

# PERSPECTIVES FROM THE FIELD

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## Who Reads Your NEPA Documents and Why?

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**The National Environmental Policy Act (NEPA) statute and regulations require that documents should be prepared for a wide range of readers. These readers have markedly different and sometimes contradictory information needs and expectations. The process of developing NEPA documents supports good intra-agency and interagency communication but produces lengthy technical documents that are difficult for the general public to understand.**

**Environmental Practice 16: 341–346 (2014)**

National Environmental Policy Act (NEPA) documents have a crucial role in our practice. Although we are clearly admonished by CFR 1500.1(c) that “NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action” [Council on Environmental Quality (CEQ), 2011], our documents—the paperwork—are how we communicate and the focus of much of our effort. If the NEPA process is considered as a structured, cumbersome conversation on some proposed action, then the documents are our primary mode of discourse. Understanding who reads NEPA documents and for what purpose tells us who is involved in this conversation and their role in the discussion.

Whether or not NEPA is producing better decisions may be debatable, but there is no question as to its production of documents. As Ray Clark notes in his introduction to this special issue of *Environmental Practice*, we not only are producing more documents, but they seem to be getting larger. Why this is happening is the subject for another article, but a simple answer is that it is hard not to be at least subliminally impressed by volume.<sup>1</sup> The tremendous volume of paperwork produced because of NEPA begs asking the question of who is paying attention, and what, if any, effect do our NEPA documents have. In this article, I delve into this question in two ways: first, by presenting a

general characterization of NEPA readers and their needs and expectations and, second, by considering the stages a NEPA document typically goes through over the course of a project.

### Types of NEPA Readers

The NEPA statute (US Congress, 1969) makes it clear that we are writing for several audiences. Section 102(2)(c) calls for the “detailed statement” to include comments and views of federal, state, and local agencies and for the statement to be made available to the public. Part G of this section directs all federal agencies to make environmental information available to “[s]tates, counties, municipalities, institutions, and individuals.” The regulations from the CEQ (40 CFR 1500–1508) are more specific by repeatedly directing notice to and direct involvement by federal, state, and local agencies, any affected Indian tribe, person, or organization from scoping through the record of decision (CEQ, 2011). In particular, section 1502.8 states, “Environmental impact statements shall be written in plain language and may use appropriate graphics so that decision makers and the public can readily understand them.”

The charge to write to this varied audience is a substantial challenge not often discussed within our practice or among our multidisciplinary teams who write our NEPA documents. The readers of our NEPA documents have varied, sometimes conflicting objectives; wide-ranging knowledge and experience bases; diverse informational needs and desires; and differing tolerance for detail. John Page (2006) developed a basic categorization of NEPA readers that provides a useful way to understand our readers. Our readers include these seven types of audiences:

1. Preferential: decision makers
2. Procedural: attorneys
3. Political: elected officials (and staff)
4. Practical: engineers and implementers

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5. Professional: technical reviewers
6. Positional: interest groups
7. Personal: the public

Each of these readers has distinct characteristics that affect the type of information that best communicates with them, which merits some brief discussion.

*Decision makers* are the senior agency officials or officers who oversee cost, schedules, and results. Their objective is to fulfill their mission or mandate. They have a lot of knowledge at a broad level but may not be familiar with the details of specific projects. They want to know what's getting done, the risks, and how the action tracks with their overall mission, plan, or policies. Most often they have a low tolerance for details but may want to dig into specific subjects.

*Procedural* readers are usually attorneys and may be working for either the agency or an opposing group. Their objective is to examine the documents to find flaws in process or presentation. Depending on their background they may have a solid understanding of NEPA regulations and case law, or they may come from another field of law and receive a NEPA assignment as a matter of rotating duties. Notably, they are often not very familiar with either engineering or scientific analysis and cannot independently evaluate whether analytical methods or conclusions are correct. They look for carefully constructed arguments with perfectly consistent terminology and precise descriptions of process and procedure. They have great tolerance for detail but without necessarily understanding its relevance.

*Political* readers are elected officials and their staff whose constituents are potentially affected (either positively or negatively) by the action. Their objectives vary widely depending on the specifics of each case, and they may be opposed, supportive, or carefully neutral. The officials themselves usually have limited knowledge and will rely on staff, whose knowledge base will be focused on the issues at play and little else. They are interested in how the findings support or detract from their position and how they can be used for leverage. Elected officials and their staff have little tolerance for details except where it relates to how they can protect or benefit their community.

