Integrating Health Impact Assessments via Environmental Policy Acts

January 19, 2017
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- Authored by the Public Health Law & Policy Program at ASU’s Sandra Day O’Connor College of Law and the University of Arizona’s Mel and Enid Zuckerman College of Public Health
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Project Overview

- **Stage 1**
  - Analyze legal factors for infusing health considerations and HIAs into environmental reviews of proposed actions or projects with potential corollary health implications.

- **Stage 2**
  - 5 case studies conducted by ASTHO and other colleagues to demonstrate actual or potential public health and environmental benefits of early incorporation of HIAs into such projects.
Stage 1 – HIA NEPA Report

- **Purpose**
  - Assess specific federal and state environmental laws and policies supporting the infusion of health considerations and HIAs into NEPA and SEPA required environmental reviews of proposed projects and actions.

- **Research Question**
  - How can health considerations be embedded into environmental reviews required by NEPA and related state or local equivalent laws?

- **10 Pathways**
  - Integrating health considerations into environmental reviews
Key Terms

- **Health Impact Assessment (HIA)**
  - “bring together scientific data, health expertise, and public input to understand how a proposed plan, policy, program, project, or action could affect the public’s health.”
  - A health review considering influences from social, economic, and environmental factors.
  - e.g., HIAs might consider the impact of construction of an industrial factory on the physical health of a community.

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**The Steps of HIA**

1. **SCREENING**
   - Determine whether an HIA is needed and likely to be useful.

2. **SCOPING**
   - In consultation with stakeholders, develop a plan for the HIA, including the identification of potential health risks and benefits.

3. **ASSESSMENT**
   - Describe the baseline health of affected communities and assess the potential impacts of the decision.

4. **RECOMMENDATIONS**
   - Develop practical solutions that can be implemented within the political, economic or technical limitations of the project or policy being assessed.

5. **REPORTING**
   - Disseminate the findings to decision makers, affected communities and other stakeholders.

6. **MONITORING AND EVALUATION**
   - Monitor the changes in health or health risk factors and evaluate the efficacy of the measures that are implemented and the HIA process as a whole.

The HIA process encourages public input at each step.
Environmental Policy Acts

- **National Environmental Policy Act (NEPA)**
  - Established comprehensive procedures for the review and analysis of federal agency actions that significantly affect the human environment.

- **State Environmental Policy Acts (SEPAs)**
  - Provides similar processes for evaluating certain projects and actions that may affect the environment at the state and local level.

- **NEPA laws do not preempt SEPA laws.**
  - CEQ encourages federal agencies to work cooperatively with state and local agencies through joint environmental research, assessments, and hearings.
17 Selected SEPA Jurisdictions (and year of enactment)
Scope of Environmental Policies Acts

- NEPA was enacted in 1969 and created the Council on Environmental Quality (CEQ), which provides guidance, promulgates regulations, and enforces the act.
- State laws may be more stringent than federal laws, but not less.
- Tribal compliance is not federally mandated, however where NEPA is applicable, tribal leaders and members must be given meaningful opportunities to contribute in decision making.
Three Levels of Review

- **Categorical Exclusion (CE)**
  - ~95% of actions or projects are determined by agencies to not have any significant effect on the human environment.

- **Environmental Assessment (EA)**
  - <5% of actions require limited assessments of non-excluded actions or projects if the lead agency is unsure if it could have a “significant affect” on the environment.

- **Environmental Impact Statement (EIS)**
  - 1% of proposed projects require a detailed review and analysis for proposed “major Federal actions significantly affecting the quality of the human environment.”
How NEPA Applies to Health Effects

Psychological effects may be required in some NEPA assessments.
Prospective Paths to Integrate Health Impacts

1. Statutes & Regulations Promoting Health & Safety
2. Significantly Affect Human Environment
3. Allegations of Detrimental Health Impacts
4. Scoping Process
5. Cumulative Impacts
6. Public Involvement
7. Proposed Action Alternatives
8. Functional Equivalence Doctrine
9. Policies Promoting Health & Safety
10. Environmental Justice
Timeline of Paths in the NEPA Process

