

## **CEQ Guidance on Timely and Efficient NEPA Compliance**

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The Council on Environmental Quality (CEQ) released its “Draft Guidance on NEPA Efficiencies” on December 7, 2011. This guidance addresses major problems in National Environmental Policy Act (NEPA) compliance: Many current NEPA reviews take months or even years to complete. And the resulting compliance costs often far exceed budget estimates.

**Time and money for NEPA compliance are often far beyond an agency’s best estimates!**

[Link to CEQ Draft Guidance on NEPA Efficiencies](#)

CEQ’s “Draft Guidance” reviews existing and proposed steps for timely and efficient NEPA reviews. From CEQ’s perspective, NEPA has always required “simple, straightforward, and concise reviews” (p. 1 in the “Draft Guidance”) and clear and useful supporting documentation. CEQ also states on p. 1 that both its past guidance (in the CEQ Regulations from 1978) and the current “Draft Guidance” apply equally to both EISs and EAs.

Early in 1979 Shipley consultants began preaching the need for clear, useful, and efficient NEPA analyses. Our first NEPA workshops were conducted only a few months after CEQ published its Regulations in 1978. In Shipley’s approach, both an EIS and an EA are best viewed as concise disclosure summaries. The goal of the following newsletter is to highlight some of the current CEQ efficiency suggestions in its “Draft Guidance.” I also review some of the Shipley Group’s current suggestions for making NEPA compliance tasks more timely and efficient.

The following newsletter discusses these four Shipley recommendations:

- 1. Integrate NEPA compliance considerations into a federal agency’s earliest decisions about proposed projects and other federal actions.**
- 2. Develop an early and comprehensive vision of both analysis tasks and necessary documents.**
- 3. As a key vision decision, choose an appropriate level of NEPA analysis.**
- 4. Ensure that all contributors (especially managers) have contributed to and, if appropriate, signed off on the early vision of tasks and documents.**

I recommend that NEPA practitioners take time to review CEQ’s “Draft Guidance.”

Successful NEPA compliance is essentially good project management. So let me add the following four project management recommendations to the four listed above. These additional recommendations come from The Shipley News (Vol. 75), September 2010: “Quality

Assurance/Quality Control: Managing Project Documents.” Copies of this newsletter are available on the Shipley website <http://www.shipleygroup.com/environmental/index.html?pg=news> .

I will not discuss these additional project management recommendations beyond listing them here:

5. **Use recorded quality standards as you add information and text to the initial vision.**
6. **Develop detailed task assignments for all contributors who will provide text and new information for the evolving vision.**
7. **Conduct early and ongoing reviews of the evolving information and text.**
8. **Budget time and money to allow for late-stage reviews, including final editing and proofreading of the mature working draft as it nears publication.**

The following newsletter discusses only the first four recommendations listed above. These first four link directly to the CEQ’s “Draft Guidance.” Recommendations 5 through 8 are not directly relevant to the content of CEQ’s “Draft Guidance.” For this reason, I am not discussing them in this newsletter even though they do contribute to the efficiency of team-written NEPA documents.

### **1. Integrate NEPA compliance considerations into a federal agency’s earliest decisions about proposed projects and other federal actions.**

**NEPA compliance should begin on day 1**, when an agency knows it is planning to harvest timber, repair a road, schedule more Air Force training flights, or change grazing regulations. Any later is too late! Early agency NEPA planning (1) identifies a proposed action, (2) records a useful purpose and need, (3) generates a range of reasonable alternatives, and (4) identifies environmental impacts of concern. All such actions/decisions become relevant information both for agency planning and for full NEPA compliance.

**Reworking early planning decisions delays agency actions and causes unacceptable cost overruns.** If early NEPA planning decisions are not recorded and tracked from day 1, the agency will eventually be revisiting and revising planning information. Such revisions waste time and money.

