NEPA from an Oil & Gas Industry Perspective

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National Environmental Policy Act of 1969

Signed into law January 1, 1970 (42 USC §§ 4321-4347)

NEPA is a national environmental policy setting forth procedural requirements that must be followed to reach a decision to pursue a federal action

The Congressional Declaration of Environmental Policy:

“It is the continuing policy of the Federal Government to ... use all practicable means and measures including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 USC § 4331 (Section 101(a))
The NEPA Responsibility

- It is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, … to the end that the Nation may:
  - “Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities”

42 USC § 4331 (Section 101(b))
The NEPA Procedural Policy

- All agencies of the Federal Government shall:
  - Include in every recommendation or report on proposals for legislation or other major Federal Actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on
    - The environmental impact of the proposed action
    - Any adverse environmental effects which cannot be avoided
    - Alternatives to the proposed action
    - The relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity
    - Any irreversible and irretreivable commitments of resources which would be involved in the proposed action

42 USC § 4332 (Section 102(C))
Creation of the Council on Environmental Quality (CEQ)

- The CEQ shall assist and advise the President in the preparation of the annual Environmental Quality Report to Congress which shall set forth:
  - status and condition of major natural, manmade or altered environmental classes of the Nation including forest, dryland, wetland, range, urban, suburban and rural environment;
  - current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation;
  - the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures;
  - 42 USC § 4341 & 4344 (Sections 201 and 204)
CEQ Regulations for Implementing the Procedural Provisions of NEPA

- Procedural guidelines for NEPA
  - When to prepare an EA or EIS
  - Opportunities for public involvement
- How is NEPA to be implemented?
  - NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken
  - NEPA documents must concentrate on the issues that are truly significant to the action in question rather than amassing needless detail
  - The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore and enhance the environment
  
40 CFR § 1500.1

- What is the goal?
  - Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment

40 CFR § 1500.2(e)
Levels of NEPA Analysis

- **Determination of NEPA Adequacy (DNA)**
  - The proposed action is within the scope of and analyzed in existing NEPA documentation and there are no new circumstances, information or unanalyzed environmental impacts

- **Environmental Assessment (EA)**
  - Determines if the action will have significant impacts
  - Results in a mitigated Finding of No Significant Impact (FONSI)
  - FONSI “means a document by a Federal agency briefly presenting the reasons why an action … will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.” CEQ Guidelines (42 CFR § 1508.13)
  - If significant impacts are determined, an Environmental Impact Statement is required

- **Environmental Impact Statement (EIS)**
  - Analyzes impacts of the proposed action, a “no action” course, and other applicable alternatives
  -Discloses the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity
  - Identifies any irreversible and irretreivable commitment of resources
  - Offers mitigation for unavoidable impacts
NEPA Categorical Exclusions

The actions eligible for a Categorical Exclusion (CX) under CEQ guidelines are “a category of actions which do not individually or cumulatively have a significant effect on the human environment and … therefore neither an environmental assessment nor an environmental impact statement is required.”

- Fish and Wildlife
- Solid Minerals
- Oil, Gas and Geothermal
- Recreation Management
- Forestry
- Emergency Stabilization
- Rangeland Management
- Other
- Realty

An “Extraordinary Circumstance” determination must be applied. Are there significant impacts or highly controversial environmental effects?

Notice of Final Action to Adopt Revisions to the BLM Procedures for Managing the NEPA Process, Federal Register August 17, 2007
Statutory Categorical Exclusions for O&G

- Energy Policy Act of 2005 declared five categorical exclusions specific to the Oil and Gas Industry
  - Disturbance of less than 5 acres if total lease disturbance is >150 acres and previous NEPA is complete
  - Drilling of a well on an existing well pad where drilling has occurred within the past 5 years
  - Drilling of a well in an area where a previous NEPA document analyzed drilling as a reasonably foreseeable activity and the NEPA document was approved within 5 years prior to the proposed spud date
  - Pipelines placed within approved ROW corridors where the corridor was approved within 5 years prior to the proposed pipeline placement
  - Maintenance of a minor activity
- These actions have been encompassed within prior NEPA documentation and do not require additional NEPA analysis
Other NEPA Tools

- Use of Multiple-Well EAs (BLM IM No. 2005-247)
  - Single NEPA analysis that addresses a multiple-well project
  - Potential well and road locations are projected based on State spacing, topography, subsurface geology and lease stipulations
  - Actions subsequent to the approved multiple-well EA/EIS can be approved through use of statutory CX or DNA
  - “Additional NEPA documentation for current or future APDs and related ROWs within the scope of the EA/EIS analysis should rarely be necessary.”

