

A. "ODOT uses the EIS process as a primary decision making document when conflicts with other State or Federal agencies exist."

OREGON:

A. In areas of mutual concern, most state agencies do incorporate applicable federal EIS's to a limited extent in planning decisions.

SOUTH CAROLINA:

A. The EIS is normally used as a reference in determining the action to be taken by the State on a project. The EIS is the only place where comprehensive information, or lack of information can be found. An example of the use of an EIS is the Richard B. Russell Dam and Lake Project of the Corps of Engineers. The EIS alerted the State to the project and the need for more analysis.

SOUTH DAKOTA:

A. The South Dakota Department of Environmental Protection (SDDEP) review areas which may contribute to degradation of air, water and land resources and makes decisions relative to existing state laws. An example would be a review of an irrigation project. We would attempt to determine through data presented in the EIS of return flows would affect the water quality of rivers and streams in the irrigation district and downstream from the area.

TENNESSEE:

A. Many policy decisions are based upon federal EIS's. For example, Tellico Dam project was brought to the Governor's attention approved for release 2004/11/30 : CIA-RDP78M02660R000800080019-3 processed through our review system.

UTAH:

A. State decisionmakers do make a good faith effort to use the information provided by environmental impact statements in coordinating federal-state projects and federally funded state projects. An example is the I-215 Belt Route in Salt Lake City. Transportation commissioners will use the environmental impact statement to aid in the selection of alternatives available.

VERMONT:

A. Rarely. The occasion of a statement may promote more investigation of a project or better interagency coordination, but the statement is so rarely on a project that involves a decision by a state agency that it is difficult to answer the question.

WISCONSIN:

A. "NEPA and WEPA have encouraged the development of multi-disciplinary, more environmentally sound governmental and private sector decision-making. The EIS procedure is a useful public and interagency disclosure device. It is difficult to estimate whether the benefits derived directly and indirectly from environmental policy legislation are in balance with the considerable governmental and private costs and time delays which result from EIS preparation."

APPENDIX B

State Responses to CEQ NEPA Questionnaire Regarding the Benefits and Costs of NEPA and the EIS Process Generally, Question 4.01

Q: Overall Comments and Suggestions on Ways to Improve EIS Process

401. Please comment on:

(d) The benefits and costs of NEPA and the EIS process generally.

ALASKA: "The Department of Law stated: We do not think there is any doubt that the NEPA process has made great strides in making federal and state agencies, and the public, aware of the environmental trade-offs of development. As an educational process, NEPA receives high grades. The place that NEPA falls down is in failing to come to grips with the critical issues surrounding any project."

ARKANSAS: "NEPA and the EIS process is serving a good purpose in spite of the inherent weaknesses and the high costs of preparing and reviewing EISs."

CONNECTICUT: "We suspect that NEPA has resulted in a tremendous burden in expense and paperwork and, as mentioned previously, increased cynicism with relatively few examples of effective integration of environmental consideration in decisionmaking. At times, "political realities" can prevent full participation in the EIS process. There is no mechanism to prevent this (since these mechanisms themselves are subject to the political process). In some cases, lack of expertise prevents full participation in EIS review (e.g., nuclear power facilities). Obviously, the more significant and long-range the impacts, the more likely one or the other of these two obstacles will be encountered."

DELAWARE: "On an overall basis EIS process has been useful and should be continued. However there is an urgent need for cutting down the bulk and an assessment as to whether 'the end justifies the means':"

FLORIDA: "Benefits:

- (1) Increased environmental protection and planning.
- (2) Enhanced State decisionmaking.
- (3) Enhanced State, Federal and intra-state cooperation.
- (4) Enhanced public involvement in federal activities.
- (5) Increased general information.
- (6) Enhanced project and federal activities monitoring ability.

Cost: All costs to the State can be expressed in monetary terms, i.e. personnel and administrative and travel costs."

GEORGIA: "NEPA and the EIS process has promoted inter-governmental dialogue and cooperation especially at the State level; improved the State policy role; and increased the State's information and knowledge base. However, the costs of the EIS process are the pulling together of staff time, which is programmed for other activities, and displeasure with the lack of Federal reaction to comments prepared for environmental impact statements.

Generally, there have been substantial benefits resulting from the EIS process. In particular, these benefits have accrued to the general citizenry by making data more readily accessible. The EIS process, then, has promoted 'citizen participation' in the governmental process. The cost of the EIS preparation is justified since the information and analysis presented through the process is normally quite pertinent, if not essential, to accurately evaluating proposed projects. This interagency communication has also been stimulated between the three vertical levels of government (Federal, State and Local) as well as horizontally within a given level. This is particularly true where projects conflict with the goals and programs of individual agencies."