The Council on Environmental Quality in its 1978 Regulations directed all federal agencies to integrate NEPA requirements into their agency’s planning process. Here is CEQ’s specific mandate:

Section 1500.2(c): “Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.”

The framers of this mandate knew or suspected in 1978 that agencies would find it difficult to integrate NEPA into existing agency procedures. And the framers were right!

**Why did agencies have difficulty integrating NEPA into their planning?** Their planning processes had been in place for decades. For example, in 1978 the USDA Forest Service had a fully developed, efficient process for planning timber harvests. During the early 1980’s Forest Service timber planners viewed NEPA compliance as a late-stage paperwork aggravation. In the timber planners’ world,

important timber decisions happened months or even years before they had to worry about NEPA compliance. A similar situation existed in the Bureau of Land Management in the 1980's. For decades, the BLM had been successfully managing grazing allotments on public land. So NEPA compliance was often ignored when BLM allotment permits came up for renewal in the 1980's. NEPA was viewed again as a useless paperwork effort.

In its 2010 "Draft Guidance," CEQ stated: "NEPA should be integrated into project planning rather than be an after-the-fact add-on" (p. 1). This statement is the second major bullet in its opening summary of its current guidance. CEQ seems to believe and I would agree that NEPA is still often viewed as more of a paper exercise than an essential planning process.

**Careful internal scoping (Section 1501.7 in the CEQ Regulations) applies to all proposed federal actions.** Agencies now know that to delay NEPA compliance actions is to delay final decisions about on-the-ground actions. So federal agencies today recognize the need for early internal scoping, with decisions clearly recorded and tracked as agencies makes all later planning decisions.

CEQ's "Draft Guidance" on pp. 8-10 makes a strong case for careful early scoping as a key step in helping agencies make NEPA compliance both timely and efficient. A major CEQ observation is that scoping is a valuable step when an agency chooses to prepare an EA. A Shipley Group assumption is that routine scoping is helpful for minor projects, even ones requiring analysis at the Categorical Exclusion level.

As a final example of the need for early planning, **the US Air Force has recently initiated a planning initiative to improve their internal scoping process.** The Air Force is proposing to do exactly what CEQ was recommending in 1978 and is recommending today: integration of early planning with NEPA compliance steps. This Air Force initiative applies to EISs, EAs, and even Categorical Exclusions.

The Air Force initiative began when senior Air Force managers and NEPA practitioners determined that unclear early planning decisions and incomplete early documentation were major NEPA compliance inefficiencies. Their initiative requires Air Force proponents to assume responsibility for early internal scoping, including the following: (1) identifying a proposed action, (2) recording a useful purpose and need, (3) generating a range of reasonable alternatives, and (4) identifying environmental impacts of concern. This information from an Air Force proponent then becomes the basis for all later NEPA compliance steps.

## **2. Develop an early and comprehensive vision of both analysis tasks and necessary documents.**

**An early and comprehensive vision of the final project actions is the starting point for good project management.** Recommendation 1 above is essentially arguing that good internal scoping provides a good starting vision. If done early and carefully, this vision remains useful as a goal and a guide for all future NEPA compliance steps.

A comprehensive vision includes all analysis tasks and all associated documents. So a good vision for an EA/EIS might include the following tasks and documents, with the following being only a few examples:

- Identification of a problem with overheated water being discharged into a nearby stream
- A proposal to move the overheated water through a treatment lagoon with water sprayers for cooling the water before discharging into the stream
- Analysis of initial alternatives to the lagoon treatment plan
- Need to assign a hydrologist to survey the stream for baseline water conditions (an estimated 3 days of field work, including water samples from up to 2 miles of the stream).
- Negotiation with the State Water Quality Board to assess water problems and develop alternatives (a half-day meeting with technicians from the Water Quality Board)
- Written report of baseline stream conditions (a projected 8-page report)
- Additional field work, especially coordinating with vendors with water treatment options for agency consideration

This vision goes on and on and on.