*Practical* readers of NEPA documents are those who will be designing or implementing the project. These may be engineers, planners, or enforcement staff, whose objective is carrying out whatever is decided and making it real. They have a deep knowledge in their particular area of expertise and will often point out weaknesses or flaws inherent in

early planning. They mainly want to know what they will need to do—the constraints placed on a design or construction (e.g., no in-water work at certain times of year) or maximum allowable levels of activity. They have great tolerance for and interest in details in their specific area of responsibility but little interest otherwise.

*Professional* readers are familiar to most NEPA practitioners. These are the subject-matter experts who, when not writing NEPA documents, are reviewing them (although some professional readers may work for issue-based groups, in which case their role is entirely critical). They have a deep knowledge base in their subjects and take professional pride in being up to date with the current accepted practices. Their objective is to look for a full, complete, carefully explained analysis. They want to know all the details about their subject but tend to have little interest outside of that silo.

*Positional* readers are interested in how a project relates to their cause, such as habitat protection, historic preservation, energy development, etc. They are usually not directly affected by an action but have a political objective in either affirming or casting doubt on the findings to support their mission. They are quite knowledgeable about their interest areas but might not be familiar with local features or circumstances. They are looking for conclusions related to their cause and look for a lot of detail in that area.

Our *public* readers are those who find themselves in some way affected by the action. For them, the action is personal regarding whether it would benefit or hurt them. Their objective is to protect their interests. They are very knowledgeable about their local area but may have little or no technical training to understand a complicated analysis. They want to know what's going to happen and what they can do about it, and in this regard often find NEPA's careful, plodding process obtuse and frustrating.

We could argue over whether some of these readers are more important than others, but that is not my point. All of these readers have a legitimate place under NEPA and should be able to find information that is at least not entirely foreign to them.<sup>2</sup>

## The Succession of Readers

With this characterization of NEPA readers in mind, a walk through the typical progression in developing NEPA documents is illuminating. To supplement my experience and help me understand how NEPA is practiced by a variety

**Table 1.** Summary of the seven types of NEPA readers

Type of readers	Who they are	Objectives	Knowledge base	What they want to know	Tolerance for detail
Preferential: decision makers	Senior agency officials or officers	Fulfill their mission or mandate	Generally broad and on policy	Risks, costs, and consistency with objectives	Usually low
Procedural: attorneys	Council to lead agencies or opponents	Determine legal strengths or weaknesses	NEPA regulations and case law	Logical consistency and process	Very high, but not substantive
Political: elected officials	Elected officials and their staff	Serve interests of their constituents	Low overall; focused on specific issues	How to find support or oppose their position or constituents	Low—just want conclusions, or high for specific issues
Practical: implementers	Engineers and enforcement staff	Carry out design or program requirements	Very high in their subject area	What they need to do	Very high—focused on outcomes
Professional: technical reviewers	Subject-matter experts	Evaluate strengths and weaknesses in the analysis	Very high in their subject area	Complete description of methods, data, results, and conclusions	Very high in their area
Positional: advocacy	Represent a specific cause	Build support for their cause	High related to their cause, often from a policy perspective	Conclusions related to their cause	Moderate, focused on their subject areas
Public	People affected by an action	Protect their self-interest	Detailed knowledge of an area; likely little technical understanding	What is going to happen	Focused on their area and just the conclusions

of agencies and for different types of actions, I engaged five professionals with direct responsibility or engagement with NEPA documents in informal discussions on their NEPA practice. Although this is not a survey or comprehensive examination, the range of agencies and type of decisions they represent encompass a broad spectrum of NEPA practice.

The first readers of NEPA documents are the internal reviewers who look at preliminary drafts. Many agencies have carefully defined and monitored procedures for circulating drafts to their own subject-matter experts and internal departments. Each department expert must sign off, some agencies requiring formal signatures, before the project can advance. Some agencies establish core teams that meet to review and collaborate on the document. As the project develops, the review often broadens. This internal review process isn't necessarily easy; some practitioners have said their toughest fights were before any drafts left their part of the agency. The extent of these reviews and their influence on proposed actions are striking. In many, if not most, agencies, NEPA review, whether categorical exclusion, environmental assessment, or environmental impact statement, is an important, established vehicle for internal communication and collaboration. These internal readers are mostly professional and practical, with procedural readers (attorneys) involved on larger or controversial projects.