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MAINE: "There is no doubt that the NEPA requirements have halted or altered some projects which if allowed to be constructed as originally proposed would have caused long-term adverse affects. It is also evident that NEPA requirements are costly. It is obvious that much effort must be expended to make sure that EIS's are not required when they are not necessary. One example of an unnecessary EIS is when the final outcome is almost 100% predictable."

MISSISSIPPI: "Costs appear to be in excess of benefits under the present procedures."

MISSOURI: "The key benefit of NEPA is that the intent of the act to require environmental thinking is being served. Cost, other than financial, requires changing priorities for the use of personnel."

NEBRASKA: "The only negative aspects might be that certain types of programs such as road building and airports are still required to justify their actions through the EIS process in greater detail than other types of programs such as parks and hospitals. Although, the second type have just as significant effect on present and existing environments."

NORTH CAROLINA: "It is Dept. of Natural and Economic Resources' opinion that the benefits of NEPA far outweigh its present costs. It provides an additional planning tool for federal and state agencies and functions as an effective public disclosure document. We fully support the NEPA and EIS process."

NORTH DAKOTA: "It is a time consuming job, but so far the only way projects can be reviewed or commented on or input added by state agencies. Benefits, the public is more informed of federally funded projects and their environmental impact. Cost, estimated cost for Soil Conservation Committee. The determination to fund a federal project for which an EIS is required has been, for all intents and purposes, before the draft EIS is released. The only benefits of commenting is the frail hope that the project will be carried out in such a way so as to not cause too much damage. Some question as to degree

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OREGON: "In general, state agencies assess benefits to have exceeded costs in the EIS process. Greater understanding between state and federal agencies has been achieved, and planning errors avoided.

The EIS process has made federal agencies more responsive to environmental impacts of proposals. It opens the door to prevention of environmental degradation, rather than after-the-fact remedies.

The EIS process allows greater public participation in the federal planning process. It generates information and increases accountability to other agencies. By identifying effects and conflicts in the planning stage, environmental, public and private costs can be anticipated and reduced.

The most severe problem is length of time required for preparation, comment, processing and approval. There has been unnecessary federal involvement in matters which could have been left to state and local discretion. Costs of the process and the inevitable delays are sizeable. Efforts should continue to streamline, clarify, and reduce costs in relation to benefits."

SOUTH CAROLINA: "While the costs of NEPA are great, the benefits are greater and needed in order to provide for the necessary protection of the environment. NEPA has provided for the involvement of all agencies and concerns in the decisionmaking process. The review of EIS's gives state agencies an opportunity to perform their responsibilities as designated by law, but the timing and need for review often determine the quality of this review.

Efforts must be made to emphasize the NEPA process as a planning mechanism for early decisionmaking input rather than documenting the environmental consequences of an action. One of the greatest benefits of NEPA and the EIS process has been the increased awareness and accountability of an applicants'/Federal agency's decisionmaking responsibility."

SOUTH DAKOTA: "A State with relatively small resources cannot adequately examine the reliability or adequacy of an EIS prepared by a large and determined Federal agency on a large and complex project which creates a potential basis for State-Federal conflict."

TENNESSEE: "The positive aspect of the NEPA-EIS program has been to acquaint public agencies with projects who otherwise would have had little or no opportunity to become aware of such projects. The procedure also provides a great deal of information to the several agencies. The difficulties with the program are: (1) It was enacted into law and placed great review burdens upon the existing staffs of the several review agencies, yet provided no funding for the supplemental staff needed if the reviews are to be conducted adequately and within the time schedules allowed. (2) Since there is no means within the NEP Act for environmentally damaging projects to be terminated, there has developed within the review staff the feeling that their time is often wasted with reviews, since the final determination of the project would more than likely be made through the political, judicial, and fiscal processes of government, rather than the environmental review process."

UTAH: "Benefits from NEPA include the possibility of better selection of alternatives and costs include time delays and moneys expended in the process."

VERMONT: "When done properly and on time, the process is invaluable. When done as justification for decisions already made rather than as solicitation for input and improvement, the process is time-consuming and expensive. We here in Vermont are committed to environmental assessment not only as a means of preserving important resources but also as a means of ensuring that investments of public and private capital can be made as efficiently as possible. NEPA and the way of doing business that it represents have contributed a valuable model for public decision-

WASHINGTON: "General Benefits --- The EIS process provides for the following:

- (a) Identifies significant social, economic and environmental impacts of proposed projects.
- (b) Provides opportunity for a thorough analysis and evaluation of alternative courses of action (or non action) within the framework of Federal and State law.
- (c) Overall, is beneficial to sound environmental management.

