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The National Environmental Policy Act: Environmental Impact Statements and Review*

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THE ROCHESTER COMMITTEE FOR SCIENTIFIC INFORMATION
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Environmental Legislation

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Summary

The National Environmental Policy Act of 1969 gave specific instructions for the preparation of Environmental Impact Statements and made environmental change a consideration in federal planning.

The statement by the Army Corps of Engineers on Red Creek channelization and the statement prepared by the Rochester Gas and Electric Company for the Atomic Energy Commission on the operation of the Ginna power plant are now available for comment by citizens. Other statements on local projects are listed in this bulletin. All of these statements have been available for citizen review, but interested individuals and groups may experience difficulty in knowing about and obtaining copies of the statements within the 90-day period allotted for review. This bulletin tells the reader how to find and comment on a statement. State legislation is being introduced to utilize Environmental Impact Statements for many projects which are presently exempt from NEPA regulations, because no federal aid is contributed. The review process at all levels would be strengthened if Environmental Impact Statements were to reach the concerned agencies and citizens in time for adequate review, comment, and cooperative effort.

Background Information

In 1969, Congress passed the National Environmental Protection Act (NEPA) which requires that "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the environment" must include a "detailed statement by the responsible officials" on the environmental effects of the action. NEPA became a law January 1, 1970 with the hope that a major step had been taken toward the salvation of the environment. A key part of NEPA is Section 102 (2)(c), which requires that an Environmental Impact Statement contains:

- (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 local short-term uses of man's environment and the maintenance and enhancement of long-term productivity
- (v) any irreversible and irretrievable commitments of resources which would be involved if the proposal was implemented.

* The substantial contributions of Graham Cox, Kenneth Harbison, and Lawrence Lundgren are acknowledged.

These five points have been amplified in an interim report by the Council on Environmental Quality in April 1970, and final guidelines appeared in April 1971.

The first draft of the Statements must be circulated to Federal, State and Municipal agencies which would be affected by the proposed action, to private organizations, and to individuals. The Statements with the comments are to be available to the President, the Council on Environmental Quality and to the public and must accompany the proposal through the existing Agency review process.

For this bulletin, R.C.S.I. has tried to assess the uses made of Environmental Impact Statements in Monroe County and the surrounding region.

Availability of Statements

The first two problems facing a citizen who wants to comment on an Environmental Impact Statement are to find out whether it exists, and obtain it within the 90 days allowed for first review.

(1) There is a weekly list of the names of statements in the Federal Register. The Federal Register costs \$25.00 a year and is obtained from the U. S. Government Printing Office, Washington, D. C. 20402. It is also available in the Business and Social Science Section at the Rundel Memorial (Main) Library on South Avenue and in the Government Documents Section on the 3rd floor of Rush Rhees Library at the U. of R. This is unquestionably the quickest source for learning that a statement exists.

(2) The Council on Environmental Quality prints a monthly newsletter, the "102 Monitor" with a very brief description of each statement that it has received during the month. A subscription to the "102 Monitor", \$6.50 a year, is obtainable from the U. S. Government Printing Office. The material in the "102 Monitor" is also read into the Congressional Record which is available at the Main Library. Both the Genesee Finger Lakes Regional Planning Board and the Environmental Management Council have subscribed to "102 Monitor" since its first publication, and in both cases the last copy received was Feb. 1972. The Rundel Memorial Library started a subscription in May 1972 and has the May through Sept. issues, but no earlier ones. They are in the Sciences Division. The Geological Sciences Library at the U. of R. has "102 Monitor" for March through Sept. 1972. The September issue of the Monitor arrived at the Main Library on Oct. 11. This is important because there are theoretically 90 days after the publication of a preliminary statement during which a citizen may make comments, and 41 of them had passed before the Monitor arrived in the city. After learning of the existence of a statement in the Monitor, one still must obtain the statement, which is not available in the Public Library or the U. of R. Library.

(3) If you know that a statement for this area exists, there are two places where you may be able to get it.

