



National Association of Environmental Professionals
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ANNUAL NEPA REPORT 2012

of the
National Environmental Policy Act (NEPA) Practice

Submitted to
NAEP Board of Directors

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April 2013

This report reviews NEPA document submittals and statistics, NEPA litigation and agency procedures for calendar year 2012. Additional sections provide commentary on the implementation of the NEPA process and expert expectations for the future. The purpose of this report is to document the status of NEPA compliance and perspectives during the reporting year. We welcome reader comment and inquiry to naep@naep.org.



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Introduction

Ronald E Lamb, CEP

The National Association of Environmental Professionals' (NAEP's) National Environmental Policy Act (NEPA) Practice (formerly known as the NEPA Working Group) is pleased to present our sixth NEPA Annual Report. This report contains summaries of the latest developments in NEPA as well as the NEPA Practice's efforts for the past year. This annual report is prepared and published through the initiative and volunteer efforts of members of the NAEP's NEPA Practice.

In the 2011 Annual Report we noted considerable effort was being expended to “streamline” the NEPA process. As discussed in this year's *NEPA Regulatory Update, Moving Ahead for Progress in the 21st Century (MAP-21)*, and *Legislative Update*—this theme continues. As NEPA practitioners we welcome efforts to improve the process while ensuring the integrity of decision-making and sound environmental analysis. We also urge caution to not lose sight of what we expect from the NEPA process—good decision-making and agency disclosure.

Consider what business gurus Chip and Dan Heath say about business decision-making¹:

Q: “How do you institutionalize good decision-making in your organization?”

A: “You need a process whereby everyone can handle a decision the same way. There should be attention paid to disconfirming information. Attention to alternate ways to frame the problem. Attention to what will happen if things go unexpectedly well or poorly. The process doesn't guarantee a good outcome. But it sets guardrails to keep you from falling into the common decision-making traps.”

Q: “With so much information available, how come we're not making better decisions?”

A: “There's so much information that it's easy to build a case for what we wanted to do all along. You have to wire opposition into your decision-making process...”

If business savvy organizations do not have something like the NEPA process to follow, they need to create it. Perhaps this is a new, untapped market for environmental professionals!

In terms of agency disclosure, it is important to remember what the NEPA process means to state and local governments, Tribes, and other potential stakeholders. During a series of hearings before the U.S. House of Representatives Committee on Resources, numerous speakers stressed the importance of the NEPA process. The mayor of Albuquerque succinctly stated:

“I participated in scoping and comment periods and I have often relied upon NEPA to keep me abreast of Federal management activities and projects that impacted places where I worked or recreated. As a councilor, I see NEPA as an important avenue of communication between local government and the Federal Government. I consider NEPA to be primarily a

¹ Inc. March 2013, page 24. www.inc.com/magazine/201303/leigh-buchanan/what-if-your-gut-is-gasp-wrong.html



planning tool. This law gives us a clear and predictable planning framework that citizens and communities can use in order to participate in decisions affecting local public lands and these decisions have a huge impact on local economies and cultural and recreational resources. Many citizens and local governments rely upon the structure that NEPA provides to understand the impacts and alternatives associated with a nearby federally funded project...NEPA is among our best tools for planning Federal projects. It gives voice to our citizenry and provides a predictable avenue for democratic involvement...”

– Martin Heinrich, City Councilor, Albuquerque, NM, Testimony Before the Committee on Resources Task Force on Improving the National Environmental Policy Act U.S. House of Representatives, August 1, 2005.²

Environmental professionals are innovative problem solvers. Working through organizations such as NAEP, we can identify practical ways to improve the NEPA process while ensuring the integrity of decision-making and meaningful public involvement.



² <https://bulk.resource.org/gpo.gov/hearings/109h/22851.txt>



The NEPA Practice³ 2012

Ron Lamb and Joe Trnka⁴

The mission of the NEPA Practice is to improve environmental impact assessment as performed under the National Environmental Policy Act.

The NAEP's NEPA Practice³ supports NEPA practitioners through monthly conference calls, networking opportunities, an online Forum, outreach with the President's Council on Environmental Quality (CEQ), educational opportunities, and projects such as this *Annual NEPA Report*. Of particular note was the CEQ pilot project sponsored by NAEP and developed by NEPA Practice members (www.whitehouse.gov/administration/eop/ceq/Press_Releases/NEPA/October_19_2011). Under this pilot project, Best Practice Principles for Environmental Assessments (EAs) was prepared. Experience-based Best Practice Principles will focus on the preparation of effective EAs that are timely, cost-effective, and incorporate those environmental issues that are relevant to the decision-making process. As discussed briefly in the *NEPA Regulatory Update*, the CEQ will seek public comments on the report findings and provide the final Best Practice Principles to agency NEPA practitioners and use them as a training and educational tool.

The NAEP's *NEPA Training Fundamentals* developed in 2011 was used as a benchmark for new training programs, including the American Public University (APU) development of an online graduate certificate in NEPA.

