



U.S. EPA – Vermont Law School Exchange  
Washington, DC April 19, 2010

### Institutional Context for U.S.

#### Environmental Program:

- Federal Government Structure
- EPA Mission & Goals
- EPA Structure & Organization
- Roles & Responsibilities
- HQ/Regional Relationship
- EPA/State and local Relations
- Functions

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### CEMS data collection, management and use

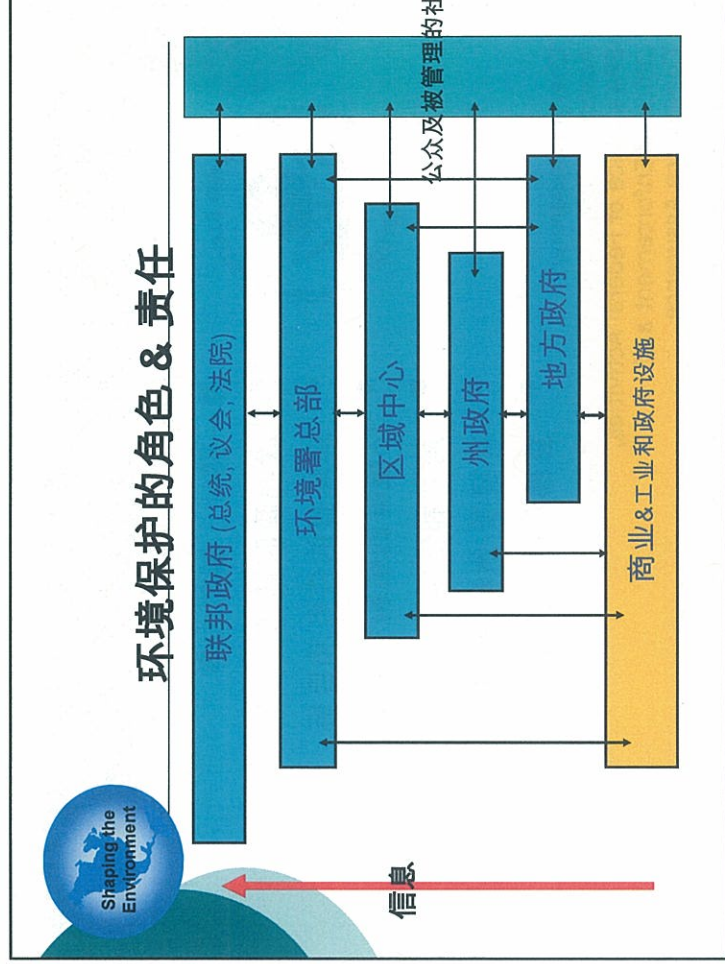
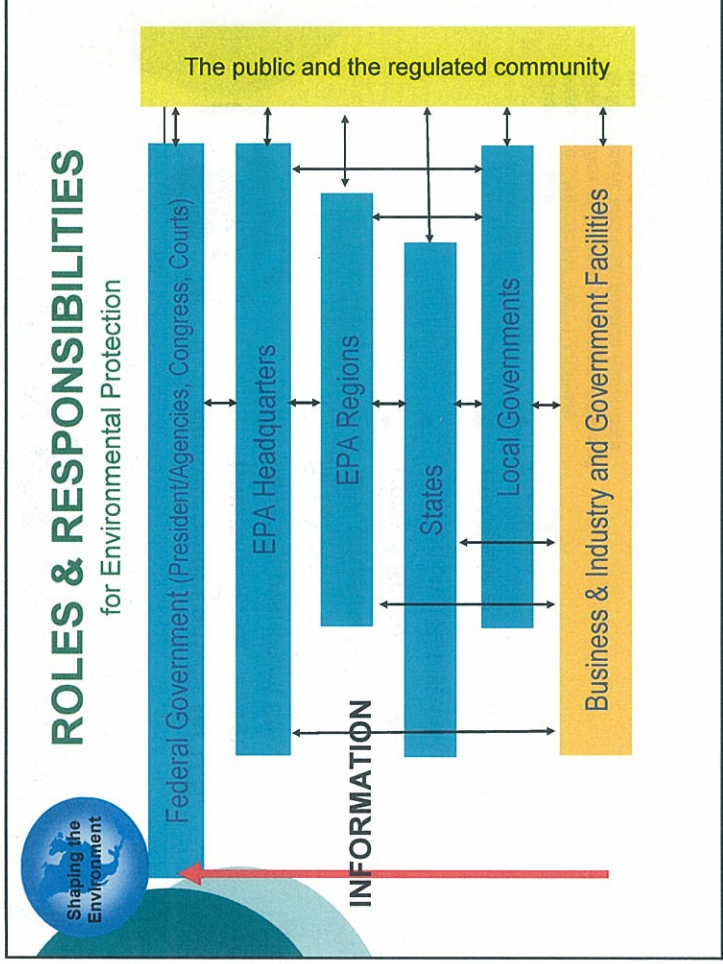
U.S. EPA – MEP Exchange  
Washington, DC March 30, 2010

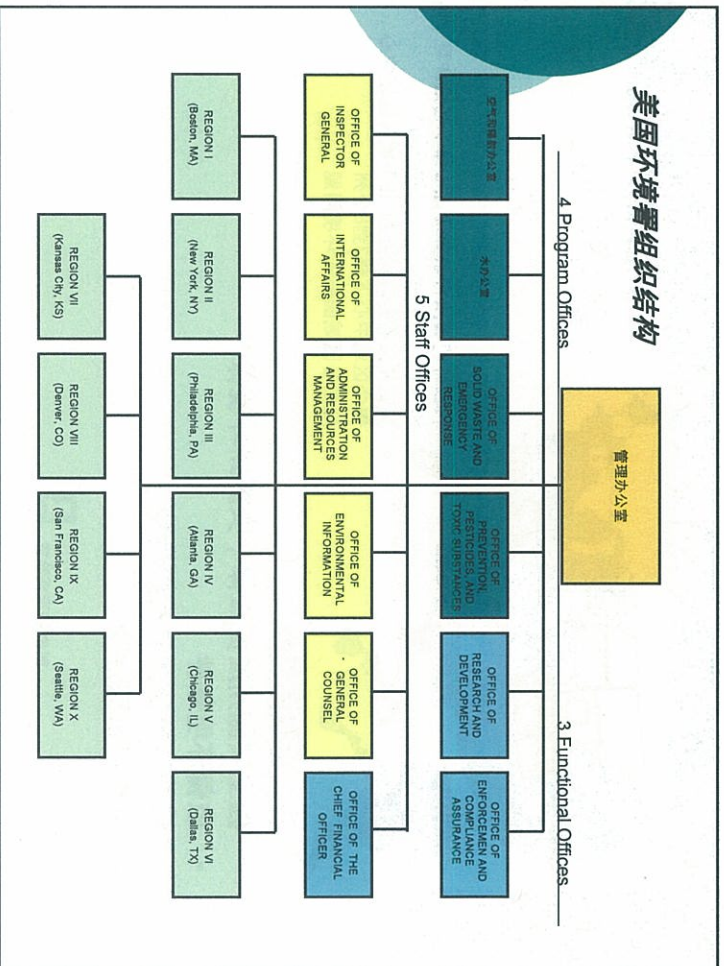
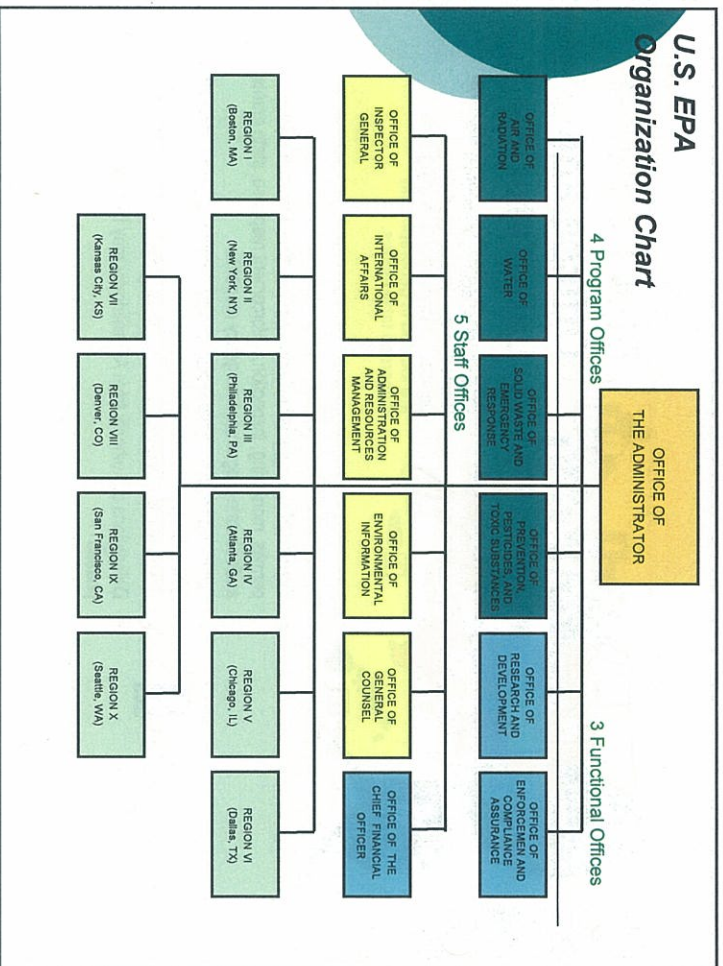
#### 第一部分：制度内容

- 联邦政府结构
- 环境署的任务和目标
- 环境署的结构和组织
- 角色和任务
- 环境署/州和地方关系
- 总部和区域关系

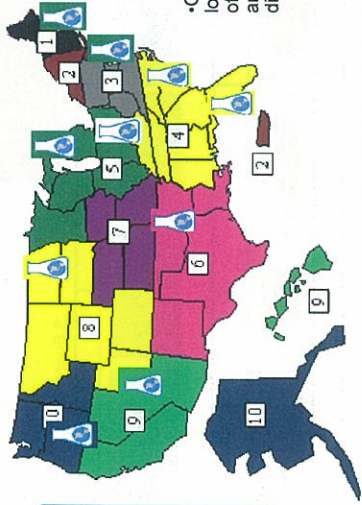


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## EPA Regional Offices and Laboratories

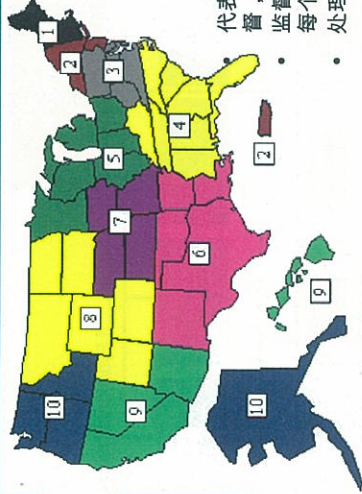


• Over 80% of agency personnel are located in the Regions or field offices. Many of the remaining 20% are located in geographically dispersed laboratories.

- Execute EPA programs implementing federal environmental laws: permits, monitoring, inspection, enforcement response, state grants, audit of state programs, emergency response
- Oversee state operations: Located in 10 "Federal" Regions, cover 3-8 States each
- Address environmental issues confronting the region
- Delegations of Authority from Administrator may be conditioned or phased


Research Labs identified by: 

## 区域中心 州



代表环境署执行联邦环境法律：包括许可，监督，督察，环境反应，执法区域等  
 监督州政府的环保措施：10个联邦区域中心，每个区域中心下辖3到8个州  
 处理各区域面临的环境问题

- 行政由联邦授权
- 独立实施州层面法律，实施州环境保护
- 监督环境条件
- 行政活动比如许可的发放
- 守法和执法活动

图例 研究实验室: 

## 50 STATES



Alaska and Hawaii??? And territories???

- Under federal air, water and waste laws, States (or Tribes approved to act as States) may apply to Federal EPA for program approval or delegation
- Operate delegated or approved federal programs
- Independently enact state laws and operate unique state environmental programs
- Monitor environmental conditions
- Primary implementers of environmental laws carrying out operational activities such as issuing permits, compliance and enforcement programs

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## LOCAL GOVERNMENTS (cities, municipalities, counties and towns)

### Provide environmental services

- drinking water
- wastewater treatment
- solid waste disposal
- recycling

### Receive from EPA

- information
- expertise
- resources (grants)

### Regulate and enforce laws in areas of, e.g.

- noise
- odors
- trash
- **PRETREATMENT OF WASTE WATER INTO MUNICIPAL TREATMENT**



## 地方政府 (市, 县, 镇)

### 提供环境服务

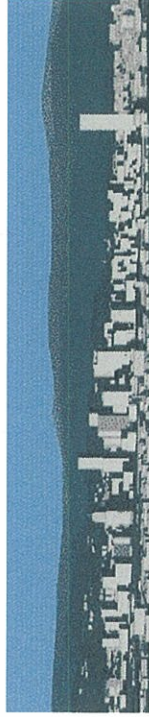
- 饮用水
- 污水处理
- 固废处理
- 再循环

### 从环境署接受

- 信息
- 技能
- 资源 (拨款)

### 管理和实施法律在以下领域.

- 噪音
- 异味
- 垃圾
- 污水预处理



# BUSINESSES & INDUSTRIES

## *Comply with regulations*

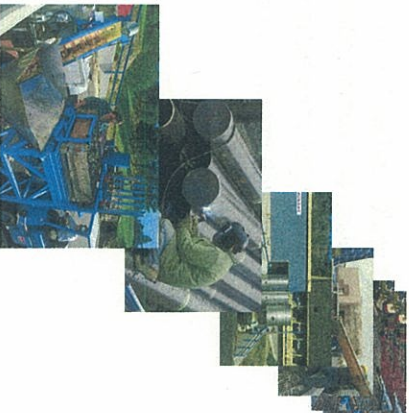
- Register chemicals
- Account for toxic substances
- Obtain permits
- Waste handling

## *Influence public policy*

- Lobby government
- Professional associations

## *Respond to Incentives*

- Public recognition
- Assistance from EPA



# 商业 & 工业

## **遵守规章**

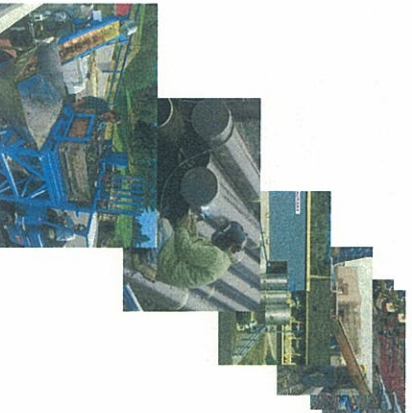
- 记录化学品
- 处理有毒物质
- 获得许可
- 污染处理

## **影响公共政策**

- 游说政府
- 职业联盟

## **激励反馈**

- 公共认知
- 环境署协助



## ENVIRONMENTAL INTEREST GROUPS

- Monitor health and well-being of people in the workplace and communities
- Lobby for stronger environmental laws
- Provide EPA with information on concerns of citizens



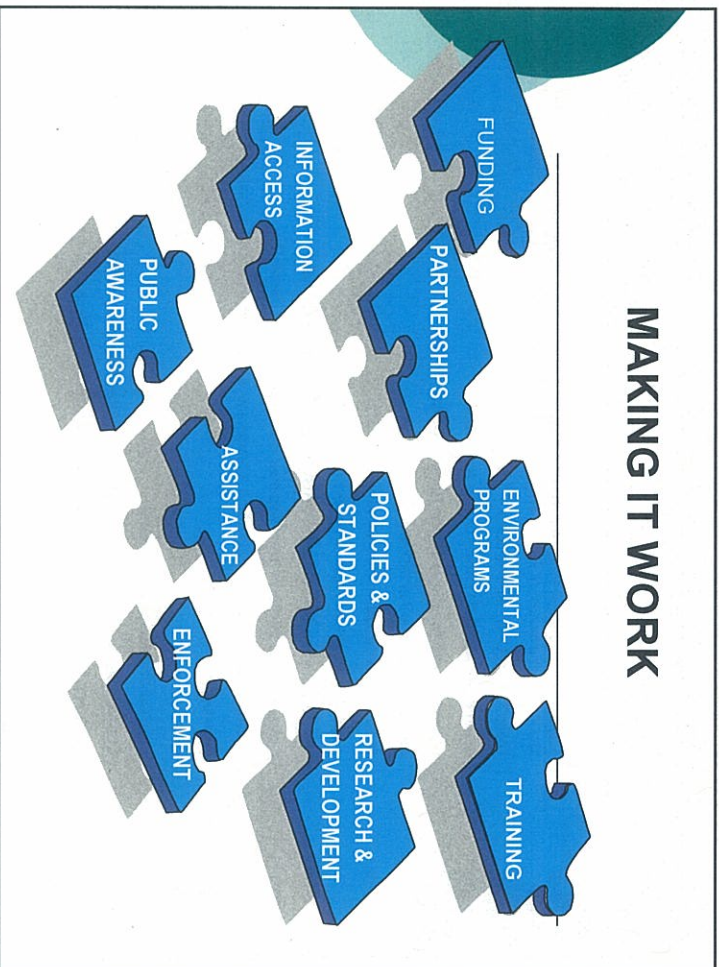
## 环境团体

- 监测人们在工作生活中的健康和福利
- 游说更严厉的环境法律
- 为环境署提供公众的关注点

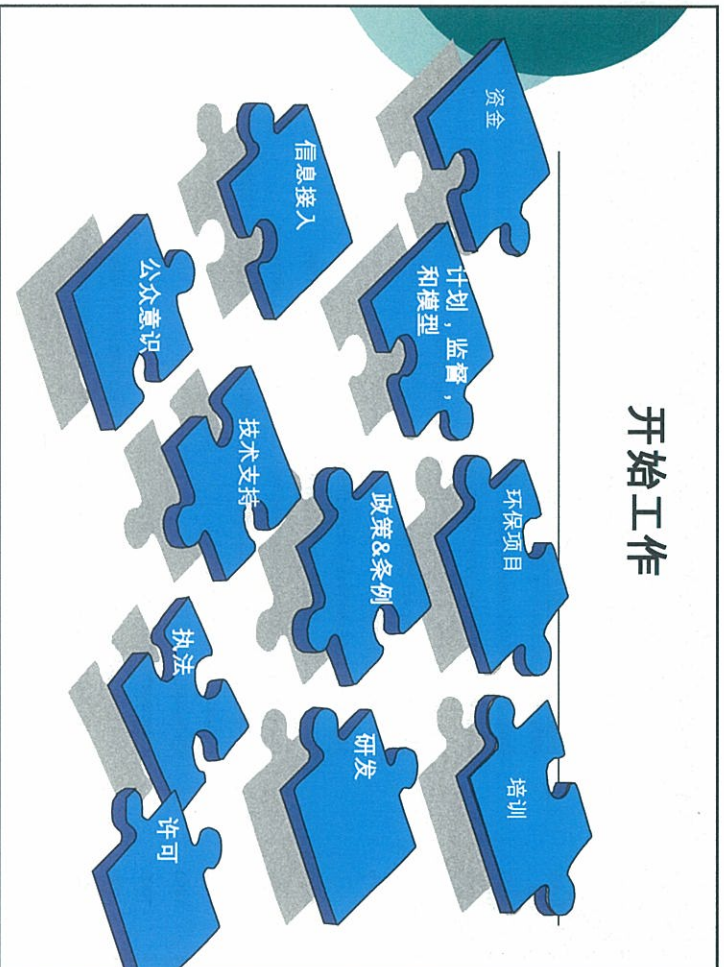




## MAKING IT WORK



## 开始工作



## Major Environmental Statutes



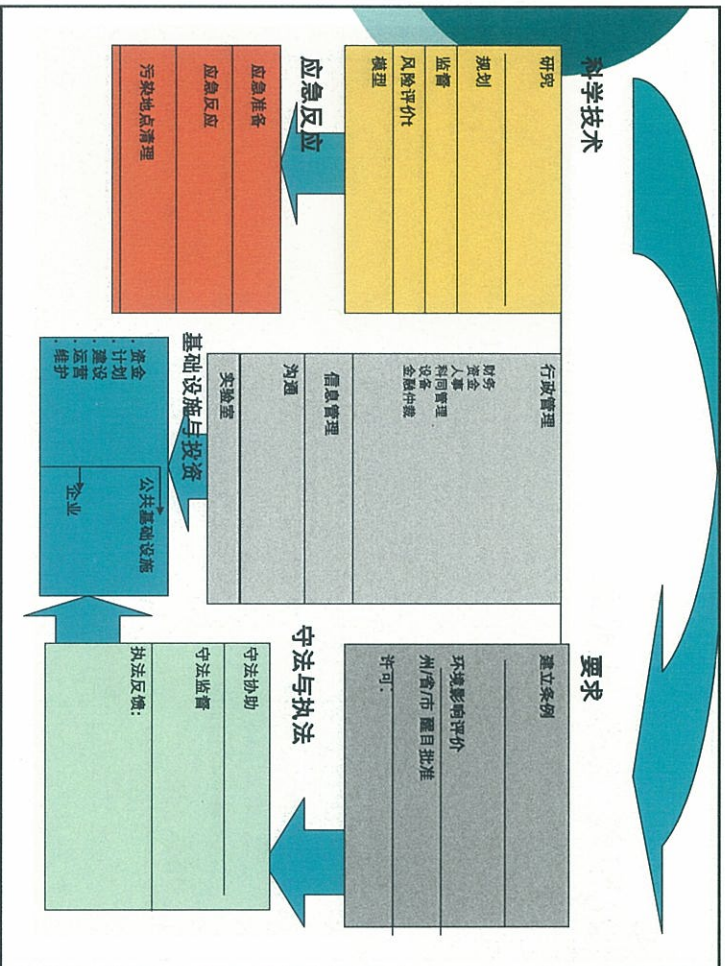
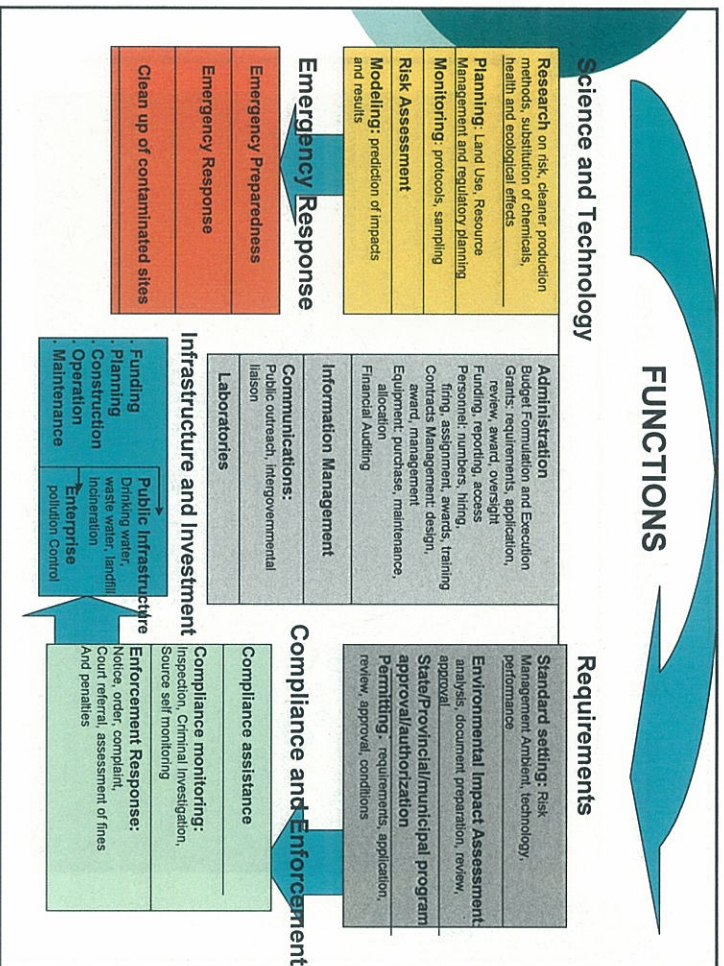
1969	National Environmental Policy Act (NEPA) Related only to Federal Governmental Action and Decision Making created system of Environmental Impact Assessment Decision-Making in the US and Globally
1970	Clean Air Act (CAA) Amendments -- 1990
1972	Clean Water Act (CWA) Water Quality Act -- 1987
1972	Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
1974	Safe Drinking Water Act (SDWA)
1976	Resource Conservation and Recovery Act (RCRA)
	Hazardous and Solid Waste Amendments -- 1984
1976	Toxic Substances Control Act (TSCA) Asbestos Information Act -- 1988
1980	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or "Superfund," Superfund Amendments and Reauthorization Act (SARA) -- 1986
1990	Pollution Prevention Act
1990	Oil Pollution Act
1996	Food Quality Protection Act (FQPA)
1999	Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
2002	Public Health Security and Bio Terrorism Preparedness and Response Act

