ENVIRONMENTAL IMPACT STATEMENTS: THE
STATUTORY FRAMEWORK

SAMUEL BUFFORD, University, Columbus, OH 43210
College of Law, Ohio State

The purpose of this paper is to lay out
the legal framework of the National En-
nvironmental Policy Act (NEPA), as it
relates to the requirements for environ-
mental impact statements.

First of all, attention should be called
to the fact that NEPA is just a small
part of American environmental law.
There are other federal statutes relating
to the management of forests and wild-
live, the cleaning of the air, the preserva-
tion of endangered species, and the preser-
vation of historical landmarks. A num-
ber of states have legislation imposing en-
vironmental quality standards beyond
those found in federal law. In addition,
the common law, apart from any legisla-
tion, has historically imposed certain
environmental protection standards upon
property owners. It is NEPA, however,
that has been the focus of the spotlight
in recent years.

The purposes of the Act are set out in

To declare a national policy which will
encourage productive and enjoyable har-
mony between man and his environment;
to promote efforts which will prevent or
eliminate damage to the environment and
biosphere and stimulate the health and
welfare of man; to enrich the understanding
of the ecological systems and natural re-
sources important to the Nation . . .

Under the declaration of National En-
vironment Policy in § 101, 42 U.S.C.
§ 4331, Congress adopted very broad
language to declare the national policy
with regard to environmental protection:

... to use all practicable means and
measures, including financial and technical
assistance, in a manner calculated to

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2Present address: Sullivan, Jones and Archer,
130 Sutter Street, San Francisco, CA 94104.

This language is broad and sweeping
and may give the appearance of commit-
ting the nation to an extensive program
of environmental conservation. How-
ever, this section has generally not been
interpreted to impose substantive require-
ments for environmental protection: it
contains no operative provisions.

The main operative provision of Title
1 of the Act is in Section 102, which is
the source of the requirement for environ-
mental impact statements. The scope of
application of the provision is limited to
proposals for federal legislation and
other major federal actions significantly
affecting the quality of the human en-
vironment. It does not apply to state
or local governments, nor to actions by non-governmental entities.

An environmental impact statement, according to the statute, must contain the following elements:

1. A statement of the environmental impact of the proposed action.
2. A statement of unavoidable adverse environmental effects.
3. A description of all alternatives to the proposed action.
5. An identification of any irreversible and irretrievable commitments of resources involved in the proposed action.

Subparagraph (A) also requires, in the development of an impact statement, the utilization of a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision-making which may have an impact on man's environment.

In addition, the statute requires the responsible federal official to consult with and obtain the comments of any federal agency which either has jurisdiction with respect to any environmental impact involved or has special expertise in the matter. Furthermore, appropriate state and local agencies must be consulted, and their comments and views, together with those of all relevant federal agencies, must be made available to the President, the Council of Environmental Quality and the public.

The environmental impact statement must be prepared early enough in the planning of the project so that its results are presented to the decision-making authority before the decision is made on whether or not to undertake a project. The statute requires that all of the comments from federal, state and local agencies shall accompany the proposal through the agency review process.

It should be noted that this statute usually has been interpreted to impose no requirements that the decision-making officials actually consider the environmental impact statement in making their decisions. Courts have, for the most part, interpreted the statute to impose only an obligation of full disclosure to the decision-making authorities. Essentially the requirements of the Act are procedural: if the procedure required by the Act is followed, the statutory requirements are met.

There are three main problem areas that have arisen with regard to the implementation of the statute. First, in a number of cases impact statements have been incomplete, particularly in the early experience of preparing such statements. With the development of expertise in preparing such statements, this has become somewhat less of a problem. Second, in some cases the decision-making authorities really have wanted to ignore the environmental impact of certain projects, and have treated the preparation of the impact statement as a formality. Where the statements have not been prepared in time to be placed before the decision-making officials at the time the decisions were made, the courts have held that the statute has not been complied with, and have required a review of the decisions in light of the impact statements completed later. Third, some impact statements have given inadequate or no attention to alternatives to the proposed projects. Where no consideration of alternatives is given at all, courts have held that the statute has not been complied with, and that the impact statements must be revised and the decision reviewed. On the other hand, even a relatively cursory presentation of alternatives in the impact statement has usually been held to satisfy the statutory requirements.

In summary, the courts have treated NEPA primarily as a procedural statute, imposing upon federal agencies the requirement of full disclosure of the environmental impacts of proposed legislation or major federal actions, and the major result of this legislation has been the preparation of environmental impact statements, which to a considerable extent are now taken into account in administrative decision-making processes.