- Exceptions, Waivers, Modifications
  - Most NEPA documents include a process for agency review of requests for exception, waiver or modification
  - Exceptions are one-time exemptions based on specific criteria and on-the-ground conditions existing during the time the project will be ongoing. Consideration is given to changes in circumstances or technologies
  - Waivers (permanent exceptions) and modifications of decision provisions are very rare
When does the Oil and Gas Industry do NEPA analysis?

- All Federal Proposed Actions which are considered “significant”
  - Drilling
  - Facility Construction
  - Access Roads
  - Pipelines
  - Fencing
  - Habitat enhancements
  - Basically any type of surface disturbance
Where does NEPA fit into an O&G Project?

- **The Vision:**
  - Geologist - Studies and identifies an area with potential hydrocarbons
  - NEPA – Resource Management Plan

- **Preparing the seedbed:**
  - Landman – Title search and secures leases and other authorizations
  - NEPA - Leasing

- **Laying out the project:**
  - The perfect well location is selected
  - A single APD or project level proposal is submitted to the managing agency
  - NEPA – Individual APD EA or project level EA/EIS
    - 30-day public comment period for single APD
    - Field examination (onsite) – some proposals require public onsites
    - Identification of mitigation
  - Associated access road and pipeline rights-of-way are submitted
  - NEPA – project level EA/EIS
    - Separate federal action
    - ROW approval can take a year or longer

- **Project Approval**
  - **Planting that Drill Bit**
    - Timing and other restrictions
    - NEPA - Exception requests

- **Reaping the benefits**
  - Hopefully a successful well
  - Can be many years from geologist vision to drilling a well
The Uncertainty of the Regulatory Environment

- Management agencies increasingly have fewer O&G experienced people
  - COGCC is now a quasi-judicial, watchdog agency. Majority of Commission members have little O&G experience
- Agency management of the industry is reactionary and focused on avoiding litigation
  - Litigation consumes vast amounts of manpower, time and money
- A continually moving target creates delays in the NEPA process
  - Goal is to make prudent decisions based on best information available at the time of project analysis
  - Technology is developing rapidly and new (and often conflicting) research data is continually becoming available
  - Industry is investing in and testing new technologies
- How do the delays affect the O&G industry?
  - Inability to plan long-term
  - Inefficient use of resources
  - Inefficient use of surface
  - Unintentional impacts
  - Permitting more locations than needed, risk management
  - Inability to keep equipment and experienced workers
  - Loss of rigs and other fit-for-purpose equipment
  - $4000 fee per well which is forfeited if location is moved or well is not drilled for any reason
NEPA Project Examples

- Pinedale
  - 2000 Record of Decision
    - Current reservoir information and new technology have increased well potential
    - Unintended consequences of mitigations
  - Supplemental EIS
    - Multiple operators proposed plan to cooperatively develop the Pinedale Anticline
    - Directional drilling from multiple-well pads
    - Produced water reuse
    - New rig technology
    - Wildlife research and monitoring

- Hiawatha
  - Benefits of working with grazing permittees and landowners
  - Range-wide, ecosystem view
  - Sage grouse research

- Uinta Basin
  - Greater Deadman Bench EIS
    - NOI to Prepare EIS published in December 2003
    - 1020 new gas wells in existing field
    - FEIS finally published in January 2008

- SW Colorado
  - Canyon of the Ancients National Monument Plan
    - Encompasses 183,000 acres. 155,000 acres have active federal O&G leases
    - Looking at cultural artifacts as “communities”
Each O&G Project is Different

- Oil and gas projects differ in the depth of the wells, the spacing of the wells, the type of reservoir, soil and vegetation, wildlife species inhabiting the area, the proximity to communities and other details.
- Mitigation should be designed to address the specific project circumstances and not be applied indiscriminately.

