NEPA: Getting citizens into the Act

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Despite its potential clout, the National Environmental Policy Act only works when citizens are watching

Most environmentalists will agree that highway officials and engineers, however well intentioned, appear to make insensitivity to the environment a way of life. After the National Environmental Policy Act of 1969 (NEPA) made it illegal to bulldoze a highway through without preparing a statement of the road's environmental impact, some anti-highway groups thought their struggles with the road builders would soon be over. As it turned out, however, the need for citizen highway action is only beginning.

Despite the successes NEPA has made possible, the act and its impact statements have been far from a cure-all. Loopholes were obvious from the start, and, like so many laws, NEPA's weakspots have been exploited and expanded by special interests. In this case, the culprits are the state highway men.

One has only to look through a few of the engineers' impact statements to see that, for the most part, they read more like slick advertising copy than technical analyses; the arguments justify decisions which had already been made. When the Washington-based Center for Science in the Public Interest (CSPI) reviewed 76 of the first 100 statements filed by the states for urban highways, it found little indication of environmental concern: 86 percent of the statements did not even discuss mass transit alternatives, 18 percent did not mention noise pollution and not one gave data on increases in local air pollution levels which the proposed road would create. It is indicative of the lack of time and energy put into the preparation of impact statements that CSPI uncovered a number of them which had been copied word for word from other statements compiled from different parts of the country.

To keep tabs on how well the states assess environmental impact, NEPA charged the Environmental Protection Agency (EPA) and other federal agencies with reviewing the statements. Between November, 1971 (when EPA rating began) and the end of April, 1973, the agency reviewed 795 highway statements. Of this number, reviewers found that 357 – 45 percent – of the statements filed by the states did not provide enough information to enable a decision on the environmental impact of the highway project to be made. *(How each state measures up is shown in the table on page 14.)*

The explanation proposed by highway engineers for this poor performance is that the states had no experience in preparing statements. We will improve with time, they claim. Unfortunately, EPA statistics show the opposite trend *(see table on page 15).*

Though improving slightly for the first six months of EPA review, the quality of the statements declined drastically over the following year. (Of course, it is possible that the statements have not gotten any worse, but rather that the rating process has become more stringent.)

If the statements are poor, there is little the EPA can do. Once it makes its recommendations, the agency has no power to require that action be taken on them. If a statement is judged to be inadequate, there are no follow-up procedures to ensure that the deficiencies are removed. And even though a final impact statement must be filed subsequent to the comments released on the draft statement, the comments can be ignored or played down.

Up to now we have spoken only of what happens when the statement is bad. When the project itself is bad, the reviewing agencies can do even less. In its rating sys-

EPA Comments – Adequacy by State

States show a wide variance as to the adequacy of environmental impact statements prepared for road projects. Nationwide, only 55 out of every 100 statements submitted to the Environmental Protection Agency received a "sufficient" rating.

State	Sufficient	Insufficient	Percentage	State	Sufficient	Insufficient	Percentage	State	Sufficient	Insufficient	Percentage
North Dakota	7	1	.875	Nebraska	16	12	.571	Alaska	7	11	.388
North Carolina	35	7	.833	Maryland	9	7	.562	Connecticut	5	8	.384
Virginia	8	2	.800	New York	27	21	.562	Kansas	8	15	.347
Idaho	3	1	.750	Oregon	9	7	.562	California	5	10	.333
Illinois	39	13	.750	South Dakota	7	6	.538	Vermont	1	2	.333
Florida	43	15	.741	Michigan	11	10	.523	Montana	1	3	.250
Oklahoma	5	2	.714	Arkansas	1	1	.500	Arizona	4	14	.222
Utah	5	2	.714	Georgia	3	3	.500	Missouri	5	19	.208
Ohio	29	12	.707	Maine	1	1	.500	Delaware	1	4	.200
Indiana	15	7	.681	Wisconsin	12	12	.500	Massachusetts	1	4	.200
Alabama	18	9	.667	Washington, D.C.	1	1	.500	New Hampshire	1	4	.200
Tennessee	10	5	.667	Texas	11	13	.458	New Mexico	1	5	.167
West Virginia	7	4	.636	Washington	4	5	.444	Colorado	0	5	.000
New Jersey	6	4	.600	Iowa	6	8	.428	Hawaii	0	9	.000
Wyoming	3	2	.600	Louisiana	3	4	.428	Nevada	0	2	.000
Minnesota	14	10	.583	South Carolina	5	7	.416	Rhode Island	0	2	.000
Kentucky	15	11	.576	Pennsylvania	10	15	.400	Mississippi	0	0	.000
								TOTAL	438	357	.550

tem for the environmental impact of the project istelf, the EPA has three review categories: lack of objection, environmental reservations and environmentally unsatisfactory. Of the 513 statements rated through April, 1973, EPA has had reservations about only 50 (approximately six percent) and found only five (0.6 percent) to be environmentally unsatisfactory. An indication of EPA's lack of clout is that two of the five projects found to be unsatisfactory have been given final approval and are now under construction.

