The National Environmental Policy Act

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The National Environmental Policy Act (NEPA) became the first of a new generation of environmental laws when it was signed on January 1, 1970 by then President Richard M. Nixon. Sometimes referred to as the Magna Carte of environmental laws, NEPA, using almost poetic language, set forth a new environmental policy for our country. NEPA's goal was to: declare a national policy to encourage productive and enjoyable harmony between man and his environment; promote efforts to prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and enrich the understanding of the ecological systems and natural resources important to the Nation. NEPA also established the Council on Environmental Quality (CEQ), which was given primary responsibility to oversee the federal government's implementation of NEPA.

NEPA charges all federal agencies to consider the environmental effects of their proposed actions prior to making decisions. To implement NEPA's policies, Congress prescribed a procedure, commonly referred to as "the NEPA process" or "the environmental impact assessment process." The ultimate goal of the NEPA process is to foster excellent action that protects, restores, and enhances the environment. This is achieved through the use of environmental assessments (EAs) and environmental impact statements (EISs), which provide public officials and the public with relevant information and allow a "hard look" at the potential environmental consequences of each proposed project.

Congress has given EPA a unique role in the NEPA process in light of its expertise in environmental matters. In 1970, Congress added Section 309 of the Clean Air Act, which requires EPA to independently review and provide publicly available written comments on the environmental impacts of major actions proposed by any and all Federal Agencies. For decades, EPA's written comment letters included a two-pronged rating; first on the environmental impact of the proposed project and secondly on the adequacy of the draft analysis, however this practice was abruptly halted in 2017. EPA also reviews proposed actions for compliance with all applicable federal environmental laws.

Another very important aspect of NEPA is that it provides an opportunity for public involvement in the form of comments and in some cases public hearings on important federal agency decisions. Transparency and providing understandable information are both critical tenants of NEPA. NEPA also includes a citizen suit provision.

The NEPA assessment process is tiered in consideration of the potential environmental affects of the project. Projects that are likely to have little to no environmental impact are given a quick, simplified assessment. Conversely, projects that could or will have major impacts are subject to a more robust assessment and more public involvement. Examples of these kinds of major projects include: major new highway projects, new or replacement bridges, forest management on federal lands, permits for oil and gas drilling on federal lands, permits for mining on federal lands, gas pipeline permits, and major new dredging projects.

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NEPA works best when the process is open to all involved parties: all interested federal, state and tribal agencies as well as the public. It should be conducted early enough that decisions have not yet been made (e.g., before land is acquired for a new project) and opportunities still exist to mitigate or avoid identified environmental impacts. It should be a cooperative process that calls on the unique expertise of all interested parties. This includes the public, who may have particularly relevant information on possible impacts and exposure pathways. The process can be most unsuccessful when short cuts are taken on developing necessary information or analysis or conversely when long, overly speculative analyses are completed and not described in an understandable fashion. Likewise, ignoring public concerns raised during the process can actually lead to project delays and increase litigation.

An example of a successful NEPA process was the effort to replace the aging Tappan Zee bridge which spans the Hudson River just north of New York City. The bridge was a critical link in the local and regional transportation network. Built in the 1950s, the old bridge carried approximately 134,000 vehicles per day but did not meet modern traffic and design standards and required frequent and costly maintenance to remain in a state of good repair. Replacement of the bridge was estimated to cost $4 billion.

The project's location in a densely populated area and an important estuarine environment meant it was necessary to the analyze a broad spectrum of environmental issues. The project had potentially significant effects on riverfront communities and ecological resources in and around the Hudson River Estuary. This area contains a number of protected resources, such as federally and state-listed endangered mammal, avian, and fish species, wetlands, and historic and archaeological resources. In addition, the project was within a regulated coastal zone and crossed a navigable waterway of the United States. To evaluate potential effects on water and ecological resources, the EIS included analysis of issues related to sedimentation, scouring, disturbance of habitat, hydroacoustic effects on fish species, and marine transportation.

The Federal Highway Administration, New York State Transportation Authority, and the New York State Department of Transportation (federal lead agency and joint lead agencies,

respectively), worked closely with other interested stakeholders, including EPA, throughout the process. An interagency coordinating group was established and met regularly.

Over 3,000 public comments were received on the environmental impact statement and public hearings were attended by over 1,100 people. The public raised concerns over both impacts during the construction phase as well as impacts on river environment and ecosystem.

Ultimately, the project included numerous mitigation measures to address these concerns., Mitigation measures during construction included installing 24-hour video cameras to document the project, noise monitors to measure construction noise and air quality monitors to assess emissions. Additionally, a number of mitigation measures were undertaken to minimize any adverse effects on fish such as:

- Limits on the time of year that dredging could occur in order to avoid times of peak fish migration and spawning in the river (dredging would only be done August 1-November 1);
- During the dredge operation, an approved species observer would be present to ensure that any sturgeon captured by the dredge are documented and released;
- Silt curtains and cofferdams were to be used to minimize the discharge of sediments into the river;
- Bubble curtains and other technologies to would be used to minimize acoustic effects of piles driving on the fish;
- Vibration techniques would be used to install pilings in the river bed whenever possible instead of much louder pile driving resulting in less impact on fish and other aquatic life.

Although replacement of the Tappan Zee Bridge was a huge, expensive, project with the potential for significant impacts, the federal/state environmental review process was completed in under a year. By using a parallel process to seek necessary permits, well integrated with the environmental assessment process, permits to build the bridge were obtained within 6 months of the record of decision.

New Tappan Zee Bridge Under Construction