## 主要环境法律



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# FUNCTIONS



## Function: Standards and Regulations

### ○ EPA-Headquarters: Sets of Standards for:

- Performance of New Construction--requires best control technology
- Ambient Air and Water Quality-- based on public health and environmental protection and criteria for different water uses
- Reporting of releases to air, water land
- Specific pollutants, industry sectors, processes
- Acceptable monitoring, modeling, protocols for testing and quantifying releases

### ○ EPA Regions:

- Review State and local programs for consistency with national standards
- Monitor air and water quality for national systems
- Work with States to include state data for monitoring

### ○ States:

- Apply national standards as a minimum in permits and regulations and laws
- Develop their own standards if more stringent than national standards

## 职能: 条例与规章

### ○ 环境署总部为以下活动制定条例:

- 新建项目情况—需要最好的技术
- 周边空气和水质量—按照水的用途建立不同指标, 考虑公共和环境健康
- 报告对空气, 水和土地的污染
- 为测试和量化污染进行的监督, 模型和条文

### ○ 环境署区域办公室:

- 审查州和地方项目的守法情况
- 监督国家体系中空气和水质量
- 与州政府合作, 在监督中加入州一级数据

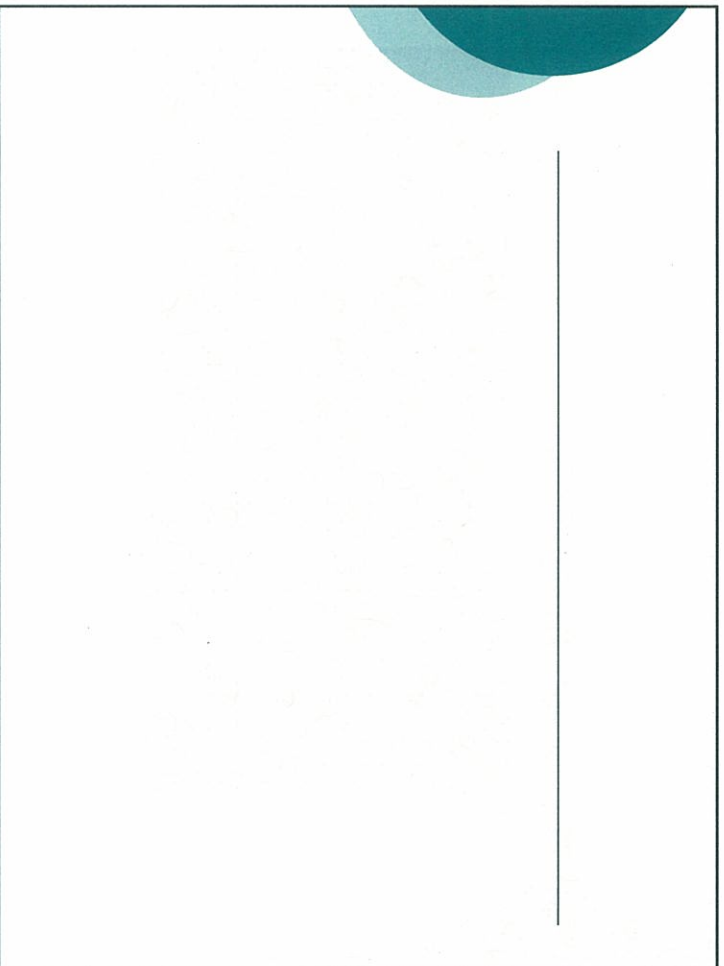
### ○ 州政府:

- 将国家条例作为许可, 法规和法律的底线
- 开发当地比国家条例更为严格的条例

## Function: Permits

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- **EPA-Headquarters:**
  - Regulations for approval/authorization of State permit programs and final decision
  - Regulations for minimum required procedure and limits
  - Priorities and Targets negotiated with Regions
  - Training
- **EPA Regions:**
  - Issue permits in States without approved programs
  - Recommend State program approval to EPA Headquarters
  - Review/May veto draft state permits
  - Technical Assistance to State and local governments
  - Obtain State facility specific reports of permits and inspections
  - Report results in national database
- **States:**
  - Issue over 90% of permits required under environmental laws
  - Report permit limits in state database
  - Report facility specific results to EPA Regional office—for subset of sources called "Major"
  - Include limits required to meet ambient standards after monitoring, and modeling to demonstrate implementation of federal standards



## Functions: Policy, Guidance, Training

- EPA-Headquarters:
  - Policies and Guidance for both Regions and State/local/tribal
  - Oversight and audit for consistency with policies and guidance
  - Training is a major source of influence over practices
- EPA Regions:
  - Policies and guidance may be basis for Regional oversight of state/local/tribal operations
- States:
  - Apply national policies to federal environmental programs but not always mandatory
  - Develop their own policies within framework of state and federal laws

## 功能: 政策, 纲要, 培训

- 环境署总部:
  - 为区域/州/和社区一级制定的政策和纲要
  - 监督法律和纲要的落实
  - 培训是影响行为的主要因素
- 环境署区域办公室:
  - 政策和纲要将成为区域办公室监督州/地方/社区活动的依据
- 州政府:
  - 根据自身情况, 落实联邦环保法规, 不强迫
  - 在州和联邦的法律框架内开发自己的政策

## Function: Monitoring and Modeling

- EPA-Headquarters:
  - Identifies acceptable monitoring equipment and modeling methods
  - Assesses requests for acceptance of new approaches
  - Training
  - Regulations for minimum required procedures and assumptions
  - Defines requirements for national monitoring network
- EPA Regions:
  - Provide Technical Assistance to State, local and tribal governments
  - Conduct monitoring for nationally defined network
  - Report results in national database
  - Obtain State reports of monitoring results
  - Implement models and reviews applications by government and private sector permit applicants
- States:
  - Maintain their own monitoring network
  - Maintain monitoring and modeling results in state database and reports to EPA through Regional office
  - Use as basis for submission of State Implementation plans for EPA approval

## 功能：监督和模型

- 环境署总部：
  - 发现可接受的监察设备和方法
  - 评价新方法的需求
  - 培训
  - 需要的最少程序和假设
  - 制定国家检测网络所必需的要求
- 环境署区域：
  - 为州、地方和社区镇政府提供技术支持
  - 为国家制定的网络开展监督
  - 将结果向国家数据库报告
  - 获得检测结果国家报告
  - 由政府和企业许可申请人执行模型和评审申请
- 州政府：
  - 保持自有的网络
  - 在州数据库中保持监督和模型网络，通过区域办公室向环境署汇报
  - 作为向联邦环境署上交的州执行计划的基础

## Function: Inspection

- EPA-Headquarters:
  - Training through National Enforcement Training Institute
  - Checklists and guidance
  - Credentials for EPA
  - Conducts very few inspections
  - Technical assistance to EPA Regions/State and local governments
- EPA Regions:
  - Conducts about 10% of national inspections
  - Reports results in national database
  - Obtains State reports of inspections
  - Technical Assistance to State and local governments
- States:
  - Conduct about 90% of national inspections
  - Credential their own inspectors
  - Report results in state database
  - Report results to EPA Regional office

## 功能：监察

- 环境署总部：
  - 培训要求（知识，专业，技术）
  - 通过国家执法培训中心开展培训
  - 清单和纲要
  - 环境署的愿望
  - 建立目标监察优先级的最低要求
  - 开展少量的监察
  - 为不同区域，国家和当地政府提供技术支持
- 环境署区域中心：
  - 开展大约 10% 的国家监察活动
  - 向国家数据库报告结果
  - 获得国家监察报告
  - 为地方和州政府提供技术支持
- 州政府：
  - 开展大约 90% 的国家监察活动
  - 监察员的职业形象
  - 向国家数据库报告结果
  - 向环境署区域中心汇报结果



## Function: Enforcement Response

- EPA-Headquarters:
  - Training through National Enforcement Training Institute
  - Enforcement response guidance and penalty policies for Regions and States
  - National Enforcement Initiatives and Targeting
  - Technical assistance to EPA Regions/State and local governments
- EPA Regions:
  - Formal response to about 20-30% of violations based on national criteria for timely and appropriate enforcement response guidance
  - Reports results in national database
  - Obtains State reports of enforcement response
  - Audits, reviews, assists State and local governments
- States:
  - Take about 70% of national formal enforcement response
  - Cooperative enforcement with Regions on nationally managed Initiatives
  - Report facility specific results in state database
  - Report results to EPA Regional office quarterly

## 功能：执法反馈

- 环境署总部：
  - 通过国家培训学院进行培训
  - 执法反馈指导和不同地区与州的执法反馈
  - 国家执法动机和目标
  - 对环境署区域中心/州和地方政府的技术支持
- 环境署区域中心：
  - 在合理及时的执法反馈指导下前提下，有大约 20-30% 的违法行为被反馈
  - 向国家数据库报告结果
  - 获得国家执法报告
  - 仲裁，评审，帮助州和地方政府
- 州政府：
  - 提供大约70%的国家正式执法反馈
  - 对于国家管理的意向与区域开展合作执法
  - 将设施的具体结果纳入国家数据库
  - 按季度向环境署区域中心汇报


## Function: Citizen Complaints

- Citizen monitoring is an important means of monitoring compliance, but a "mixed blessing" since they may not reflect priorities, and may overwhelm resources. Lesson: Important to a) triage, b) find partners to handle types of numerous complaints that may not require specialized expertise, e.g. police response to open burning.
- EPA-Headquarters:
  - Complaints from citizens received directly or through citizen's congressman
  - Referred to Region for investigation, follow up, report back in tracked and timed communication
- EPA Regions:
  - Usually receives complaints to EPA and refers complaint to state for controlled response
  - May investigate directly; invites states to join
- States:
  - -- response to citizen complaints is a major responsibility and important politically


## 功能: 提供资金

- 环境署总部:
  - 按照工作数量模型向各区域办公室分配资金
  - 规定行为衡量标准
  - 与区域讨论目标
  - 分配州一级的资金拨款
- 环境署区域中心:
  - 评审州资金要求
  - 在总部规定的额度内, 审批州一级资金
  - 按照资金和表现协议, 仲裁/评审州环保项目
  - 将区域和州的表现向总部按季度汇报
- 州一级:
  - 开发项目计划, 环境署和州的资金要求
  - 与区域协商行为和运行协议
  - 向环境署区域办公室汇报结果

## 功能：许可

- 环境署总部：
    - 许可与授权州一级相关环境法规和最终决定
    - 制定所需的程序和许可的最小限度
    - 与区域可作确定目标和优先级别培训
  - 环境署区域中心：
    - 在州层面上无须联邦决定，颁发许可
    - 为环境署总部的许可活动提供建议
    - 评审/否决州颁发的许可
    - 对州和当地项目提供技术支持
    - 获得州一级项目有关许可和监察的具体报告
    - 反应区域情况的报告成为进入国家数据库
  - 州政府：
    - 颁布国家环境法需要的90%多的许可
    - 国家数据库中报告许可的限制
    - 将项目的具体结果向环境署区域中心汇报
    - 包括监督完成后满足相关标准所需要的许可，及实施联邦法规的模型
- 

## 功能：基础设施

- 环境署总部：
    - 对污水处理，固废有毒物质处置，饮用水处理的技术进行研发
    - 规定最小表现限制
    - 管理州一级的资金和拨款项目
    - 最终审批州一级环保项目
  - 环境署区域中心：
    - 评审州基础设施需要的资金要求
    - 为州和地方政府提供技术支持
    - 向国家数据库提供结果
    - 获得国家报告
  - 州一级：
    - 开发基础设施和拨款要求的计划
    - 将进度加入国家数据库
    - 将结果向环境署区域中心汇报
- 

## 功能: 应急反馈

- 环境署总部:
  - 建立国家应急反应中心
  - 与其他联邦中心协调, 确定不同问题的解决方案
  - 开发针对联邦, 州和地方的应急反应培训项目
  - 技术研发
  - 在不同情况下开发应急系统地反应程序
  - 颁布雇员安全健康法规
  - 国家签订应急反应合同
  - 协调跨区域应急反应
  - 建立本地应急计划和反馈项目的管理机制
  - 建立为第一反应人, 包括当地警察, 消防员, 医院等机构, 提供数据的要求
- 环境区域中心:
  - 建立区域应急反应中心, 协调与联邦机构, 州和地方政府的关系
  - 为其他联邦机构, 州和当地政府提供技术支持
  - 在本区域实施总部的项目
- 州一级:
  - 开发应急反应预案
  - 建立州应急反应系统

## 总部区域管理

- 总部项目经理
  - 规定优先等级, 行为条例
  - 管理国家数据库, 不同区域为该数据库提供反映水质和重要设施的具体信息
  - 开展区域访问和仲裁
  - 举行支部主管季度会议
  - 举行州和区域年会
  - 通过轮流担任的“领导区域”, 获得区域在政策和运行方面的信息
- 协调员/副协调员:
  - 每周召开会议, 由区域中心重要官员参与
  - 每周按重点进行活动报道
  - 每天发布新闻
  - 保证对预算分配和支出的控制
  - 每两年召开会议, 讨论由国家项目经理提出的区域管理报告
  - 按季度管理信息管理系统



## Contact Information

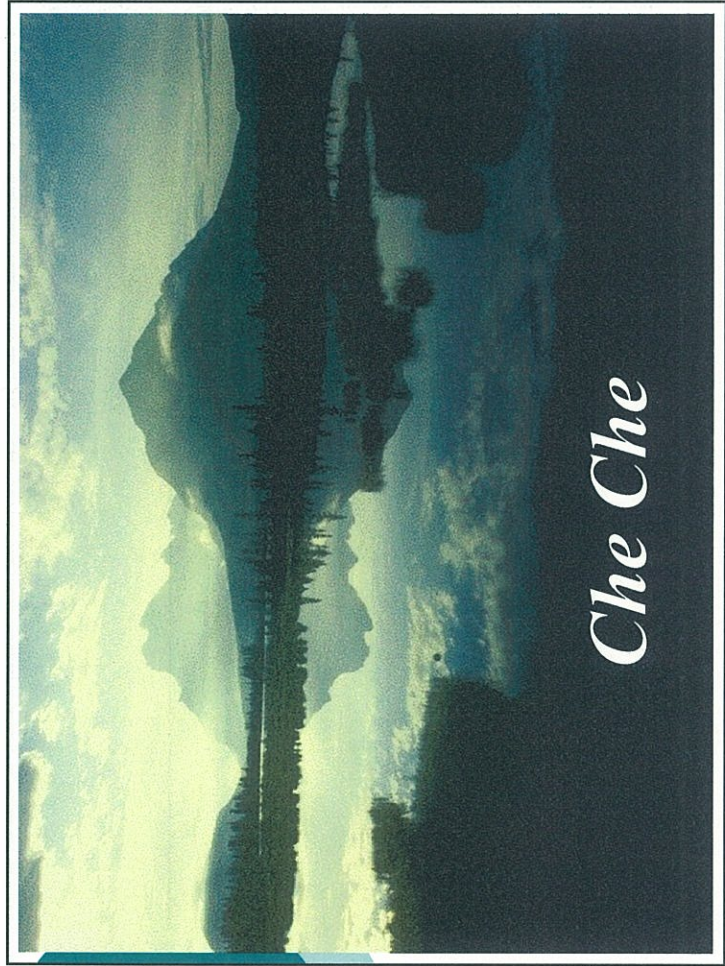
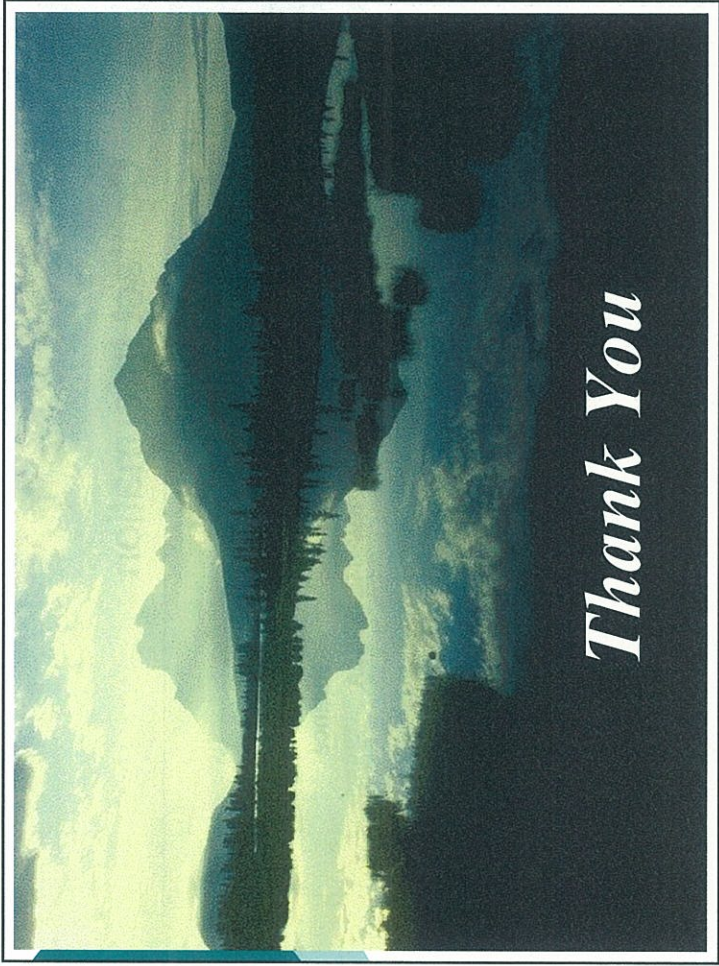
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See Resource CDs on enforcement and environmental  
impact assessment prepared for MEP



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## 美国主要环境保护项目的通常成分

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### ○ 联邦合作

- 联邦，州和地方层面分享和共有的责任
- 结果的责任和影响

### ○ 国家条例和实现方法

- 在公共健康、福利和生态健康方面的条例
- 针对具体工业部门和污染物的表现和技术条例
- 计划：监测，模型，法规和信息
- 不执行相关国家条例的结果

## 州政府履行联邦环境法律的局限

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- 一个州只能在以下条件实施联邦环境法律，比如清洁空气法和清洁水法，包括：
  - 成立一个州环境署
  - 成员，经费充足，达到联邦最低要求
- 州政府可能会建立比联邦更为严厉的条例
  - 尽管联邦条例比州条例拥有更高的法的权利（比如汽车污染物排放条例，杀虫剂商标等
- 环境署有许多方法控制州的环保工作：
  - 如果州的环保活动损害了联邦环保活动的成功，环境署可以重新实行全权，直接管理州环境署的人员







# CITIZEN ENFORCEMENT: TOOLS FOR EFFECTIVE PARTICIPATION

Capacity Building Support Document  
for Environmental Compliance  
and Enforcement Programs



EUROPEAN  
COMMISSION



ENVIRONMENTAL  
LAW INSTITUTE



Environment/  
Environment  
Canada



ENVIRONMENT  
AGENCY



WORLD BANK

**CITIZEN ENFORCEMENT:**

**TOOLS FOR EFFECTIVE PARTICIPATION**

*Capacity Building Support Document  
for Environmental Compliance and  
Enforcement Programs*

**Fifth International Conference on Environmental Compliance and  
Enforcement**

**November 16 - 20, 1998  
Monterey, California, U.S.A.**

## Preface

This document, *Citizen Enforcement: Tools for Effective Participation*, was prepared as one of eight Environmental Compliance and Enforcement Capacity Building Technical Resource Documents that developed to support the International Conferences on Environmental Compliance and Enforcement and ongoing exchange under the International Network for Environmental Compliance and Enforcement. Additional country examples and tools will be added based upon comments received during and following use at the Fifth International Conference in Monterey, California, November 16-20, 1998. These documents were developed as resource documents to be used by government officials and others who have responsibility for developing and/or enhancing environmental compliance and enforcement programs. The Resource Documents include:

- Financing Environmental Permit, Compliance and Enforcement Programs,
- Source Self-Monitoring, Reporting, and Recordkeeping Requirements: an International Comparison
- Multimedia Inspection Protocols,
- Communications Strategies for Environmental Enforcement Programs, and
- Transboundary Trade in Potentially Hazardous (Waste, Pesticides and Ozone depleting) Substances.
- International Inspector Training Compendium, Course and Program Comparison
- Country Progress/Self Assessment Reports on Environmental Compliance and Enforcement
- Citizen Enforcement: Tools for Effective Participation

Consistent with the goals of the Executive Planning Committees for the Fourth and Fifth International Conferences to build capacity internationally for environmental compliance and enforcement, this document addresses

The information presented can be used by government officials to help design or enhance their own environmental enforcement programs with the objective of achieving a higher level of compliance.