Presentations at the NEPA Practice's monthly conference calls in 2012 included:

- Ms. Dinah Bear on H.R. 4377, the "Responsibly and Professionally Invigorating Development Act of 2012" (RAPID Act) and provisions for NEPA "streamlining."
- Ms. Nathalie Tisseaux, National Oceanic and Atmospheric Administration (NOAA), and Mr. Michael Booth, Cardno TEC, on NOAA climate change screening.
- Mr. Lamar Smith, Federal Highway Administration (FHWA), on the Moving Ahead for Progress in the 21st Century (MAP-21) transportation legislation and provisions for "efficient environmental reviews."
- NEPA Practice members also supported NAEP webinars on Native American Consultation (January 2012), CEQ Guidance on NEPA Review (April 2012), Review of 2011 NEPA

³ Traditionally known as the NEPA Working Group, NAEP's Committee and Working Group structure was updated and streamlined in 2012. The NEPA Practice is now under the Environmental Policy Committee.

⁴ Questions concerning this report should be directed to:

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Cases (June 2012), and the CEQ and Office of Management and Budget (OMB) Memorandum on Environmental Collaboration and Conflict Resolution (November 2012).

NEPA Practice monthly conference calls are typically held at 2:30 p.m. (Eastern) on the 2nd Wednesday of each month. NAEP members are welcome. To be added to the NEPA Practice email list and call reminders, email your request to naep@naep.org or to ronaldlamb@comcast.net.





Report Excerpts

Just the Stats

In 2012, announcements of 404 environmental impact statements (EISs) were published in the Federal Register. Nine agencies each prepared 10 or more documents; six agencies prepared 20 or more. Similar to previous years, the Forest Service provided the most with 105; the next highest was the Bureau of Land Management with 56, while the Federal Highway Administration slipped to third with 44. Of the total, 194 were draft EISs and 210 were finals. **Table 1** and the map on following pages show NEPA documents filed in 2012 by agency and by State....

Preparation Times for Final EISs 2012

In calendar year 2012, 31 federal agencies made publicly available 200 draft environmental impact statements (EISs), and 29 agencies made available 205 final EISs. Seven of the final EISs were adoptions and are not included in our calculations. Two final EISs were withdrawn following their publication. One of those final EISs was replaced during 2012; the first version of that EIS was deleted from our calculations to avoid counting it twice. The 197 final EISs in our sample had an average preparation time (from the Federal Register Notice of Intent [NOI] to the Notice of Availability for the final EIS) of....

Litigation Updates for 2012

In 2012, the U.S. Courts of Appeal issued 28 decisions involving implementation of the National Environmental Policy Act (NEPA) by federal agencies. The 28 cases involved 13 different departments and agencies. The government prevailed in 24 of the 28 cases (86 percent). The U.S. Supreme Court issued no NEPA opinions in 2012; opinions from the U.S. District Courts were not reviewed. For comparison purposes, **Table 8** shows the number of U.S. Court of Appeals NEPA cases issued in 2006–2012, by circuit. **Figure 3** is a map showing the states covered in each circuit court....

NEPA Regulatory Update

The CEQ and EPA Office of Federal Activities are the two federal entities with oversight responsibility for the implementation of NEPA. One of CEQ's main roles is to provide leadership to other federal agencies regarding how to best implement NEPA. In this capacity, CEQ periodically issues informal guidance on NEPA issues and also has an ongoing program to promote NEPA improvement and streamlining within federal agencies. EPA's main responsibility for NEPA oversight is to review all environmental impact statements (EISs) prepared by federal agencies. To aid in reviewing EISs, EPA also periodically issues informal guidance advising federal agencies what they should include in NEPA documents and what EPA will look for in reviewing them, particularly relating to emerging environmental issues. This article summarizes the key NEPA developments at CEQ and EPA during 2012...



Membership Benefits

Who We Are:

- We are a multidisciplinary, professional environmental association.
- We are dedicated to the promotion of ethical practices, technical competency and professional standards in the environmental fields.

What We Stand For:

- We stand for Integrity in the environmental professions.
- Our foundation is our Code of Ethics and Standards of Practice.
- As environmental professionals, we serve the public, our employers, and our clients with integrity, fairness and technical objectivity.

What We Do:

- We work for a diversity of employers, including government, industry, consulting, academia, and the private sector.
- We work in varied disciplines: air, water, noise, waste remediation, ecological resources, transportation, NEPA, sustainability, and education.

How You Benefit:

- Annual Conference brings together nation's top environmental professionals
- Timely research through our peer-reviewed journal, Environmental Practice
- Access to Best Practices through our national committees
- Professional networking opportunities and activities through state and regional chapters
- On-line career center tailored to the environmental professions
- Bi-monthly eNews featuring research findings, perspectives and chapter activities
- Bi-weekly National Desk newsletter featuring reporting from the publisher of GreenWire and ClimateWire
- Educational webinars on diverse topics such as new regulations and guidance, review of recent case law, and other emerging issues
- Member enjoy discounts on conference, regional and local programs, and members-only page on our website www.naep.org

How We Are Unique:

- Interdisciplinary environmental practitioners
- Strong professional conduct through our Code of Ethics
- Achievement recognition through our Environmental Excellence Awards

Affiliated Chapters:

- | | | |
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| • Alaska | • Hawaii | • North Texas |
| • Arizona | • Illinois | • Northwest |
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