



The National Environmental Policy Act (NEPA)

Objectives

Terminal Objective

Given the Environmental Laws and Regulations course manual as a reference, you will be able to:

- **Explain the purpose of the National Environmental Policy Act (NEPA) and how to meet its requirements.**

Objectives

Enabling Objectives

- **State NEPA's purposes**
- **Identify the resources available that facilitate the Department's compliance with NEPA.**
- **Outline the NEPA environmental review planning procedures.**

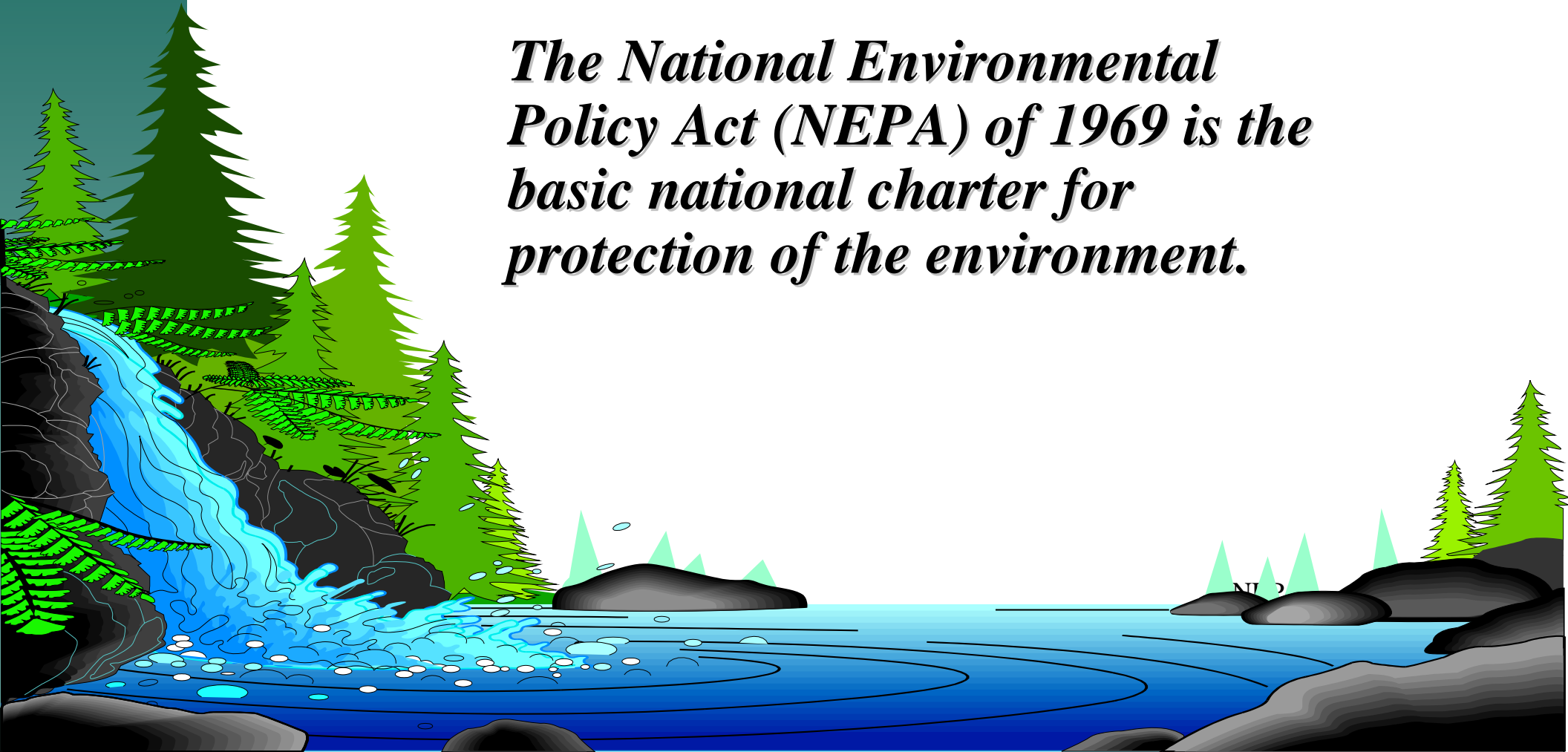
Objectives

Enabling Objectives (continued)

- **Describe the documentation required in the NEPA environmental review process.**
- **Specify how Federal statutes and regulations are coordinated with NEPA review requirements.**