A comprehensive vision necessarily includes all such details and options. Notice, also, that the early vision information often links to projected days in the field or projected pages in a report. Such quantitative targets are the best way for an agency manager to begin to estimate the time and money a project will require. Such estimates are essential for a fully developed, mature project vision.

Shipley Group consultants routinely recommend that NEPA practitioners use available agency checklists to record the evolving project vision.

As an option, Shipley Group training materials include a Project Initiation Letter/Memo as a tool for recording the tasks and associated documents for a proposed project. A copy of Shipley's recommended Project Initiation Letter/Memo appears at the end of this newsletter.

Shipley's suggested Project Initiation Letter/Memo is also a basic checklist for a potential Statement of Work (SOW). A formal SOW is necessary if the agency decides to choose a contractor to help the agency with its NEPA compliance tasks

### **3. As a key vision decision, choose an appropriate level of NEPA analysis.**

CEQ's "Draft Guidance" (pp. 2-4) summarizes the three levels of possible NEPA compliance: EIS, EA, and Categorical Exclusion.

Efficiency and timeliness both suggest that an agency choose the proper level of NEPA compliance. CEQ's discussion on pp. 4-6 goes on to emphasize that NEPA compliance information be recorded

concisely and that the writing should comply with the federal government's recent emphasis on plain language.

For information about plain language, see two recent Shipley newsletters, both of which are available on the Shipley Group's website. The Shipley News (Vol. 81), June 2011: "Plain Language and a High-Quality EIS or EA"; The Shipley News (Vol. 82), July 2011: "Shipley Writing Strategies and www.plainlanguage.gov." <http://www.shipleygroup.com/environmental/index.html?pg=news>

#### **4. Ensure that all contributors (especially managers) have contributed to and, if appropriate, signed off on the early vision of tasks and documents.**

As a transparent process, each step in NEPA compliance should receive full agency review. Too often, managers wait until a lot of staff work has been done before they review a NEPA team's project vision. A delayed review from a key manager is just one more avoidable delay. And as I have noted above, delays in the NEPA process cost time and money.

All contributors include all key managers (those with approval or disapproval authority). Absentee managers are a sure sign that project efficiency will suffer.

An agency's technical specialists are also important early contributors. If, for example, a project is likely to affect air quality, the agency's air quality specialist should be an early reviewer of the early NEPA decisions. Similarly, for any resource with impacts of crucial concern, the relevant agency specialist should be brought in to review early decisions, especially those setting the scope of the projected NEPA analysis.

Interested Federal, State, and local agencies also have a role in helping ensure that an agency's internal scoping is as comprehensive as possible. Prudent NEPA practitioners often alert agency representatives if a proposed project is likely to affect an agency's property or its legal and regulatory responsibilities.

Parties from outside the agency have a clear role later in the NEPA process, but early agency planning discussions should consider if any environmental groups or other interested citizens are likely to raise objections to the agency's proposed action. Such early and thoughtful internal scoping pays dividends, especially if it helps the agency to make sure that its early NEPA planning decisions address likely questions from the public.

Remember, also, that questions from a public group can potentially push an agency to expand the scope of its projected impact analyses. In some cases, potential public concerns will move a potential Categorical Exclusion decision up to the EA level. And sometimes, an EA analysis is bumped up to the EIS level.

### **Four additional Shipley Group Recommendations**

The following four recommendations complete the Shipley Group's suggestions for making NEPA compliance as efficient and as timely as possible:

- 5. Use recorded quality standards as you add information and text to the initial vision.**
- 6. Develop detailed task assignments for all contributors who will provide text and new information for the evolving vision.**
- 7. Conduct early and ongoing reviews of the evolving information and text.**
- 8. Budget time and money to allow for late-stage reviews, including final editing and proofreading of the mature working draft as it nears publication.**

These four suggestions are discussed in The Shipley News (Vol. 75), September 2010: "Quality Assurance/Quality Control: Managing Project Documents. Shipley Group's home page is <http://www.shipleygroup.com/environmental/index.html> .

