

WHAT THE NEPA?

Fall, 2018



What Will We Discuss Today?

National Environmental Policy Act (NEPA)

- Origin of NEPA
- The Law

Several Key Agencies and Aspects of NEPA

- USACE/DMR: Waters of the U.S. (WOTUS)/Wetlands (404)
- MDEQ: Water Quality Certification (401)
- USFWS: Federal Fish and Wildlife (T&E Species), *by Others*
- MDAH: National Historic Preservation Act/Cultural Resources, *by Others*
- Multiple other Federal and State Agencies/Aspects (e.g., EPA, NRCS, MDWF, FEMA, Native Americans, Department of Justice/Interior, etc.)

The NEPA Process

The Future of NEPA



Origin and Purpose of NEPA

- Prior to NEPA, Common Law (Trespass/Nuisance), Conservation Era (Teddy Roosevelt, Aldo Leopold, Francis 'Fanny' Cook), Federal Assistance (State Programs), then the Environmental Movement (Silent Spring) .
- 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.
- NEPA established the country's first omnibus national environmental law which served as a watershed for federal environmental legislation from 1970-1980 (known as the "environmental decade").



The Environmental Decade

1970 - Clean Air Act (CAA)

1972 - Clean Water Act (CWA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Ocean Dumping Act (ODA)

1973 - Endangered Species Act (ESA)

1974 - Safe Drinking Water Act (SDWA)

1976 - Toxic Substance Control Act (TSCA), Resource Conservation and Recovery Act (RCRA)

1980 - Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)



Let's Talk About NEPA's Origin

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
- Citizen Involvement

Both of which should lead to implementation of NEPA's policies.



Let's Talk About NEPA's Origin

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.
- To implement NEPA's policies, Congress prescribed a procedure, commonly referred to as "the NEPA process" or "the environmental impact assessment process."



Let's Talk About NEPA's Origin

Who is Responsible for Implementing NEPA?

- 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.
- Because NEPA implementation is an important responsibility of the Federal Government, many Federal agencies have established offices dedicated to NEPA policy and program oversight.



Let's Talk About NEPA's Origin

Who is Responsible for Implementing NEPA?

- 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 decision-making.



Let's Talk About NEPA's Origin

National Environmental Policy Act Sec. 101

Congress recognized the profound impact of man's activity on the interrelations of all components of the natural environment. Particularly in regards to:

- Population growth,
- High-density urbanization,
- Industrial expansion,
- Resource exploitation, and
- new and expanding technological advances.

Critical importance of restoring and maintaining environmental quality to the overall welfare and development of man.



Let's Talk About NEPA's Origin

National Environmental Policy Act Sec. 101

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.



Let's Talk About NEPA's Origin

National Environmental Policy Act Sec. 101

In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to:

- Improve and coordinate Federal plans, functions, programs, and resources;
- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;



Let's Talk About NEPA's Origin

Preserve important historic, cultural, and natural aspects of our national heritage:

- maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;
- and enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.



Let's Talk About NEPA's Origin

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.

NEPA is About People and Places



Let's Talk About NEPA's Origin

Tent Rocks, Jemez Mountains



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




US District Courthouse, Sioux Falls, SD





You may need a 404/401 permit!


- ▶ Placing fill into waters of the U.S
- ▶ 404 Permit/401 WQC Review Process
 - Individual 404
 - ▶ Application to US Corps Of Engineers
 - Coastal Counties, Applications to Dept. of Marine Resources
 - ▶ Coastal Zone Consistency
 - ▶ Joint Public Notice for 404/401 – 30 days
 - ▶ DEQ reviews and comments
 - ▶ Non-controversial projects - 401 issued by Executive Director otherwise to Permit Board
 - Nationwide Permits, No Action by State - Normally


















What is a 401 WQC Review?


- ▶ Protection of water quality in receiving waters
- ▶ Water Quality Standards
- ▶ Stream Classifications
- ▶ 303(d) listings and TMDLs














Factors to Address

- ▶ Alternatives
- ▶ Initial and Secondary Impacts
- ▶ Mitigation
- ▶ Storm Water Management
- ▶ Wastewater Treatment Approvals



Alternatives

- ▶ Available and capable of being carried out
- ▶ Consideration to cost, existing technology, and logistics
- ▶ Overall project purpose



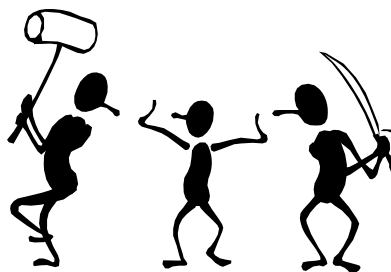
Initial and Secondary Impacts

- ▶ Initial impacts are those direct impacts as a result of project construction.
- ▶ Secondary impacts are those as indirectly occur as a result of project construction.



Is the Process Controversial?

