

The BP Disaster and Lessons Learned

BY JAMES A. KENT

I recently received emails from several colleagues that essentially asked the same question: “How can we, as professionals, adjust our thinking and plans for the post-BP disaster era?”

This is an emerging new era for right of way professionals, and change is certain. The old school development model of designing, proposing and defending will be replaced by engaging, communicating and building. If we are to succeed, we must either develop the leadership skills necessary for participating in this new era, or be content with reacting to the agendas of others.

In the July/August issue of Right of Way Magazine, two different articles raised concerns about the increased regulations that energy developers are likely to face as a result of the BP disaster. In my article, “Collaboration under the NEPA Umbrella,” I spoke to the federal tightening of the National Environmental Policy Act (NEPA) in terms of regulations and permitting. An article by Val K. Hatley, entitled “Under the Gun,” shed light on the red flag raised by the reorganization of the Minerals Management Service in the Department of Interior.

As stated in Section 101 of NEPA, the goal of major federal actions is to foster “productive harmony,” a balance between people and nature. Congress directed that the social, economic, and ecological aspects of decision-making be integrated in order to create that balance. Section 101 will inevitably receive new and vigorous attention from regulators armed with concepts like the Pre-NEPA engagement, collaboration and issue management. The main goal will center around one

important theme – project outcomes that produce sustainable, livable and healthy communities.

As we prepare for action in this new era, there are three essential elements that will not only help ensure our projects are in compliance, but eliminate unnecessary delays, roadblocks and environmental hurdles during the process.

The social component of the Environmental Impact Statement will take on new and significant attention. This includes a situational assessment to discover which issues will surface for the impacted population, mitigation measures for those issues in project design and an implementation plan with budget. It is the public’s reaction to these off-site impacts that are stopping projects even when the technical aspects and on-site impacts are favorable.

Social impact assessments, along with other feasibility studies, must be done up front before finalizing decisions relative to siting, corridor selection, permitting and acquisition. Recognize the relationship that residents have with their environment, and how any type of disruption that impacts their environment will be met with fear and anxiety. Those who understand the fundamental dynamic of community life and legitimate project impacts on people’s lives will benefit greatly. If local residents feel respected, your chance for project success will be significantly enhanced.

Avoid the trap of relating to regulators in a manner that you feel gives an advantage in how they look at your

project. This trap can lead to assumptions that certain studies can be short-changed or ignored completely because relationships replace science.

Currently, there is a lawsuit against the Cape Wind offshore turbine farm near Nantucket Island. In this case, with the tacit permission of several regulatory agencies, the applicant did not carry out the required environmental studies and did not implement mitigation measures.

At a critical time, the very agencies that appeared to support the project suddenly became adversaries of the developer. There is no leverage to be gained by not doing all of the compliance work and doing it early. Make NEPA, the Endangered Species Act, the Clean Air Act and the Clean Water Act work for you.

The opportunities this change brings will produce projects that are physically, biologically, socially, culturally and economically integrated. We would all be wise to embrace this emerging new era. With the rebirth of NEPA, fresh industry leadership is critical for survival and profitability.



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