1. Does NEPA/SEPA apply?
2. EA Process
3. EIS Process
4. Final Determination

- Significantly Affects Human Environment
- Allegations of Detrimental Health Effects
- Statutes and Regulations
- Cumulative Impacts
- Incorporation by Reference
- Scoping
- Public Involvement
- Action Alternatives
- Environmental Justice
- Policies Promoting Health
Path 1: Statutes & Regulations Promoting Health & Safety Considerations

- NEPA’s intent is to “stimulate the health and welfare of man”
- Planners must avoid risks to human health and safety in agency action planning
- Environmental reviews consider both direct and indirect impacts on the environment that may affect health
  - e.g., water and air quality
- Health effects of any NEPA project must be identified, compared to economic and technical factors of a project, and included within planning documents for review.
Path 1: Statutes & Regulations Promoting Health & Safety Considerations

- California Regional Agency in collaboration with the U.S. Department of State
  - Analyzed construction workers’ risk of exposure to hazardous material. The EIS noted the implementation of specific safety procedures in compliance with federal regulations.

- Nearly every SEPA also mentions health or safety.
  - Connecticut: Environmental improvement is aimed at “enhancing human health and safety.”
  - Minnesota: Focuses on the “promotion of human health-oriented efforts.”
**Path 1: Statutes & Regulations Promoting Health & Safety Considerations**

- Hermosa Beach HIA, CA
- 2014 HIA evaluated potential impacts of oil drilling
  - damage to air and water quality, noise and light pollution, and community livability

The HIA adopted a similar framework, expanding and supplementing the health effects considered in public comments and the resulting draft EIR.
Path 2: Significantly Affects Human Environment

- All federal agencies must produce a detailed EIS for “major Federal actions significantly affecting the quality of the human environment”

Intensity of project’s impact

- Controversial Nature
- Effects on public health and safety
- Uncertainty of Risks
Path 2: Significantly Affects Human Environment

Highway J Citizens Group v. Mineta (7th Cir. 2003)

- Wisconsin residents challenged approved construction of 2 overpasses without a preliminary EIS.
- Residents asserted that project would contaminate groundwater, flooding local residents’ water with arsenic.
- They claimed inadequate assessment of “intensity” in the EA.
- U.S. Department of Transportation eventually won due to the specific, scientific, and reasoned consideration of health impacts in the EA.
Path 3: Allegations of Detrimental Health Effects

- Health Considerations through Direct Allegations
- Alleged Imminent and Adverse Impacts on Human Health
- San Juan, Puerto Rico – July 2016
  - CDC and Puerto Rican officials wanted to spray insecticide to control mosquitos carrying Zika Virus.
  - Officials failed to formally consider negative reactions to the aerial spray.
Emergency Exemptions from NEPA

- In emergencies, agencies can receive exemptions from NEPA’s procedural requirements under
  - The Stafford Act
  - CEQ’s regulations {1506.11}

- CEQ granted 41 alternative arrangements from 1977 - 2008

- Hawaii – 2014
  - CEQ authorized emergency road construction to prevent expected lava flows from cutting off community access to major routes
**Path 4: Scoping Process**

- Lead federal agencies are required to invite affected governmental entities, and other interested parties to provide comments.
- Issues previously analyzed may be addressed in the EIS by reference to prior assessment.
  - e.g. Federal Aviation Administration might adopt an EIS produced by Air National guard on relevant issues.
- Assignments to cooperating agencies on significant issues are allocated.
Path 4: Scoping Process

Stacy Branch Mine

- 6th Circuit federal court of appeals affirmed lower court’s decision that the U.S. Army Corps properly granted permission to surface mine under several miles of streams.

- Citizens alleged that the scope of the review was limited, and did not consider the overall health impacts.

- Environmental groups have sought CEQ guidance to require the Corps (and potentially other agencies) to expand the scope of their environmental reviews.
Path 5: Cumulative Impacts

- Analyze the cumulative effects of proposals to ensure all consequences are considered
- Not just the affected environment, but also human health
  - Greater geographical area, and timeline
  - Considers resources and socioeconomic issues
  - “Human health issues”
    - Emissions, water, quality degradations, and disruption of community mobility
**Path 5: Cumulative Impacts**

- *City of Buffalo v. New York State Department of Environmental Conservation (N.Y. Sup. Ct. 2000)*
  - A New York Appellate court held that the agency failed to consider the cumulative impacts of a bridge and plaza construction together.