The next group of readers for many documents are from other agencies that, whether or not they are formally cooperating agencies, have a recognized role or expertise related to the action. Often these readers are not reviewing the entire document but are sent sections or technical reports focused on their area of expertise. The function of this review is to avoid or minimize (note the familiar terms) objections or controversy later when designs have advanced and the public is involved. Many agencies count on this step and the overall NEPA process as a prepermitting stage that flags and hopefully resolves possible fatal flaws or substantive issues before the formal permitting process begins. Like the internal review, this step is an important vehicle for communication. These readers are also professional and practical, and the focus is largely technical and aimed at complying with specific regulations or guidance. This guidance can unintentionally make documents hard for lay readers to understand. For example, the procedures for modeling noise from light-rail trains are effective in developing good systems and avoiding impacts but are difficult to explain to the general public.

As NEPA documents are readied for publication, there are more reviews within lead agencies (especially for

environmental impact statements), and upper management and attorneys are more likely to be involved. For many NEPA managers, this can be the most difficult and trying time. Months or years have been invested at this point, and the document has been through all of the rounds of first internal review and then review with other agencies, only to have a highly placed official or an attorney, who is just now being consulted, raise some fundamental premise or finding that threatens to set the entire process back by months or years. These are the preferential and the political readers. Frantic meetings and phone calls follow, hopefully leading to some better understanding or adjustments that can be made without tremendous effort. (Attorneys are often satisfied by adding more to the document.) Making these changes without introducing inconsistencies or contradictions in what is now a huge document can be the NEPA practitioner's greatest challenge.

Finally, the NEPA document is published for public review. At this point, the people who live nearby or have an interest in the project get the opportunity to read a document and attend public meetings to learn more about the project. These people have been waiting for months or years since they heard about the project during something called a scoping meeting (what the heck does that mean?) and have since seen only vaguely worded updates on a website. When they finally get the information, the NEPA document has often morphed to a several-hundred-page behemoth—several hundred pages of text, tables, and graphics—that was punched around and finally squeezed out of the multiple internal and interagency review processes. It is the collective memory of innumerable debates, discussions, and accommodations. This is also where the interest groups finally get to see what transpired after they have been maneuvering to get their perspective recognized and included. While these groups can have considerable expertise and represent a substantial constituency, usually it is hard for them to participate meaningfully because they don't have status as an agency. This characterization of NEPA documents is purposely harsh, but, while there are exceptions, I hold it is more common than not (Mattern, 2009). While rare and quite a small minority, to be fair there are cases where the NEPA manager makes a point to get to know the interested public and groups and keep them apprised, to ensure they know about upcoming meetings, and to see the documents are written clearly so they can be readily understood.

I know there are many exceptions to the process that I've depicted, and I realize that it is difficult and perhaps misleading to make general statements about how

NEPA is practiced. There are so many different agencies and types of projects, and NEPA's purview is so broad, that this variation seems inevitable. From one perspective, this is a strength—that NEPA is a broad enough practice that it can be applied in many different situations. This is also a weakness because there are many examples of what can only be considered poor or even terrible practice. The variation exists within agencies. A career-long senior NEPA lead noted that, within his agency, he finds NEPA is practiced differently depending on whether the NEPA team is multidisciplinary or interdisciplinary. Multidisciplinary teams are made up of experts who take their subject and run with it, analyzing away with little interaction with other subjects or a broader context. This produces lengthy documents that read like a collection of research papers and are notable for not pulling the information together to explain what it all means. On the other hand, interdisciplinary teams are managed to foster interaction and collaboration among the experts. These teams will gravitate toward problem solving and often develop new solutions or alternative approaches. They are more likely to produce shorter documents that are focused more on relevant issues and that are less prone to reciting facts without explanation or conclusions. Both approaches can be found within the same agency, under the same regulations and body of guidance.

