PERSPECTIVE

Does NEPA Planning Suffer from the Pike Syndrome?

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In the war of 1812, Oliver Hazard Perry pronounced, "We have seen the enemy, and they are us." In recent years, the National Environmental Policy Act (NEPA) has come under increasing scrutiny and criticism as many agencies have experienced delays and inefficiencies in this process. I personally believe that much of this problem stems not from inefficiencies inherent in NEPA's regulatory requirements, but instead from the way in which the planning process is implemented.

The Pike Syndrome

Before venturing further, let us ask ourselves, What does the NEPA process have in common with pike fish? Now, as many fishermen will testify, a pike is a long fish with razor-sharp teeth that preys viciously upon smaller prey. Long revered as a challenging and tenacious fighter, this fish is prized by sportsmen. But what few fishermen know is that these pike have also been the subject of some very enlightening experiments.

If a bell jar filled with minnows is introduced into an aquarium filled with pike, they will repeatedly lunge at the minnows, striking their face hard upon the glass bell jar. Bewildered, the pike eventually give up and ignore the minnows. Now here is where the experiment gets interesting. If the bell jar is removed, allowing the minnows to swim freely, the pike will continue to ignore them! The pike have been conditioned to leave the minnows alone; they are unable to adapt to their new surroundings. While swimming freely against a natural food supply of minnows, the pike may eventually starve to death rather than attack their natural food source. The pike is an animal incapable of adjusting to its surroundings, unable to comprehend that what it learned earlier is no longer applicable.

This experiment has since become known as the Pike Syndrome.[1] In scientific circles it has become a metaphor for fixed, unyielding, conditioned thinking. The Pike Syndrome has probably been responsible for the extinction of many species.

Does the Pike Syndrome Apply to NEPA?

When viewed with an eye to NEPA, the Pike Syndrome may explain why some quarters continue to experience inefficiencies and ineffectiveness in their NEPA process. Where projects are being managed more and more with an eye on effectiveness and costs, NEPA practitioners can little afford to continue the way of the pike. More effective, faster, and cost-efficient approaches must be incorporated into the NEPA process.

If viewed as a permitting requirement rather than a planning process, NEPA compliance can be slow, costly, and resource-intensive. Properly performed, however, NEPA provides planners and decision makers with a powerful tool for planning future actions.

Examples of NEPA's successes and failures abound. Described below are two different experiences in NEPA compliance—one a glimmering example of success, the other, anything but.[2] The first example vividly illustrates the true potential of NEPA in shaping federal planning. The second demonstrates the ineffectiveness of NEPA when it is improperly implemented. Let's examine both cases to see what can be learned from these experiences.

A Tale of Two Stories

In 1994, the US Department of Energy (DOE) issued a draft Environmental Impact Statement (EIS) for the Safe Interim Storage of high-level radioactive waste (The New Tank Waste EIS). The preferred alternative involved construction of up to six enormous high-level waste storage tanks, with a projected cost of $435 million. The need for additional storage space was considered urgent, and "political" support was decidedly in favor of pushing this proposal forward as fast as possible.

But questions soon arose. In conducting the NEPA analysis, it soon became clear that the "purpose and need" for additional storage space was, in reality, not justified. During the NEPA process, a reconsideration of waste volume projections and management practices led DOE to eventually conclude that construction of the additional tanks was unjustified. The cost savings from this single decision alone are estimated to exceed the cost of DOE's *entire* NEPA process for many years into the future. Carol Brogstrom, director of DOE's Office of NEPA Policy and Assistance, stated that this was truly a "NEPA success story," and a letter to the DOE from the Confederated Tribes of the Umatilla Indian Reservation characterized this EIS as an excellent example for others to follow.

Now, contrast this experience with one where an EIS was prepared for a relatively modest proposal to stabilize plutonium at the DOE's Hanford Plutonium Finishing Plant. A decision was made to prepare an EIS even though there was substantial reason to believe that an Environmental Assessment (EA) could suffice. Properly implemented, a decision to prepare an EIS on such a modest proposal does not necessarily present a significant problem, from the standpoint of efficiency. Here, the "problem" was not so much the fact that an EIS had been undertaken, as the manner in which it was prepared. The final document was "bloated," well beyond the recommended page limit of 150 pages for a typical EIS, and was barely under the maximum allowable page limit of 300 pages (reserved for projects of unusual scope or complexity); this does not include almost 250 pages of appendices. Between the draft and final stages, the font was even changed to keep the length of the text within the prescribed guideline limits for length!