- ▶ Small percentage of controversial projects
- ▶ Lack of information provided
- ▶ Other permit/project requirements
- ▶ Adverse water quality impacts



Why does 404/401 process take so long and cost so much?

- “Shoe Horning” or “Cookie Cutter” Projects
- Not considering wetland impacts early on in the project planning
- Delineation of wetlands can take time
- Incomplete evaluation of avoidance, alternatives
- Improper mitigation
- Not allowing enough time for permit evaluation
- Not considering other permits such as construction storm water permits



Waters of the US and 401 Certification

For more information:

There are a number of good resources on Section 404/401 at EPA's website, the USACE Vicksburg and Mobile District's Websites, and the MDEQ's Website:

<https://www.epa.gov/cwa-404/section-404-permit-program>
<https://www.epa.gov/cwa-404/clean-water-act-section-401-certification>
<http://www.mvk.usace.army.mil/Missions/Regulatory.aspx>
<http://www.sam.usace.army.mil/Missions/Regulatory/>
<https://www.mdeq.ms.gov/water/surface-water/>

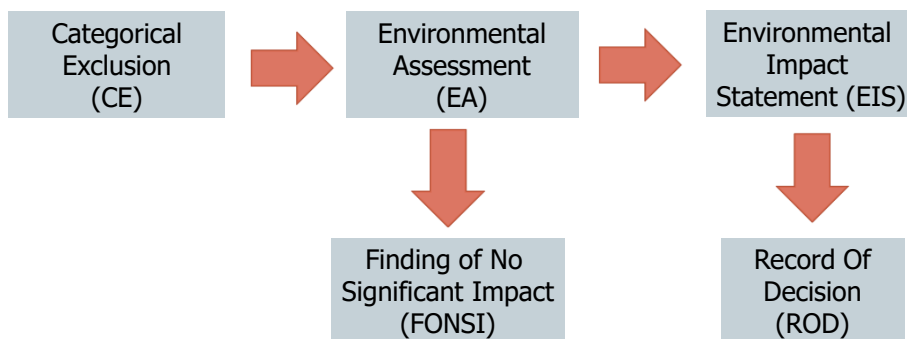
Any questions for MDEQ?

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The NEPA Process

Types of NEPA Analysis



The NEPA Process

Categorical Exclusion (CATEX)

- A Category of Actions determined not to have an individual or cumulative significant effect on the human environment.
- Least complicated type of analysis.
- Documented by a memo of record.
- Can be prepared in less than a day.
- A CE is a type of NEPA analysis
- Majority of Projects Qualify for a CE.



The NEPA Process (MDOT CATEX Form)

ENV 140
Rev. 10/99

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
ENVIRONMENTAL DIVISION
ENVIRONMENTAL CLASS OF ACTION DETERMINATION

DISTRICT NO. _____		HIGHWAY NO. _____		DISTRICT ENGINEER _____		DATE _____
PROJECT NO. _____		COUNTY _____		PLANNING ENGINEER _____		DATE _____
SECTION NO. _____				ROADWAY DESIGN ENGINEER _____		DATE _____
1. PROJECT TERMS:				ENVIRONMENTAL ENGINEER / ADMINISTRATOR _____		
2. EXISTING CONDITIONS:				DATE _____		
3. PROPOSED IMPROVEMENTS:				DATE _____		
4. PRELIMINARY PURPOSE & NEED:				5. FEDERAL CONCURRENCE TO FEDERAL DIVISION ADMINISTRATOR _____		
DATE _____				DATE _____		
6. IS NEW ROW REQUIRED? <input type="checkbox"/> YES <input type="checkbox"/> NO				7. COMMENTS IDENTIFYING THE SIGNIFICANT IMPACTS IDENTIFIED OR MINIMAL		
8. ENVIRONMENTAL CONSEQUENCES EVALUATION (FONSI OR EIS)				IMPACT	SEVERITY	MITIGATION
9. AIR QUALITY IMPACTS						
10. SOIL EROSION IMPACTS						
11. VISUAL QUALITY IMPACTS						
12. SOUND AND VIBRATION IMPACTS						
13. CULTURAL RESOURCES IMPACTS						
14. HISTORIC & ARCHITECTURAL PRESERVATION - ALL LANDS						
15. HISTORIC & ARCHITECTURAL PRESERVATION - ALL LANDS						
16. WETLANDS & STREAMS IMPACTS						
17. OTHER						
18. OTHER REMARKS:						