- (a) the Department of Environmental Conservation Office in Avon, 6274 East Avon-Lima Road, Avon. Phone 1-926-2466
- (b) the Genesee Finger Lakes Regional Planning Board in the Ebenezer Watts Bldg., 47 Fitzhugh St. South, Rochester. Phone 232-1060

The Regional Planning Board is the clearing house for statements for the eight-county region (Genesee, Livingston, Monroe, Ontario, Seneca, Wayne, Yates) under its jurisdiction. Statements are kept in the Planning Assistance Department which maintains an up-to-date list. The Planning Board itself has had substantially less than the 90 days allotted for comment on the first draft and the 30 days allotted for comment on the second draft of statements up to this time. Statements may be read at the Regional Planning Board office, but not removed. If the statement is short, it is possible to arrange for a copy which can be removed from the office. The process of discovering and obtaining a statement leaves a short time for comments before the deadlines.

(4) It is often possible to obtain a copy of an Environmental Impact Statement (EIS) directly from the preparing agency. The Army Corps of Engineers, 1776 Niagara Street, Buffalo, 14207, is particularly responsive to requests for statements.

Table 1. Statements on File at the Genesee Finger Lakes Regional Planning Board.

Statement	Agency	Status of Statement	Date Received	Present Status of Project
Red Creek Channelization	ACE	Preliminary Updated	7/1/70 9/10/72	under consideration by towns
Dam on Ellicott Creek	ACE	Draft	10/10/70	Waiting for final statement, expect to go ahead with project
Irondequoit Bay Channel enlargement and swing bridge	ACE	Preliminary	12/28/70	Held up by State Law until Irondequoit Bay-Wayne County Expressway is built
Hamlin Beach Erosion Control	ACE	Preliminary Updated	12/1/70 5/10/72	Action expected
Harbor at Oak Orchard Creek	ACE	Draft Final	5/28/71 4/5/72	No plans to start yet
Irondequoit-Wayne County Expressway*	DOT	Draft Final	6/9/71 5/18/72	Approved, proceeding with final design, then will await funds
Canandaigua South-West Connector	DOT	Draft	8/16/71	Postponed for lack of funding
Gananda	HUD	Draft Final	11/71 2/72	Progressing rapidly
Riverton	HUD	Preliminary Final	7/27/71 11/17/71	Progressing rapidly
Genesee Expressway	DOT	Draft	1/28/72	Various stages of progress
Rochester Harbor Maintenance	ACE	Draft Updated	11/19/71 6/21/72	Dredged
Brown's Bridge, Route 253, Henrietta	DOT	Draft Final	6/22/72 10/16/72	Approved, awaiting funds

ACE = Army Corps of Engineers

DOT = Department of Transportation

HUD = Housing and Urban Development

* The final draft of the Irondequoit Bay-Wayne County Expressway Statement is available at the Department of Transportation Office at 1530 Jefferson Road. It has not yet been received by the Regional Planning Board.

It can be seen from this list that one statement was completed 4 months after its draft, while another statement is still not complete after two years. It can also be seen that the Army Corps of Engineers and Department of Transportation were first and second in number of statements submitted. Similarly, across the United States, the Corps and DOT submit the most statements.

Who Writes Environmental Impact Statements?

Preparation of a good statement requires skill, effort, and time. The law directs that the Federal agency administering the grant or doing the proposed project must write the statement itself. Statements of the Army Corps of Engineers and the Department of Transportation are usually prepared by their own staff specialists. The Corps has both established careful guidelines on the preparation of statements and sought to obtain qualified preparators. In the Buffalo District, the Corps utilizes a team including a plant ecologist (commissioned officer), a civilian aquatic biologist, and civil engineer to analyze the environmental impact of proposed projects and to write its statements. Their most recent statement for this area, the updated draft of the Red Creek channelization project, is a model presentation of skilled analysis and relative objectivity.