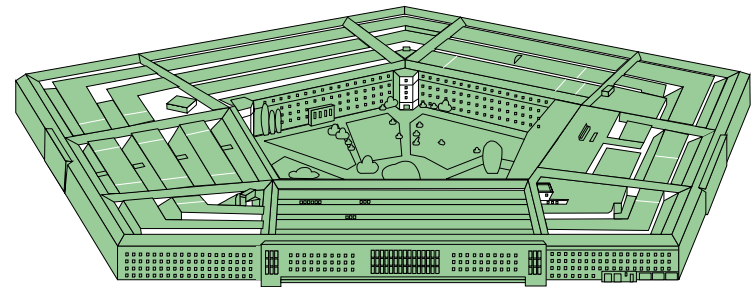
Overview

The National Environmental Policy Act (NEPA) of 1969 is the basic national charter for protection of the environment.



Overview

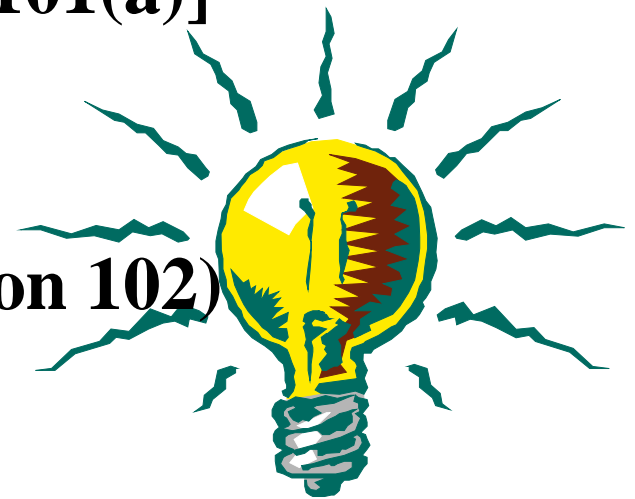
NEPA was necessary to ensure that Federal agencies would consider environmental concerns when making decisions, because often the statutes that created the agencies did not include an environmental mandate.



Overview

NEPA:

- **Established policy [Section 101(a)]**
- **Set goals [Section 101(b)]**
- **Provided the means for carrying out policy (Section 102)**
- **Established the Council on Environmental Quality (CEQ) (Section 202)**



Objectives

The objectives of NEPA are to:

- **Declare a national policy that will encourage productive and enjoyable harmony between man and the environment**



Objectives

- **Promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man**
- **Enrich the understanding of the ecological systems and natural resources important to the Nation**
- **Establish the CEQ**



Objectives

How does NEPA accomplish these objectives?

By ensuring considerations of environmental issues before conducting major Federal actions

Title I Section 101

Section 101(a) declares NEPA's general policy:

It is the continuing policy . . . to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of . . . Americans.

Title I Section 101

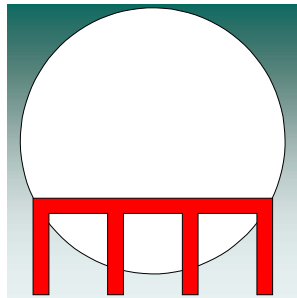
Section 101(b) sets forth NEPA's six goals:

- **Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations**
- **Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings**



Title I Section 101

- **Attain a wide range of beneficial environmental uses without degradation, risk to health or safety, or other undesirable and unintended consequences**



Title I Section 101

- **Preserve important historic, cultural, and natural aspects of our national heritage . . . and maintain . . . an environment that supports diversity, and variety of individual choices**



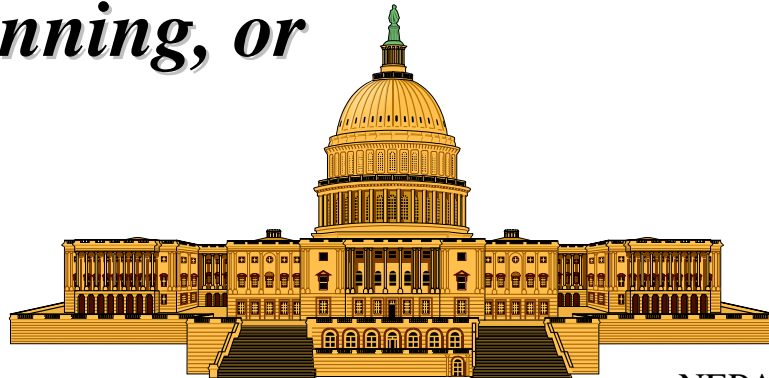
Title I Section 101

- **Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities**
- **Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources**



Title I Section 102

Section 102 contains NEPA's "action-forcing" provisions, which direct all agencies of the Federal Government to consider environmental impact prior to any recommendation; proposal for legislation; or proposed action, planning, or decisionmaking.