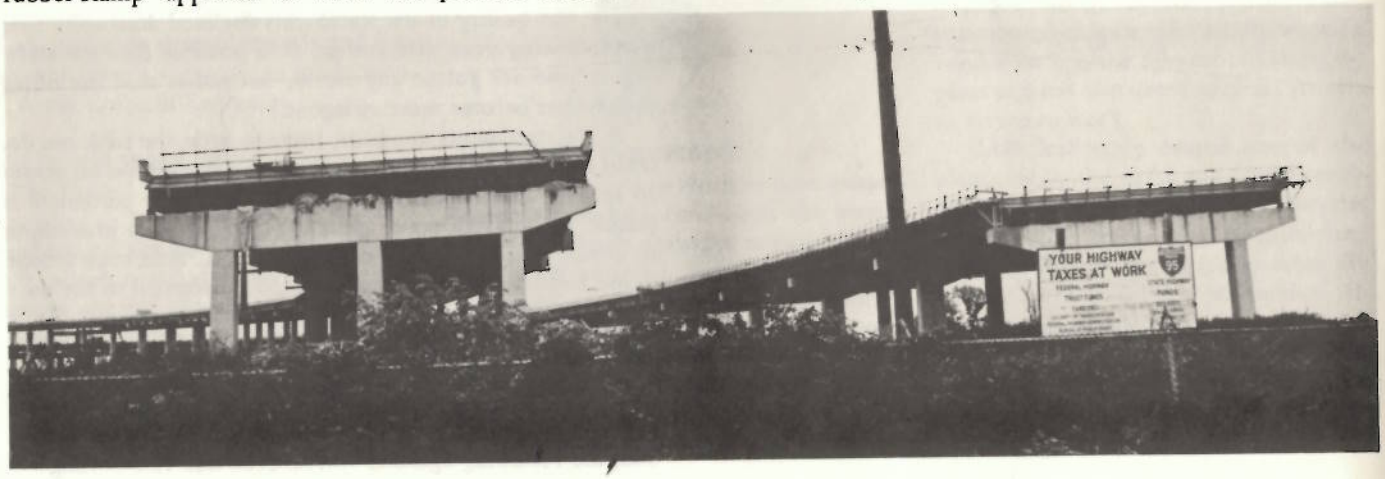
When asked why EPA found so few proposals unsatisfacotry, one official from EPA's Office of Federal Activities who reviews statements responded, "They may be politically scared." Since it has no authority to reject statements, the EPA must move more slowly, and take only the most modest measures. To the hardly controversial suggestion that EPA provide the states with a list of areas that are generally given short-shrift in impact statements, one agency man replied, "We don't want to have a codified form. That would defeat the purpose of the statement." As a matter of fact, EPA *has* drafted just such a how-to guide, but it will be distributed only to its own reviewers, not to the state agencies that write up the statements in the first place. Morale within the EPA is undoubtedly lowered by the knowledge of its limitations, all its expertise notwithstanding. In the words of another reviewer, "EPA is not going to stop any projects; that's very clear."

A disheartening realization for environmentalists is that even with its weaknesses, the EPA does a better job of reviewing statements than any other agency. In its review of the reviewers, CSPI found that the Department of Transportation (DOT), while stopping a few harmful projects, routinely offers rubber-stamp approval of even the poorest statements. DOT's environmental commitment is somewhat suspect; recently, the Department's Office of Environment and Urban Systems (TEU) and its Assistant Secretary status were abolished and its responsibilities transferred to the Office of Safety and Consumer Affairs. TEU's brief life span was filled by repeated battles with the Federal Highway Administration (FHWA) whose lack of concern for the environment is notorious.

Much of the FHWA staff is antagonistic to environmentalists, calling them the "bugs and bunny people." A phone call by the authors to FHWA to obtain a copy of a published report on highway-related air pollution elicited a refusal from the bureaucrat responsible on the grounds that "air pollution from highways is no problem," and that "nature pollutes more." It was finally necessary to go over his head to someone possibly no less antagonistic, but certainly more diplomatic.

Other executive departments that review statements, like Housing and Urban Development, Interior and Agriculture, study only a fraction of the statements submitted and those picked usually concern controversial projects. The Department of the Interior, to the surprise of some environmental lawyers, has made good comments on several statements, but for the most part, it does not measure up to the EPA.