Certain other agencies such as the Department of Housing and Urban Development (HUD) or the Atomic Energy Commission have relied much more on outside services, although the AEC has been building a respected professional group within the agency. HUD has divided its projects into a number of categories. Some get "normal environmental clearance", some get "special environmental clearance" and some require full and detailed Environmental Impact Statements. New towns and large scale subdivisions always require a full Environmental Impact Statement. However, for both of our new towns, Riverton and Gananda, HUD has accepted EIS prepared by applicants for funds, edited them, and issued them under its own name. Statements prepared in this way may not be objective and may not consider alternatives to the proposed project. After all, the writers have a vested interest in performing the project at a specific site or in a particular way. Their statements are apt to be justifications for plans which have already been set. The problem of partisan statements could be reduced somewhat if the statements were written early enough for submission of alternate plans by reviewers.

Riverton is an example of how the HUD system effectively eliminated alternatives. The statement was written after the developer had chosen the land and started to lay out the project but before any major construction was started. Therefore, no consideration was given in the impact statement to examination of alternate sites. Citizens at large had no chance to judge the best location for a new town. At the moment, two New Towns are being developed in the region, Riverton to house 20,000, Gananda 85,000; both have submitted environmental impact statements and neither impact statement mentions the other community, nor whether we need 100,000 units in addition to housing planned elsewhere in the Rochester metropolitan area.

In respect to alternatives within the site, the Riverton review was both timely and effective. The Genesee Finger Lakes Regional Planning Board submitted alternate proposals for use of the flood plain in its review. These proposals convinced the developer that an alternate was ecologically satisfactory: a golf course in the flood plain and housing on the hill - out of danger of flooding. This was not the original choice.

A decision by the U. S. Court of Appeals, Second Circuit, recently upheld by the Supreme Court, may drastically affect the HUD procedure. In Greene County vs FPC, the court declared that the Federal Power Commission must "draft its own impact statement (and) cannot substitute environmental statement of applicant for its own". The Kalur vs Resor case, decided by the U. S. District Court, District of Columbia, strengthened the Greene County precedent, adding that the concerned Federal agencies' word may not be accepted at face value, so independent environmental impact statements must be prepared. Clearly, the HUD practice violates these directives.

Statements in the Process of Being Written in Monroe County

The Regional Planning Board has been informed of three statements which are being written.

HUD: the Third Ward Urban Renewal Project

DOT: a 500 ft. extension of the East-West runway at the Monroe County Airport

AEC: the operation of the Ginna power plant with emphasis on the effects of hot water on the lake.

The last statement is the closest to completion. A two volume statement has been prepared by R.G. & E. and submitted to the AEC. The Genesee Finger Lakes Regional Planning Board, the Monroe County Planning Council, the Environmental Management Council and the R.C.S.I. all have copies of these two volumes. Although the Ginna power plant was built before the requirement for impact statements was extended to the licensing of atomic power plants by the AEC, the law now holds that the AEC must assess water quality effects before licensing each nuclear plant even if another agency has done so. Therefore, a belated impact statement had to be prepared for the Ginna plant.

The designers of the Ginna plant considered alternate methods of cooling waste water from the outset, and selected one as most ecologically satisfactory. The plant has now been operating for three years. Thus, this statement is an analysis of how well the radioactivity containment system and the surface flow system for heat dissipation have worked, and will be very useful to those building future plants. Widespread use of such post-project analyses would be a valuable addition to the environmental impact process; it would provide information on how well it is working.

The Ginna case is also notable because R.C.S.I., as a citizens' group, and State agencies did review plans for and predicted the environmental impact of the installation before Federal legislation requiring such review had been enacted.

Applications Subject to Statement and Review

The Regional Planning Board receives and reviews many applications for federal support. A number of these have checked "yes" to the question - "Has an impact statement been written?" although the statements have not been submitted to the clearing house and may not yet have reached the funding agencies from consultants. Examples are:

- Brockport interceptor
- Durand-Eastman sewage treatment plant
- Farmington wastewater treatment plant
- Dansville wastewater treatment facilities
- Canandaigua Open Space Land Acquisition

Negative Declarations

The Regional Planning Board has a number of negative declarations from the DOT. A negative declaration is a statement that no statement is needed. Most of these projects involve repairing or replacing a deteriorating structure such as a bridge or bridge approach.

Environmental Impact Procedures at State and County Level

It has already been observed that analysis of impact and preparation and review of statements demand skill and conscientious effort. Agencies which now bear the brunt of preparation, writing and review have rarely been given extra help; some Peter has been robbed to pay EIS Paul. The feeling of the agencies that only "significant" actions should be included is understandable.

