

# The National Environmental Policy Act (NEPA)

## **A Two-Page Primer**

George S. Hawkins, Esq.

Executive Director, Stony Brook-Millstone Watershed Association

- I. Key statutory provisions. President Nixon signed the National Environmental Policy Act (NEPA) into law on January 1, 1970. NEPA is the cornerstone of the modern environmental movement.

Section 101(a): “The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation...declares that it is the continuing policy of the Federal Government, in cooperation with the State and local governments, and other concerned public and private organizations, to use all practical means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare (and) to create and maintain conditions under which man and nature can existing in productive harmony...”

Section 102: “The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall –

...

(C) include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between the local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

...

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.

*Plain Language: NEPA requires that a) government assess its own actions to determine if significant environmental impacts will occur, and b) if the impacts are significant, government must review and select among feasible alternatives that action that can achieve a desired objective while minimizing the environmental impacts.*

- II. Council on Environmental Quality. NEPA authorized the formation of CEQ, which in part, administers the requirements of the Act and establishes regulations governing the NEPA process in other government agencies.

Section 1501.2: Apply NEPA early in the process. “Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”

Section 1501.3: When to prepare an environmental assessment. “(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.”

Section 1501.4: Whether to prepare an environmental impact statement. “(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.”

Section 1508.9: “Environmental Assessment”: (a) means a concise public document for which a Federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact...(b) Shall include brief discussions of the need for the proposal, of alternatives required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.”

Section 1508.13: “Finding of no significant impact” means a document by a Federal agency briefly presenting the reasons why an action...will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.”

Section 1508.14: “Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.”

Section 1508.8: “Effects” include (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes to the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources, and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have been both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Section 1508.7: “Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Section 1508.27: “Significantly” as used in NEPA requires considerations of both context and intensity:

- (a) Context. This means the significance of the action must be analyzed in several contexts, such as society as a whole, the affected region, the affected interests, and the locality...
- (b) Intensity. This refers to the severity of the impact
  - (1) Impacts that may be both beneficial and adverse
  - (2) The degree to which the proposed action affects public health and safety;
  - (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas...
  - (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial...
  - (5) The degree to which the possible effects to the human environment are highly uncertain...
  - (6) The degree to which the action may establish a precedent for future actions...
  - (7) Whether the action is related to other actions with individual insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into component parts.
  - (8) The degree to which the action may adversely affect the districts, sites, highways, structures, or objects listed in or eligible for listing on the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources...
  - (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973
  - (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