Project Name \_\_\_\_\_

Project Number \_\_\_\_\_

### Scoping Document/Project Initiation Letter

*(Potential Content)*

**1. Identify the proponent and the responsible official (if the two are different).**

**2. Summarize the proposal.**

- *Who proposes to do what, where, and when*
- *Need for the action (why)*
- *Objectives of the proposal (purpose). Objectives include project outputs and any known environmental resource objectives.*

**3. Specify the scope of the decision to be made.** *What actions and decisions are to be considered and which ones are excluded? As appropriate, reference higher-level planning procedures, such as forest plans or resource management plans.*

**4. Profile the scope of the environmental analysis.**

- *Actions (connected, cumulative, similar) included in the analysis of all resources*
- *Possible mitigation measures already anticipated to be necessary*
- *Alternative actions, insofar as known*
- *Anticipated environmental issues (projected resource impacts that will assist the decisionmaker and the public to choose between the alternatives)*
- *Probable outside land holdings (federal, state, local, or private) of importance to a discussion of cumulative impacts*

**5. Identify the anticipated level of documentation, along with a short rationale.**

- ☐ EIS
- ☐ EA
- ☐ CE/CX/CATEX with documentation
- ☐ CE/CX/CATEX without documentation

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**6. List any known consultation requirements or permits.**

- Air quality
- Water quality, wetlands, floodplains, etc.
- Threatened, endangered, and sensitive animals, plants, or fish
- Cultural sites
- Others? \_\_\_\_\_

**7. Profile the current management direction in and near the project area.** *This often is a summary profile of the existing environment, with reference to high-level planning documents. (See item 3 above.) This profile also sets the baseline conditions in nearby areas that have had, are having, or will have impacts on the project area.*

**8. Summarize projected public involvement.**

- *List other federal, state, local, private individuals, or private groups known to be interested or potentially affected by the proposed project. (See item 6 above.)*
- *List proposed strategies for contacting and involving the parties listed.*



**9. Summarize the schedules for the analysis and the documentation.**

- *Analysis steps: baseline surveys, review of the literature, team meetings on alternatives, interaction of actions and resources (synergy between resource impacts), mitigations, revised alternatives, etc.*
- *Documentation checkpoints: draft of purpose and need and issues (Chapter 1); preliminary description of alternatives (Chapter 2); organizational structure of Chapters 3 and 4; initial drafts of impact sections (Chapter 4), etc.*
- *Checkpoints (dates) when the responsible official will review the IDT's evolving work*
- *Publication dates for internal drafts and then publishable versions of the DEIS, FEIS, ROD, EA, FONSI, or CE*

**10. Summarize documentation expectations (quality standards).**

Estimated length (page count) \_\_\_\_\_

Page layout and expectations as to graphics (baseline maps, etc.) \_\_\_\_\_

Headings and associated numbering conventions \_\_\_\_\_

Tracking between chapters, including previews, repetition, and other design decisions \_\_\_\_\_

Record keeping standards for the administrative record/analysis file \_\_\_\_\_

**11. List all IDT members.**

Team leader \_\_\_\_\_

Core team members \_\_\_\_\_

Outside contributors \_\_\_\_\_

Document writer/editor (if different from above) \_\_\_\_\_

Managers responsible for members' time and funding (if different from responsible official) \_\_\_\_\_

**12. Review and reaffirm, as necessary, how the team will make decisions.** *Will the team use a voting process or work toward consensus? Such decisions are especially important if a team member has a differing viewpoint than the leader or other members. Remind members that the IDT does not choose an alternative, nor do members sign the Finding of No Significant Impact (FONSI).*

**13. Request dated signatures from the responsible official (or his/her deputy), the IDT leader, and all team members.**