On the state and local scale, however, every change may be significant in regulating the growth and development of a region. Logically, private as well as public projects should require an impact statement as should ecological actions such as siting of landfills or placement of water mains which predetermine where buildings will go.

California, Delaware, Montana, Washington and Puerto Rico have passed state legislation modeled after the provisions of NEPA, so that projects funded by the State but not the Federal government will also be reviewed. California law will bring private projects within the procedure. In New York State legislation requiring Environmental Impact Statements for State funded projects was passed by both Houses and vetoed by the Governor in 1972. Bills to require both State funded and private projects affecting the environment to submit impact statements will be introduced at the next legislative session. Hearings were conducted October 30 and 31 by the Assembly Committee on Conservation (C. D. Lane, Chairman). Mr. Lane is submitting the legislation of last session for examination and revision. These are A 9245 (2/3/72), directed at State agencies, and A 11577 (3/7/72) covering private development.

Certain counties, such as Suffolk County, require county agencies to prepare impact statements for the projects they are to undertake. Although Monroe County has not implemented legislation requiring impact statements, it has implemented the spirit of the Act and uses its structure rather extensively, albeit informally, in environmental decision making. The County Environmental Management Council asks for Impact Statements on Federally funded projects, such as disposal of dredgings or construction of interstate highways. In addition, it has applied the "5 questions" of NEPA in virtually every local case where its advice was sought, since the fall of 1970. Projects have ranged from land use decisions in Tryon Park, to County Solid Waste program, excavation permits, and housing developments.

The writing of environmental impact statements requires considerable effort and may result in delay of action in some instances. Evidence gained from the first studies of EIS in practice demonstrates that the benefits generally more than compensate for inconvenience and expense. Comment of other parties during the review process frequently is a source of sound alternates or modifications. Often, the very necessity to prepare an objective EIS itself reveals the wiser course.

The full benefit of the EIS mechanism can be realized only by extending it to projects which do not receive federal funding. The review process would be strengthened if impact statements were prepared before firm decisions have actually been made. Moreover, they must reach all affected agencies and citizen reviewers promptly so that adequate time will be available for study and comment.

Sources for Further Information

The only brief official treatment is a 13 page, letter-sized pamphlet: In Productive Harmony. Environmental Impact Statements Broaden the Nation's Perspectives. U.S.E.P.A. Office of Public Affairs. Sept. 1972.

L. P. DeVoe, An Investigation of Environmental Impact Statements and Their Review by the Monroe County Environmental Management Council. MCEMC Consultant Report, Rochester, N.Y. Dec. 27, 1971.

Environmental Impact Analysis: Philosophy and Methods. Record of the Conference held in January, 1972. The University of Wisconsin Sea Grant Program, Madison.

Statements on Proposed Federal Actions Affecting the Environment. Guidelines. The Federal Register, Vol. 36, No. 79 Part II. Friday, April 23, 1971

State of California, Environmental Goals and Policy. Office of Planning and Research, Governor's Office. March 1, 1972. The short Summary Report is available separately. The full report is distributed by the Documents Section, State of California, P. O. Box 20191, Sacramento, Cal. 95820. \$6.00.

Improvements Needed in Federal Efforts to Implement the National Environmental Policy Act of 1969. Report to the Subcommittee on Fisheries and Wildlife, Conservation Committee on Merchant Marine and Fisheries, House of Representatives by the Comptroller General of the United States. May 18, 1972. B-170186.

Toward a Systematic Approach to Environmental Impact Review. Eds. Marian S. Baumgold and Gordon A. Enk. Institute on Man and Science, Rensselaerville, N.Y. for the NYSDEC. June, 1972.

The following are available only as abstracts. They are indicative of studies in progress by the Institute on Man and Science:

Federal Court Interpretation of NEPA

Environmental Impact Preparation: Beneficial and Adverse Effects

State NEPA Equivalents: Laws and Administrative Mandates Requiring Preparation of Environmental Impact Statements (EIS) on State Funded Projects

Environmental Impact Statements: State Review Procedures