

# NATIONAL ENVIRONMENTAL POLICY ACT CHECKLIST

The National Environmental Policy Act (NEPA) requires agencies to take a “hard look” at environmental impacts, including those related to air, water, soil, public safety, and historic sites. Thus, NEPA advocacy can support advocacy on other permits and vice versa and can be used to draw attention to concerns that air, water, and other permits may not address.

Notes	National Environmental Policy Act	Guide
	<b>1st Stage: Gather Information &amp; Develop Relationships</b>	
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Determine if NEPA will be triggered. Typically, NEPA will be required whenever a Corps Section 404 individual permit or Section 10 permit is required</li> <li><input type="checkbox"/> If it's not clear, reach out to the Corps district office to ask about its plans or consult with an experienced attorney</li> </ul>	p. 150
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Reach out to the agencies that apply NEPA— including the Corps, EPA, FWS, NMFS—as soon as you find out about a proposed project. Federal law requires agencies to apply NEPA early.</li> <li><input type="checkbox"/> Identify the lead agency and cooperating agencies. Typically, when there is a Corps permit, the Corps will be the lead NEPA agency. Cooperating agencies may include EPA, FWS, and NMFS</li> <li><input type="checkbox"/> Begin developing relationships with local agency staff. Educate staff about your concerns about the project; provide supporting evidence whenever possible</li> <li><input type="checkbox"/> Ask the lead agency to notify you of all NEPA-related public engagement opportunities and how to best stay informed about the timeline for the NEPA review               <ul style="list-style-type: none"> <li><input type="checkbox"/> Track how that timeline relates to other advocacy, such as on air and water permits.</li> </ul> </li> <li><input type="checkbox"/> Find out if the lead agency plans to issue a more abbreviated “environmental assessment” (EA) or a more detailed “environmental impact statement” (EIS)               <ul style="list-style-type: none"> <li><input type="checkbox"/> If an EA: Urge the lead agency (1) to prepare an EIS by presenting evidence that the proposed activities may cause significant harm to the environment; (2) to provide a formal public</li> </ul> </li> </ul>	p. 150-153

	<p>comment opportunity on the draft EA and to host public meetings</p>	
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Collaborate with allies to determine how to best divvy up resources to maximize the impact—NEPA advocacy often runs concurrently with other advocacy opportunities</li> <li><input type="checkbox"/> Build a broad and strong coalition that includes local allies and federal, state, and local politicians, if possible</li> </ul>	<p>p. 170</p>
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Gather as much information as possible about a project and its potential impacts, including harm to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Air quality;</li> <li><input type="checkbox"/> Water quality;</li> <li><input type="checkbox"/> Climate change;</li> <li><input type="checkbox"/> Vegetation and wildlife;</li> <li><input type="checkbox"/> public health and safety;</li> <li><input type="checkbox"/> Environmental justice;</li> <li><input type="checkbox"/> Geology and soils;</li> <li><input type="checkbox"/> Land cover;</li> <li><input type="checkbox"/> Transportation;</li> <li><input type="checkbox"/> Toxic substances;</li> <li><input type="checkbox"/> Aesthetic and visual resources;</li> <li><input type="checkbox"/> Cultural resources</li> </ul> </li> <li><input type="checkbox"/> Identify experts that could assist with evaluating impacts and developing detailed comments. Some of these experts may also be able to assist with permits. Consider: <ul style="list-style-type: none"> <li><input type="checkbox"/> Economics;</li> <li><input type="checkbox"/> Air quality;</li> <li><input type="checkbox"/> Wetlands</li> </ul> </li> <li><input type="checkbox"/> To learn about the project: <ul style="list-style-type: none"> <li><input type="checkbox"/> Speak with community members to identify issues that the agency may have overlooked;</li> <li><input type="checkbox"/> Conduct online research to find out what the applicant has said about the project;</li> <li><input type="checkbox"/> Review newspaper articles;</li> <li><input type="checkbox"/> Use mapping tools to learn about the area;</li> <li><input type="checkbox"/> Ask agency staff</li> </ul> </li> <li><input type="checkbox"/> Submit a public records request under FOIA to gather additional information and to fill in knowledge gaps, including information about the agencies' plans <ul style="list-style-type: none"> <li><input type="checkbox"/> If you have not heard from the agency within 20 days, reach out to the agency</li> </ul> </li> </ul>	<p>pp. 173-184</p>

	<ul style="list-style-type: none"> <li>□ Begin to prioritize key issues</li> <li>□ Often the best issues are the most obvious flaws, the most significant harm, and those that overlap with other advocacy</li> </ul>	
<b>2nd Stage: Engage in the NEPA Process</b>		
	<ul style="list-style-type: none"> <li>□ The scope of public engagement opportunities depends on whether the lead agency issues an <b>EA</b> (a more abbreviated process) or an <b>EIS</b> (a more involved process with more public engagement opportunities)</li> <li>□ Participate in all formal and informal public engagement opportunities</li> <li>□ Work with allies to secure broad public participation</li> </ul>	p. 171
	<p><b>EA is Issued</b></p> <ul style="list-style-type: none"> <li>□ Document concerns in writing to the lead agency, even if there is no formal public comment opportunity</li> <li>□ Support concerns whenever possible with evidence attached. <ul style="list-style-type: none"> <li>□ Doing so could convince the agency to prepare an EIS and, if need be, help support a case in court arguing that the agency should have prepared an EIS</li> </ul> </li> </ul>	p. 171