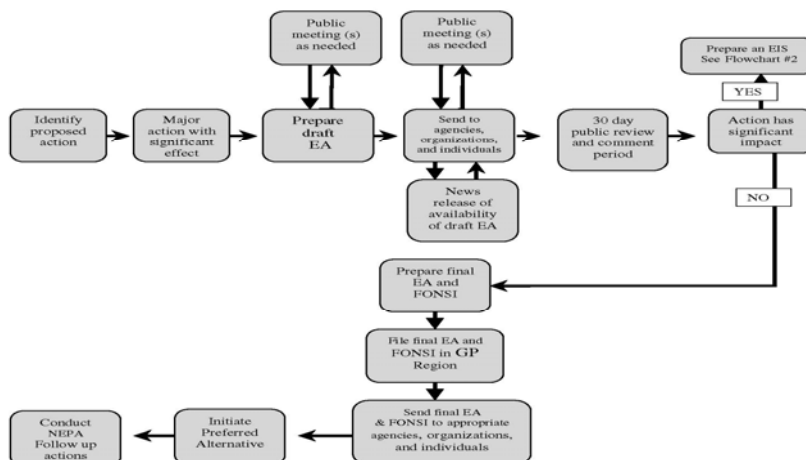
The NEPA Process

Environmental Assessment (EA)

- A brief environmental review.
- You must analyze the impacts of the proposed action, no action, and alternatives (min. three?).
- Typically it takes 3-6 months to prepare.
- Determines if action will have a significant impact.
- If no significant impacts (FONSI).
- If significant impacts, leads to an Environmental Impact Statement (EIS).



The NEPA Process – EA Flowchart

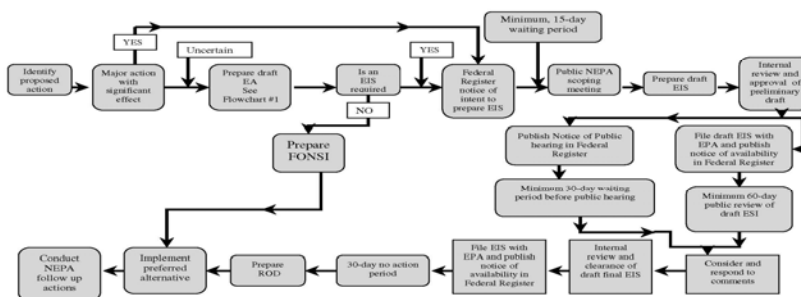


The NEPA Process

Environmental Impact Assessment (EIS)

- Detailed environmental review.
- Analyze the impacts of the proposed action, no action, and alternatives (min. three?)
- Offers mitigation for impacts.
- Results in a Record of Decision (ROD).
- Typically takes 12-24 months, and longer.

The NEPA Process – EIS Flowchart



NEPA – National Environmental Policy Act
 CE – Categorical Exclusion
 EA – Environmental Assessment
 ROD – Record of Decision

EIS – Environmental Impact Statement
 FONSI – Finding of no Significant Impact
 EPA – Environmental Protection Agency



11 Miss. Admin. Code Pt. 4 Ch. 1. Nonhazardous Solid Waste Management Regulations

Rule 1.3 Siting Criteria.

- Airports
- Floodplains
- Wetlands
- Fault Areas
- Seismic Impact Zones
- Unstable Areas
- Hydrocarbon and Water Wells
- Public Water Supplies



11 Miss. Admin. Code Pt. 4 Ch. 1. Nonhazardous Solid Waste Management Regulations

Rule 1.3 Siting Criteria.

- Surface Water
- Surface Water Drainage Areas
- Natural Geology
- Air Quality
- Threatened and Endangered Species
- Historical and Archeological Areas
- Parks and Recreational Areas
- Forests, Wilderness Areas, Wildlife



11 Miss. Admin. Code Pt. 4 Ch. 1. Nonhazardous Solid Waste Management Regulations

Rule 1.3 Siting Criteria.

- Forests, Wilderness Areas, Wildlife Management Areas, and Natural Areas
- Structures
- Residential Areas
- Property Setbacks (Buffer Zones)
- Local Government Regulations/Solid Waste Management Plans.
- Transportation Factors.



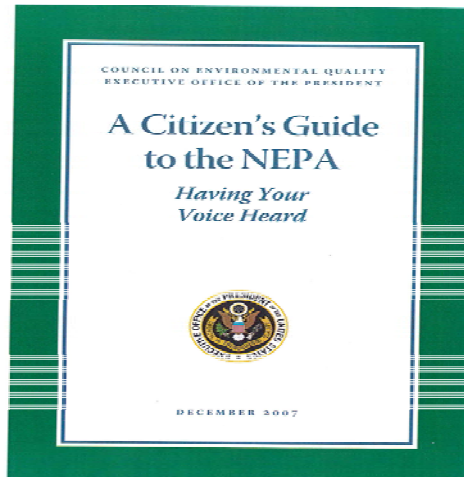
11 Miss. Admin. Code Pt. 4 Ch. 1. Nonhazardous Solid Waste Management Regulations

Rule 1.3 Siting Criteria.

- Noise Factors.
- Existing Facility Demonstrations
- Recordkeeping
- Applicability



Reference



What is Future of NEPA?

ENDANGERED SPECIES – DILUTION?

WOTUS – STAYED?

EXECUTIVE ORDER 13807 – Execute and Coordinate the Review Process (2 Years)

SUSTAINABILITY - BUZZ



QUESTIONS?

Special Thanks!

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