Cumulative impacts at the EA level are less stringent than at the EIS level, however most courts require analysis of foreseeable actions that could exaggerate impacts of the proposed project.
**Path 6: Public Involvement**

- NEPA/SEPAs require public involvement, presenting opportunities to highlight potential health impacts, alternatives, and mitigation measures.

- NEPA requires public awareness of mitigation and monitoring efforts to ensure goals are met to reduce impacts.

- EIS must include public comments formally submitted.
Path 6: Public Involvement

Alaska North Slope HIA

- North Slope Oil Development HIA assessed health impacts of oil development on Alaska Native communities
  - Without mitigation efforts, there would have been negative dietary, socioeconomic, and pollution exposure
  - Due to public concern, new air-quality monitoring methods and substance abuse education for project workers were implemented.
Path 7: Proposed Action Alternatives

- Review processes must include alternatives to proposed projects, providing pathways for incorporating health considerations.

- Reasonable alternatives are the “heart” and “linchpin” of an EIS.

Alternatives

- No action alternatives
- Other reasonable actions
- Mitigation measures
Path 7: Proposed Action Alternatives

Wisconsin Sewerage HIA

- Biosolids Storage Facility HIA listed pros and cons of alternatives, including applying biosolids to farming land.

- Community expressed concern for toxic chemicals and groundwater contamination.

- HIA determined that alternatives were less advantageous than storage.

Greenville, WI
Path 8: Functional Equivalence

- Projects that would normally require an EIS may sometimes forgo it if other laws that also govern the project would make an EIS essentially redundant.
  - Court created “Functional Equivalence Doctrine”
- Courts have limited doctrine to acts administrated by the EPA
- Clean Air Act is also statutorily exempted from NEPA requirements
Path 9: Policies Promoting Health & Safety Considerations

- Federal agencies are required to adopt and implement their own policies regarding environmental reviews
- Federal and state agencies set guidance for their own project-planning processes
  - Focused on when and how to incorporate human health considerations
- Not legally binding, however courts may require agencies to follow their own stated procedures and policies
Path 9: Policies Promoting Health & Safety Considerations - Examples

- **BLM’s NEPA Handbook**
  - Specifies that public health effects must be included in the determination of an action’s significant effects

- **U.S. Department of Energy NEPA Guides**
  - e.g. *Transportation Risk Assessment Handbook* – underscores the need for assessing human health impacts

- **Washington State’s Department of Ecology**
  - *Environmental Checklist Guidance*
Path 10: Environmental Justice

- Federal agencies must ensure low-income and minority populations are protected from disproportionately negative environmental health impacts.
- President Clinton’s Executive Order
  - required that federal agencies make achieving environmental justice a part of their mission
  - created an interagency workgroup to provide guidance and coordinate research
  - mandated development of agency-specific strategies that encourage public participation and support enforcement of health and environmental laws
Path 10: Environmental Justice

- In 2013, USFS produced a draft EIS in response to Roca Honda Resources’ Uranium mining proposal.
- USFS received public comments, held open houses, and invited 8 Tribes to participate.
- EIS concluded that the project had the potential to disproportionately impact children, low-income, and minority populations, consisting predominantly of tribal members.
Conclusions

- Strategic opportunities exist to infuse health effects via HIAs into legally-required environmental reviews (ERs)
- 10 paths for agencies, public health officials, community interest groups, and others to incorporate health considerations in the ER process
- NEPA and SEPA ERs via HIAs consider the built environment, transportation, natural resources and energy, agriculture, and housing
- HIAs can gain community support by helping agencies avoid health-related legal objections and improving public health in equitable ways
- Increased focus on health impacts assures healthier and safer communities through cleaner and more livable environments
Acknowledgements and Questions

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Please type your questions in the Q&A panel.

If you have any further questions or comments please contact Kim Weidenaar, JD, at kim.weidenaar@asu.edu.

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