Title II

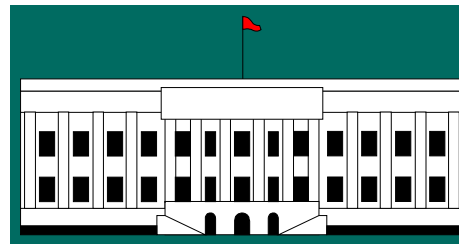
Section 202 created the CEQ, whose members are appointed by the President and approved by the Senate.



Title II

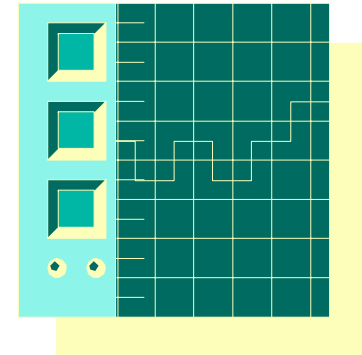
The duties and functions of the CEQ are:

- **Assist and advise the President on environmental matters**
- **Gather, analyze, and interpret information concerning the quality of the environment**
- **Review and appraise Federal Government programs and activities**



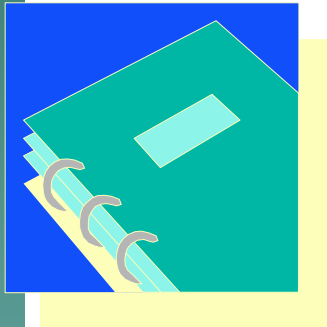
Title II

- **Develop and recommend to the President national policies to improve environmental quality**
- **Conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality**



Title II

- **Document and define changes in the natural environment**
- **Report to the President on the state and condition of the environment**
- **Make and furnish to the President studies, reports, and recommendations regarding policy and legislation**



DOE NEPA Tools

- **Secretarial Policy Statement on NEPA**
- **DOE Order 451.1A, NEPA Compliance Program**
- **Effective Public Participation Under NEPA**
- **The NEPA Compliance Guide, Volumes I and II**
- **Guidance on an Environmental Impact Statement Summary**

Secretarial Policy Statement on NEPA

Issued June 1994

- **Noted DOE must comply with letter and spirit of NEPA**
- **Delegated to Field Offices**
 - **authority for EA's, FONSI's**
- **Delegated to PSO's**
 - **authority to approve implementation plans for EIS's**

Secretarial Policy Statement on NEPA

Establishes policy of:

- **Concurrent, rather than sequential, reviews of NEPA documents**
- **CERCLA documentation will include NEPA values**
- **DOE opportunity to integrate the NEPA and CERCLA processes for specific proposed actions**

DOE Order 451.1A

Issued June 1997

- **Objective: To establish DOE internal requirements and responsibilities for implementing NEPA.**
- **Goal: To establish requirements and responsibilities to ensure efficient and effective implementation of DOE's NEPA responsibilities through teamwork.**

DOE Order 451.1A

- **Goal (cont.):** A key responsibility for all participants is to control the cost and time for the NEPA process while maintaining its quality.
- **The Role of Contractors:** Although contractors may assist in the Department's NEPA implementation, the legal obligation to comply with NEPA belongs to DOE.

DOE Order 451.1A

The Order articulates the requirements for DOE's NEPA Compliance Program, including:

- **A system of DOE NEPA Compliance Officers.**
- **NEPA quality assurance plans and public participation plans.**

DOE Order 451.1A

- **Identification of a DOE NEPA Document Manager for each environmental impact statement and environmental assessment.**
- **A system for reporting lessons learned and encouraging continuous improvement.**

DOE Order 451.1A

The Order also identifies the responsibilities for each Secretarial Officer and the Heads of Field Organizations, including:

- **Establishment of a NEPA compliance program and use of the NEPA process early in project and program planning to consider environmental factors along with other relevant information.**

DOE Order 451.1A

- **Insurance that internal scoping procedures, a quality assurance plan and a public participation plan are prepared for the office.**
- **Inclusion in new contracts and grants a provision that the awardee may not undertake on DOE's behalf an action that is subject to NEPA until DOE has notified the awardee that DOE has satisfied applicable NEPA requirements.**

DOE Order 451.1A

- **Incorporation of NEPA milestones in project planning documents.**
- **Submittal of an annual NEPA planning summary to the Assistant Secretary for Environment, Safety and Health by January 31 of each year and making it available to the public.**

DOE Order 451.1A



The Order also articulates the responsibilities of the NEPA Compliance Officer, NEPA Document Manager, and the Office of NEPA Policy and Assistance.