*Citizen Enforcement: Tools for Effective Participation*, and the other documents listed above are available on the International Network for Environmental Compliance and Enforcement's (INECE) Internet site: <http://www.inece.org>. They also are available from the INECE Secretariat at the addresses below. Finally, the INECE Secretariat seeks your comments as to whether these documents serve their intended purpose and how they might be improved. Please send comments in writing to the INECE Secretariat in care of Ms. Wasserman or Mr. Gerardu at the following addresses:

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## Acknowledgments

This document is part of a series of capacity building support documents for environmental compliance and enforcement prepared for the International Conferences on Environmental Compliance and Enforcement. This document on the citizen role in environmental compliance and enforcement was compiled for the Fifth International Conference on Environmental Compliance and Enforcement, November 16 - 20, 1998, Monterey, California, by the International Network on Environmental Compliance and Enforcement partnership.

*Citizen Enforcement: Tools for Effective Participation*, capacity building support document was prepared by the Environmental Law Institute under United States Environmental Protection Agency Cooperative Agreement No. CR-822795-01. EII staff who contributed to the report include Susan Casey-Lefkowitz, Suellen Keiner, and Jill van Berg. EII would like to thank those who have contributed to the collections of materials on the role of citizens in environmental compliance and enforcement for prior conferences, such as Professor Michael Axline, University of Oregon and Joel Reynolds, Senior Attorney, Natural Resources Defense Council.

EII also appreciates the work of those who contributed papers on this topic to the International Conferences on Environmental Compliance and Enforcement, including participants from Australia, Bangladesh, Belgium, Colombia, India, Kenya, Malawi, Nepal, the Netherlands, the Philippines, Poland, Russia, Tanzania, Ukraine, and the United States. References to these papers can be found in Appendix I.

Although the information in this document has been funded by the United States Environmental Protection Agency, it may not necessarily reflect the views of the Agency and no official endorsement should be inferred.

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## **1 Introduction**

This document, *Citizen Enforcement: Tools for Effective Participation*, is part of a series of capacity building support documents prepared for the International Conferences on Environmental Compliance and Enforcement. It was prepared for the Fifth International Conference to be held in Monterey, California, U.S.A., November 16-20, 1998. This series is for use as a resource by government officials and citizen enforcers.

*Citizen Enforcement: Tools for Effective Participation* pulls together in one document experiences and understandings of the various ways in which citizens around the world can be involved in environmental compliance and enforcement. The document relies on the efforts of government and citizen enforcers, primarily as documented in International Conference proceedings and workshop reports.

The role of citizens in environmental compliance and enforcement is fairly new in most countries. Historically, public participation has not included clear mechanisms for citizen involvement in programs and actions to achieve compliance with and enforce environmental law. Perhaps the most well-known mechanism is direct citizen enforcement through lawsuits. However, there are many other opportunities for citizens to supplement governmental efforts. For example, in some countries citizens contribute to monitoring or inspections. Citizens have much to add to the negotiation and settlement process of enforcement actions. Finally, there are a growing number of international mechanisms for citizen participation in enforcement, as demonstrated by the Commission on Environmental Cooperation's citizen submission mechanism, the World Bank Inspection Panel, and the new Convention on Access to Environmental Information, Public Participation and Access to Justice in Environmental Matters.

As citizens bring their knowledge of local affairs and the added resources of their time and energy to environmental compliance and enforcement, governments are beginning to establish processes to facilitate citizen participation. These include guidelines for citizen monitoring, programs for citizen inspections, public complaint processes, provisions for citizen enforcement suits, and guidelines for citizen participation in settlements. Governments have found that giving citizens the proper tools can enhance government enforcement efforts.

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This document gives an overview of how citizens can and do participate in domestic environmental compliance and enforcement efforts, as well as how governments can facilitate this participation. It also looks at several international mechanisms for citizen participation in environmental enforcement, as well as at the growing role for international institutions in facilitating citizen participation in enforcement. It is organized to follow the set of principles for effective public participation in enforcement developed during a workshop at the Fourth International Conference. It begins with the list of prerequisites to effective public participation identified during the workshop at the Fourth International Conference which include:

- Recognition of Environmental Rights
- Clear Environmental Standards
- Access to Environmental Information
- Access to Justice and "Standing"
- Independent and Well-Informed Judiciary

It then reviews examples and how citizens participate in four different elements of the compliance and enforcement program. Some of these ways to participate are more commonplace than others. They include:

- Monitoring Compliance
- Public Complaint Processes
- Citizen Enforcement Litigation
- Settlement of Enforcement Actions

The INECE partnership recognizes that citizens may also serve to promote compliance, however, there are no current examples in support of these activities. When they are identified they too will be added to a future version of this document.



## 2 Setting the Stage for Effective Citizen Participation

Effective public participation in environmental compliance assurance and enforcement actions requires more than a willing citizenry. In countries where citizen involvement in enforcement is fairly common, and in countries where it is just beginning, there are several fundamental regulatory and institutional elements that are necessary for effective citizen participation. These prerequisites include recognition of environmental rights and a citizen cause of action, clear environmental standards, access to information, standing, and an independent and well-informed judiciary. Where even one of these elements is missing, citizens may find it difficult to participate in the environmental enforcement process.

### 2.1 Recognition of Environmental Rights

Citizen participation in the environmental enforcement process is usually built around the recognition of certain rights beyond personal property rights. In many countries, citizen participation in environmental enforcement is grounded in the recognition of a right to a clean environment. When granted this right, citizens have a platform on which to stand in both administrative proceedings and court cases.

Many countries' constitutions expressly establish environmental rights and assign the state responsibility for protecting those rights. For example, the Constitution of Chile guarantees all persons the right to live in an environment free from contamination, and assigns the state the duty to protect this right and to preserve nature. Similarly, in the Philippines, the constitution instructs the state to protect and advance environmental rights.

"The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." *Article 2, Section 16, Constitution of the Philippines (1986).*

Other countries have more general constitutional provisions that have been determined by courts to encompass environmental rights. For example, in Argentina, courts have used *amparo*, a constitutional guarantee that can be loosely translated as "protection," to defend individual or collective environmental rights derived from statutes, international treaties, and the constitution itself. In India, the Supreme Court has extended the constitutionally guaranteed right to life to include the right

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to a clean and hygienic environment and has held that a person genuinely interested in the protection of environment on behalf of the society or community may appeal to the Supreme Court of India for the preservation of this fundamental right.

### **2.2 Clear Environmental Standards**

Clear permitted emissions levels and clear standards of conduct to which actual emissions and facility or government actions can be compared are important pre-requisites for effective citizen participation in enforcement efforts. When a citizen has information concerning required emissions levels, deadlines for compliance, or other enforceable substantive requirements in statutes, regulations, or permits, it is easier to identify and prove violations. A law that simply prohibits "harmful" or "dangerous" pollution would be much more difficult to enforce consistently and would require citizen enforcers to tackle complicated questions of science and policy. With clear standards of conduct, the only question at issue in most enforcement actions can be whether the defendant violated the legal standard, order, or permit.

For example, in the United States, the implementing regulations for most major environmental statutes set quantified pollution limits that entities such as states and municipalities must meet within specified time frames. To achieve area-wide compliance levels, regulatory agencies with jurisdiction over environmental matters issue industrial sources individual permits that establish specific emission and effluent limits for each facility. Historically, these standards have enabled citizen enforcers to hold violators accountable for their actions.

### **2.3 Access to Environmental Information**

To effectively participate in environmental enforcement, citizens must be able to access information held by the government, such as monitoring data, environmental permits, government reports, industry records, and other relevant sources of information that document the status of administrative proceedings, government decisions, environmental quality, emissions, and releases.

Some countries have laws that specifically guarantee the right to access environmental information. This right is usually subject to certain limitations such as exemptions for industry trade secrets and matters of national security. For example, Member States of the European Union are implementing access to environmental information legislation pursuant

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to EU Directive 90/313/EEC, which calls for public access to information on the environment held by public authorities. The Directive also requires an appeal process for denials of access to information.

Other countries have general provisions of law providing for access to government-held information, which can often be extended to include environmental information. For example, the Canadian Access to Information Act guarantees citizens the right to information held by the federal government, including environmental information. Like the EU Directive, this Act provides for an appeal process for denied requests. For these and similar laws to be effective, clear procedures for filing information requests are important. For example, procedures can clearly address responsibility for answering requests, response time limits, affordability of the information, and an appeals process.

In addition to requirements that information be provided on request, some countries are affirmatively providing certain types of information to the public. For example, under the concept of "community right-to-know," some countries require that industry report on pollutant releases and transfers to the government. The government in turn is required to make this information publicly accessible. Pollutant release and transfer registers (PRTRs) enable citizens to monitor industrial environmental performance by providing detailed facility-specific data on types, locations, and amounts of hazardous substances released or transferred. In several countries, including Canada and the United States, certain corporations are required by law to compile and submit this data to the federal government, which then makes the information publicly accessible in a user-friendly format over the Internet. Equipped with detailed information on facility-specific emissions, citizens can track compliance, work directly with corporations to encourage compliance, and help governments identify violations. The specific type of information reported in PRTRs and the range of facilities covered vary from country to country. Key elements that define the scope of PRTR include: the types of facilities required to report; the thresholds for staff size and chemical use above which a facility must report; and the types of pollutants covered and how their use is quantified.

"Save as provided in this Article, Member States shall ensure that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest." *European Council Directive 90/313/EEC on Freedom of Access to Information on the Environment, Article 3(1).*

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### **2.4 Access to Justice and "Standing"**

To seek judicial resolution of alleged violations, citizens must have access to an appeals process, including standing to appear in court. Standing for citizen participation is often linked to a personal stake in the outcome of the case. A citizen may have to show that he or she has suffered or is threatened by some kind of harm, and often must have been a party to prior proceedings. How broadly the concept of "harm" is defined usually gives the scope of standing, both in prior proceedings and in appeals.

For example, in the United States, federal environmental statutes grant citizens broad access to both administration proceedings and appeals processes. In addition, most environmental laws contain specific citizen enforcement suit provisions, granting standing to any person. However, when citizen suits are not specifically authorized, courts have great power to limit standing to those representing personal interests rather than the public interest. India, on the other hand, has a tradition of citizens having access to justice on behalf of the public interest, whether or not there is specific statutory authorization for citizen suits.

Even where a law seems to grant citizens standing to become party to a proceeding, this access can be controversial when requested by environmental groups. For example, in Slovakia, the Supreme Court denied standing to a forest protection group to become party to an administrative proceeding concerning their local forest. However, in a few countries, environmental organizations are expressly

It is possible for environmental organizations to use civil proceedings to protect the environment. It is not necessary to prove that a specific individual interest has been harmed. The fact alone that environmental organizations tried to protect the interests of the environment was sufficient. *De Nieuwe Meer Case, Supreme Court of the Netherlands, 17 June 1986.*

environmental organizations are expressly granted standing to represent the "public interest" through legal proceedings. For example, in the Netherlands, the Environmental Protection Act stipulates that the interest for which private organizations were established is regarded as sufficient interest in an environmental case. In Indonesia, in a 1989 case, the Jakarta District Court granted an environmental NGO, the Indonesian Forum for the Environment, legal standing to sue five national government agencies and the pulp-and-paper industry to enforce environmental laws.

In some countries, standing in an environmental suit hinges on prior involvement with the case during administrative proceedings. For example, in Hungary, a local environmental association was granted standing on appeal because it had proven interest in the case by participating in previous administrative proceedings.

### **2.5 Independent and Well-Informed Judiciary**

When administrative avenues for citizen enforcement fail, the judicial system is often the final resource for appealing environmental conflicts. For this reason, it is imperative that the judiciary be established and operated in manner that facilitates redress of environmental harms.

For access to justice in environmental matters to be effective, it is critical to have a judiciary that is independent of political pressures. If the judiciary is closely associated with government agencies, citizen enforcement actions against those agencies may be impractical. Citizen suits against industry or the government also may be disadvantaged if judges rely on political support for reappointment or reelection.

For example, Brazil's judicial system is designed specifically to free the judiciary of political allegiances. Instead of election or appointment, judges earn their positions based on their performance on a standard examination. Once in office, they can never be removed. In India, being independent and well-respected by society has allowed the judiciary to confront difficult environmental problems and require individuals, government agencies, and industry to comply with the law and accept the costs associated with pollution control.

"It is the Courts and more importantly the Judges who man these Courts who are required to give body and soul to these vibrant concepts [of environmental rights]."  
*Justice M. F. Salanhya, High Court of Karnataka, Bangalore, India, August 1998.*

For the judiciary to be truly protective of environmental rights and the public interest, it is also important that judges be educated about environmental issues and related legal topics, such as emerging scientific principles, the concept of risk and future harm, and the practice of public interest litigation. Continuing legal education is, therefore, critical to the ultimate usefulness of the judicial system in resolving environmental disputes.

### **3 Citizen Role in Domestic Environmental Compliance and Enforcement**

#### **3.1 Monitoring Compliance**

Monitoring compliance through collecting and analyzing information on the compliance status of the regulated community is one of the most important elements of an enforcement program. Citizens can contribute to monitoring by tracking industrial environmental performance through independently-compiled emissions data or compliance reports produced by regulated entities. Citizen monitoring can help government agencies identify violations and is particularly important when resources for government monitoring are scarce or insufficient.

In some countries, governmental institutions make use of citizen monitoring that may already be taking place independent of any coordinating government program. However, many government agencies find that establishing a program to clearly communicate their information needs to citizen monitors provides for collection of information more directly useful in the identification of potential environmental violations. For example, in the United States, the state of Virginia has established a coordinator of citizens who volunteer to monitor streams in the state. This program allows citizens to collect information needed by the state water program to detect potential problems or violations around the state. It also provides citizens with a direct contact in the government to receive the information they collect and channel it to the proper authorities.

Another formal vehicle for public participation in monitoring is the establishment of coordination agreements between government agencies and private organizations. For example, in the Philippines, the emergence of multi-party monitoring has enabled local community residents, private organizations, and industrial project proponents to join representatives from the Department of Environment and Natural Resources (DENR) to undertake post-Environmental Impact Analysis (EIA) compliance monitoring. The DENR is moving to institutionalize this system of multi-party team monitoring by creating, in each regional office, a Regional Community Advisory and Monitoring Committee whose membership will include NGOs and the private sector. The committees are expected to be involved in all phases of EIA, including compliance monitoring.

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Inspections are an important mechanism for monitoring. Typically, government agencies with jurisdiction over environmental regulations dispatch inspectors to visit companies to see first-hand whether a facility is in compliance with environmental standards or required practices. Failed inspections often provide a basis for further agency efforts to bring facilities into compliance.

Some countries allow citizens to participate in compliance inspections conducted by government officials. Usually, the citizen must have been involved in the complaint process prior to the inspection. For example, water quality legislation in Argentina allows private parties who have filed a complaint about a facility to participate in any inspection of the facility during the investigation.

In some countries, government agencies are allowed to contract with citizen groups or other associations to enlist their assistance in inspection efforts. For example, under Estonia's Nature Protection Act, citizens can be deputized as "public inspectors" to monitor compliance with laws, regulations, and permits concerning hunting, fishing, and forestry. They are permitted to write protocols about violations of nature protection rules, but they cannot collect penalties. In Poland, a similar institution exists in the form of the Nature Protection Guard, an organization affiliated with conservation associations that monitors compliance with nature protection laws. Authorized members of the guard have the right to enforce nature conservation laws directly through a procedure of ticketing violators and imposing small fines. This model has yet to be transferred to the pollution control area through regulation, but there is a legal framework, under the Polish Environmental protection Act of 1980, for deputizing trade unions and other associations as inspectors.

### **Sample Legal Provision for Citizen Participation in Inspections**

"When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection." *United States Surface Mining Control and Reclamation Act, 30 U.S.C. §1271(a)(1).*

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### **3.2 Public Complaint Processes**

In many countries, public complaint processes facilitate citizen participation in enforcement efforts. Typically, the government establishes a mechanism for citizens to submit complaints concerning activities that are causing environmental harm. The mechanism can require government agencies to address complaints and respond in a timely manner. Public complaints can be very useful in drawing government attention to potential violations that may otherwise go unrecognized.

Citizens may be able to use informal complaint mechanisms or petitions to draw government attention to enforcement issues. In Mexico, for example, the federal environmental law and parallel state laws enable any person to file a complaint with the appropriate government agency regarding activities that cause environmental harm or ecological imbalance. The agency is required to investigate the matter and provide a prompt response.

Throughout Mexico, this process is the principal vehicle for public participation in administrative enforcement matters. In some states, the process has been the principal driving force behind enforcement efforts. Some states have established telephone hotlines to receive citizen complaints or set up a toll free numbers or "green" mailboxes to facilitate the complaint process.

Some countries have an independent complaint committee or designated staff member (ombudsman) at the national or local levels to receive and process citizen complaints. The position of ombudsman is usually funded by, but independent of, the government and may be competent to deal with complaints on the basis of statutory rules. The laws creating the ombudsman position often regulate what kinds of complaints may be reviewed.

#### **Mexico's Citizen Complaint Process**

The Mexican general environmental law and its predecessors establish a system for public complaints to be filed for any incident, act, or omission that falls within the jurisdiction of the Federal Government and produces an ecological imbalance or environmental damage, or which violates any environmental law provisions. The Mexican government has the obligation to receive, investigate, and respond to the administrative complaints and claims of citizens concerning failure to comply with environmental law. The government has specific time limits to inform the complainant of the procedures being undertaken, and to inform him or her of the results concerning verification of the alleged violations and the response measures being taken.



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Poland, for example, created a position called the Commissioner for Civil Rights Protection. The Commissioner's role is to receive and manage complaints about infringements of citizens' rights and freedoms determined by the Constitution and other provisions of law. The Commissioner is not limited to environmental issues, but environmental issues fall under the Commissioner's jurisdiction and historically have been a focus of activity. The Commissioner does not have authority to rule on administrative matters, but can recommend or appeal decisions, suggest legislative initiatives or procedural amendments, and pursue solutions to specific violations to promote compliance with the law.

#### **3.3 Citizen Enforcement Litigation**

In many countries citizens can be given the right to assume or share the primarily governmental function of taking a potential violator to court to enforce the law. Citizen enforcement suits generally take one of two forms. Members of the public or environmental associations can sue industrial facilities (including regulated government facilities) directly for violating applicable laws or rights. Alternatively, members of the public can sue the government for failure to perform non-discretionary enforcement duties, with the aim of obtaining a court order requiring the appropriate agency to enforce the law.

In either case, citizen enforcement suits are designed to protect the public interest by allowing citizens to help ensure that environmental laws and rights are properly upheld. To achieve this purpose, countries throughout the world have established a variety of mechanisms for authorizing citizen enforcement suits. The following are some common models that have enabled citizens to utilize their judicial systems to enhance environmental enforcement.

Some countries grant citizens access to courts for the express purpose of environmental enforcement and provide specific authority in their environmental statutes for citizen enforcement suits concerning those laws. For example, in the United States, all major federal environmental statutes grant citizens the right to bring suit against any person (including individuals, corporations, associations, and governments) to enforce the provisions of the law.

In some countries, the right to enforce environmental laws in court is derived from general provisions of the civil code. For example, in Hungary, the civil code allows individuals to sue others for violating an obligation not to disturb others needlessly, "especially neighbors." While this provision is not specific to environmental law, it can be used by citizens to

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address environmental violations. In the case of pollution, the "neighborhood" encompassed is not restricted to property immediately adjoining the site of polluting activity, but instead includes anyone affected by the pollution.

Some countries allow citizens to go to court to enforce environmental laws in the public interest. For example, in India, citizens are granted broad access to bring public interest law suits to defend their human and social rights. Litigants need not prove a violation of law, as in countries where access to courts is established in environmental statutes, but they must demonstrate a violation of natural rights. Because these suits are filed in the public interest, citizens must base their claims on damages to society – not solely to themselves.

Many countries, particularly those in Latin America, authorize citizens or citizen organizations to bring popular actions, similar to class action law suits, to enforce environmental laws. For example, in Colombia, citizen groups can bring suit against any public or private entity causing threat of harm.

Similarly, Brazil allows citizens to file popular actions against public administrative acts that may be injurious to the public patrimony of the federal, state, or local government. However, in Brazil, only individual citizens may file popular actions; legal entities such as associations, corporations, or the state may not. Nevertheless, popular actions only serve to protect community rights, not the individual rights of the plaintiff. In Brazil, popular actions may be used to remedy administrative violations.

### **Elements of Citizen Suits Under U.S. Environmental Laws**

**Statutory Standing:** Any person has standing to sue any other person (including the government) who is violating the requirements of the given law.

**Notice to Government:** Before filing suit, a citizen must notify state and federal agencies as well as the alleged violator that a lawsuit is pending. As long as the violation continues and the state or federal government is not pursuing a diligent enforcement action against the alleged violator in court, the lawsuit may be filed.

**Fee Shifting:** If the citizen wins, the court costs and attorney fees associated with bringing the action may be awarded to the plaintiff.

**Remedies:** The court may order the defendant to stop the violating activities. Some statutes allow the citizen to ask the court to impose civil penalties upon the violator, payable to the U.S. Treasury.

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Granting citizens the ability to bring enforcement suits does not necessarily mean that citizens will be able to do this in practice. Citizens also need to consider the costs of lawyers, court fees, and expert witnesses. In some countries, citizen suit provisions in environmental laws contain fee-shifting provisions that allow citizen enforcers who prevail on significant issues to recover the costs of litigation, including reasonable fees for attorneys and experts. Citizen enforcers are not responsible for the fees of the opposing side if the citizens do not prevail.

For citizen enforcement suits to be effective, courts need to have authority to impose effective remedies. Citizen suits can only supplement governmental enforcement actions to curb pollution if courts possess and use sufficient power to stop and deter violators. Environmental citizen suit provisions may allow courts to award civil penalties and to issue mandatory injunctions.

#### **3.4 Settlement of Enforcement Actions**

In some countries environmental enforcement actions, including citizen enforcement actions, may be settled in negotiation among the parties. To ensure that settlements are enforceable, they are often crafted as court negotiated consent decrees, with interim deadlines for specific actions and penalties. In many cases, there is a role for citizens in this process. In addition to citizen suit settlements, citizens who are parties to, or have an interest in, a government enforcement suit often may participate in negotiating the terms of the consent decrees. For example, in the United States, settlements typically include requirement that violations cease, feasible remediation of harm, and monetary penalties to deter noncompliance. In civil judicial cases, the U.S. Department of Justice seeks public comment on lodged consent decrees. In certain administrative enforcement actions, there are also public notice requirements that are followed before a settlement is finalized.