When compared to many other DOE actions of a nuclear nature, this activity was relatively innocuous. Worse, though, this encyclopedia of a document concluded that every impact investigated was insignificant—the very purpose for writing an EIS. Yes, not a single impact was found to pose a significant environmental effect! Yet this EIS contained more detail than the

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New Tank Waste EIS where the analysis of issues, alternatives, and potential impacts were many times more complex. The amount of detail was completely out of proportion to the complexity of the action or the potential for impacts. Not surprisingly, this EIS ignored mandatory direction, which spans the NEPA Regulations for reducing the cost, effort, and size of an EIS. In the end, the EIS is estimated to have cost the American taxpayers an estimated five million dollars, and the contribution to the decision-making process was marginal at best! One recognized expert went so far as to describe this EIS as a "NEPA miscarriage."

How does one account for such differences? What can we learn from such experiences? Why was one a major success in terms of efficiency, effectiveness and excellent decision making, while the other frittered away scarce resources with very little to show for it? Was this a case of the Pike Syndrome? Differences in philosophy certainly account for part of the contrast. Adherence to (or disregard of) regulatory direction and good methods of professional practice may account for much of the rest. These experiences demonstrate that, to a great extent, the NEPA planning process can be either a success story or a quagmire, depending on how one chooses to implement the process.

Traditional Problems that Have Plagued NEPA

Experience shows that a number of problems are continually responsible for inefficiencies and ineffectiveness in an agency's NEPA process. Some of these problems include:

- Prescribed methods and regulatory provisions for reducing paperwork, cost, and delays in the NEPA process are often used ineffectively or ignored altogether;
- In interpreting regulatory provisions, agencies sometimes fail to apply reason or common sense. This is true even when certain provisions are inconsistent with the "rule of reason" because they conflict or lead to absurd results;
- Decision making, approaches, and analytical methodologies are often applied in an ad-hoc manner without regard to accepted methods of professional practice;
- Finally, there is often opposition or reluctance to accept new or innovative tools, techniques, and approaches, many of which may lead to greater efficiency (the Pike Syndrome?). The inevitable result is increased costs and delays as some issues are overly investigated, while others may be inadequately evaluated.

Particularly with respect to the last bullet, agencies have been granted a wide measure of latitude and flexibility in interpreting NEPA and implementing its requirements. While the Council on Environmental Quality (CEQ) grants this wide degree of latitude and flexibility, agencies often fail to take full advantage of the privilege.

A Flexible Process for Planning Future Actions

As a planning tool, NEPA allows agencies to account for environmental factors, yet it does not set performance standards or place burdensome restrictions on administrators or project engineers. Properly executed, NEPA can even assist an agency in planning future actions so that they avoid triggering subsequent permitting and regulatory requirements.

Unlike most other environmental laws, NEPA allows agencies to include other factors such as cost, schedules, safety, and risk assessment in reaching a final decision. Moreover, NEPA allows agencies to consider alternatives that lie outside its jurisdiction or that conflict with other existing laws and regulations; properly executed, a NEPA analysis can even provide the agency with a rigorous and publicly reviewed basis for seeking a change in existing law so that a more sensible or appealing alternative may be pursued.

It is time to start taking advantage of the great flexibility that NEPA brings to the field of environmental planning. If this is done, NEPA provides a unique and powerful tool for planning actions so as to avoid environmental damage. If not, we may eventually find that the field of environmental planning has gone the way of the pike.

Notes

1. P. Goldberg, 1990, *The Babinski Reflex,* Tarcher, Los Angeles.

2. C. H. Eccleston, 1999, *The NEPA Planning Process: A Comprehensive Guide with Emphasis on Efficiency,* Wiley, New York, 396 pp.

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