## Conclusions

In his opening comments for the 2013 NEPA Annual Report from the National Association of Environmental Professionals, one of NEPA's original authors, Congressman John D. Dingell, noted, "Simply put, NEPA can be surmised in one concept—look before you leap" (Dingell, 2014). This is really just good, open planning with coordination and public disclosure. From today's perspective, the idea of working without this coordination invokes visions of cumbersome chaos, yet this was often the case in the 1960s and one of the frustrations that led Congress to pass NEPA (Clark, 1997). From over 30 years of NEPA practice and conversations with multiple NEPA professionals, my conclusion is that NEPA has become an established means of coordination that agencies rely on for communication and coordination. This finding seems obvious today, but without NEPA this wouldn't necessarily be the case. This work often takes time, but working out better solutions should. Overall, we do look, and, more often than not, our leap is different and better as a result.

Those who have been mostly marginalized by our NEPA practice are the public and the interest groups, who come at

the end of the review chain and are hence an afterthought to the process. Interest groups can bring knowledge and important perspectives, but, to avoid being deluged by information, NEPA leads find it is easier to shut the door to all interest groups except as required by regulation. Some agencies do make a genuine and notable effort to be open and involve the public, but, because the bulk of the discourse is among professional, practical, or procedural readers, the information remains obtuse. The issue is exacerbated by the fact that these early reviewers tend to be focused on their particular area of expertise and are often not looking comprehensively at the document and the key conclusions from a comprehensive perspective. Even when agencies make extra efforts to share their NEPA documents, the public still faces a technical morass. For example, the Department of Energy maintains an excellent web portal (<http://energy.gov/nepa/nepa-documents>) for all of its NEPA documents, even categorical exclusions. This is much more open than most agencies. Their documents, however, are “normal” NEPA documents and quite technical. If NEPA is truly intended to be a democratic process that the public can follow and understand, then we have largely failed or at least deserve a poor grade.

I wish I could point to some specific part of the CEQ regulations or written guidance as the culprit responsible for the weaknesses in NEPA practice that I’ve described. That would point to something we know how to change and presumably fix. This isn’t the case; moreover, the ills in NEPA practice that I’ve described are contrary to or at least show an ignorance of these regulations. This is not a new conclusion; consider the CEQ’s 2012 memo *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*, which points to solutions for a host of common NEPA problems by methodically citing their long-standing regulations—a polite way of saying, “Try reading the regs first, then you can complain.”

If the current regulations and guidance are not producing the practice and documents that we want for the general public, then revisions should be seriously considered. I am mindful of the burden that new requirements bring, particularly since they might reduce the flexibility that has been one of NEPA’s strengths. However, if our intent genuinely is to bring the public into NEPA as a meaningful participant, and our practice is as I’ve described, clearer mandates must be considered.

Whether or not requirements are strengthened, what these conclusions do point to is the overall lack of training

for NEPA practitioners and leadership directing them to act. There are countless stories of how NEPA projects bog down or blow up out of proportion under the direction of someone who has been shuffled into a lead role without adequate preparation. NEPA calls for judgment and reason backed by facts, but, without support and direction from managers, staff implementing NEPA will be shackled and won’t use the tools we already have in place.

## Acknowledgments

This article draws on thoughtful comments from the following NEPA and environmental professionals who graciously donated their time: Robert Cunningham, Pathway Consulting Services (retired, US Forest Service); James Irish, Sound Transit; Stephanie Miller, Parametrix; Charles Nicholson, Tennessee Valley Authority; Charlie Raines, Sierra Club & Forterra; and Michael Robinson, US Army Dugway Proving Ground.

## Notes

- 1 In the author’s first month working on NEPA, fresh from graduate school, he was lectured by his boss on the importance of the *thud factor*, that the size of the document should be commensurate with the value of the contract.
- 2 This characterization of readers can be used as a tool to think through who will be involved and develop a map of the NEPA document so as to track where to place information for each type of reader. I have done this successfully as an exercise for several projects after scoping has developed enough information that the action is reasonably well understood and various interests have made themselves known. A group with project leaders and NEPA staff completes a table similar to the one included here but with the specific names and subjects that will be involved. Columns can be added to note where in the document (chapter, appendix, and executive summary) what information in what level of detail will be placed. This exercise was not successful where the lead agency regarded environmental review as a prepermitting exercise and had little interest in anyone other than attorneys and technical reviewers.

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Submitted June 18, 2014; revised July 18, 2014; accepted July 18, 2014