

Collaboration under the NEPA Umbrella

BY JAMES A. KENT

One of the direct results of the BP Deepwater oil rig disaster in the Gulf of Mexico will be the tightening of the National Environmental Policy Act (NEPA) law across the board on federal lands and for federal permits. This monumental tragedy exposed a loose relationship between the federal regulatory agency, the Department of Interior's (DOI) Minerals Management Service and oil companies like BP to the extent that NEPA exemptions were given without any evidence that they were warranted. The repercussions from these acts of negligence will have profound effects on all future federal permitting nationwide.

NEPA enforcement will be one of the major vehicles for ensuring compliance. The good news is that companies can take preventive action if they recognize this change is coming. Companies that want to protect their projects from the unintended consequences of a new wave of enforcement need to quickly come up to speed on their knowledge of NEPA. This is especially true when it comes to addressing the social component of the law, which is usually neglected by the federal agencies and project proponents in doing environmental assessments and environmental impact statements. Yet, it is the social ecology – the cultural and economic impacts on individuals and communities – that must be addressed on an equal basis with the natural environment.

In order to enhance project approval opportunities, an internal strengthening of the social component is advisable. The concept of pre-NEPA work is already in

motion within the permitting agencies with specific attention focused on Section 101 – the policy goal of the law. In this section, the concept of productive harmony proposes the integration and balance between people and nature.

On projects that impact the community, the pre-NEPA work allows time for relationships to form and creates an understanding among the agencies, citizens and local governments before the clock of Section 102, the familiar procedures section of NEPA, starts ticking. Agencies are finding that the pre-NEPA efforts actually help expedite the formal process by reducing last minute delays and legal actions.

There is currently a shift toward integrating more collaborative approaches to accomplish sustainability, livability and health of the resources and local people in both the DOI and the U.S. Forest Service. A collaborative process allows citizens to participate in changes to their social and physical environments. It also reinforces the government's function as one of expediting and facilitating citizen stewardship rather than commanding and controlling the process.

Companies are well advised to thoroughly understand the collaboration concept under the NEPA umbrella and to use it wisely in providing leadership to agency personnel who may be struggling with the expansion of their responsibilities. A well prepared future course of action will pay dividends by avoiding conflict, false starts, lawsuits, gridlock and project delays. It is essential that time be taken to encourage local

citizens to function as willing partners, as this will help ensure we collectively move forward in energy development. Increased local citizen ownership in the outcomes of the project leads to improved decision-making by the agencies that in turn provides benefits and protection for project developers.

As the decision-making landscape changes because of the BP blow-out, it is the social, cultural and economic aspects of those decisions that will become the driving force for new resource siting and corridor development involving federal permitting. Companies now have an opportunity to shape and direct their own future by developing their decision making capacity internally instead of having it dictated to them by outside forces.



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