

Reviewing the Latest CEQ Guidance on Cumulative Impacts

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On June 24, 2005 the Council on Environmental Quality (CEQ) issued a memo entitled “Guidance on Consideration of Past Actions in Cumulative Effects Analysis.” The occasion for the memo was the CEQ’s desire to clarify how agencies should analyze past impacts in their NEPA cumulative effects analyses. Copies are available at:

ceq.eh.doe.gov/nepa/reg/Guidance_on_CE.pdf.

The following comments and questions are based on my reading of the June 24 memo. I discuss the following:

- **Guidance on the Analysis of Past Impacts**
- **Review of CEQ’s Approach to Cumulative Impact Analysis**
- **Remaining Questions**

The memo turned out to be a good review of the basic principles of cumulative impact analysis.

The essential reference is still CEQ’s *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997). This 1997 publication is the main reference in the Shipley workshop on Cumulative Impact Analysis and Documentation.

Guidance on the Analysis of Past Impacts

According to the memo, past events as contributors to cumulative impact analyses have two uses:

- **Providing “relevant and useful” impact levels from past impacts in the cumulative geographic project area.** Relevant past impact levels are then added to the current direct and indirect impacts and to reasonably foreseeable future impacts, thus combining to equal cumulative impacts. This is the classic analysis of cumulative impacts—that is, the additive impacts of past, present, and reasonably foreseeable actions as the total cumulative impacts. All relevant actions and impacts occur within the

cumulative geographic area of the proposed action (or alternatives).

- **Providing historical or technical information from past events that have not contributed to the impacts in the current project area.** Agencies can incorporate by reference such technical information into their NEPA analyses. Note that the impacts from these past events do not contribute additive impacts to the impacts from the agency’s proposed action (or alternatives) because the events are outside the cumulative geographic project area. An example of this second type of useful information would be an environmental mitigation measure tested elsewhere. What worked and what didn’t? Answers would provide useful information but would not contribute to the level of cumulative impacts in the project analysis area.

CEQ’s memo encourages agencies to use scoping to limit historical information to the essentials—that is, the focus should be on relevant historical details that influence the assessment of potential impacts, including, as appropriate, their cumulative values. As the original CEQ Regulations (1978) suggested, agencies should “reduce excessive paperwork” (Section 1500.4).

Review of CEQ’s Approach to the Analysis of Cumulative Impacts

The June 24 memo was short—only four pages/screens long. Its brevity led me to suspect that it would cover only its primary topic: guidance on the analysis of past impacts from a cumulative perspective. Instead, the memo turned out to be a good summary of CEQ’s approach to the analysis of cumulative impacts.

The following 12 principles summarize CEQ’s overall approach. These principles are not listed in the memo, but they are mentioned in passing as the memo discusses different types of cumulative impact analyses and several court decisions.

Test yourself on these 12 principles. If my summary language is too brief or perhaps unclear, get a copy of the CEQ memo and verify what CEQ actually meant.

These 12 principles are the basis for the content in the Shipley Group workshop Cumulative Impact Analysis and Documentation. The next presentation of this workshop will be August 18-19, 2005 in Las Vegas, NV.

1. “NEPA is forward looking”—that is, its focus is on all projected impacts (including cumulative impacts) of the agency’s proposed action (or alternatives).
2. Cumulative impacts are additive—that is, cumulative impacts are the combined impacts from the direct and indirect impacts of an action when added to the past, present, and reasonably future actions within the cumulative geographic area, no matter who owns the land in the analysis area for each resource.
3. Scoping should guide (and limit!) the overall cumulative effects analysis.
4. Scoping should assist agencies to set geographic and temporal boundaries for all potential cumulative impacts. Note that analysis boundaries usually vary from resource to resource and do not simply equal the project area.
5. From scoping, agencies are responsible for “identifying . . . significant environmental issues . . . and deemphasizing insignificant issues” (Section 15001.1(d)).
6. Agencies should make practical decisions as to when incomplete or unavailable information is relevant to reasonably foreseeable significant adverse impacts: (Section 1502.22). Such decisions rest with an agency’s budget, not with the cost-benefit analysis of the proposed action.
7. An EIS provides an agency the opportunity to focus on cumulative effects that may be significant, especially if these effects are likely to be adverse.
8. An EA likely involves “only a limited cumulative impact assessment to confirm that the effects . . . do not reach a point of significant environmental impacts.”
9. Actions categorically excluded from NEPA analysis generally do not involve cumulative impact analyses. If they do, then an EA or EIS would be the likely level of NEPA analysis.
10. An agency (or agencies) can conduct programmatic cumulative impact analyses either within or outside the NEPA framework. Such information is legally useful in either instance.
11. Agencies might find that implementation of an environmental management system (EMS) a valuable tool for improving their cumulative impact analyses. CEQ cites Executive Order 13148, which mandates that agencies begin to implement an EMS.
12. Agencies should not confuse direct and indirect effects with cumulative effects. Such confusion is a common conceptual trap in many NEPA documents.

Remaining Questions

Questions remain, primarily because cumulative impact analysis is more art than science. And the boundaries for an adequate analysis are not set by regulation or agency policy. Instead, each agency’s proposed action has its own site- and project-specific features, and an adequate cumulative effects analysis must respond to these features.

NEPA practitioners have and will continue to debate just how much cumulative impact information to include in an EA. As summary point 8 above says, CEQ believes that cumulative impact information is appropriate in an EA, but only to the extent that the information allows the agency to support the resulting FONSI. Thus agency scoping is the essential step because it assists the agency to decide just how much information is relevant and useful to the disclosure of cumulative impacts.

The words “significance,” “significant,” and “significantly” also continue to be the crux of many NEPA disputes. The June 24 memo does not clarify

Feature Article

July 2005

just how the CEQ would recommend using these words. In some instances, CEQ is clearly thinking of the legal threshold, as reflected in actions “significantly affecting the quality of the human environment” (NEPA, Section 102(2)(C)). Such impacts prevent an agency from arriving at a Finding of No Significant Impact.

In other contexts, CEQ reverts to the common meaning of “significant.” For example, toward the beginning of the June 24 memo, CEQ speaks of the effects of an agency proposal for an action as having “a significant relationship to those effects [of past actions].” This use is not equal to a threshold finding about significant impacts. Instead, the word seems to be a synonym for “important” or perhaps “relevant.”

CEQ quotes its own guidance about the need for an agency to identify “significant issues” (Section 1501.7(a)(2)). Practitioners continue to have problems with this recommendation because CEQ has never clearly defined what a significant issue is. And even more troubling is the notion that an EA should address “significant issues” even though most EAs eventually show that no impacts discussed are truly significant (in the legal threshold sense).

Conclusion: Many questions about cumulative impacts are unanswered. So NEPA practitioners have much work yet to do, especially as they tailor NEPA cumulative impact analyses to fit the expectations of agencies, CEQ, and the courts.

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