In the United States, U.S. EPA has developed a policy on "supplemental environmental projects" (SEPs). SEPs are environmentally beneficial projects which a violator agrees to undertake in settlement of an enforcement action. The violator is still required to comply with the law; the SEP usually means a reduction in the civil penalty in exchange for projects regarding public health, pollution prevention, pollution reduction, environmental restoration, assessments and audits, environmental compliance promotion, or emergency planning and preparedness. U.S. EPA issued the final Supplemental Environmental Projects Policy in April 1998. The Policy sets out the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they

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may become part of a settlement. The U.S. EPA SEP Policy recommends that EPA make special efforts to seek input on project proposals from the local community that may have been adversely impacted by the violations.

A related emerging mechanism in the United States for achieving citizen-industry partnerships during the settlement of an enforcement case is the use of Good Neighbor Agreements. Under Good Neighbor Agreements, companies enter into negotiated contracts with workers, local community members and associations to establish a framework for public assessment of industrial environmental conditions. Common elements of Good Neighbor Agreements include provisions for public disclosure of relevant company information and stakeholder audits, whereby citizens engage in direct, on-site evaluations of facilities to identify changes that may be needed to ensure environmental compliance, safety, and sustainability. Good Neighbor Agreements can also provide a forum for addressing community recommendations for improvements in environmental protocol.

Each Good Neighbor Agreement is unique, because the parties, conditions, and issues vary significantly among cases. However, the Rhone-Poulenc Community Audit Agreement (RPCAA) in Texas serves as a good example for illustrating the fundamental elements of a typical agreement. The RPCAA provided for a safety and environmental audit to be financed by Rhone-Poulenc and integrated into the company's hazardous waste facility permit.

Under the agreement, the auditor was to be approved and accompanied by a committee comprised of community group members and facility workers. Citizens were also given

### **Common Elements of Citizen-Industry Agreements**

#### ***Commitments to Community and Workforce***

- Pollution Prevention
- Remedial Action
- Accident Prevention and Preparedness
- Local Hiring
- Infrastructure Commitments
- Philanthropic Policy Reforms

#### ***Rights and Resources for Neighbor and Workers***

- Community-selected Oversight Bodies
- Right to Inspect
- Funding of Independent Experts
- Right-to-Know Provisions
- Notifications and Studies
- Whistleblower Protection
- Enforcement of Agreement

*(from Sanford Lewis, The Good Neighbor Project for Sustainable Industries, 1996)*

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permission to conduct additional inspections by appointment. The scope of the audit included regulatory compliance, safety training, accident prevention, emergency response, waste analysis and information systems, monitoring programs, and waste minimization practices. The agreement also provided for public disclosure of company documents including: a hazard assessment and risk analysis; lists of accidents, upsets, and corrective actions; and waste minimization and reduction plans. In the agreement, Rhone-Poulenc consented to "negotiate in good faith" any recommendations resulting from the audit.

## **4 Citizen Role in International Environmental Compliance and Enforcement**

Because many environmental issues and problems transcend national borders and fall outside the traditional realm of government jurisdiction, international and transboundary enforcement mechanisms are becoming an increasingly important avenue for citizen participation in environmental enforcement matters. Fora for international and transboundary citizen enforcement efforts include domestic and international court systems, regional and multilateral institutions, international treaties, and international cooperation. This section looks at three examples of international and transboundary mechanisms that enable citizen participation in environmental enforcement.

The 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is the first international legal agreement placing an obligation on Parties to grant access to justice for citizens in the domestic implementation of the Convention. The Commission on Environmental Cooperation provides a model for a regional forum for gathering information following citizen complaints about alleged violations of domestic environmental law. The World Bank is the first multi-lateral institution to set up an information gathering mechanism, again based on citizen complaints to investigate alleged violations of its own internal environmental policies and procedures.

### **4.1 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters**

*The Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters* is the fruition of two years of intensive government negotiation in the United Nations Economic Commission for Europe (UNECE). In June 1998, 35 countries and the European Community signed the Convention.

The Convention creates obligations that parties are to implement domestically. The three principles of the draft Convention, broadly stated, are: (1) the public should have access to environmental information, with limited, explicit exceptions; (2) the public should have a right to participate in the environmental decision-making process and have that participation taken into account in the decision-making process; and (3) the public should ultimately have access to an independent and impartial review process, capable of binding public authorities,

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when the public feels its rights have been infringed. The Convention is the first time that States have agreed on the content of these principles and established their minimum procedural elements.

Article 9 of the Convention contains the provisions on access to justice. Although the article limits its provisions by affirming that they be carried out in accordance with national law, it still sets out some important principles for domestic access to justice in environmental matters. Article 9 confirms the importance of having an impartial and independent review procedure to enforce a citizen's right to access information and to participate in decision-making under the Convention. The Convention refers to standing for individuals and organizations alike, and promotes a very broad interpretation of what "sufficient interest" would mean for the purposes of granting standing to individuals and organizations under the Convention. Under Article 9, Parties to the Convention have the following obligations, always in accordance with their national law:

- Any person whose request for information was not dealt with in accordance with the Convention shall have access to a review procedure before an independent and impartial body, such as a court.
- Members of the public shall have access to some type of a review procedure to challenge the substantive and procedural legality of any decision subject to the public participation provisions of the Convention.
- Although the Convention leaves what constitutes "sufficient interest" for a member of the public to have standing to national law, it does encourage that this be determined "consistently with the objective of giving the public concerned wide access to justice within the scope of the Convention." Especially non-governmental organizations promoting environmental protection shall be deemed to have a sufficient interest and to have rights capable of being impaired for review under this Article.

Parties to the Convention are "concerned that the effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced."  
*Preamble, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.*

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- Members of the public shall have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.
- Access to justice procedures shall provide adequate and effective remedies, including injunctive relief, and be fair, equitable, timely and not prohibitively expensive.
- Decisions under Article 9 shall be recorded in writing and should be publicly accessible.
- Parties shall provide information to the public on the review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

### **4.2 North American Citizen Submissions on Environmental Enforcement**

An environmental side agreement to the North American Free Trade Agreement (NAFTA) created several mechanisms for public participation in promoting the enforcement of national environmental laws in the United States, Mexico, and Canada. Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC), any citizen or non-governmental organization can present a submission to the Secretariat of the Commission for Environmental Cooperation (CEC) alleging that a NAFTA country is failing to enforce its environmental laws. The remedy for a submission found to be valid is the development by the CEC of a formal factual record of the case that can be made public. The CEC has guidelines for submissions on enforcement matters under Articles 14 and 15 of NAAEC. As of October 1998, these guidelines were undergoing revision and public comment and expected to be finalized in early 1999.

Since 1995, eighteen submissions have been made to the CEC to develop a factual record on alleged violations of domestic law in Canada, the United States and Mexico. Only one case has gone through the entire process, including the development of a factual record. A coalition of Mexican environmental organizations initiated an inquiry into the Mexican government's failure to enforce applicable domestic laws during the environmental impact assessment phase of a construction project in Cozumel. In January 1996, the groups filed a submission with the CEC alleging the government's failure. One month later, the CEC Secretariat determined that the submission merited requesting a response from the Mexican

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government. In June 1996, after reviewing the government's response, the Secretariat advised the CEC Council that a factual record was warranted. On the first day of August 1996, the Council unanimously instructed the Secretariat to proceed with developing a factual record. The final factual record was concluded in October 1997 and was released to the public.

#### **CEC Citizen Submission Process**

- Secretariat determines that the Article 14(1) criteria are met.
- Secretariat determines whether the submission merits requesting a response from the Party named in the submission under Article 14(2).
- In light of any response provided by that Party, the Secretariat may recommend to the Council that a factual record be prepared, in accordance with Article 15.
- The Council, comprised of the environmental ministers (or their equivalent) of Canada, Mexico and the United States, may then instruct the Secretariat to prepare a factual record on the submission.
- The final factual record is made publicly available upon a 2/3 vote of the Council.

#### **4.3 World Bank Inspection Panel**

The World Bank is, thus far, the only one of the multilateral development institutions that has created a method for citizen participation in enforcement of internal bank policies and procedures in bank-financed projects. The Bank created an Inspection Panel in 1994 to investigate claims filed by affected parties and to review the Bank's compliance with its own policies and procedures, some of which pertain directly to environmental matters.

Upon receiving a complaint, the Panel conducts an initial review, including a review of the management's response to the claim. The Panel subsequently recommends to the Executive

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Directors whether a full investigation is warranted. The Executive Directors retain sole power to authorize a full investigation. For investigations that go forward, the panel enjoys broad investigatory powers including access to Bank management and staff. After the investigation, the Panel issues a report with its recommendations to the Bank management and the Executive Directors. Management has six weeks to respond and provide its own recommendations to the Executive Directors, who make all final decisions.

The first major claim before the Panel alleged violations of environmental assessment, resettlement, and other policies in the siting of the Arun III Hydroelectric dam. The Panel had just completed a full investigation into the alleged violations when the Bank president announced in August 1995 that the Bank would no longer support Arun III. The Bank president cited the work of the Inspection Panel as one of the reasons for his decision.

#### **The World Bank Inspection Panel Process**

- The Panel receives requests for inspection presented to it by an affected party in the territory of the borrower which is not a single individual (i.e., a community of persons such as an organization, association, society or other grouping of individuals).
- The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and /or implementation of a project financed by the Bank (including such situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect.
- If the Bank's Executive Directors decide to investigate the request, the Panel is requested to review the available information and report their findings.

**Resolution No. 93-10, No. IDA 93-6**

COUNCIL ON ENVIRONMENTAL QUALITY  
EXECUTIVE OFFICE OF THE PRESIDENT

# A Citizen's Guide to the NEPA

*Having Your  
Voice Heard*



DECEMBER 2007

COUNCIL ON ENVIRONMENTAL QUALITY  
EXECUTIVE OFFICE OF THE PRESIDENT

# A Citizen's Guide to the NEPA

*Having Your  
Voice Heard*



DECEMBER 2007

This guide is based on research and consultations undertaken by the Council on Environmental Quality (CEQ) concerning the need for a Citizen's Guide to the National Environmental Policy Act (NEPA). Participants in the NEPA Regional Roundtables held in 2003-2004 clearly voiced the need for an guide that provides an explanation of NEPA, how it is implemented, and how people outside the Federal government — individual citizens, private sector applicants, members of organized groups, or representatives of Tribal, State, or local government agencies — can better participate in the assessment of environmental impacts conducted by Federal agencies (see <http://ceq.eh.doe.gov/utfr>). This guide is informational and does not establish new requirements. It is not and should not be viewed as constituting formal CEQ guidance on the implementation of NEPA, nor are recommendations in this guide intended to be viewed as legally binding.

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#### List of Acronyms

CE:	Categorical Exclusion
CEQ:	Council on Environmental Quality
CFR:	Code of Federal Regulations
EA:	Environmental Assessment
EIS:	Environmental Impact Statement
EMS:	Environmental Management System
EPA:	The Environmental Protection Agency
FONSI:	Finding of No Significant Impact
NEPA:	The National Environmental Policy Act
NOI:	Notice of Intent
ROD:	Record of Decision

#### Purpose of the Guide

This guide has been developed to help citizens and organizations who are concerned about the environmental effects of federal decisionmaking to effectively participate in Federal agencies' environmental reviews under the National Environmental Policy Act (NEPA).<sup>1</sup> With some limited exceptions, all Federal agencies in the executive branch have to comply with NEPA before they make final decisions about federal actions that could have environmental effects. Thus, NEPA applies to a very wide range of federal actions that include, but are not limited to, federal construction projects, plans to manage and develop federally owned lands, and federal approvals of non-federal activities such as grants, licenses, and permits. The Federal Government takes hundreds of actions every day that are, in some way, covered by NEPA.

The environmental review process under NEPA provides an opportunity for you to be involved in the Federal agency decisionmaking process. It will help you understand what the Federal agency is proposing, to offer your thoughts on alternative ways for the agency to accomplish what it is proposing, and to offer your comments on the agency's analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. NEPA requires Federal agencies to consider environmental effects that include, among others, impacts on social, cultural, and economic resources, as well as natural resources. Citizens often have valuable information about places and resources that they value and the potential environmental, social, and economic effects that proposed federal actions may have on those places and resources. NEPA's requirements provide you the means to work with the agencies so they can take your information into account.

<sup>1</sup> National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4347, available at [www.nepa.gov](http://www.nepa.gov).

## History and Purpose of NEPA

Congress enacted NEPA in December, 1969, and President Nixon signed it into law on January 1, 1970. NEPA was the first major environmental law in the United States and is often called the "Magna Carta" of environmental laws. Importantly, NEPA established this country's national environmental policies.

To implement these policies, NEPA requires agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. Two major purposes of the environmental review process are better informed decisions and citizen involvement, both of which should lead to implementation of NEPA's policies.

## Who is Responsible for Implementing NEPA?

Every agency in the executive branch of the Federal Government has a responsibility to implement NEPA. In NEPA, Congress directed that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA.<sup>2</sup> To implement NEPA's policies, Congress prescribed a procedure, commonly referred to as "the NEPA process" or "the environmental impact assessment process."

NEPA's procedural requirements apply to all Federal agencies in the executive branch. NEPA does not apply to the President, to Congress, or to the Federal courts.<sup>3</sup>

Because NEPA implementation is an important responsibility of the Federal Government, many Federal agencies have established offices dedicated to NEPA policy and program oversight. Employees in these offices prepare NEPA guidance, policy, and procedures for the agency, and often make this information available to the public through sources such as Internet websites. Agencies are required to develop their own capacity within a NEPA program in order to develop analyses and documents (or review those prepared by others) to ensure informed decisionmaking.<sup>4</sup> Most agency NEPA procedures are available on-line at the NEPA.net website <http://ceq.eh.doe.gov/nepalregs/agency/agencies.cfm>). Agency NEPA procedures are published in

<sup>2</sup> Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. §4332.

<sup>3</sup> CEQ NEPA Regulations 40 C.F.R. §1508.12.

<sup>4</sup> Council on Environmental Quality, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" 40 C.F.R. section 1507.2, available at [www.nepp.gov](http://www.nepp.gov). Future references to the CEQ NEPA Regulations will be cited as: CEQ NEPA Regulations, 40 C.F.R. §1507.2.

## National Environmental Policy Act Sec. 101 [42 USC § 4331]

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may —

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

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the Federal Register for public review and comment when first proposed and some are later codified and published in the Code of Federal Regulations.<sup>5</sup> If you experience difficulty locating an agency's NEPA procedures, you can write or call the agency NEPA point of contacts and ask for a copy of their procedures.<sup>6</sup>

### To What Do the Procedural Requirements of NEPA Apply?

In NEPA, Congress recognized that the Federal Government's actions may cause significant environmental effects. The range of actions that cause significant environmental effects is broad and includes issuing regulations, providing permits for private actions, funding private actions, making federal land management decisions, constructing publicly-owned facilities, and many other types of actions. Using the NEPA process, agencies are required to determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions.

NEPA's procedural requirements apply to a Federal agency's decisions for actions, including financing, assisting, conducting, or approving projects or programs; agency rules, regulations, plans, policies, or procedures; and legislative proposals.<sup>7</sup> NEPA applies when a Federal agency has discretion to choose among one or more alternative means of accomplishing a particular goal.<sup>8</sup>

Frequently, private individuals or companies will become involved in the NEPA process when they need a permit issued by a Federal agency. When a company applies for a permit (for example, for crossing federal lands or impacting waters of the United States) the agency that is being asked to issue the permit must evaluate the environmental effects of the permit decision under NEPA. Federal agencies might require the private company or developer to pay for the preparation of analyses, but the agency remains responsible for the scope and accuracy of the analysis.

<sup>5</sup> The draft agency implementing procedures, or regulations, are published in the Federal Register, and a public comment period is required prior to CEQ approval. Commenting on these agency regulations is one way to be involved in their development. Most agencies already have implementing procedures; however, when they are changed, the agency will again provide for public comment on the proposed changes.

<sup>6</sup> See Appendices A and D for information on how to access agency points of contact and agency websites.

<sup>7</sup> CEQ NEPA Regulations, 40 C.F.R. § 1508.18. Note that this section applies only to legislation drafted and submitted to Congress by federal agencies. NEPA does not apply to legislation initiated by members of Congress.

<sup>8</sup> CEQ NEPA Regulations, 40 C.F.R. § 1508.23.

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### When Does NEPA Apply?

NEPA requires agency decisionmakers to make informed decisions. Therefore, the NEPA process must be completed before an agency makes a final decision on a proposed action. Good NEPA analyses should include a consideration of how NEPA's policy goals (Section 101) will be incorporated into the decision to the extent consistent with other considerations of national policy. NEPA does not require the decisionmaker to select the environmentally preferable alternative or prohibit adverse environmental effects. Indeed, decisionmakers in Federal agencies often have other concerns and policy considerations to take into account in the decisionmaking process, such as social, economic, technical or national security interests. But NEPA does require that decisionmakers be informed of the environmental consequences of their decisions.

The NEPA process can also serve to meet other environmental review requirements. For instance, actions that require the NEPA process may have an impact on endangered species, historic properties, or low income communities. The NEPA analysis, which takes into account the potential impacts of the proposed action and investigates alternative actions, may also serve as a framework to meet other environmental review requirements, such as the Endangered Species Act, the National Historic Preservation Act, the Environmental Justice Executive Order, and other Federal, State, Tribal, and local laws and regulations.<sup>9</sup>

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### Who Oversees the NEPA Process?

There are three Federal agencies that have particular responsibilities for NEPA. Primary responsibility is vested in the Council on Environmental Quality (CEQ), established by Congress in NEPA. Congress placed CEQ in the Executive Office of the President and gave it many responsibilities, including the responsibility to ensure that Federal agencies meet their obligations under the Act. CEQ oversees implementation of NEPA, principally through issuance and interpretation of NEPA regulations that implement the procedural requirements of NEPA. CEQ also reviews and approves Federal agency NEPA procedures, approves of alternative arrangements for compliance with NEPA in the case of emergencies, and helps to resolve disputes between Federal agencies and with other governmental entities and members of the public.

<sup>9</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.25.

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In 1978, CEQ issued binding regulations directing agencies on the fundamental requirements necessary to fulfill their NEPA obligations.<sup>10</sup> The CEQ regulations set forth minimum requirements for agencies. The CEQ regulations also called for agencies to create their own implementing procedures that supplement the minimum requirements based on each agency's specific mandates, obligations, and missions.<sup>11</sup> These agency-specific NEPA procedures account for the slight differences in agencies' NEPA processes.

The Environmental Protection Agency's (EPA) Office of Federal Activities reviews environmental impact statements (EIS) and some environmental assessments (EA) issued by Federal agencies.<sup>12</sup> It provides its comments to the public by publishing summaries of them in the Federal Register, a daily publication that provides notice of Federal agency actions.<sup>13</sup> EPA's reviews are intended to assist Federal agencies in improving their NEPA analyses and decisions.<sup>14</sup>

Another government entity involved in NEPA is the U.S. Institute for Environmental Conflict Resolution, which was established by the Environmental Policy and Conflict Resolution Act of 1998 to assist in resolving conflict over environmental issues that involve Federal agencies.<sup>15</sup> While part of the Federal Government (it is located within the Morris K. Udall Foundation, a Federal agency located in Tucson, Arizona), it provides an independent, neutral, place for Federal agencies to work with citizens as well as State, local, and Tribal governments, private organizations, and businesses to reach common ground. The Institute provides dispute resolution alternatives to litigation and other adversarial approaches. The Institute is also charged with assisting the Federal Government in the implementation of the substantive policies set forth in Section 101 of NEPA.<sup>16</sup>

<sup>10</sup> CEQ NEPA Regulations, 40 C.F.R. parts 1500-1508, available at [www.nepa.gov](http://www.nepa.gov).

<sup>11</sup> CEQ NEPA Regulations, 40 C.F.R. § 1507.3.

<sup>12</sup> Clean Air Act, 42 U.S.C. § 7609.

<sup>13</sup> See Appendix B for information on the Federal Register.

<sup>14</sup> For additional information see <http://www.epa.gov/compliance/nepa/index.htm>.

<sup>15</sup> Environmental Policy and Conflict Resolution Act of 1998, 20 U.S.C. §§ 5601-5609.

<sup>16</sup> For a discussion of the relationship between Section 101 of NEPA and conflict resolution, including specific case examples and recommendations for strengthening that relationship see the National Environmental Conflict Resolution Advisory Committee, "Final Report — Submitted to the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation," (April 2005), available at <http://www.ecr.gov> by clicking on "Resources" and "NEPA and ECR".

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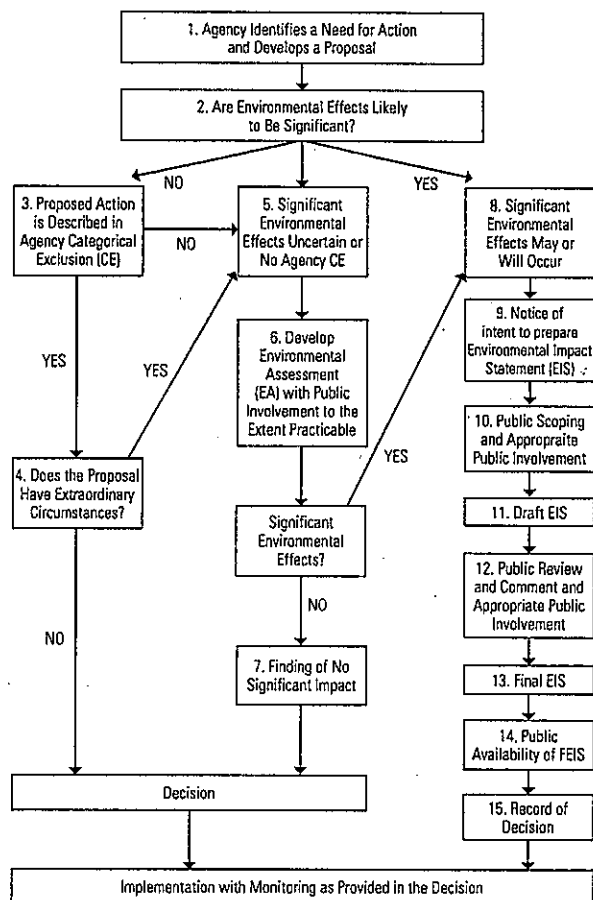
## Navigating the NEPA Process

Each year, thousands of Environmental Assessments (EAs) and hundreds of Environmental Impact Statements (EISs) are prepared by Federal agencies. These documents provide citizens and communities an opportunity to learn about and be involved in each of those environmental impact assessments that are part of the Federal agency decisionmaking process. It is important to understand that commenting on a proposal is not a "vote" on whether the proposed action should take place. Nonetheless, the information you provide during the EA and EIS process can influence the decisionmakers and their final decisions because NEPA does require that federal decisionmakers be informed of the environmental consequences of their decisions.

