

John Felleman's comment on Citizen Guide

Comment received by e-mail on 3/2/07

Horst:

This is an important imitative, long overdue. Below are some comments that hopefully will improve the usefulness of the final version.

1. p.3 "substantive policies set forth in Sec. 101 of NEPA"

The Courts have consistently concluded that NEPA is "procedural", not "substantive". It would seem that a different descriptive term should be used here.

2. p.4 Versions of the diagram (such as The NEPA Book) have been very helpful in understanding the administrative triage which is at the heart of the CEQ regulations. Graphically the version in the draft lacks hierarchy which is important for cognition. Attached please find a copy of the one I've been using for a number of years that has worked quite well with my intro. grad students.

3. p.6 "When a company applies for a permit(...impacting waters...) the agency must....under NEPA"

Isn't permitting under the Clean Water Act exempt from NEPA by statute?

4. p.6 The Env. Justice E.O. needs a citation #. It would also be good to ref. the CEQ guidance on this topic.

5. p.6 "40 CFR 1507.2 (2005)"

The CEQ web site citation for the NEPA Regs is "Source: 43 FR 55990, Nov. 28, 1978, unless otherwise noted." Were the regulations changed in 2005?

6. p.7 "...an agency develops a proposal..."

"...that agency may be a joint lead agency"

"...other agencies...may be a cooperating agency'.."

"In most cases the agency..."

Students, citizens, interest groups get quite confused with the organization of the government and the roles in NEPA. (Diagrams are quite helpful here but laws, rules/regsguidance are almost entirely textual). The above sequence doesn't help this. Since agencies wear different hats, it would seem that from this point onward the text should always use the phrase "lead agency(ies)", "the agency".

7. p. 9 "notice of intent" should be capitalized.

8. p.11,13,17 what goes in the gaps?

9. p. 13 "In addition...the DEIS will contain a description of the environment that will be affected by the various alternatives"

This reads as a casual tack-on. A more appropriate approach would be to have a highly graphic call-out box that succinctly lists the contents of an EIS with appropriate citations. Then here or a bit later encourage the public to actively participate in the "description of the environment" based on their local knowledge.

10. p. 18 "...places to be involved in the NEPA process"

"(2) before and as a NEPA analysis is being prepared"

This is particularly vague. It would seem that this is a critical place to explicitly reinforce the importance of participation in Scoping.

11. p. 15 EPA's Review, Appendix C

The continuing problem here is that the summary scorecard just frustrates the public. It is often not available during the public comment period on the draft, and, if available, the public wants to read the actual "substantive" comments not some ordinal scale category.

As general editorial comment the draft is a helpful introduction to helping the public understand it's interfaces with the NEPA process. That said, it is painfully clear that after a couple of years of studying how to improve NEPA there has been essentially no progress from the perspective of meaningful public participation.

Some points:

*NEPA tracking. We certainly have the technology to have a web-based centralized, standard comprehensive tracking and public document access system for all EAs and EISs from NOI to FONSI or ROD.

*Scoping- it is absolutely essential that scoping result in a standard public document that is consistent with the Regs.

*p. 19 "Before commenting (on the DEIS), understand: 1... ,2... ,3... ,4...."

Just how is the public expected to do this? Few if any of my advanced environmental grad students can. Why is it the public's responsibility? Frequently, insights to these (1,2,3,4) important perspectives only surface after the fact in the ROD! This essential framing information should come from the lead agencies at the earliest stages of the EA and EIS tracks.

Hope this has been of some help. I look forward to the final product.

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