Effective Public Participation Under NEPA

Issued August 1998

- **Known as “the Gold Book”**
- **Provides guidance to programs executing NEPA responsibilities**
- **Outlines DOE’s policy for involving the public effectively and meaningfully in DOE’s NEPA processes**

Effective Public Participation Under NEPA

Goals:

- **Actively seek and consider public comments**
- **Incorporate the views of stakeholders in making decisions**
- **Inform the public in a timely manner**
- **Empower the public to participate in DOE's decision making processes**
- **Incorporate credible, effective public participation processes into DOE**

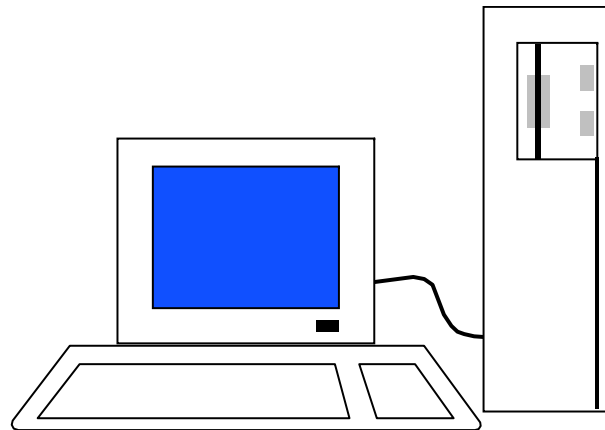
Effective Public Participation Under NEPA



Defines public participation as “an open, ongoing, two-way communication, both formal and informal, between DOE and its stakeholders”

NEPA Tools

**NEPA tools can be found on the Internet at:
<http://tis-nt.eh.doe.gov/nepa/tools/tools.htm>**



NEPA Compliance

Environmental review planning is:

- **An integral part of an integrated environmental compliance planning strategy**
- **Should be considered early in the planning process**



NEPA Compliance

Integrated environmental compliance:

- **Avoids or minimizes environmentally related delayed construction starts**
- **Avoids or minimizes premature commitment of project resources**



NEPA Compliance

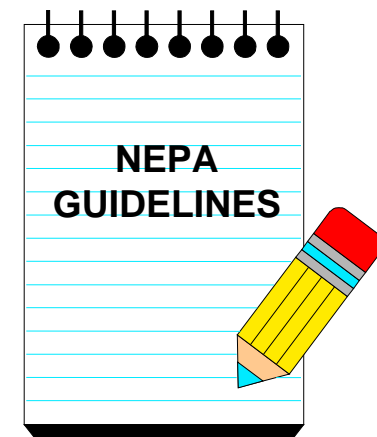
- **Allows for stepwise, progressive decisionmaking**
- **Avoids prejudicing the NEPA review**
- **Will likely facilitate subsequent permitting processes through its early EIS preparation effort**



NEPA Documentation

The NEPA processes and documents required by CEQ regulations and DOE NEPA guidelines are as follows:

- **Categorical Exclusion (CX)**
- **EA**
- **EIS**



Categorical Exclusion

A CX:

- **Is a category of actions that individually or cumulatively have no significant effect on the quality of the human environment**
- **Does not require an EA or EIS and documentation does not need to be submitted when a CX is applied**

Categorical Exclusion

10 CFR 1021 includes guidance on levels of NEPA documentation

- **Examples of actions that can be categorically excluded are in Tables 1-1 and 1-2**

Categorical Exclusions

Examples of EM Categorical Exclusions

- **CERCLA removals**
- **Waste sorting, characterizing, overpacking facility (not HLW)**
- **Modifications for waste minimization/reuse of materials**

Environmental Assessment

An EA has three functions:

- **To determine whether a proposed action requires an EIS**
- **To aid an agency's compliance with NEPA when an EIS is not necessary**
- **To facilitate preparation of an EIS when necessary**