- **Directional Drilling and Multiple Well Pads**
  - Big Game areas
  - Sage Grouse strutting and nesting areas
  - Deeper wells

- **Year-round concentrated activity**
  - Big Game areas
  - Sage Grouse strutting and nesting areas

- **Mat Drilling**
  - Single well locations
  - Smaller rigs (shallower wells)

- **Off-site frac equipment**
  - Single well locations
  - Close proximity to communities or trails (viewshed issues)

- **Liquids gathering systems**
  - One operator over a broad area
  - Big Game areas

- **Wildlife research** – goal is to guide mitigations that lessen wildlife impacts
- **Habitat treatments** – goal is to achieve more successful reclamations
- **Aggressive reclamation** - The faster the better!
Oil and natural gas are valuable resources too

- Our way of life depends on ever-increasing amounts of energy yet the public scorns what must be done to deliver affordable energy
  - We expect lights when we flip a switch
  - We expect heat when we crank up the thermostat
  - We expect low gasoline prices so we can fuel our recreation vehicles to enjoy the natural environment
  - High energy prices affect lower income families disproportionately
- O&G is generally considered lowest on the value hierarchy in NEPA analysis and oftentimes is not considered a resource but viewed as just an “impact.”
- The impacts from energy extraction are not permanent like housing developments or shopping malls
- Land can be restored, wildlife habitat can be protected and technology is being used to reduce footprint and other energy extraction impacts
- Energy extraction can be done so all valuable resources exist harmoniously in a “balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities.” (See NEPA 42 USC § 4331)
Observations

- NEPA was a simple, uncomplicated Act: Be mindful of your impact on the human environment. Understand those impacts and their consequences. Involve the affected public and make decisions that will remove or minimize the impacts.
- NEPA is a good procedural process for identifying all related components of a proposed project and all its foreseeable impacts on other resources.
- It has become an extremely lengthy process with some EIS taking 5 or more years (and thousands of pages) to complete.
- It has become an extremely contentious process, a pre-cursor to litigation.
- The final Record of Decision is often the beginning of lawsuits being filed, injunctions requested, delays in implementation, conflicts as to the intent of the document, and on and on.
More Observations

- BLM has lots of resources to manage
  - The increase in drilling permits has not been met with a similar increase in BLM manpower
  - In most cases, BLM does not meet the approval timing expectations of Onshore Order No. 1
- O&G knowledge/experience in BLM and other regulatory agencies is decreasing
  - Example of COGCC
  - Oil and gas is devalued
- Need more thoughtful environmental mitigation/monitoring plans
  - Sometimes the latest technology or mitigation du jour is not the wisest for a particular project
  - The process has become an opportunity to get funding for pet projects
- Partnering with others can result in increased overall benefits
  - Permittees, landowners, other O&G companies
  - Wyoming Landscape Conservation Initiative, Cooperative Sagebrush Initiative, etc
- Proponents must closely monitor the NEPA process and participate vigorously and consistently to ensure good NEPA documents
  - Ensure that all laws and regulations are conscientiously followed
  - Anticipate and avoid any legal weaknesses
  - Build a strong administrative record
Thoughts on Navigating NEPA

- Identify the project with a public interest
- Be knowledgeable about NEPA, CEQ NEPA regulations and all environmental and regulatory requirements and restrictions
- Convince the regulatory agencies involved of the desirability of the project and maintain alert and active communication
  - What is each agency’s concerns?
  - What is each agency’s ultimate authority?
- Participate fully in the scoping process
  - What are the real issues?
  - NEPA analysis must address all issues identified in scoping
- Include all parts of the proposed project in the NEPA documentation
- Meet the landowners and develop relationships
- Maintain communication with communities affected by the project
- Become familiar with all wildlife research and monitoring results for the area
- Develop and propose thoughtful mitigations for identified impacts
- Assertively contribute to the agency’s process
  - Participate wherever and whenever possible in the process
  - Use the commenting process to ensure adequacy of the EIS
  - Monitor what gets into the administrative record
- Participate in the commenting process - Enlist allies
- Create a strong administrative record
  - What you would like to present to the court in the future. Make sure it is in the record
- Vigorously press forward on all fronts