

Excerpts from Citizen's Guide to the NEPA: Having Your Voice Heard
Office of the President 12/07

http://ceq.hss.doe.gov/nepa/Citizens_Guide_Dec07.pdf

Notice of Intent and Scoping (pp 13-14)

The EIS process begins with publication of a Notice of Intent (NOI), stating the agency's intent to prepare an EIS for a particular proposal. (Number 9 in Figure 1). The NOI is published in the Federal Register, and provides some basic information on the proposed action in preparation for the scoping process (Number 10 in Figure 1).²⁷ The NOI provides a brief description of the proposed action and possible alternatives. It also describes the agency's proposed scoping process, including any meetings and how the public can get involved. The NOI will also contain an agency point of contact who can answer questions about the proposed action and the NEPA process. The scoping process is the best time to identify issues, determine points of contact, establish project schedules, and provide recommendations to the agency. The overall goal is to define the scope of issues to be addressed in depth in the analyses that will be included in the EIS. Specifically, the scoping process will:

- ❖ Identify people or organizations who are interested in the proposed action;
- ❖ Identify the significant issues to be analyzed in the EIS;
- ❖ Identify and eliminate from detailed review those issues that will not be significant or those that have been adequately covered in prior environmental review;
- ❖ Determine the roles and responsibilities of lead and cooperating agencies;
- ❖ Identify any related EAs or EISs;
- ❖ Identify gaps in data and informational needs;
- ❖ Set time limits for the process and page limits for the EIS;
- ❖ Identify other environmental review and consultation requirements so they can be integrated with the EIS; and
- ❖ Indicate the relationship between the development of the environmental analysis and the agency's tentative decision making schedule.²⁸

As part of the process, agencies are required to identify and invite the participation of interested persons. The agency should choose whatever communications methods are best for effective involvement of communities, whether local, regional, or national, that are interested in the proposed action. Video conferencing, public meetings, conference calls, formal hearings, or informal workshops are among the legitimate ways to conduct scoping. It is in your interest to become involved as soon as the EIS process begins and to use the scoping opportunity to make thoughtful, rational presentations on impacts and alternatives. Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate in the EIS.

²⁶ CEQ NEPA Regulations, 40 C.F.R. § 1501.7. More information on scoping can be found in CEQ's guidance on scoping at www.nepa.gov.

²⁷ Public hearings are run in a formal manner, with a recording or minutes taken of speakers' comments. Public meetings may be held in a variety of formats, and may be much more informal than hearings.

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Another way to participate is to check with local experts such as biologists or economists at a university to assist with your review of the NEPA analyses and documents. You can also form

study groups to review environmental impact analyses and enlist experts to review your comments on the documents. There are many examples, such as the one in the following box, of situations where citizen groups have worked with agencies to develop an alternative to a proposal where the agency adopted that alternative.

⁵⁰ CEQ NEPA Regulations, 40 C.F.R. §§ 1501.6, 1508.5.

[Citizen’s Alternative – Example; ala Mary O’Brien]

Forest Service Herbicide Use in the Pacific Northwest

In many cases, cooperation isn’t the first experience that communities and agencies share with one another. In the case of aerial herbicide spraying by the Forest Service in the 1980’s across Washington and Oregon, litigation gave way to collaboration that yielded a better decision for all parties.

At issue was the use of 2,4-D, a herbicide comprising half of the well known Agent Orange, which was being sprayed on large tracts of clear-cut forest in an effort to suppress competition with the replanted conifers from all other plants, including native trees and grasses. In 1984, as a result of a citizen lawsuit, a federal judge ordered the Forest Service to stop herbicide use until the agency addressed the problems associated with its use. The Forest Service decided to draft a new EIS for vegetation management and thereby opened the door for public involvement in their decision.

A coalition of tree planters, scientists, rural residents, and herbicide reform activists volunteered to work with the Forest Service to develop an alternative that didn’t rely on herbicides for vegetation management. The group identified several simple alternatives such as planting two-year old trees rather than planting seedlings, because the trees are better able to deal with encroachment. Likewise, letting native red alders grow will actually benefit new conifer growth because the alders fix nitrogen in the soils. Much to the coalition’s surprise the forest supervisor selected most of the “least-herbicide” approaches for implementation.

Through NEPA, citizens were able to educate and assist the decision- makers in developing their alternatives. Central to their approach was bringing to the table alternatives that met their goals of reducing herbicide use and the goals of the decision-maker to effectively manage vegetation.

Information taken from “Standing Up for This World” by Mary O’Brien in September/October 2004 issue of *Orion*, pages 56-64.