The final repository for the statements, the Council on Environmental Quality (CEQ), is perhaps the weakest link in the entire review process. The CEQ will take no action on a statement or project unless the EPA or other agency finds it to be unsatisfactory. With only a small professional staff, in addition to its three Presidentially appointed



members, the CEQ cannot possibly assess the thousands of federal projects initiated each year. When President Nixon signed NEPA into law, he made it clear he fully intended that the CEQ play a meager role: "The environmental advisors will be assisted by a compact staff in keeping me thoroughly posted on current problems and advising me on how the federal government can act to solve them . . . No matter how pressing the problem, to over-organize, to over-staff or to compound the levels of review and advice seldom brings earlier or better results," the President stated.

Even if the CEQ voices disapproval of a highway to the FHWA, it has no authority to stop the project; nor does any other agency. In fact, the final legal authority remains exactly where it was prior to NEPA – with the Secretary of Transportation.

NEPA's loopholes suggest their own plugs. At the very least, EPA, HUD, Interior and other agencies should review every statement that falls within their special areas. If they think it is outside their competency, the agency should make a declaration to that effect. It seems only logical that all agencies should use the same or an internally consistent rating system.

Moreover, there is a need for follow-up procedures for statements with insufficient information. An EPA rating of insufficiency should mean that a statement be redrafted until it satisfies the requirements. EPA and the other reviewing agencies should identify weak spots in present methods of preparing statements and develop accurate methods to assess impacts on pollution, resource use and other issues. All of these reforms, however, will only be effective if large doses of one major ingredient is added to the highway building process: citizen action.

So far, citizen pressure and aggressive litigation have had remarkable success in reversing agency decisions on environmentally destructive highways. Citizen action has been little promoted by the Department of Transportation which seems to think that, in the words of one environmental bureaucrat, "the citizens are not good enough," to help make road decisions. The courts, on the other hand, have been receptive and will continue to require strict adherence to NEPA's procedural requirements that environmental impact statements be prepared, reviewed and made public; the Supreme Court's favorable decision on Overton Park in Memphis, Tenn., serves almost as a guarantee of this. Some lower courts have gone a step beyond procedural requirements to say that the statements must also be "adequate," unlike the 45 percent of the submitted statements that EPA rated insufficient.

In summary, then, the effectiveness of the NEPA process depends on the extent to which citizens get into the Act. When the proposed roads go uncontested, the states know that the EPA and other agencies – which, after all, can only cajole the states into responsibility – can be safely ignored. The result is that officials have little incentive to do a good job. But when citizens twist a few arms by taking the highway builders to court, they force officials to listen and the quality of the impact statements takes a quantum leap. ■

EPA Comments – Adequacy over Time

Between November 1, 1971 and April 30, 1973, 795 environmental impact statements on highway projects were submitted to EPA. Since mid-1972, their quality has consistently been declining.

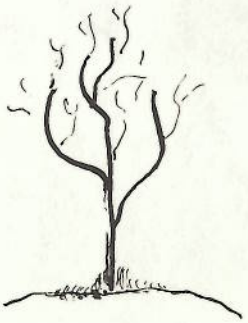
Time Period	*Sufficient*	*Insufficient*	*Percentage*
Nov. 1, '71 - Nov. 30, '71	53	36	.595
Dec. 1, '71 - Jan. 15, '72	62	50	.553
Jan. 16, '72 - Mar. 15, '72	60	46	.566
Mar. 16, '72 - May 31, '72	78	36	.684
June 1, '72 - July 31, '72	59	43	.578
Aug. 1, '72 - Oct. 15, '72	39	38	.506
Oct. 16, '72 - Nov. 30, '72	23	26	.469
Dec. 1, '72 - April 30, '73	64	82	.438

Farmworker safety standard in jeopardy

On May 1, the Department of Labor issued surprisingly stringent emergency standards regulating farmworker exposure to pesticides ("Government Environment," May 26). The standards did not last long, however. Buckling under pressure from growers and canners, Labor's Occupational Safety and Health Administration issued a revised set of standards on June 29. OSHA announced at the time that it would hold hearings to collect information for permanent pesticide regulations.

The Environmental Protection Agency is also holding hearings on the subject in eight cities across the country. Both agencies are attempting to set safe reentry periods for sprayed fields containing the seven crops covered by the regulations. They are also dealing with the nature of warning notices in the fields, protective clothing for field workers and sanitary and medical facilities. The standards focus on the short-lived but highly toxic organophosphate-type pesticides which have taken over the market as DDT-type substances have gradually been banned.

There is pressure on Congress to shift the authority for regulation of farmworker exposure to pesticides from Labor to the Department of Agriculture, a move which would effectively destroy any chance of stringent standards ever being set or enforced.



At hearings held thus far, farmworkers and environmentalists have been outnumbered by growers, chemical firms and canners. Unless the concerned public makes its feelings known to the agencies and Congress, demanding strong regulations and the continuation of OSHA authority, the health and safety of farmworkers will continue to be jeopardized.

EPA will accept written testimony until October 30. Write to: Hearing Clerk, Environmental Protection Agency, Washington, D.C. 20460. The OSHA hearing record is already closed.