This guide will help you better navigate through the NEPA process and better understand the roles of the various other actors. While reading the guide, please refer to the following flowchart, "The NEPA Process," which details the steps of the NEPA process. For ease of reference, each step of the process is designated with a number which is highlighted in the text discussing that particular step. While agencies may differ slightly in how they comply with NEPA, understanding the basics will give you the information you need to work effectively with any agency's process.



## The NEPA Process



*\*Significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final EIS or the Record of Decision (CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c)).*

The NEPA process begins when an agency develops a proposal to address a need to take an action.

The need to take an action may be something the agency identifies itself, or it may be a need to make a decision on a proposal brought to it by someone outside of the agency, for example, an applicant for a permit. Based on the need, the agency develops a proposal for action (Number 1 in Figure 1). If it is the only Federal agency involved, that agency will automatically be the "lead agency," which means it has the primary responsibility for compliance with NEPA.

Some large or complex proposals involve multiple Federal agencies along with State, local, and Tribal agencies. If another Federal, State, local, or Tribal agency has a major role in the proposed action and also has NEPA responsibilities or responsibilities under a similar NEPA-like law<sup>17</sup>, that agency may be a "joint lead agency." A "joint lead agency" shares the lead agency's responsibility for management of the NEPA process, including public involvement and the preparation of documents. Other Federal, State, Tribal, or local government agencies may have a decision or special expertise regarding a proposed action, but less of a role than the lead agency. In that case, such a Federal, State, Tribal, or local government agency may be a "cooperating agency."

A "cooperating agency" is an agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative). Thus, a "cooperating agency" typically will have some responsibilities for the analysis related to its jurisdiction or special expertise.

Once it has developed a proposed action, the agency will enter the initial analytical approach (Number 2 in Figure 1) to help it determine whether the agency will pursue the path of a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).

<sup>17</sup> About a quarter of the states have such laws; for example, New York, Montana, Washington, and California all have such laws. New York City also has such a law. A list with references is available at <http://nepa.gov> by clicking on "State Information" or directly at <http://ceq.eh.doe.gov/nepalstates.html>.

### Special Situations

- ❖ On rare occasions, Congress may exempt an action from NEPA.
- ❖ If the agency needs to take an action that would typically require preparation of an environmental impact statement in response to an emergency, and there is insufficient time to follow the regular NEPA process, then the agency can proceed immediately to mitigate harm to life, property, or important resources, and work with CEQ to develop alternative arrangements for compliance with NEPA (40 C.F.R. §1506.11).
- ❖ The NEPA analyses and document may involve classified information. If the entire action is classified, the agency will still comply with the analytical requirements of NEPA, but the information will not be released for public review. If only a portion of the information is classified, the agency will organize the classified material so that the unclassified portions can be made available for review (40 C.F.R. §1507.3(c)).

## Implementing the NEPA Process

### *Categorical Exclusions (CEs)* (Number 3 in Figure 1)

A CE is a category of actions that the agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment.<sup>18</sup> Examples include issuing administrative personnel procedures, making minor facility renovations (such as installing energy efficient lighting), and reconstruction of hiking trails on public lands. Agencies develop a list of CEs specific to their operations when they develop or revise their NEPA implementing procedures in accordance with CEQ's NEPA regulations.

A CE is based on an agency's experience with a particular kind of action and its environmental effects. The agency may have studied the action in previous EAs, found no significant impact on the environment based on the analyses, and validated the lack of significant impacts after the implementation. If this is the type of action that will be repeated over time, the agency may decide to amend their implementing regulations to include the action as a CE. In these cases, the draft agency procedures are published in the *Federal Register*, and a public comment period is required. Participation in these comment periods is an important way to be involved in the development of a particular CE.

<sup>18</sup> CEQ NEPA Regulations, 40 C.F.R. § 1508.4.

If a proposed action is included in the description provided for a listed CE established by the agency, the agency must check to make sure that no extraordinary circumstances exist that may cause the proposed action to have a significant effect in a particular situation. Extraordinary circumstances typically include such matters as effects to endangered species, protected cultural sites, and wetlands (Number 4 in Figure 1). If there are no extraordinary circumstances indicating that the effects of the action may be significant, then the agency can proceed with the action.

If the proposed action is not included in the description provided in the CE established by the agency, or there are extraordinary circumstances, the agency must prepare an EA or an EIS, or develop a new proposal that may qualify for application of a CE. When the agency does not know or is uncertain whether significant impacts are expected, the agency should prepare an EA to determine if there are significant environmental effects.

### *Environmental Assessments (EA)* (Number 5 in Figure 1)

The purpose of an EA is to determine the significance of the environmental effects and to look at alternative means to achieve the agency's objectives. The EA is intended to be a concise document that (1) briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) aids an agency's compliance with NEPA when no environmental impact statement is necessary; and (3) facilitates preparation of an Environmental Impact Statement when one is necessary.<sup>19</sup>

An EA should include brief discussions of:

- ❖ the need for the proposal,
- ❖ alternative courses of action for any proposal which involves unresolved conflicts concerning alternative uses of available resources,
- ❖ the environmental impacts of the proposed action and alternatives, and
- ❖ a listing of agencies and persons consulted.<sup>20</sup>

<sup>19</sup> CEQ NEPA Regulations, 40 C.F.R. § 1508.9.

<sup>20</sup> CEQ NEPA Regulations, 40 C.F.R. § 1508.9(b).

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Because the EA serves to evaluate the significance of a proposal for agency actions, it should focus on the context and intensity of effects that may “significantly” affect the quality of the human environment.<sup>21</sup> Often the EA will identify ways in which the agency can revise the action to minimize environmental effects.

When preparing an EA, the agency has discretion as to the level of public involvement (Number 6 in Figure 1). The CEQ regulations state that the agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing EAs.<sup>22</sup> Sometimes agencies will choose to mirror the scoping and public comment periods that are found in the EIS process. In other situations, agencies make the EA and a draft FONSI available to interested members of the public.

Some agencies, such as the Army, require that interested parties be notified of the decision to prepare an EA, and the Army also makes the EA publicly available. Some agencies keep a notification list of parties interested in a particular kind of action or in all agency actions. Other agencies simply prepare the EA. Not all agencies systematically provide information about individual EAs, so it is important that you read the specific implementing procedures of the proposing agency or ask the local NEPA point of contact working on the project about the process and let the appropriate agency representative know if you are interested in being notified of all NEPA documents or NEPA processes related to a particular type of action.

The EA process concludes with either a Finding of No Significant Impact (FONSI) (Number 7 in Figure 1) or a determination to proceed to preparation of an EIS. A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.<sup>23</sup> The EA is either summarized in the FONSI or attached to it.

In two circumstances, the CEQ regulations require agencies to make the proposed FONSI available for public review for 30 days. Those situations are:

- ❖ if the type of proposed action hasn't been done before by the particular agency, or

<sup>21</sup> CEQ NEPA Regulations 40 C.F.R. § 1508.27.

<sup>22</sup> CEQ NEPA Regulations, 40 C.F.R. § 1501.4(e)(2).

<sup>23</sup> Government Printing Office Electronic Information Enhancement Act of 1993, 44 U.S.C. §§ 4101-4104.

- ❖ if the action is something that typically would require an EIS under the agency NEPA procedures.<sup>24</sup>

If this is the case, the FONSI is usually published in the *Federal Register*,<sup>25</sup> and the notice of availability of the FONSI will include information on how and where to provide your comments. If the requirement for a 30 day review is not triggered the FONSI often will not be published in the Federal Register. It may be posted on the agency's website, published in local newspapers or made available in some other manner. If you are interested in a particular action that is the subject of an EA, you should find out from the agency how it will make the FONSI available.

#### *Environmental Impact Statements (EIS)* (Number 8 in Figure 1)

A Federal agency must prepare an EIS if it is proposing a major federal action significantly affecting the quality of the human environment.<sup>26</sup> The regulatory requirements for an EIS are more detailed than the requirements for an EA or a categorical exclusion and are explained below.

#### *Notice of Intent and Scoping* (Numbers 9 and 10 in Figure 1)

The EIS process begins with publication of a Notice of Intent (NOI), stating the agency's intent to prepare an EIS for a particular proposal. (Number 9 in Figure 1). The NOI is published in the Federal Register, and provides some basic information on the proposed action in preparation for the scoping process (Number 10 in Figure 1).<sup>27</sup> The NOI provides a brief description of the proposed action and possible alternatives. It also describes the agency's proposed scoping process, including any meetings and how the public can get involved. The NOI will also contain an agency point of contact who can answer questions about the proposed action and the NEPA process.

The scoping process is the best time to identify issues, determine points of contact, establish project schedules, and provide recommendations to the agency. The overall goal is to define the scope of issues to be addressed in depth in the analyses that will be included in the EIS. Specifically, the scoping process will:

<sup>24</sup> 42 U.S.C. § 4331(c).

<sup>25</sup> Scoping is a NEPA term of art that describes one major public involvement aspect of the NEPA EIS process (CEQ NEPA Regulations, 40 C.F.R. § 1501.7).

<sup>26</sup> CEQ NEPA Regulations, 40 C.F.R. § 1501.7. More information on scoping can be found in CEQ's guidance on scoping at [www.nepa.gov](http://www.nepa.gov).

<sup>27</sup> Public hearings are run in a formal manner, with a recording or minutes taken of speakers' comments. Public meetings may be held in a variety of formats, and may be much more informal than hearings.

- ❖ Identify people or organizations who are interested in the proposed action;
- ❖ Identify the significant issues to be analyzed in the EIS;
- ❖ Identify and eliminate from detailed review those issues that will not be significant or those that have been adequately covered in prior environmental review;
- ❖ Determine the roles and responsibilities of lead and cooperating agencies;
- ❖ Identify any related EAs or EISs;
- ❖ Identify gaps in data and informational needs;
- ❖ Set time limits for the process and page limits for the EIS;
- ❖ Identify other environmental review and consultation requirements so they can be integrated with the EIS; and
- ❖ Indicate the relationship between the development of the environmental analysis and the agency's tentative decisionmaking schedule.<sup>28</sup>

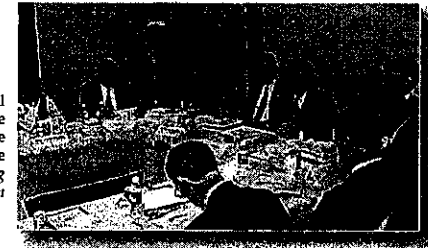
As part of the process, agencies are required to identify and invite the participation of interested persons. The agency should choose whatever communications methods are best for effective involvement of communities, whether local, regional, or national, that are interested in the proposed action. Video conferencing, public meetings, conference calls, formal hearings, or informal workshops are among the legitimate ways to conduct scoping. It is in your interest to become involved as soon as the EIS process begins and to use the scoping opportunity to make thoughtful, rational presentations on impacts and alternatives. Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate in the EIS.

<sup>28</sup> CEQ NEPA Regulations, 40 C.F.R. § 1501.7. More information on scoping can be found in CEQ's guidance on scoping at [www.nepa.gov](http://www.nepa.gov) by clicking on "CEQ Guidance."

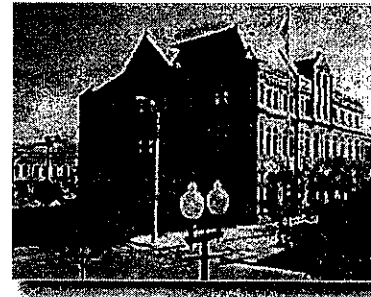
## NEPA is About People and Places



Tent Rocks, Jemez Mountains.



Southern Regional NEPA Roundtable discussion on the NEPA Task Force report *Modernizing NEPA Implementation*



US District Courthouse, Sioux Falls, SD

From top left: Tent Rocks photo courtesy of Michael Dechter; Courthouse, Sioux Falls, South Dakota, photo courtesy of General Services Administration. <http://nrmrpbx.gsa.gov/Internet/PBSWeb.nsf/01a704c21n7427f644872569b50079ac3d?OpenDocument>

### Draft EIS (Number 11 in Figure 1)

The next major step in the EIS process that provides an opportunity for your input is when the agencies submit a draft EIS for public comment. The Environmental Protection Agency (EPA) publishes a Notice of Availability in the Federal Register informing you and other members of the public that the draft is available for comment (Number 12 in Figure 1). The EPA notices are also available at <http://www.epa.gov/compliance/nepaleisdata.html>. Based on the communication plan established by the agency, websites, local papers, or other means of public notice may also be used. The comment period is at least 45 days long; however, it may be longer based on requirements spelled out in the agency specific NEPA procedures or at the agency's discretion. During this time, the agency may conduct public meetings or hearings as a way to solicit comments.<sup>29</sup> The agency will also request comments from other Federal, State, Tribal, and local agencies that may have jurisdiction or interest in the matter.

One key aspect of a draft EIS is the statement of the underlying purpose and need.<sup>30</sup> Agencies draft a "Purpose and Need" statement to describe what they are trying to achieve by proposing an action. The purpose and need statement explains to the reader why an agency action is necessary, and serves as the basis for identifying the reasonable alternatives that meet the purpose and need.

The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is the heart of the NEPA analysis. The lead agency or agencies must, "objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."<sup>31</sup> Reasonable alternatives are those that substantially meet the agency's purpose and need. If the agency is considering an application for a permit or other federal approval, the agency must still consider all reasonable alternatives. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Agencies are obligated to evaluate all reasonable alternatives or a range of reasonable alternatives in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

<sup>29</sup> Public hearings are run in a formal manner, with a recording or minutes taken of speakers' comments. Public meetings may be held in a variety of formats, and may be much more informal than hearings.

<sup>30</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.13.

<sup>31</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.14.

Agencies must always describe and analyze a "no action alternative." The "no action" alternative is simply what would happen if the agency did not act upon the proposal for agency action. For example, in the case of an application to the U.S. Army Corps of Engineers for a permit to place fill in a particular area, the "no action" alternative is no permit. But in the case of a proposed new management plan for the National Park Service's management of a national park, the "no action" alternative is the continuation of the current management plan.

If an agency has a preferred alternative when it publishes a draft EIS, the draft must identify which alternative the agency prefers. All agencies must identify a preferred alternative in the final EIS, unless another law prohibits it from doing so.<sup>32</sup>

The agency must analyze the full range of direct, indirect, and cumulative effects of the preferred alternative, if any, and of the reasonable alternatives identified in the draft EIS. For purposes of NEPA, "effects" and "impacts" mean the same thing. They include ecological, aesthetic, historic, cultural, economic, social, or health impacts, whether adverse or beneficial.<sup>33</sup> It is important to note that human beings are part of the environment (indeed, that's why Congress used the phrase "human environment" in NEPA), so when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS should discuss all of these effects.<sup>34</sup>

#### CEQ NEPA Regulation Section 1508.8 [40 C.F.R. § 1508.8.]

"Effects" include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

<sup>32</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.14(e).

<sup>33</sup> CEQ NEPA Regulations, 40 C.F.R. §§ 1508.7, 1508.8.

<sup>34</sup> CEQ NEPA Regulations, 40 C.F.R. § 1508.14.

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In addition to the purpose and need, identification of reasonable alternatives, and the environmental effects of the alternatives, the draft EIS will contain a description of the environment that would be affected by the various alternatives.

The EIS will also have a list of who prepared the document and their qualifications,<sup>35</sup> a table of contents, and an index.<sup>36</sup> The agency may choose to include technical information in appendices that are either circulated with the draft or readily available for review.<sup>37</sup>

#### *Final EIS (Number 13 in Figure 1)*

When the public comment period is finished, the agency analyzes comments, conducts further analysis as necessary, and prepares the final EIS. In the final EIS, the agency must respond to the substantive comments received from other government agencies and from you and other members of the public.<sup>38</sup> The response can be in the form of changes in the final EIS, factual corrections, modifications to the analyses or the alternatives, new alternatives considered, or an explanation of why a comment does not require the agency's response.<sup>39</sup> Often the agency will meet with other agencies that may be affected by the proposed action in an effort to resolve an issue or mitigate project effects. A copy or a summary of your substantive comments and the response to them will be included in the final EIS.<sup>40</sup>

When it is ready, the agency will publish the final EIS and EPA will publish a Notice of Availability in the Federal Register. The Notice of Availability marks the start of a waiting period (Number 14 in Figure 1). A minimum of 30 days must pass before the agency can make a decision on their proposed action unless the agency couples the 30 days with a formal internal appeals process.<sup>41</sup> This provides time for the agency decisionmaker to consider the purpose and need, weigh the alternatives, balance their objectives, and make a decision.

There is an additional (but rarely used) procedure worth noting: pre-decision referrals to CEQ.<sup>42</sup> This referral process takes place when

<sup>35</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.17.

<sup>36</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.10.

<sup>37</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.18.

<sup>38</sup> CEQ NEPA Regulations, 40 C.F.R. § 1503.4.

<sup>39</sup> CEQ NEPA Regulations, 40 C.F.R. § 1503.4(a).

<sup>40</sup> CEQ NEPA Regulations, 40 C.F.R. § 1503.4(b).

<sup>41</sup> CEQ NEPA Regulations, 40 C.F.R. § 1506.10. If the end of the 30 day wait period is less than 90 days after the notice of availability of the Draft EIS, was published in the Federal Register, then the decision must await the expiration of the 90 days.

<sup>42</sup> CEQ NEPA Regulations, 40 C.F.R. part 1504.

EPA or another Federal agency determines that proceeding with the proposed action is environmentally unacceptable. If an agency reaches that conclusion, the agency can refer the issue to CEQ within 25 days after the Notice of Availability for the final EIS is issued. CEQ then works to resolve the issue with the agencies concerned. CEQ might also refer the agencies to the U.S. Institute for Environmental Conflict Resolution to try to address the matter before formal elevation.<sup>43</sup> There is no provision for citizens to formally refer an action to CEQ; however, CEQ typically provides an opportunity for public involvement in a referral.

#### *Record of Decision (ROD) (Number 15 in Figure 1)*

The ROD is the final step for agencies in the EIS process. The ROD is a document that states what the decision is; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including any enforcement and monitoring commitments.<sup>44</sup> In the ROD, the agency discusses all the factors, including any considerations of national policy, that were contemplated when it reached its decision on whether to, and if so how to, proceed with the proposed action. The ROD will also discuss if all practical means to avoid or minimize environmental harm have been adopted, and if not, why they were not.<sup>45</sup> The ROD is a publicly available document. Sometimes RODs are published in the Federal Register or on the agency's website, but if you are interested in receiving the ROD you should ask the agency's point of contact for the EIS how to obtain a copy of the ROD.

<sup>43</sup> The U.S. Institute reports disputes it is involved with to CEQ and requests concurrence from CEQ to engage in those disputes involving two or more federal agencies.

<sup>44</sup> CEQ NEPA Regulations, 40 C.F.R. § 1505.2.

<sup>45</sup> CEQ NEPA Regulations, 40 C.F.R. § 1505.2(c).

### Environmental Management Systems (EMS)

Executive Order (EO 13423) and a subsequent memorandum issued from the Office of Management and Budget and CEQ direct all agencies to adopt an Environmental Management System (EMS). "An EMS is a systematic approach to identifying and managing an organization's environmental obligations and issues that can complement many aspects of the NEPA review process." (Boling, E.A. 2005. Environmental Management Systems and NEPA: A Framework for Productive Harmony. The Environmental Law Reporter. 35 ELR 10022. Environmental Law Institute). EMSs are typically used by organizations and agencies to set up the procedures that will help them comply with the specific requirements of environmental laws and regulations, such as air and water permits. EMSs can be particularly useful in NEPA in the context of post-decision monitoring and mitigation. Using the procedures provided by an EMS, agencies can better ensure they are proper implementation of mitigation measures and provide a mechanism for monitoring the actual effects of the mitigation. (CEQ, Aligning National Environmental Policy Act Processes with Environmental Management Systems — A Guide for NEPA and EMS Practitioners (April 2007) available at [www.nepa.gov](http://www.nepa.gov) by clicking on "Aligning NEPA Processes with Environmental Management Systems.")

#### Supplemental EIS (Asterisk in Figure 1)

Sometimes a Federal agency is obligated to prepare a supplement to an existing EIS. An agency must prepare a supplement to either a draft or final EIS if it makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. An agency may also prepare a supplemental EIS if it determines that doing so will further the purposes of NEPA.<sup>46</sup> A supplemental EIS is prepared in the same way as a draft or final EIS, except that scoping is not required. If a supplement is prepared following a draft EIS, the final EIS will address both the draft EIS and supplemental EIS.

<sup>46</sup> CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c).

#### EPA's Review

EPA plays a critical role in other agencies' NEPA processes. EPA is required to review and provide comments on the adequacy of the analysis and the impact to the environment.<sup>47</sup> EPA uses a rating system that summarizes its recommendations to the lead agency (see Appendix C). If EPA determines that the action is environmentally unsatisfactory, it is required by law to refer the matter to CEQ.

The Office of Federal Activities in EPA is the official recipient of all EISs prepared by Federal agencies, and publishes the notices of availability in the Federal Register for all draft, final, and supplemental EISs. The publication of these notices start the official clock for public review and comment periods and wait periods.<sup>48</sup> In addition to the Federal Register, the notices and summaries of the EPA comments are available at <http://www.epa.gov/compliance/nepa/cisdata.html>.

#### When and How to Get Involved

##### It Depends on the Agency

To determine the specific steps in the process where public involvement will be the most effective, it is very important to review the agency's NEPA implementing procedures. As previously mentioned, NEPA processes differ among agencies. For example, the Federal Highway Administration provides a 30 day comment period (with or without a public meeting) on all EAs that they develop before a FONSI is issued while some other agencies have no required comment periods for EAs.<sup>49</sup>

In addition, new legislation can change the way NEPA is implemented in agencies. For example, after the passage of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act", which is transportation legislation that Congress passed in August 2005, the Department of Transportation updated its NEPA processes to implement the new transportation legislation. The Federal Highway Administration and Federal Transit Administration have kept websites up to date and are tracking the evolving guidance at <http://www.environment.fhwa.dot.gov/strmlng/index.asp> by clicking on "SAFETEA-LU."

