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Guidance Coming for Agencies to Speed NEPA Reviews in Economic Stimulus Work

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Impact Statements

Guidance Coming for Agencies to Speed NEPA Reviews in Economic Stimulus Work

The White House Council on Environmental Quality is preparing guidance for federal agencies on expedited environmental reviews for work to be funded by the American Recovery and Reinvestment Act of 2009, according to a CEQ official.

The act (Pub L. No. 111-5) does not allow sections of the National Environmental Policy Act to be skipped. But it does say, in Section 1609, "Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized."

At an Environmental Law Institute panel discussion March 10, Horst Greczmiel, CEQ's associate director for NEPA oversight, said the White House council would provide guidance to agencies and is taking other steps.

"We're also working with agencies to address whether or not agency NEPA procedures need to be revised," he said. "We want to make sure there are no roadblocks created inadvertently in those procedures that might stand in the way of moving forward with projects in a way that is still compliant with NEPA."

Another member of the panel, attorney Thomas Jensen with Sonnenschein Nath & Rosenthal, said, "I think CEQ has an obligation to give us some guidance soon."

NEPA applies to a range of federal actions, including construction projects, plans to manage and develop federally owned lands, and federal approvals of licenses and permits. Agencies must conduct either an environmental assessment, leading possibly to a finding of no significant impact, or a more detailed environmental impact statement. Projects can receive a categorical exclusion from review if they meet certain criteria that an agency has determined have no significant environmental impacts.

Greczmiel offered cautionary notes and examples of quick environmental assessments, but preceded those by saying, "Just to make it very clear, 'expedited' means it's done well, it's implemented according to the law, there aren't any shortcuts taken, and that we do it efficiently and effectively."

Focused Assessments Possible

The Healthy Forests Initiative, launched in 2002 by the Bush administration to reduce the severity of forest fires, "extensively used what we call the focused and timely environmental assessments," Greczmiel said. None of its projects were challenged in court, despite the frequency of litigation aimed at the U.S. Forest Service over the years.

That approach to implementing NEPA demonstrated that "it is doable to do a concise and focused environmental assessment that doesn't have the bulk and the depth of analysis that people have come to expect from environmental impact statements," Greczmiel said.

His next example was what he called "post-Katrina" environmental assessment work, involving extensive repairs to infrastructure after the devastating 2005 hurricane. While repair work to such things as roads often can qualify for a categorical exclusion, there were in many cases project expansions in addition to repairs in the wake of the hurricane.

In those cases, federal officials brought in local officials early in the process to collaborate on alternatives that minimized environmental impacts. The up-front collaboration quickly focused and narrowed the alternatives under review, Greczmiel said.

Section 1609 was added through an amendment proposed by Sen. Barbara Boxer (D-Calif.) in response to concerns that environmental regulations would defeat the purpose of the Recovery Act. A proposed

amendment that would have gone further in expediting NEPA came from Sen. John Barrasso (R-Wyo.), but it did not win approval.

2005 Law Sought Speedy Reviews

Four years earlier, the Energy Policy Act of 2005 included another technique for speeding environmental regulatory procedures. The act assigned to the Federal Energy Regulatory Commission the role of lead agency in natural gas pipeline permitting, giving FERC the authority to set deadlines for other agencies to get their work done on a project.

FERC determined that other agencies would be allowed 90 days after the issuance of the commission's environmental impact statement to get their work done on a project, explained Jeff Wright, deputy director of FERC's Office of Energy Projects. One quirk of 2005 energy law, however, is that it did not give the commission any enforcement authority in the event that an agency failed to meet a deadline.

Sharon Buccino, an attorney with the Natural Resources Defense Council, said the idea of an agency like FERC taking the lead is not a bad one, as long as environmental agencies at the federal and state level are given adequate chances to do their work. "There needs to be some centralization and some coordinator," she said.

Several years before the Energy Policy Act, FERC developed another method for speeding NEPA reviews—the pre-filing program, which gets the NEPA wheels turning in early planning stages for a project, before permit applications. Wright said NEPA reviews tend to take at least 18 months, but the pre-filing practice has been getting about five or six months of that work done before the application.

By Alan Kovski

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