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Citizens who want to raise issues with the agency should do so at the earliest possible stage in the process. Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a timely manner. And the Supreme Court has held in two NEPA cases that if a person or organization expects courts to address an issue, such as evaluating a particular alternative, the issue must have been raised to the agency at a point in the administrative process when it can be meaningfully considered unless the issue involves a flaw in the agency’s analysis that is so obvious that there is no need for a commentator to point it out specifically.

***How to Comment* (p 27)**

Comments may be the most important contribution from citizens. Accordingly, comments should be clear, concise, and relevant to the analysis of the proposed action. Take the time to organize thoughts and edit the document submitted.⁵⁶ As a general rule, the tone of the comments should be polite and respectful. Those reviewing comments are public servants tasked with a job, and they

deserve the same respect and professional treatment that you and other citizens expect in return. Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Comments that contribute to developing alternatives that address the purpose and need for the action are also effective. They are particularly helpful early in the NEPA process and should be made, if at all possible, during scoping, to ensure that reasonable alternatives can be analyzed and considered early in the process.

In drafting comments, try to focus on the purpose and need of the proposed action, the proposed alternatives, the assessment of the environmental impacts of those alternatives, and the proposed mitigation. It also helps to be aware of what other types of issues the decisionmaker is considering in relationship to the proposed action.

Commenting is not a form of “voting” on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward.

Numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively. In addition, general comments that state an action will have “significant environmental effects” will not help an agency make a better decision unless the relevant causes and environmental effects are explained.

Finally, remember that decisionmakers also receive other information and data such as operational and technical information related to implementing an action that they will have to consider when making a final decision.

⁵⁶There are many reference books for how to research issues, review documents, and write comments. One in particular is “The Art of Commenting” by Elizabeth Mullin from the Environmental Law Institute (Mullin, Elizabeth D. 2000. † The Art of Commenting: How to Influence Environmental Decisionmaking with Effective Comments, Environmental Law Institute. Washington, DC). Another useful reference for those involved in commenting on transportation projects is the American Association of State Highway and Transportation Official’s (AASHTO) Practitioner’s Handbook 05-Utilizing Community Advisory Committees for NEPA Studies, December, 2006, available at <http://environment.transportation.org> or available through AASHTO’s Center for Environmental Excellence by calling (202) 624-3635.

Don’t Wait Too Long (p28)

First, don’t wait too long to raise your concerns; raise them as soon as practicable. If you just sit back and hope that things will get “better” or that your comments will have greater effect later, you may hear that “you should have raised this sooner.” At times, waiting can be detrimental to you as well as to the rest of the public and the agency involved. For example, if you feel strongly that a particular alternative should be addressed and do not raise it during the scoping process, then it will not get the benefit of comparative analysis with the other alternatives. In addition, it could result in a more expensive and lengthy process (costing taxpayers, including yourself, more) if your delayed suggestion results in the agency deciding to issue a supplemental EIS analyzing that alternative. Or if you, or your organization, later go to court to argue that a certain alternative should have been analyzed in the NEPA document, the judge may find that the court won’t consider that information because you should have raised your concern earlier during the NEPA process.

Other Assistance

If, for some reason, you believe that the process ahead may be particularly contentious or challenging, given a past history of community conflict or deeply divided interests, consider raising with the lead agency the possibility of designing a collaborative process with outside

assistance.

One source of such assistance is the U.S. Institute for Environmental Conflict Resolution. Located in Tucson, Arizona, as part of the Morris K. Udall Foundation, the Institute is a Federal entity that offers neutral environmental conflict resolution design, facilitation, education, training, and mediation. Anyone, whether in or out of government, can call the Institute and ask to speak to a professional staff person to discuss the potential for the Institute's involvement in a proposed federal action. You might want to look at its website at www.ecr.gov or contact the Institute to get a better sense of who they are and what they do.⁵⁷ There may also be an environmental conflict resolution office in your state that can provide assistance, and there are also many other individuals and organizations in the private sector that provide various types of conflict resolution services. The U.S. Institute also maintains a publicly accessible roster of environmental mediators and facilitators (available at www.ecr.gov by clicking on "Resources").

Appendix A

NEPAnet and How to Use It NEPAnet

<http://www.NEPA.gov>

NEPAnet is the Council on Environmental Quality's NEPA website which is supported by the Department of Energy. It contains a wealth of information related to NEPA as it has developed over the years in agencies and through the courts. Guidance as well as studies and reports from CEQ can be accessed from the site; and information on NEPA training can also be found.