<sup>47</sup> Clean Air Act, 42 U.S.C. § 7609.

<sup>48</sup> CEQ NEPA Regulations, 40 C.F.R. § 1506.10.

<sup>49</sup> Federal Highway Administration NEPA Regulations, 23 C.F.R. § 771.119 (2005).

**Safe, Accountable, Flexible, Efficient  
Transportation Equity Act:  
A Legacy for Users  
(SAFETEA-LU), Public Law 109-59**

Congress included some modifications to the regular NEPA process for proposed actions that require preparation of EISs in SAFETEA-LU. For example, SAFETEA-LU requires the lead agency to provide an opportunity as early as practicable during the environmental review process for the public to weigh in on both defining the purpose and need for a proposal and determining the range of alternatives to be considered. Congress provided for a process whereby some states could assume responsibilities for all environmental compliance, including NEPA. Congress also established a 180 day statute of limitations for lawsuits challenging agency approvals of projects.

If you are involved or anticipate becoming involved in the NEPA process for a proposed highway or federal mass transit proposal, you should become familiar with the specific requirements of SAFETEA-LU for the NEPA process. One good way to do this is check information on the Federal Highway Administration's website at [www.fhwa.dot.gov/safetealu](http://www.fhwa.dot.gov/safetealu). By clicking on "Cross Reference" you will find both the requirements of the law and FHWA regulations and implementing guidance.

You should also be aware that in the context of highway planning, much work is done at a pre-NEPA stage through statewide, municipal, and rural planning processes. These processes often set the stage for the NEPA process and you should be aware of your opportunities to get involved at that earlier stage. You can learn more about these processes by going to the Federal Highway Administration's website listed above, or by obtaining a copy of "A Citizen's Guide to Transportation Decisionmaking", available at [www.fhwa.dot.gov/planning/citizen/index.htm](http://www.fhwa.dot.gov/planning/citizen/index.htm) or by writing to the Federal Highway Administration at 1200 New Jersey Avenue, S.E., HEPP-20, Washington, D.C. 20590, Attention: Transportation Planning Capacity Building Team; or calling 202 366-0106. Another publication that may be of assistance is "The Metropolitan Transportation Planning Process: Key Issues. A Briefing Notebook for Transportation Decisionmakers, Officials, and Staff." That publication is being updated to reflect the changes in the SAFETEA-LU law, and should be available through the same website and addresses above.

### ***Be Informed of Actions***

Sometimes citizens are generally interested in actions taking place in a particular area (for example, in your community or in an ecosystem or a facility that affects you). If this is the case, you can inform the appropriate agency or agencies that you would like to be notified of any proposed action or any environmental impact analysis that might be prepared in that area. In addition, many agencies now have websites where they post notices for actions they are proposing.

### ***Active Involvement***

Being active in the NEPA process requires you to dedicate your resources to the effort. Environmental impact analyses can be technical and lengthy. Active involvement in the NEPA process requires a commitment of time and a willingness to share information with the decisionmaking agency and other citizens. You may participate as an individual, get involved by working with other interested individuals or organizations, or by working through your local, Tribal, or State government. For example, if an agency is taking an action for which your local, State or Tribal government has special expertise or approval authority, the appropriate State, local or Tribal agency can become a "cooperating agency" with the Federal agency.<sup>50</sup> This formal status does not increase their role in decisionmaking, but it does allow the governments to use their knowledge and authorities to help shape the federal decisionmaking.

Another way to participate is to check with local experts such as biologists or economists at a university to assist with your review of the NEPA analyses and documents. You can also form study groups to review environmental impact analyses and enlist experts to review your comments on the documents. There are many examples, such as the one in the following box, of situations where citizen groups have worked with agencies to develop an alternative to a proposal where the agency adopted that alternative.

<sup>50</sup> CEQ NEPA Regulations, 40 C.F.R. §§ 1501.6, 1508.5.



#### Forest Service Herbicide Use in the Pacific Northwest

In many cases, cooperation isn't the first experience that communities and agencies share with one another. In the case of aerial herbicide spraying by the Forest Service in the 1980's across Washington and Oregon, litigation gave way to collaboration that yielded a better decision for all parties.

At issue was the use of 2,4-D, a herbicide comprising half of the well known Agent Orange, which was being sprayed on large tracts of clear-cut forest in an effort to suppress competition with the replanted conifers from all other plants, including native trees and grasses. In 1984, as a result of a citizen lawsuit, a federal judge ordered the Forest Service to stop herbicide use until the agency addressed the problems associated with its use. The Forest Service decided to draft a new EIS for vegetation management and thereby opened the door for public involvement in their decision.

A coalition of tree planters, scientists, rural residents, and herbicide reform activists volunteered to work with the Forest Service to develop an alternative that didn't rely on herbicides for vegetation management. The group identified several simple alternatives such as planting two-year old trees rather than planting seedlings, because the trees are better able to deal with encroachment. Likewise, letting native red alders grow will actually benefit new conifer growth because the alders fix nitrogen in the soils. Much to the coalition's surprise the forest supervisor selected most of the "least-herbicide" approaches for implementation.

Through NEPA, citizens were able to educate and assist the decision-makers in developing their alternatives. Central to their approach was bringing to the table alternatives that met their goals of reducing herbicide use and the goals of the decision-maker to effectively manage vegetation.

Information taken from "Standing Up for This World" by Mary O'Brien in September/October 2004 issue of *Orion*, pages 56-64.

Your involvement in the NEPA process does not have to be confined to commenting on the analysis. If the agency adopts monitoring and mitigation in the ROD, upon request, it must make available to the public the results of relevant monitoring.<sup>31</sup> It must also, upon request,

<sup>31</sup> CEQ NEPA Regulations, 40 C.F.R. §1505.3(d).

inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.<sup>32</sup> Community groups can also be involved in monitoring.<sup>33</sup>

In summary, there are several opportunities to get involved in the NEPA process:

- ❖ when the agency prepares its NEPA procedures,
- ❖ prior to and during preparation of a NEPA analysis,
- ❖ when a NEPA document is published for public review and comment, and
- ❖ when monitoring the implementation of the proposed action and the effectiveness of any associated mitigation.

#### Other Processes that Require Public Involvement

When a proposed action is part of a permitting process there may also be opportunities to comment provided in the statute or regulations for that permitting process in addition to the NEPA public involvement opportunities discussed above. For example, public involvement is required by most Federal agency land use planning regulations. While this guide does not explore all of those additional possibilities for comment, the NEPA team working on a particular proposal will be familiar with the various comment periods and will be able to inform you of those opportunities. Note that the permitting and NEPA processes should be integrated or run concurrently in order to have an effective and efficient decisionmaking process.

<sup>32</sup> CEQ NEPA Regulations, 40 C.F.R. §1505.3(c).

<sup>33</sup> See [www.malpaisborderlandsgroup.org/science.asp](http://www.malpaisborderlandsgroup.org/science.asp) for discussion of work undertaken by the Science Advisory Committee of the Malpai Borderlands Group in southeastern Arizona and southwestern New Mexico.

### Public Comment Periods

Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.<sup>54</sup> Citizens involved in the process should ensure that they know how agencies will inform the public that an action is proposed and the NEPA process is beginning (via Federal Register, newspapers, direct mailing, etc.); that certain documents are available; and that preliminary determinations have been made on the possible environmental effects of the proposal (e.g., what level of analysis the agency will initially undertake).

Agencies solicit different levels of involvement when they prepare an EA versus an EIS. In preparing an EIS, agencies are likely to have public meetings and are required to have a 45 day comment period after the draft EIS is made available. In the case of an agency preparing an EA, the CEQ regulations require the agency to involve the public to the extent practicable, but each agency has its own guidelines about how to involve the public for EAs. In any case, citizens are entitled to receive "environmental documents", such as EAs, involved in the NEPA process.<sup>55</sup>

In terms of a specific agency, required public comment periods associated with an EA or an EIS can be found in its NEPA implementing procedures. In some cases, the draft EIS that an agency prepares may be extremely long. In such cases, an agency may grant requests to extend the comment period to ensure enough time for the public and other agencies to review and comment.

Citizens who want to raise issues with the agency should do so at the earliest possible stage in the process. Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a timely manner. And the Supreme Court has held in two NEPA cases that if a person or organization expects courts to address an issue, such as evaluating a particular alternative, the issue must have been raised to the agency at a point in the administrative process when it can be meaningfully considered unless the issue involves a flaw in the agency's analysis that is so obvious that there is no need for a commentator to point it out specifically.

<sup>54</sup> CEQ NEPA Regulations, 40 C.F.R. §§ 1501.4(b), 1506.6(b).

<sup>55</sup> CEQ NEPA Regulations, 40 C.F.R. §§ 1506.6, 1508.10.

### How to Comment

Comments may be the most important contribution from citizens. Accordingly, comments should be clear, concise, and relevant to the analysis of the proposed action. Take the time to organize thoughts and edit the document submitted.<sup>56</sup> As a general rule, the tone of the comments should be polite and respectful. Those reviewing comments are public servants tasked with a job, and they deserve the same respect and professional treatment that you and other citizens expect in return. Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Comments that contribute to developing alternatives that address the purpose and need for the action are also effective. They are particularly helpful early in the NEPA process and should be made, if at all possible, during scoping, to ensure that reasonable alternatives can be analyzed and considered early in the process.

In drafting comments, try to focus on the purpose and need of the proposed action, the proposed alternatives, the assessment of the environmental impacts of those alternatives, and the proposed mitigation. It also helps to be aware of what other types of issues the decisionmaker is considering in relationship to the proposed action.

Commenting is not a form of "voting" on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward. Numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively. In addition, general comments that state an action will have "significant environmental effects" will not help an agency make a better decision unless the relevant causes and environmental effects are explained.

Finally, remember that decisionmakers also receive other information and data such as operational and technical information related to implementing an action that they will have to consider when making a final decision.

<sup>56</sup> There are many reference books for how to research issues, review documents, and write comments. One in particular is "The Art of Commenting" by Elizabeth Mullin from the Environmental Law Institute (Mullin, Elizabeth D. 2006. *The Art of Commenting: How to Influence Environmental Decisionmaking with Effective Comments*. Environmental Law Institute, Washington, DC). Another useful reference for those involved in commenting on transportation projects is the American Association of State Highway and Transportation Officials' (AASHTO) Practitioner's Handbook 05-Utilizing Community Advisory Committees for NEPA Studies, December, 2006; available at <http://environment.irsportation.org> or available through AASHTO's Center for Environmental Excellence by calling (202) 624-3635.

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## What If Involvement Isn't Going Well?

For the purposes of this discussion, "not going well" means that you or your organization believes that the lead agency isn't giving the public sufficient opportunity to get involved or isn't using that involvement effectively. Perhaps you think that the agency should hold a public meeting, and it refuses to do so. Or you or your community or group has developed an alternative that you think meets the purpose and need of the proposed action and reflects the policies set forth in NEPA, but the agency says it won't analyze it in the NEPA document. Maybe you want an extension of the comment period because the document is very lengthy, and you simply need more time to review it. Or maybe you feel that communications between your organization and the lead agency have, for some reason, not been constructive.

The most appropriate steps to take if you find yourself in these kinds of situations always depend, of course, on the particular people, timing and proposal at hand. Nonetheless, here are some possible factors and courses of action to consider.

### *Don't Wait Too Long*

First, don't wait too long to raise your concerns; raise them as soon as practicable. If you just sit back and hope that things will get "better" or that your comments will have greater effect later, you may hear that "you should have raised this sooner." At times, waiting can be detrimental to you as well as to the rest of the public and the agency involved. For example, if you feel strongly that a particular alternative should be addressed and do not raise it during the scoping process, then it will not get the benefit of comparative analysis with the other alternatives. In addition, it could result in a more expensive and lengthy process (costing taxpayers, including yourself, more) if your delayed suggestion results in the agency deciding to issue a supplemental EIS analyzing that alternative. Or if you, or your organization, later go to court to argue that a certain alternative should have been analyzed in the NEPA document, the judge may find that the court won't consider that information because you should have raised your concern earlier during the NEPA process.

### *Contact the Agency*

Your first line of recourse should be with the individual that the agency has identified as being in charge of this particular process.

See if you can sit down with him or her to discuss your concern(s). You may be pleasantly surprised at the response.

### *Other Assistance*

If, for some reason, you believe that the process ahead may be particularly contentious or challenging, given a past history of community conflict or deeply divided interests, consider raising with the lead agency the possibility of designing a collaborative process with outside assistance.

One source of such assistance is the U.S. Institute for Environmental Conflict Resolution. Located in Tucson, Arizona, as part of the Morris K. Udall Foundation, the Institute is a Federal entity that offers neutral environmental conflict resolution design, facilitation, education, training, and mediation. Anyone, whether in or out of government, can call the Institute and ask to speak to a professional staff person to discuss the potential for the Institute's involvement in a proposed federal action. You might want to look at its website at [www.ecr.gov](http://www.ecr.gov) or contact the Institute to get a better sense of who they are and what they do.<sup>37</sup> There may also be an environmental conflict resolution office in your state that can provide assistance, and there are also many other individuals and organizations in the private sector that provide various types of conflict resolution services. The U.S. Institute also maintains a publicly accessible roster of environmental mediators and facilitators (available at [www.ecr.gov](http://www.ecr.gov) by clicking on "Resources").

### *NEPA's Requirements*

Perhaps your concern involves understanding a legal requirement. There are, of course, many ways to obtain the advice of lawyers knowledgeable about the NEPA process: the lead agency, private attorneys, and public interest attorneys. Build your own understanding by reading information on the NEPA net website at <http://www.NEPA.gov>. You may also call the General Counsel's office or the Associate Director for NEPA Oversight at the Council on Environmental Quality for assistance in interpreting NEPA's legal requirements or for advice and assistance if you have tried to work with the lead agency but feel those efforts have been unsuccessful (see Appendix D for contact information).

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<sup>37</sup> The Institute can be contacted via mailing address: U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Ave. Tucson, AZ 85701; phone: (520) 901-4501; or electronic mail: [usiec@ecr.gov](mailto:usiec@ecr.gov). You might also be interested in reviewing the April 2005 report of the National Environmental Conflict Resolution Advisory Committee that discusses the linkages between NEPA's policies and environmental conflict resolution and is available at <http://www.ecr.gov> by clicking on "Resources" and "NEPA and ECR".

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### Remedies Available

Finally, of course, there are both administrative and judicial remedies available. A few Federal agencies, such as the Bureau of Land Management and the Forest Service, have an administrative appeals process. Each process is specific to that agency. If an appeal is available, you may find it beneficial to invoke it to try to resolve your concerns with the agency's decisions without the need for a legal challenge. Moreover, a statute or agency regulation may require you to exhaust such an appeal procedure before seeking judicial review. Citizens who believe that a Federal agency's actions violate NEPA may seek judicial review (after any required administrative appeals) in Federal court under the Administration Procedures Act. If you are represented by a lawyer, you should consult with him or her about appropriate options and about communicating with the Federal agencies.

### Final Thoughts

This guide was developed to explain the National Environmental Policy Act (NEPA), how it is implemented, and how people outside the Federal government — individual citizens, private sector applicants, members of organized groups, or representatives of Tribal, State, or local government agencies — can better participate in the assessment of environmental impacts conducted by Federal agencies. To learn more about CEQ and NEPA, visit our web sites at <http://www.whitehouse.gov/ceq> and <http://www.nepa.gov> or contact the CEQ Associate Director for NEPA Oversight at (202) 395-5750. Your thoughts and comments on improving this Guide for future editions are always welcome and can be addressed to:

CEQ NEPA Citizens Guide  
722 Jackson Place, NW  
Washington, DC 20503

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## Appendix A

### NEPAnet and How to Use It

NEPAnet  
<http://www.NEPA.gov>

NEPAnet is the Council on Environmental Quality's NEPA website which is supported by the Department of Energy. It contains a wealth of information related to NEPA as it has developed over the years in agencies and through the courts. Guidance as well as studies and reports from CEQ can be accessed from the site; and information on NEPA training can also be found.

Under the "National Environmental Policy Act (NEPA)" section there are several useful links including:

- ❖ The NEPA Statute
- ❖ Executive Orders
- ❖ CEQ Regulations for Implementing NEPA
- ❖ Individual Federal Agency Procedures for Implementing NEPA\*
- ❖ CEQ Guidance; topics include:
  - Environmental Conflict Resolution
  - Emergency Actions
  - Cumulative Effects Analysis
  - Cooperating Agencies

\* The agency implementing procedures can be accessed here and are mentioned throughout the Citizen's Guide as an important part of the process.

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- Purpose and Need
  - Forest Health Projects
  - Environmental Justice
  - Transboundary Impacts
  - Pollution Prevention
  - Scoping
  - Forty Most Asked Questions Concerning CEQ's NEPA Regulations
  - Wetlands
  - Prime Agricultural Land
  - Wild and Scenic Rivers
  - ❖ Federal Agency NEPA Web Sites
  - ❖ Federal NEPA Contacts
  - ❖ State Information
  - ❖ Tribal Information

The other sections provide information about:

- ❖ CEQ NEPA Studies
- ❖ CEQ NEPA Reports
- ❖ Environmental Impact Statements
- ❖ Environmental Impact Analysis
- ❖ Environmental Impact Assessment Professional Organizations
- ❖ International Environmental Impact Assessments
- ❖ NEPA Litigation
- ❖ NEPA Case law
- ❖ NEPA Training Information

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## Appendix B

### The Federal Register and How to Use It

<http://www.gpoaccess.gov/fr/index.html>

The Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. It is updated daily by 6 a.m. and is published Monday through Friday, except Federal holidays.

This is where you'll find notices from Federal agencies regarding their NEPA actions. Information on the availability of documents, schedule of meetings, and notices of intent to prepare EISs are also published in the Federal Register. In addition, EPA publishes a list of EISs that they have received from agencies each week, and a summary of ratings on EISs that they have reviewed.

The easiest way to pull up notices is to have as much information as possible. Key words such as the name of the agency, location of the action, date or date ranges of the publication are all helpful in the search.

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## Appendix C

### EPA's EIS Rating System

**EPA's Environmental Impact Statement Rating System Criteria**  
<http://www.epa.gov/compliance/nepa/comments/ratings.html>

This website includes information about EISs that have been filed with EPA, EISs that are available for public comment, and information about EPA's review and rating of individual EISs.

EPA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft EIS.

- ❖ Rating the Environmental Impact of the Action
- ❖ Rating the Adequacy of the Draft Environmental Impact Statement (EIS)

#### Rating The Environmental Impact of The Action

- ❖ **LO (Lack of Objections):** The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.
- ❖ **EC (Environmental Concerns):** The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.

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❖ **EO (Environmental Objections):** The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for environmental Objections can include situations:

1. Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;
2. Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;
3. Where there is a violation of an EPA policy declaration;
4. Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives; or
5. Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.

❖ **EU (Environmentally Unsatisfactory):** The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:

1. The potential violation of or inconsistency with a national environmental standard is substantive and / or will occur on a long-term basis;
2. There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or

3. The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.

#### Rating The Adequacy of The Draft Environmental Impact Statement (EIS)

❖ **1 (Adequate):** The draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

❖ **2 (Insufficient Information):** The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the final EIS.

❖ **3 (Inadequate):** The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and / or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

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## Appendix D

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### Agency NEPA Contacts

<http://www.NEPA.gov>  
<http://ceq.eh.doe.gov/nepa/contacts.cfm>

The list of Federal NEPA Contacts is maintained on NEPA.net (<http://www.NEPA.gov>) under the heading "National Environmental Policy Act (NEPA)" and is periodically updated.

The complete list is available via the link entitled "Federal NEPA Contacts" or available directly at <http://ceq.eh.doe.gov/nepa/contacts.cfm>. If you do not have computer access, call CEQ at (202) 395-5750 for assistance.

The CEQ NEPA Contacts are:

Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503  
Phone: 202-395-5750  
Fax: 202-456-6546

Mr. Horst Greczmiel, Associate Director for NEPA Oversight  
Ms. Dinah Bear, General Counsel  
Mr. Edward (Ted) Boling, Deputy General Counsel



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## Appendix E

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**Some Useful Definitions from the  
Council on Environmental Quality  
NEPA Implementing Regulations**

Excerpts from 40 CFR part 1508  
[http://ceq.eh.doe.gov/nepa/regs/ceq/toc\\_ceq.htm](http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm)

**Section 1508.4 Categorical exclusion.**

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

**Section 1508.5 Cooperating agency.**

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

**Section 1508.7 Cumulative impact.**

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past,

present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

**Section 1508.8 Effects.**

"Effects" include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

**Section 1508.9 Environmental assessment.**

"Environmental assessment":

- (a) Means a concise public document for which a Federal agency is responsible that serves to:
  1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
  2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
  3. Facilitate preparation of a statement when one is necessary.

- (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

**Section 1508.11 Environmental impact statement.**

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

**Section 1508.12 Federal agency.**

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian Tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

**Section 1508.13 Finding of no significant impact.**

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

**Section 1508.14 Human environment.**

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

**Section 1508.16 Lead agency.**

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

**Section 1508.18 Major federal action.**

"Major federal action" includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

**Section 1508.20 Mitigation.**

"Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

**Section 1508.22 Notice of intent.**

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

- (a) Describe the proposed action and possible alternatives.
- (b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
- (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

**Section 1508.23 Proposal.**

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

**Section 1508.25 Scope.**

"Scope" consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

- (a) Actions (other than unconnected single actions) which may be:
  - (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
    - (i) Automatically trigger other actions which may require environmental impact statements.
    - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
    - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
  - (2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
  - (3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may

wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

- (1) No action alternative.
- (2) Other reasonable courses of actions.
- (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

**Section 1508.27 Significantly.**

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
- (2) The degree to which the proposed action affects public health or safety.
- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park

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lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

- (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

#### Section 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the

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general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

- (a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

Charlie

Attorney. Air Enforcement Division  
permit challenge. <sup>Public</sup>  
Clean Air Act. 2010.

Clean UP. Power plants.

Citizen Suits. Enforcement Cases

1. internal / external. blame on me.  
employment

2. Clean Air Act.

features in Clean Air Act.

defender - key ring - apartment

EPA experts. Accounting & resources for them.

external. Impractical realities

external. Impractical realities

60-day notice.

settlement. with the state.

sweet heart deal - overfile

want more. remedy clean Air

citizen groups make up for pollution

estimate. (injury - affected) illness

(connection)

What do you usually do after receiving a notice letter?

send. civil penalties

injunction

enforcement similar.