Environmental Assessment

CEQ regulations state that an EA should briefly discuss:

- **The need for the proposal**
- **The environmental impacts of the proposed action and alternatives**
- **A listing of agencies and persons consulted**
- **Alternatives as required by NEPA Section 102(2)(E)**

NEPA Documentation

10 CFR 1021 includes guidance on levels of NEPA documentation

- **Examples of actions normally requiring an EA (but not an EIS) are in Table 1-3**

Actions Requiring an EA

Examples of EM EA actions

- **Siting/construction/operation of water treatment facilities**
- **Siting/construction/operations of R&D/non-hazardous waste incinerators**
- **Siting/construction/operation of on-site waste storage facilities (not HLW)**

Finding of No Significant Impact

- A FONSI explains why an action will not have significant effects on the human environment, and therefore will not require an EIS
- The public must be notified that a FONSI has been issued
- A FONSI or proposed FONSI with effects of national concern must be published in the Federal Register

Finding of No Significant Impact

The FONSI does not have a strictly defined format, but generally should include:

- **A summary of the proposed action**
- **Availability - how to obtain the EA**
- **Contact name for additional information**
- **Proposed action - brief description**

Finding of No Significant Impact

- **Background information**
- **Environmental impacts**
- **Alternatives considered**
- **Determination of the finding**



NEPA Documentation



10 CFR 1021 includes guidance on levels of NEPA documentation

Examples of actions normally requiring an EIS are in Table 1-4

Actions Requiring an EIS

Examples of EM EIS actions

- **Decommissioning of uranium enrichment facilities**
- **Decommissioning of reactors**
- **Decommissioning of nuclear fuel reprocessing facilities**

Actions Requiring an EIS

Examples of EM EIS Actions (cont.)

- **Siting/construction/operation of a major HLW treatment, storage, disposal facilities**
- **Siting/construction/operation of waste disposal facility for TRU waste**
- **Siting/construction/operation of incinerators (other than R&D or non-hazardous waste)**

TSCA Incinerator at Oak Ridge

Toxic Substance Control Act (TSCA) Incinerator



Scoping

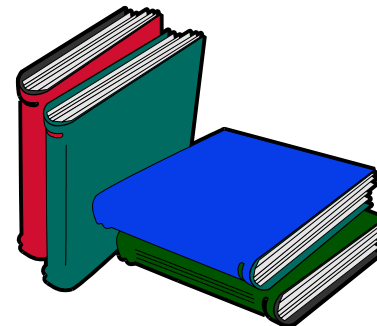
Scoping is a process that solicits public input to the EIS process to ensure that:

- **Issues are identified early and properly studied**
- **Insignificant issues do not consume time and effort**
- **The draft EIS is thorough and balanced**

Notice of Intent

An NOI is published in the Federal Register to let the public know that an EIS will be prepared. This publication initiates:

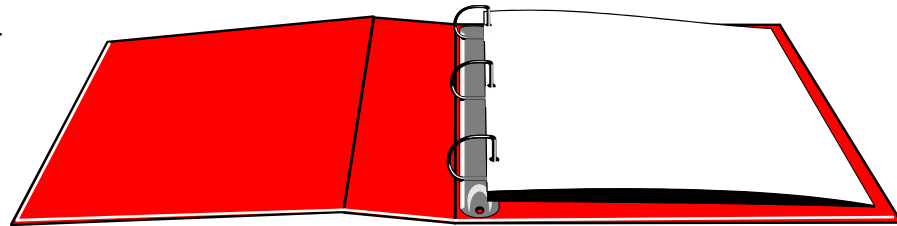
- **At a minimum, the 30-day public comment period**
- **The EIS process**



Notice of Intent

An NOI should include:

- **A description of the proposed action and possible alternatives**
- **The DOE's proposed scoping process**
- **The name and address of a DOE contact person**



Environmental Impact Statement

- **The EIS ensures that the policies and goals defined in NEPA are introduced into the programs and actions of the Federal Government**
- **The EIS is to be used by Federal officials (with other relevant material) to plan actions and make decisions**

Environmental Impact Statement

An EIS should include the following:

- **Cover sheet**
- **Summary**
- **Table of Contents**
- **Purpose of and need for action**
- **Alternatives (including proposed action)**
- **Affected environment**

