

Lecture 12 overview

1. CEQ
2. CEQ Regulations
3. EPA oversight
4. Assignment #1

NEPA & CEQ

1. NEPA (Title 1 & 2)
2. Environmental Quality Improvement Act
3. Executive Orders
4. EPA
5. Clean Air Act Amendments

NEPA §201 Annual Report



President to Congress:

- 1) status and condition of major classes;
- 2) current and foreseeable trends;
- 3) the adequacy of available natural resources;
- 4) review of the programs and activities;
- 5) program & legislation for remedying the deficiencies of existing programs and activities.

NEPA §202 CEQ



1. Create in the Executive Office of the President a Council on Environmental Quality;
2. Composed of three members appointed by the President, and with the advice and consent of the Senate

NEPA §204 Duties of CEQ

1. assist and advise the President in the preparation of Report;
2. gather timely and authoritative information concerning the conditions and trends in the quality of the environment
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act

NEPA §204 Duties of CEQ

4. develop and recommend national policies to foster and promote improvement of environmental quality;
5. to conduct investigations, studies, surveys, research, and analyses;
6. to document and define changes in the natural environment;

NEPA §204 Duties of CEQ

7. to report at least once each year to the President on the state and condition of the environment;
8. to make studies and recommendations on policy and legislation as the President may request

NEPA §205 Consultation

1. consult with the *Citizens' Advisory Committee on Environmental Quality* and representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable;
2. Utilize services, facilities and information of public and private agencies and organizations.

Environmental Quality Improvement Act

- Passed April 3, 1970 by legislature
- Created *Office of Environmental Quality* in Executive Office
- Chair of CEQ ⇒ Director of OEQ

CEQ ← OEQ
(policy level) (staff level)

Annual Reports on *NEPAnet*



CEQ

Current Director:



Nancy Sutton

- Deputy Mayor for Energy and Environment, Los Angeles, CA
- CA Governor Energy Advisor
- Deputy Secretary for policy and intergovernmental relations in the California EPA from 1999-2003
- EPA as a Senior Policy Advisor in San Francisco; special assistant to the EPA Administrator in D.C.

CEQ

Bush Director:



James L. Connaughton

- Partner in Environmental Law firm
- Work on environmental management and compliance, legislation, regulation, international trade and standards
- Represented big oil companies & industry
- Graduate of Yale University & the Northwestern University School of Law

CEQ

Clinton Director:

George T. Frampton, Jr.

- Assistant Secretary of Interior for Fish & Wildlife
- President of the Wilderness Society
- Partner in Environmental Law firm
- Investigated: Watergate, Three-mile Island
- Harvard Law School
- Law clerk for Supreme Court 1971-72

Conflicting duality of CEQ?

1. Presidential Advisor: provide advice and 'behind-the-scenes' agency conflicts
2. Public Ombudsman: public 'crusader' for the environment and source of objective information

CEQ & NEPA

- NEPA does not give explicit oversight control to CEQ
- Also, no authority to issue regulations
- Corrected by Executive Order by Nixon in Sept. 1970

EO 11514 (Nixon, 1970)

Strengthen role of CEQ:

The CEQ shall:

- Issue regulations for implementation of NEPA
 - Require EISs to be concise, clear
 - Develop referral process for conflicts

EO 11514 (Nixon, 1970)

Strengthen role of CEQ:

The heads of Federal agencies shall:

- Review statutory authority that would inhibit full compliance by Sept. 1, 1970

EO 11514 (Nixon, 1970)

Consequences:

- No clear oversight role, only advisory
- By 9/70 only 8 of 21 agencies developed procedures (AEC, FPC, TVA)
- Ineffectiveness may be due to dual role of CEQ

History of CEQ

- Large staff in early 70s
- Decreased in late 70s from use of consultants
- Virtually eliminated by Reagan in 1981 (51 staff terminated)
- Reinstated by Bush in late 80s (>40 staff)
- Large group under Clinton-Gore in 90s

History of CEQ

Budget:

1979: \$2,126,000
1980-81: \$3,000,000
1982-84: \$44,000
1985-86: \$480,000

CEQ Guidelines

First issued in April, 1970:

Prepared by Dingell & Jackson staff:

- Created Draft (DEIS) and Final (FEIS) as mechanism to allow comments
- "Fullest extent possible" defined as statutory conflicts
- Left implementation to agencies

CEQ Guidelines

1971 revisions:

- Due to agency implementation issues
 - not using EIS as decision-making tool
 - no time for public comment
- Major changes
 - Consider effects at earliest possible time
 - No action <90 d after DEIS or <30d after FEIS

CEQ Guidelines

1971-1977:

Continued revision through memoranda with review of court cases

- Agencies slow to adopt due to costs & delays
- Push agencies to develop procedures, fully explore alternatives, involve opposing viewpoints

CEQ Guidelines

Congressional backlash:

Due to energy crisis and delay of major projects:

- AEC licensing of power plants halted
- Trans-Alaskan pipeline halted
- Several dams & major road projects halted
- Cross-Florida canal cancelled

EO 11991 (Carter, 1977)

Amended Nixon's EO 11514:

CEQ to issue binding regulations to implement §102(2)

All Federal agencies shall –

- Proceed with actions required by NEPA §102
- Comply with regulations issued by the Council

CEQ Guidelines

1977-78 Revision:

Extensive consultation with agencies, industry & environmental groups

Review of NEPA case law

Revised 74 of 92 sections (>80%)

Stand almost completely unchanged

CEQ Guidelines

1978 Guidelines:

1. CEQ interpretation of NEPA (not agency)
2. Codification of NEPA case law
3. Required agency use of regulations
(upheld by *Andrus v. Sierra Club*, 1979)

CEQ Guidelines

1978 Guidelines:

1. Early use of NEPA:
 - ensure that planning and decisions reflect environmental values
2. Use of Environmental Assessments (EAs) and EISs for making decisions:
 - EAs: determine if impacts 'Significant'
 - EISs: impacts known to be significant

CEQ Guidelines

1978 Guidelines:

3. Lead agency determination:
 - magnitude of involvement
 - approval/disapproval, expertise
4. Cooperation with agencies that have jurisdiction or expertise
 - participate in NEPA process: scoping, help develop, provide staff & funds

CEQ Guidelines

1978 Guidelines:

5. Scoping:
 - Invite broad participation (Federal, State, local, Tribes, proponents/opponents)
 - Scope of issues addressed
 - Identification of significant issues
 - Federal Register notice of EIS

CEQ Guidelines

1978 Guidelines:

6. Record of Decision (ROD): complete NEPA process
 - State decision
 - Identify alternatives considered & why
 - State means to avoid or minimize impacts

CEQ Guidelines

1978 Guidelines:

7. Agency procedures:
 - Develop supplemental procedures
 - Describe how NEPA fits into decision points
 - Open up decision-making process to public
 - Discuss all alternatives in EIS

CEQ Guidelines

1978 Guidelines:

8. CEQ referral process:
 - Requires concerted, timely, unsuccessful attempts to resolve differences
 - Consider severity, scope, duration, possibility of alternatives

Creation of EPA



Reorganization by Nixon (July, 1970)

Principal roles and functions:

- establishment and enforcement of standards;
- conduct of research, gathering of information, to strengthen environmental protection programs and recommending policy changes;

Creation of EPA



Principal roles and functions:

- Assisting others, through grants, and technical assistance;
- Assisting the Council on Environmental Quality.

EPA & CEQ



'Work in close harmony'

CEQ:

- all aspects of environment
- focuses on broad policy

EPA:

- protect by preventing pollution
- setting & enforcing standards

EPA oversight of NEPA

Congress (Dec. 1970)

- Response to slow compliance of agencies
- *Example:* U.S. Dept. of Transportation refused to release agency comments on EIS for Supersonic Transport
- Added §309 to Clean Air Act

§309 of Clean Air Act



1. EPA review & comment on impact of:
 - proposed legislation
 - new Federal projects
 - proposed Federal regulations
2. Make review public (filing system)
3. If unsatisfactory, publish determination, refer to CEQ

EPA EIS Review



Impact of Action:

- LO: Lack of objections
- EC: Environmental concerns
 - Impacts that should be avoided
- EO: Environmental objections
 - Impacts that must be avoided
- EU: Environmental unsatisfactory
 - Adverse impacts of high magnitude
 - May trigger CEQ referral

EPA EIS Review



Adequacy of Draft EIS:

Category 1: Adequate

Category 2: Insufficient information

- Needs new information or discussion

Category 3: Inadequate

- Needs revision and publications as Supplemental EIS (SEIS)
- May trigger CEQ referral

Next Time . . .

- Environmental documents & review process
- Reading:
 - Jain et al., 4.3-4.10, Appendix D
 - Reinke & Swartz, A & M