1. talk about the features of the <sup>citizen suit</sup> provision in Clean Air Act

fewer than 10 ↓

tiny cases major cases  
financial support

2. Do you actually go to the court?

ask attorney general.

old power-plant. grandfather clause

trial. appeal board.

304. 7604. 60-day

[can we talk about this?]

they don't have money

so go through the

whole procedures.

citizens want.

[standing]. file them

(agreement). take them. wonderful trail.

Do

civil compensation  
clean up the  
tips fund

Civil enforcement  
Criminal monitoring and follow up are EIA weaknesses

4.5 for 飲料 Mitigation Plans / monitoring plans.

All elements access to monitoring results

local / state attorney general budget.

financial assure EIA

Interdisciplinary Federal Decision Making

NEPA Limitations

1.1 Do not apply to all federal actions

1.2 Relies heavily upon other environmental laws, standards.

1.3 procedural not substa

1.4 no penalty or enforcement provision

Significant Context

Intensity = In light of

the role of sciences legally binding

Social sciences

natural / (OECA)

environmental crimes

medium. region office high court. NEIC programs - sub-offices

re - criminal - investigator FBI - civil? Inter-Pol

200 passed state attorney

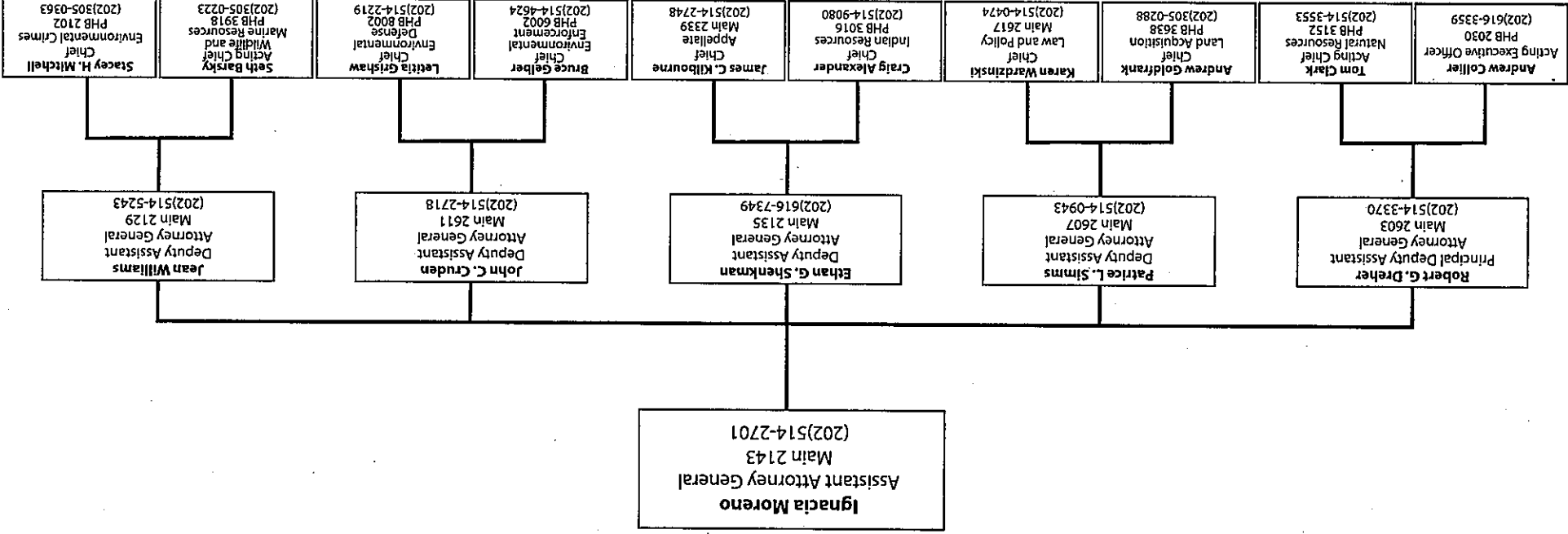
personal manage people

Reason office.

sentencing rules for environmental crime



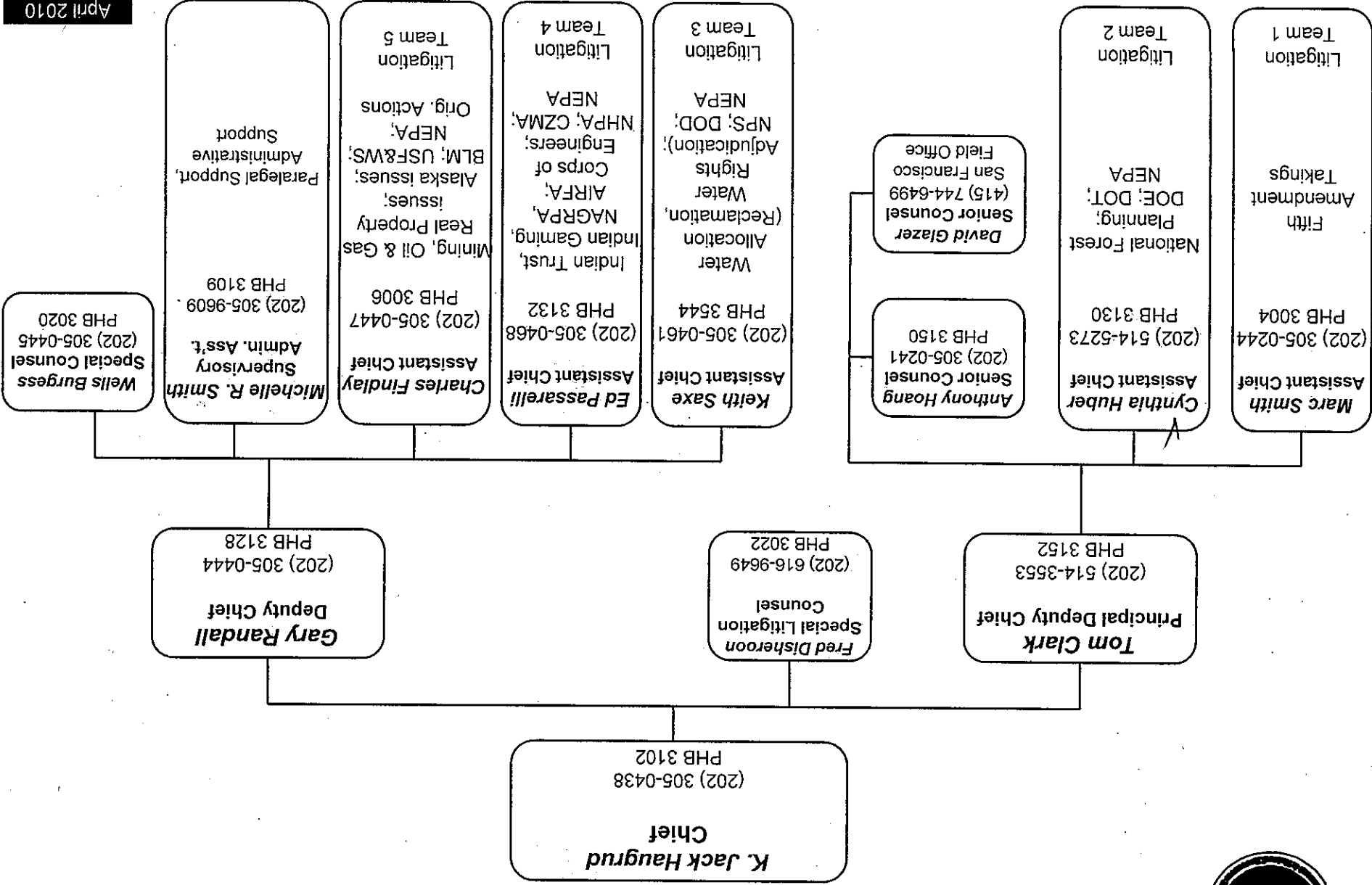
**U.S. DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATURAL RESOURCES DIVISION**



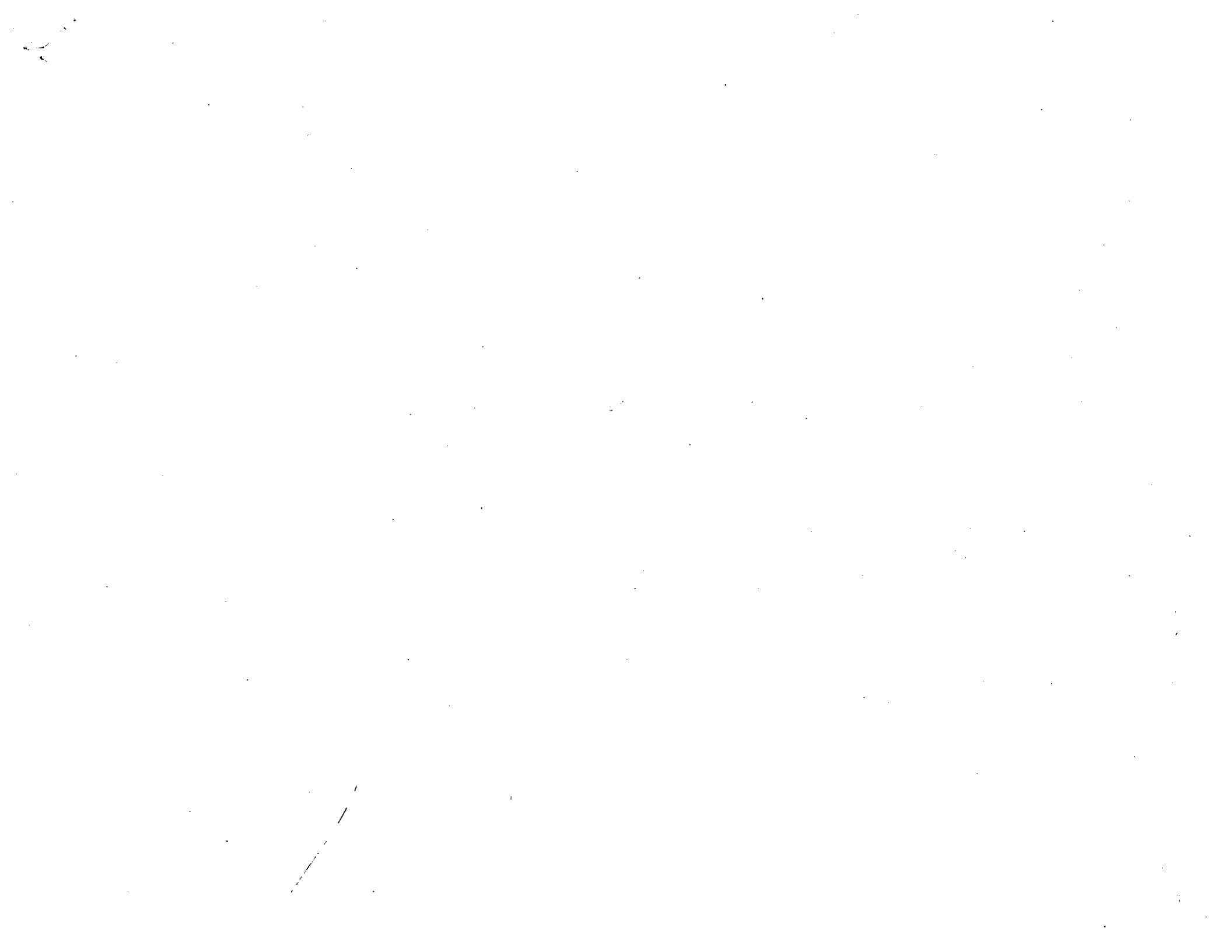
November 8, 2010

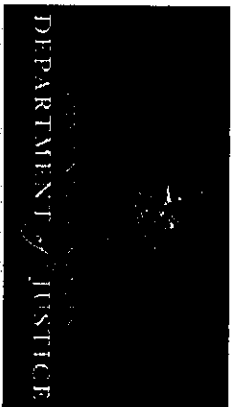


# NATURAL RESOURCES SECTION MANAGEMENT ORGANIZATION CHART



April 2010





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Environment & Natural Resources Division

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The Environment and Natural Resources Division of the Department of Justice handles environmental and natural resources litigation on behalf of the United States. The work of the Division arises under approximately 150 federal civil and criminal statutes, including the Clean Air Act, Clean Water Act, CERCLA (Superfund), Safe Drinking Water Act, Endangered Species Act, Marine Mammal Protection Act, National Environmental Policy Act, Surface Mining Control and Reclamation Act, and Truckee Act.

The Division's mission is to enforce the Nation's environmental laws to ensure clean air, water and land for all Americans; prosecute criminal cases under federal pollution and wildlife laws; defend environmental and natural resources laws and federal agency programs and actions; litigate cases under statutes providing for the management of public lands and natural and cultural resources; litigate cases to protect the rights of Indians under treaties, acts of Congress, and Executive Orders, and defend the United States in claims brought by Indians; prosecute eminent domain proceedings to acquire land on behalf of the United States for authorized public purposes; conduct the Division's appellate litigation in federal circuit courts of appeals and state appellate tribunals, and assist the Office of the Solicitor General with appeals to the United States Supreme Court; and advise the Attorney General, Congress, the Office of Management and Budget, and the White House on matters of environmental and natural resources law.

Last Updated: November 2010

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Environment & Natural Resources Division

ENVIRONMENTAL CHALLENGES TO FEDERAL PROGRAMS AND ACTIVITIES

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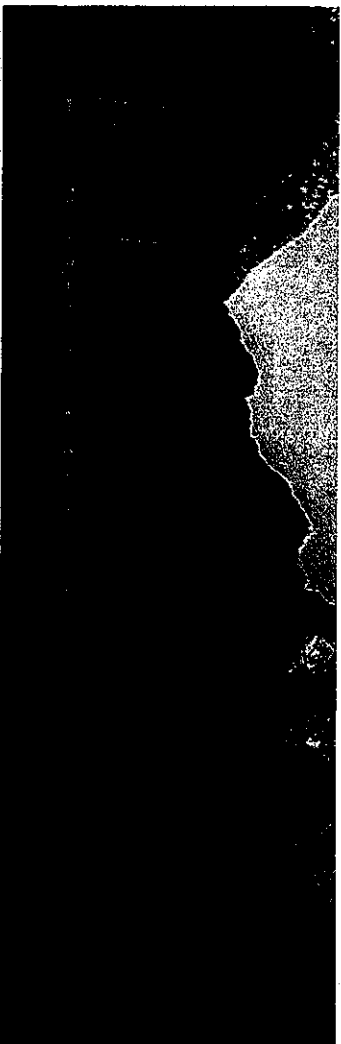
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The Division's cases frequently involve allegations that a federal program or action violates Constitutional provisions or environmental statutes. Examples include regulatory takings cases, in which the plaintiff claims he or she has been deprived of property without just compensation by a federal program or activity, or suits alleging that a federal agency has failed to comply with the National Environmental Policy Act (NEPA) by, for instance, failing to issue an environmental impact statement.

Both takings and NEPA cases can affect vital federal programs such as the Nation's defense capabilities (including military preparedness exercises, weapons programs, and military research), the NASA space program, recombinant DNA research, and beneficial recreational opportunities such as the rails-to-trails program. These cases also involve challenges to regulations promulgated to implement the Nation's anti-pollution statutes, such as the Clean Air Act and the Clean Water Act, or activities at federal facilities that are claimed to violate such statutes.

The Division's main clients in this area include the Department of Defense and the United States Environmental Protection Agency. Sharing responsibility for handling these cases are the:

- Natural Resources Section
- Environmental Defense Section

Last Updated: October 2010

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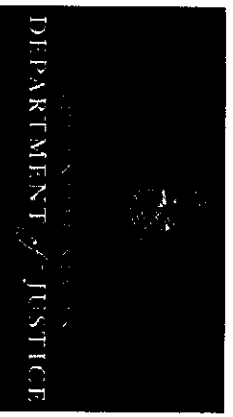
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Environment & Natural Resources Division

NEPA AND OTHER OVERARCHING STATUTES

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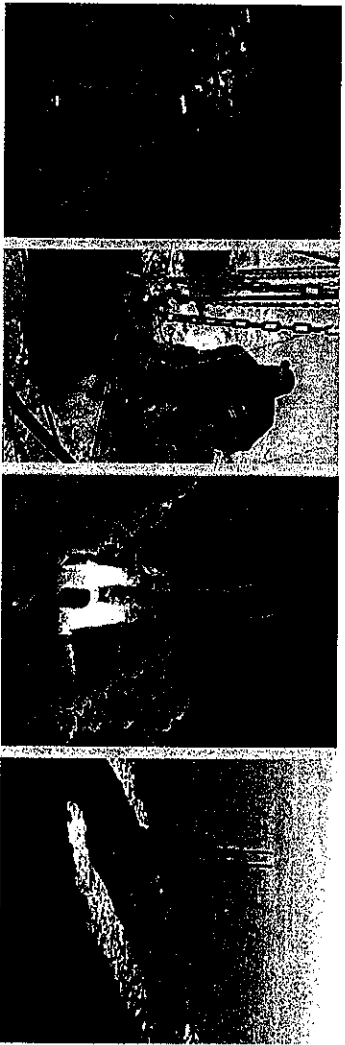
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Of all the statutes which NRS addresses, the National Environmental Policy Act (NEPA) gives rise to the greatest variety of litigation. NEPA, enacted in 1970, requires every federal agency to examine the environmental impacts of proposed major federal actions and to consider reasonable alternatives and cumulative impacts, sharing its analysis with the public for comment, before deciding on action. Because the substantive statute pursuant to which the agency is undertaking the action may provide broad discretionary protection to agency decision making, NEPA's "procedural" requirements are often the principal, and in some cases the only available tool for dissatisfied citizens to challenge agency action in the courts.

NRS's NEPA litigation clients include virtually all federal agencies, and an astonishing variety of programs and projects. NRS has litigated NEPA cases concerning such diverse topics such as:

- federal funding of highway projects,
- Army, Navy and Air Force training exercises,
- management decisions in National Parks and National Forests,
- Space Shuttle launches,
- nuclear weapons disposal,
- Antarctic research,
- IRS regulations,
- whale hunting, and
- the transshipment of radioactive waste through the Panama Canal.

NRS litigation has charted the development of NEPA case law over the past four decades. Its lawyers are recognized experts in the field, and are sought after for teaching and lecturing inside and outside the Government.

NRS also handles litigation arising from other statutes that impose pre-decisional consultative and analytical requirements on federal agencies, including the National Historic Preservation Act, the Coastal Zone Management Act, the Archaeological Resources Protection Act, and Section 4(f) of the Department of Transportation Act.

Last Updated: September 2010

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# Alphabet Soup... Client agencies

★

• BLM

• FS

• DOT

Department of Transportation

• DOE

• DOD

• ACOE

• FWS

• NMFS

pick their projects.

DOI - NEPA - get sued

policy makers. public

non commercial

in-house

risk.

not well written  
federal agencies  
analysis.

three day court

the draft document (not lawyers)

DOJ. problems.

work on policies

expand

問題 =

1. 訴訟

2. 立法

legislation.

FHWA

APHIS

RUS

MARAD

BOR

MMS

OSM

EPA

building the  
relationships

litigation

Calendar Year 2008 Filed EISS

Total - 543

<b>Department of Agriculture</b>	0
Agriculture Research Service	0
Animal & Plant Health Inspection Service	2
Farm Service Agency	1
Forest Service	124
Natural Resource Conservation Service	1
Rural Utilities Service	0
<b>Subtotal</b>	<b>128</b>

<b>Department of Commerce</b>	0
National Oceanic & Atmospheric Admin.	36
Economic Development Administration	0
<b>Subtotal</b>	<b>36</b>

<b>Department of Defense</b>	0
Defense Base Closure & Realignment Commission	0
Defense Logistics Agency	0
U.S. Air Force	6
U.S. Army	7
U.S. Army Corps of Engineers	42
U.S. Marine Corp	0
U.S. Navy	24
<b>Subtotal</b>	<b>79</b>

<b>Department of Energy</b>	8
Bonneville Power Administration	3
Federal Energy Regulatory Commission	19
National Nuclear Security Administration	4
Western Area Power Administration	2
<b>Subtotal</b>	<b>36</b>

<b>Department of Health &amp; Human Services</b>	0
Food & Drug Administration	0
National Institute of Health	1
<b>Subtotal</b>	<b>1</b>

<b>Department of Homeland Security</b>	2
Customs and Border Protection	0
Federal Emergency Management Agency	0
U.S. Coast Guard	6
<b>Subtotal</b>	<b>8</b>

<b>Department of Housing &amp; Urban Development</b>	0
HUD Assumable Programs	0
Federal Housing Administration	0
<b>Subtotal</b>	<b>0</b>

<b>Department of the Interior</b>	2
Bureau of Indian Affairs	11
Bureau of Land Management	48
Bureau of Reclamation	16
Fish and Wildlife Service	13
Geological Survey	0
Indian Health Service	0
Minerals Management Service	4
National Park Service	25
Office of Surfacing Mining	2
<b>Subtotal</b>	<b>121</b>

<b>Department of Justice</b>	1
Bureau of Prisons	1
Drug Enforcement Administration	0
<b>Subtotal</b>	<b>2</b>

<b>Department of Labor</b>	0
Mine Safety & Health Administration	0
<b>Subtotal</b>	<b>0</b>

<b>Department of State</b>	2
International Boundary & Water Com.	1
<b>Subtotal</b>	<b>3</b>

<b>Department of Transportation</b>	0
Federal Aviation Administration	10
Federal Highway Administration	64
Federal Motor Carrier Safety Admin.	0
Federal Railroad Administration	3
Federal Transit Administration	21
Maritime Administration	0
National Highway Traffic Safety Admin.	2
Surface Transportation Board	4
<b>Subtotal</b>	<b>104</b>