General Costs -- NEPA and the EIS process add significantly to the cost of proposed projects and increase the lead time prior to initiating or implementing a proposed action. State agency participation in EIS preparation and review places additional burdens on existing staff and may create a need for specialized positions which are not readily adaptable to the overall responsibilities of the agency.

WISCONSIN: "NEPA and WEPA have encouraged the development of multi-disciplinary, more environmentally sound governmental and private sector decisionmaking. The EIS procedure is a useful public and interagency disclosure device. It is difficult to estimate whether the benefits derived directly and indirectly from environmental policy legislation are in balance with the considerable governmental and private costs and time delays which result from EIS preparation."

WYOMING: "Although there was nearly unanimous agreement that the general EIS process is beneficial at least one agency did find that it had been consuming an excessive amount of time, money and personnel. There were some feelings that too many EIS's were being done, particularly in the transportation field. The view was that EIS's were being required by some federal agencies for projects that were quite insignificant. There is a need for uniformity in EIS procedures among federal agencies, which might be achieved by better coordination or standardization of guidelines."

Q 204 In FY 1974, how many Federal EIS's? Please specify whether actual or estimated and in terms of: (a) cost in dollars, (b) number of staff required, (c) staff-hours expended.

<u>States able to estimate</u>	<u>Cost in \$\$</u>	<u>No. of Staff</u>	<u>Staff Hours Expended</u>
ALASKA	\$ 1,000,000	10 full-time	18,000 man h
DELAWARE			
EIS Review Committee	2,000		
Cost of EIS Review & Comment	10,000		
State Plng. Office	1,000	1	100 man h
DNREC (Nat. Res. & Env. Control)	10,000		0.7 man year
	<u>23,000</u>		
FLORIDA	168,000	39	18,856 man h
GEORGIA			
Off. of Plng & Budget	2,000	(per 4 EIS)	200 man h
Dept. of Nat. Res.	4,000	" 10	800 "
Dept. of Community Dev.	7,000	" 6	900 "
IOWA			
Dept. of Env. Quality Conservation Comm'n	20,000	can't quantify	44 staff wee
Energy Policy Council	7,500	1/2	1/2 man year
State Clearinghouse	3,000 to 5,000		
MISSOURI			
Highway Department	7,500	6	500 man h

	<u>Cost in \$</u>	<u>No. of Staff</u>	<u>Staff Hours Expended</u>	
NEBRASKA	60,000	5	10,500	"
NORTH DAKOTA				
Forest Service	900	2	104	"
Park Service	380	1	50	"
Soil Conservation Comm'n	-	-	-	
St. Planning Div.	7,500	2	2,000	
NEW JERSEY				
Non-Highway Projects	\$ 8,000	1	1400 man hr	
NORTH CAROLINA				
	70,000	2.5	8000	" "
OHIO				
Dept. of Transp.	5,000		560	" "
OREGON				
Soil & Water Conserv. Comm'n		4	1500	" "
Land Conserv. & Dev.	7,125	10-12	456	" "
Aeronautics Div.	2,500	4	106	" "
Intergov'tal Rel. Div.	6,443	3	501	" "
SOUTH CAROLINA				
Dept. of Archives & History alone	133,300		12,400	" "
	8,300	4	1,400	" "
TENNESSEE				
Dept. of Conservation	6,000	7	300	" "
Dept. of Transportation	7,200	2	180	" "
Public Health (FY 75)	35,000 to 40,000			
Wildlife Resources Agy	19,500		27 man months	
			14.5 man month	

Cost in \$ No. of Staff

	<u>Cost in \$</u>	<u>No. of Staff</u>	<u>Staff Hours Expended</u>
UTAH	250,000	20	
VERMONT	600	6	96 man hrs
WASHINGTON	79,320	29	8,883 man hrs
WISCONSIN			
Dept. Nat. Resources	20,000	3	2 man yrs
Dept. of Transp.	600	8	76 man hrs
St. Historical Soc.	4,900	4	700 man hrs
Public Service Comm'n	-	-	-
Soil & Water Conserv.	\$1,500	6	15 man days
University of Wisconsin	3,000 to 5,000	9	-
St. Planning Office	-	3	-
WYOMING	400,000	140	50,000 man hr