Environmental Impact Statement

- **Environmental impacts (effects)**
- **List of preparers**
- **List of agencies, organizations, and persons to whom copies of the statement are sent**
- **Appendices (if any)**



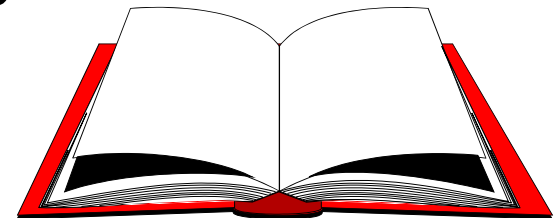
Environmental Impact Statement

- **The EIS ensures that the policies and goals defined in NEPA are introduced into the programs and actions of the Federal Government**
- **The EIS is to be used by Federal officials (with other relevant material) to plan actions and make decisions**

NEPA Document Distribution

Distribution procedures for any NEPA document must be decided on a case-by-case basis taking into consideration:

- **The nature of the action**
- **The extent of public interest**



Notice of Availability

- **The Environmental Protection Agency (EPA) publishes in the Federal Register a weekly NOA of Draft EISs filed during the previous week**
 - **This notice begins the review period for an EIS**

Public Hearings

The CEQ guidance for public hearings is found in 40 CFR 1506.6, which states that an agency shall hold or sponsor public meetings or hearings whenever appropriate or required by statute.



Record of Decision

A ROD is published in the Federal Register.

It:

- **States the decision by the DOE**
- **Identifies all alternatives considered**
- **Specifies the alternative(s) considered to be environmentally preferable**
- **States whether all practical means to avoid or minimize environmental harm from the alternative(s) selected have been adopted**

Supplements

Supplements to draft or final EISs are prepared if there are:

- **Substantial changes made in the proposed action relevant to environmental concerns**
- **Significant new circumstances or information affecting the proposed action or its impacts relevant to environmental concerns**

NEPA Integration With Other Laws and Regulations

The CEQ regulations state that agencies shall integrate NEPA requirements with other planning and environmental review procedures required by law so that the procedures run concurrently rather than consecutively.



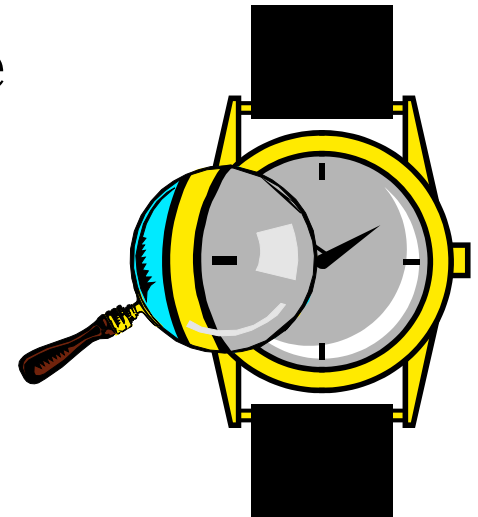
NEPA Integration With Other Laws and Regulations

Once the applicable environmental regulations have been identified, one must:

- **Affirm the applicability of specific environmental regulations**
- **Assist in understanding the implementing regulations**
- **Determine the activities required for compliance**

NEPA Integration With Other Laws and Regulations

- **Determine the sequence and timing of activities**
- **Determine the relationship of the regulations to the NEPA process**
- **Identify other environmental documents that might be needed or should be coordinated with the NEPA document**



NEPA Integration With Other Laws and Regulations

- **Identify agency coordination requirements**
- **Identify restrictions that have the potential for delaying or halting the project**
- **Determine the approximate time required for compliance**
- **Identify the regulatory/consulting agency**

Review Questions

- 1. Your site is contemplating building a pilot-scale waste treatment facility (which appears on the “categorically excluded” list). What level of NEPA documentation is required?**
 - a. Action Description Memorandum**
 - b. Environmental Assessment**
 - c. Finding of No Significant Impact**
 - d. Environmental Impact Statement**
 - e. None of the above**

Review Questions

2. The National Environmental Policy Act (NEPA) accomplishes its objectives by ensuring an EIS is prepared before conducting major Federal actions.

- a. True**
- b. False**

Review Questions

3. A Record of Decision for an EM Environmental Impact Statement:

- a. Justifies DOE's previous decision to select the "Preferred Alternative".**
- b. Documents responses to comments received from stakeholders on the draft EIS.**
- c. Documents the decision on EM's proposed major proposed federal action.**