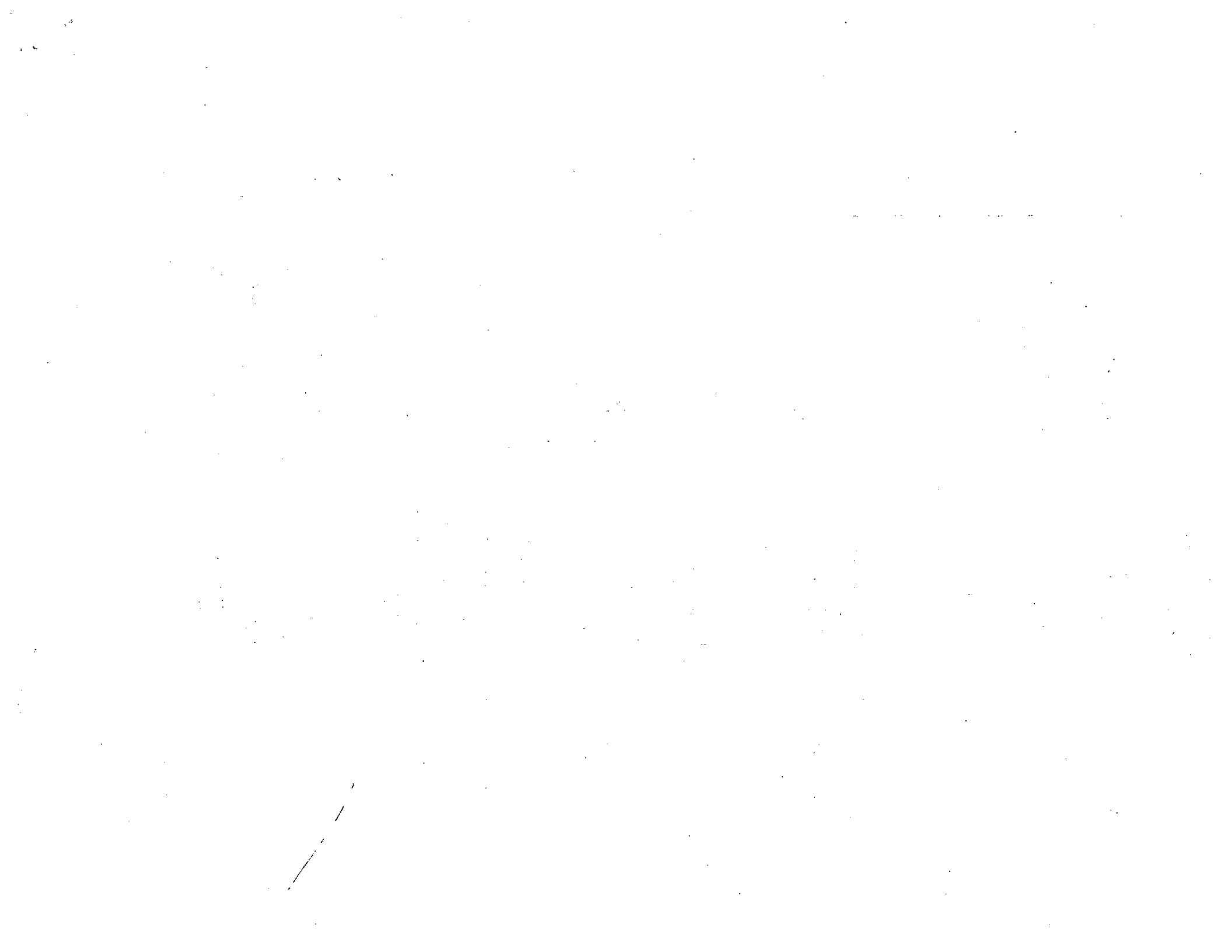
<b>Department of Treasury</b>	0
<b>Subtotal</b>	<b>0</b>



Department of Veteran Affairs	0
Subtotal	0

<b>Independent Agency</b>	0
Advisory Council on Historic Preservation	0
Agency for International Development	0
Delaware River Basin Commission	0
Environmental Protection Agency	1
Federal Communication Commission	0
Federal Mine Safety & Health Review Commission	0
General Services Administration	2
National Aeronautics & Space Administration	1
National Capital Planning Commission	1
National Science Foundation	1
National Transportation Safety Board	0
Nuclear Regulatory Commission	14
Susquehanna River Basin Commission	0
Tennessee Valley Authority	2
The Presidio Trust	1
U.S. Postal Service	2
<b>Subtotal</b>	<b>25</b>

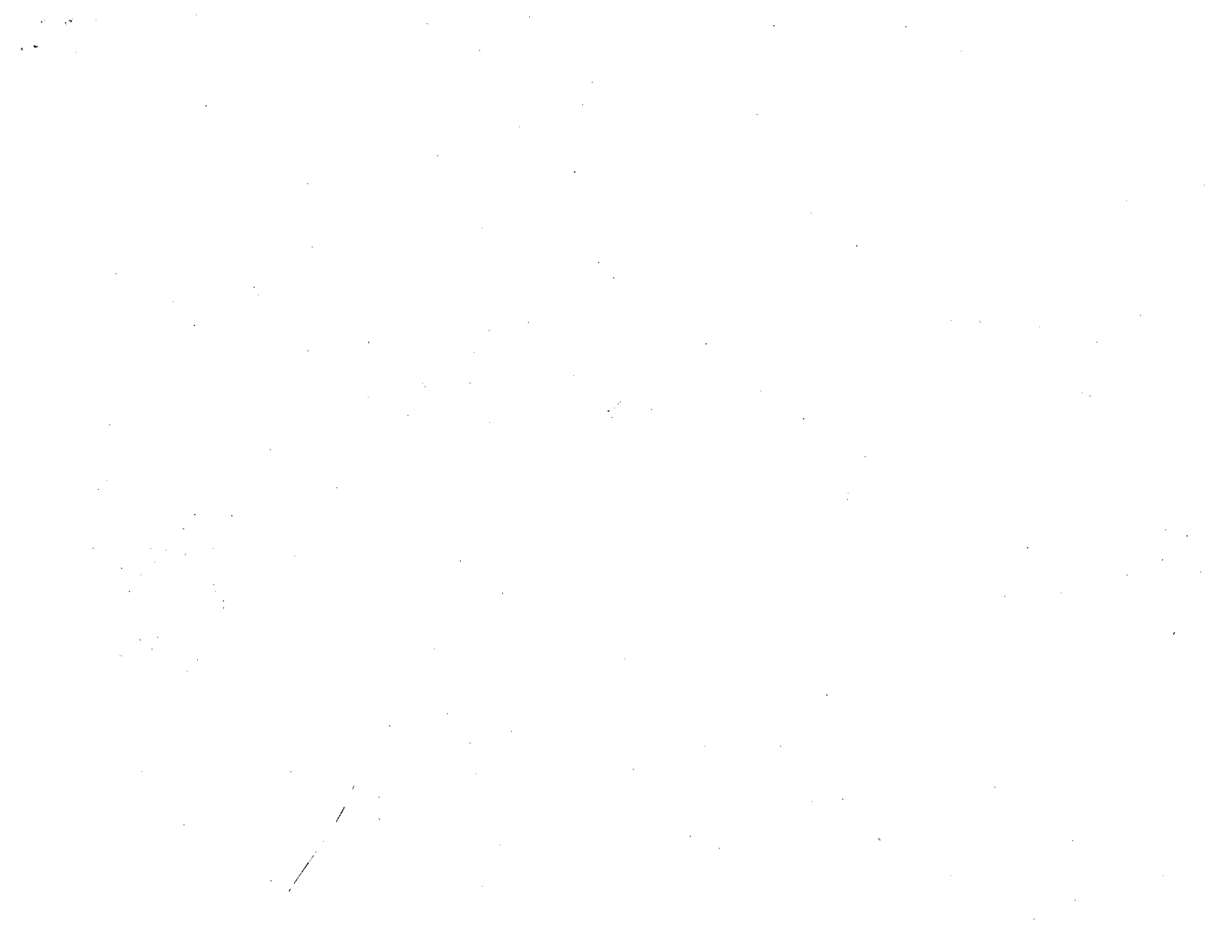
Total	543
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Calendar Year 2007 Filed EISs  
Total 557

Department of Agriculture	0
Agriculture Research Service	0
Animal & Plant Health Inspection Service	4
Farm Service Agency	0
Forest Service	139
Natural Resource Conservation Service	2
Rural Utilities Service	3
Subtotal	148
Department of Commerce	0
National Oceanic & Atmospheric Adm.	23
Economic Development Administration	0
Subtotal	23
Department of Defense	1
Defense Base Closure & Realignment Commission	0
Defense Logistics Agency	0
National Guard Bureau	2
U.S. Air Force	3
U.S. Army	20
U.S. Army Corps of Engineers	40
U.S. Marine Corp	0
U.S. Navy	8
Subtotal	74
Department of Energy	12
Bonneville Power Administration	4
Federal Energy Regulatory Commission	32
National Nuclear Security Administration	0
Western Area Power Administration	5
Subtotal	53
Department of Health & Human Services	0
Food & Drug Administration	0
National Institute of Health	0
Subtotal	0
Department of Homeland Security	2
Customs and Border Protection	0
Federal Emergency Management Agency	0
U.S. Coast Guard	3
Subtotal	5

Department of Housing & Urban Development	3
HUD Assumable Programs	0
Federal Housing Administration	0
Community Development Block Grant	2
Subtotal	5
Department of the Interior	0
Bureau of Indian Affairs	0
Bureau of Land Management	2
Bureau of Reclamation	52
Bureau of Reclamation	13
Fish and Wildlife Service	16
Geological Survey	0
Indian Health Service	0
Minerals Management Service	7
National Park Service	26
Office of Surface Mining	1
Subtotal	117
Department of Justice	2
Bureau of Prisons	1
Drug Enforcement Administration	0
Subtotal	3
Department of Labor	0
Mine Safety & Health Administration	0
Subtotal	0
Department of State	1
International Boundary & Water Com.	3
Subtotal	4
Department of Transportation	0
Federal Aviation Administration	6
Federal Highway Administration	79
Federal Motor Center Safety Admin.	0
Federal Railroad Administration	2
Federal Transit Administration	9
Maritime Administration	0
National Highway Traffic Safety Admin.	0
Surface Transportation Board	1
Subtotal	97



NEPA Cases (in 2006)		
Case/Defendant	Case Filed	Multi-Party (in 2006)
FERC	2	0
Navy	1	0
NRC	3	1
DOI - BLM	21	14
- FWS	6	3
- BURE	0	1
- NPS	0	3
- BLM/CO	1	0
- MMS	0	0
- OSM	0	0
USDA - FS	30	33
- APHS	2	1
DOC - NOAA	4	4
Army - COE	28	7
Army	0	2
DOT - FHWA	7	1
- FTA	1	0
- FAA	3	0
- MARAD	0	0
- SLSC	0	0
DOE	0	1
EPA	2	0
HUD	0	0
Air Force	0	1
DVA	0	0
NSE	0	0
FOC	0	0
GSA	0	0
FDA	0	0
<b>Total</b>	<b>109</b>	<b>72</b>

2006 NEPA Case Dispositions	
	Gov't Agency
Judgment for defendant	84
Adverse dispositions	120
TRO	1
Preliminary injunction	8
Permanent injunction	16
Remand	48
Dismissal w/ settlement	13
Dismissal w/o settlement	34
Case pending NEPA	195

Basis for NEPA Dispositions	
	Gov't Agency
Jurisdictional - P prevailed	13
Jurisdictional - D prevailed	14
NEPA - Not required	4
NEPA - Is required	0
OE - Adequate	9
OE - Not Adequate	4
EA - Adequate	27
EA - Not Adequate	23
EIS - Adequate	29
EIS - Not Adequate	26
SEIS - Needed	14
SEIS - Not Needed	4
<b>Total</b>	<b>195</b>

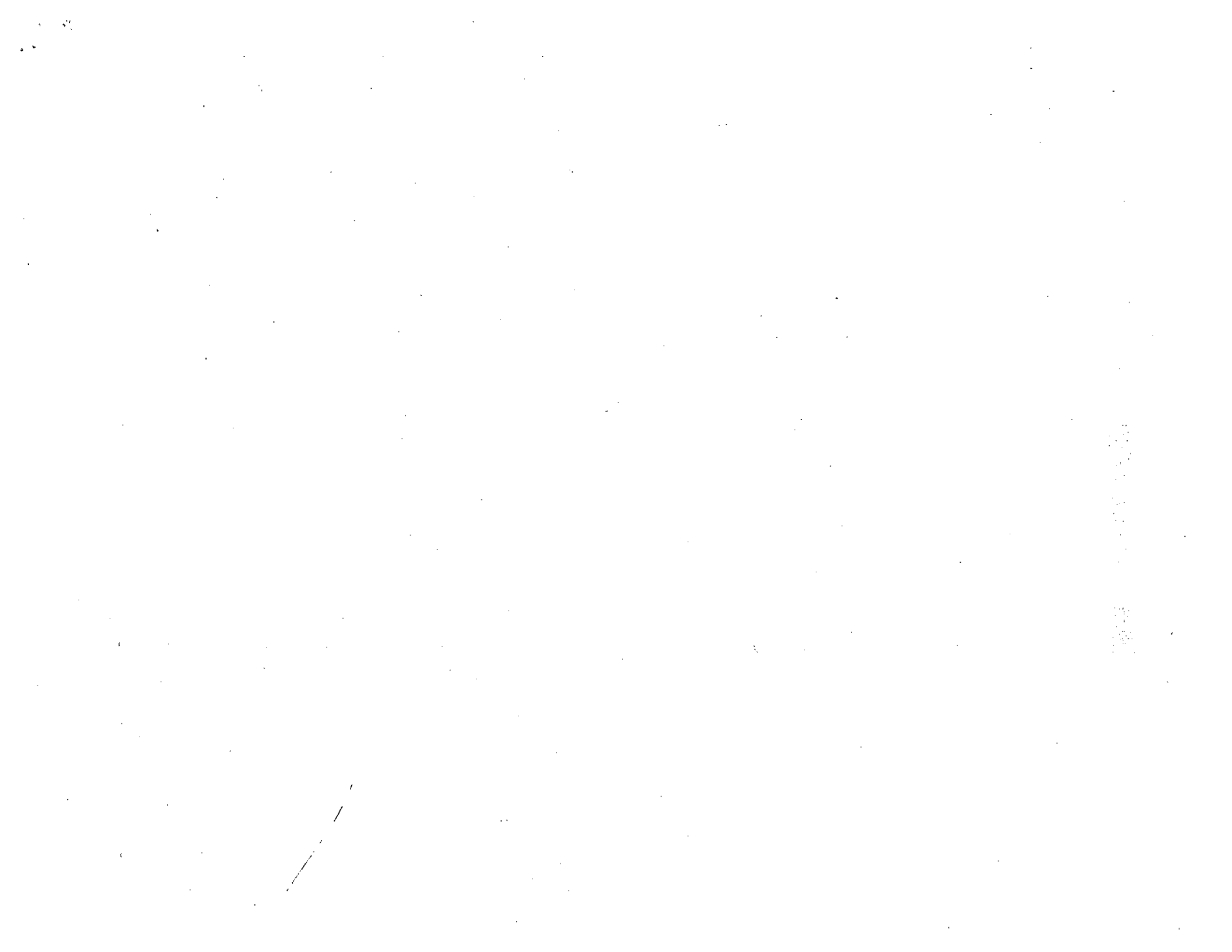
EAF/ONSI Adequacy	
adequate	27
incomplete, essential info	14
inadequate indirect effects	3
inadequate cumulative effects	4
alternatives not considered	2

Plaintiffs	
Public interest groups	62
Individual/citizen assoc.	22
State government	5
Local government	2
Business groups	3
Property owners/residents	2

EIS Adequacy	
adequate	29
incomplete, essential info	13
inadequate indirect effects	6
inadequate cumulative effects	2
alternatives, no action	0
alt. excluded/range	4
other	1

SEIS	
adequate	2
need to prepare - new effects info	8
need to prepare - change in action	6
no need to prepare	4

Indian tribes	2
Multiple plaintiffs	10
<b>Total</b>	<b>108</b>



Agency	2008 NEPA Case Dispositions	2007 NEPA Case Dispositions	2006 NEPA Case Dispositions
FERC	3	0	0
Navy	1	3	0
NRC	3	0	0
DOI - BLM	14	3	0
- FWS	6	0	0
- BurRec	1	0	0
- NPS	6	1	0
- BIA/NIGC	3	0	0
- MMS	0	2	0
- OSM	1	0	0
USDA - FS	46	13	5
- APHIS	3	8	0
DOC - NOAA	8	15	5
Army - COE	15	2	0
Army	2	9	1
DOT - FHWA	9	1	0
- FTA	1	0	0
- FAA	0	0	0
DOE	6	0	0
EPA	1	0	0
HUD	1	0	0
Air Force	0	0	0
TVA	1	1	1
FCC	0	1	0
GSA	0	0	0
EX-Im Bank (OPIC)	0	0	0
USFS	0	0	0
HHS/FDA	0	0	0
- NIH	0	0	0
VA	Pending	Pending	Pending
DHS - GBP	Pending	Pending	Pending
- CG	Pending	Pending	Pending
<b>Total</b>	<b>132</b>	<b>35</b>	<b>35</b>

Agency	2008 NEPA Case Dispositions	2007 NEPA Case Dispositions	2006 NEPA Case Dispositions
Gov't Agency	1	27	3
Jurisdictional - P prevailed	1	27	3
Jurisdictional - D prevailed	0	0	0
NEPA - Not required	3	0	0
NEPA - Is required	5	3	14
CE - Adequate	14	9	21
EA - Adequate*	14	9	21
EA - Not Adequate*	9	15	1
EIS - Adequate*	21	1	8
EIS - Not Adequate*	15	1	8
SEIS - Needed*	1	1	8
SEIS - Not Needed*	8	1	8

Agency	2008 NEPA Case Dispositions	2007 NEPA Case Dispositions	2006 NEPA Case Dispositions
Gov't Agency	77	73	0
Judgment for defendant	77	73	0
Adverse dispositions:	73	0	0
TRO	0	0	0
Preliminary Injunction	6	10	19
Permanent Injunction	10	19	26
Dismissal w/ settlement	26	12	233
Dismissal w/o settlement	12	233	0
Case pending, NEPA	233	0	0

EA/FONSI Adequacy	
adequate	16
incomplete, essential info	5
inadequate in/direct effects	3
inadequate cumulative effects	1
other	5

EIS Adequacy	
adequate	21
incomplete, essential info	4
inadequate indirect effects	4
inadequate cumulative effects	2
alternatives: no action	0
alt. excluded/range	5
other	2

SEIS	
adequate	3
need to prepare -new effects info	1
need to prepare - change in action	0
no need to prepare	5

Plaintiffs	
Public Interest groups	210
Individual/Citizen assoc.	56
State government	13
Local government	9
Business groups	15
Property owners/residents	10
Indian tribes	10
Multiple plaintiffs	50
Other	1
<b>Total</b>	<b>374</b>



FERC	2	0
Navy	1	0
NRC	0	1
DOI - BLM	7	8
- FWS	3	3
- BurRec	3	0
- NPS	2	1
- BIA/NIGC	2	0
- MMS	2	0
- OSM	1	0
USDA - FS	40	23
- APHIS	1	4
DOC - NOAA	2	2
Army - COE	1	3
Army	0	2
DOT - FHWA	4	0
- FTA	2	0
- FAA	5	1
DOE	1	0
EPA	2	1
HUD	0	0
Air Force	0	1
TVA	1	1
FCC	0	0
GSA	0	0
Ex-Im Bank (OPRE)	0	0
USPS	1	0
HHS-FDA	1	0
- NIH	0	0
VA	0	0
DHS - GBP	1	0
- CG	1	0
	86	49

Basis for NEPA Dispositions	
Gov't Agency	3
Jurisdictional - P prevailed	12
NEPA - Not required	10
NEPA - Is required	4
CE - Adequate	7
CE - Not Adequate	6
EA - Adequate*	14
EA - Not Adequate*	15
EIS - Adequate*	29
EIS - Not Adequate*	35
SEIS - Needed*	9
SEIS - Not Needed*	6

2007 NEPA Case Dispositions	
Gov't Agency	87
Judgment for defendant	87
Adverse dispositions:	95
TRO	2
Preliminary Injunction	10
Permanent Injunction	18
Remand	23
Dismissal w/ settlement	15
Dismissal w/o settlement	27
Case pending, NEPA	168

EA/FONSI Adequacy	
adequate	23
incomplete, essential info	3
inadequate in/direct effects	7
inadequate cumulative effects	3
other	2

EIS Adequacy	
adequate	29
incomplete, essential info	17
inadequate indirect effects	8
inadequate cumulative effects	4
alternatives: no action	0
alt. excluded/range	6
other	0

SEIS	
adequate	3
need to prepare - new effects info	6
need to prepare - change in action	3
no need to prepare	3

Plaintiffs	
Public Interest groups	222
Individual/Citizen assoc.	58
State government	9
Local government	13
Business groups	16
Property owners/residents	10
Indian tribes	18
Multiple plaintiffs	9
<b>Total</b>	<b>355</b>

FERC	2	0
Navy	1	0
NRC	3	1
DOI - BLM	21	14
- FWS	6	3
- BurRec	0	1
- NPS	0	3
- BIA/NIGC	1	0
- MMS	0	0
- OSM	0	0
USDA - FS	30	33
- APHIS	2	1
DOC - NOAA	4	4
Army - COE	25	7
Army	0	2
DOT - FHWA	7	1
- FTA	1	0
- FAA	3	0
- MARAD	0	0
- SLSC	0	0
DOE	0	1
EPA	2	0
HUD	0	0
Air Force	0	1
TVA	0	0
NSF	0	0
FCC	0	0
GSA	0	0
FDA	0	0
<b>Total</b>	<b>108</b>	<b>72</b>

adequate	27
incomplete, essential info	14
inadequate indirect effects	3
inadequate cumulative effects	4
alternatives not considered	2

**EA/FONSI Adequacy**

<b>2006 NEPA Case Dispositions</b>	
Gov't Agency	
Judgment for defendant	84
Adverse dispositions:	120
TRO	1
Preliminary Injunction	8
Permanent Injunction	16
Remand	48
Dismissal w/ settlement	13
Dismissal w/o settlement	34
Case pending, NEPA	195

<b>Basis for NEPA Dispositions</b>	
Gov't Agency	
Jurisdictional - P prevailed	13
Jurisdictional - D prevailed	14
NEPA - Not required	4
NEPA - Is required	0
CE - Adequate	9
CE - Not Adequate	4
EA - Adequate*	27
EA - Not Adequate*	23
EIS - Adequate*	29
EIS - Not Adequate*	26
SEIS - Needed*	14
SEIS - Not Needed*	4

<b>Plaintiffs</b>	
Public Interest groups	62
Individual/Citizen assoc.	22
State government	5
Local government	2
Business groups	3
Property owners/residents	2

EIS Adequacy	
adequate	29
incomplete, essential info	13
inadequate indirect effects	6
inadequate cumulative effects	2
alternatives: no action	0
alt. excluded/range	4
other	1

SEIS	
adequate	2
need to prepare - new effects info	8
need to prepare - change in action	6
no need to prepare	4

Indian tribes	2
Multiple plaintiffs	10
<b>Total</b>	<b>108</b>