	<p><b>EIS is Issued</b></p> <ul style="list-style-type: none"> <li>□ <u>Scoping</u>. This step is among the best opportunities for shaping the agency’s NEPA analysis. <ul style="list-style-type: none"> <li>□ Urge the agency to consider particular environmental concerns and proposed alternatives</li> <li>□ Identify knowledge gaps and information/data needs</li> <li>□ Ensure that the “purpose and need” statement and “affected environment” are appropriately defined</li> <li>□ Provide supporting evidence of each of the above</li> </ul> </li> <li>□ <u>Draft EIS (and Supplemental Draft EIS, if any)</u>. <ul style="list-style-type: none"> <li>□ Review the draft EIS and supporting documentation</li> <li>□ Draft written comments attaching supporting evidence</li> <li>□ If needed, request an extension to the comment period, which generally lasts 45 days</li> <li>□ Request a public hearing <ul style="list-style-type: none"> <li>□ If there is a public hearing on a Clean Water Act Section 404 permit, use that hearing to advocate on NEPA issues</li> </ul> </li> </ul> </li> <li>□ <u>Final EIS (and Supplemental Final EIS, if any)</u>. <ul style="list-style-type: none"> <li>□ Submit written comments on unresolved issues even if a comment period is not announced</li> <li>□ The final EIS must be available for public review at least 30 days before the “record of decision” issues</li> </ul> </li> </ul>	p. 171-173
	<p><b>Cross-Cutting Strategies</b></p> <ul style="list-style-type: none"> <li>□ Be specific about concerns, what needs to be done to fix the agency’s analysis, and ideas for alternatives</li> <li>□ Provide supporting evidence showing that the concerns are valid and that proposed alternatives are reasonable</li> </ul>	
	<ul style="list-style-type: none"> <li>□ In comments, <b>address “global issues”</b> <ul style="list-style-type: none"> <li>□ <u>Purpose and need statement</u>: Ensure that the statement is not restrictive and allows for consideration of a reasonable range of alternatives</li> </ul> </li> </ul>	p. 173-177

	<ul style="list-style-type: none"> <li>□ <u>Affected environment:</u> Ensure the that the agency has defined a reasonable scope for the “affected environment” <ul style="list-style-type: none"> <li>□ The geographic scope depends, in part, on the extent of federal involvement and whether the federal permit covers a sizable portion of the project</li> <li>□ E.g., Does the affected environment include the entire petrochemical facility, just the area at issue in the federal permit, or something else?</li> <li>□ Encourage the agency to define the affected environment broadly</li> </ul> </li> <li>□ <u>Reasonable alternatives:</u> <ul style="list-style-type: none"> <li>□ Identify specific alternatives that the Corps should consider and demonstrate with evidence that the proposed alternatives are reasonable</li> <li>□ Comment on the criteria used to evaluate and select alternatives—ensure that the criteria do not unreasonably exclude alternatives</li> <li>□ Ensure that the “no action” alternative is a true no action alternative, e.g., the applicant modifies the project such that the project no longer needs a Corps permit, or the project does not happen</li> </ul> </li> <li>□ <u>Mitigation:</u> <ul style="list-style-type: none"> <li>□ Ensure the agency took a “hard look” at mitigation options</li> <li>□ Suggest specific mitigation options with supporting evidence attached</li> <li>□ For water-related impacts, ensure the mitigation analysis tracks the Clean Water Act Section 404 analysis</li> </ul> </li> <li>□ <u>Sufficiency of analysis:</u> <ul style="list-style-type: none"> <li>□ Ensure the analysis is well-supported by the best available science and that agency took a “hard look” at potential environmental consequences</li> </ul> </li> </ul>	
	<ul style="list-style-type: none"> <li>□ In comments, address <b>resource-specific issues:</b> <ul style="list-style-type: none"> <li>□ You may address any environmental issue regardless of whether the agency has considered it</li> </ul> </li> </ul>	p.177-183

	<ul style="list-style-type: none"> <li><input type="checkbox"/> The scope of relevant issues depends on how the “affected environment” has been defined— or how you have argued that it should be defined</li> <li><input type="checkbox"/> Focus on the resources likely to suffer the gravest impacts, those for which the agency has overlooked important impacts, and those that you are addressing through other advocacy. Consider: <ul style="list-style-type: none"> <li><input type="checkbox"/> Wetlands and waters;</li> <li><input type="checkbox"/> Vegetation and wildlife;</li> <li><input type="checkbox"/> Air quality;</li> <li><input type="checkbox"/> Environmental justice;</li> <li><input type="checkbox"/> Climate change;</li> <li><input type="checkbox"/> Public health and safety</li> </ul> </li> </ul>	
<b>3rd Stage: Review Record of Decision &amp; Consider Litigation</b>		
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review the record of decision closely</li> <li><input type="checkbox"/> Consult with an experienced attorney to evaluate whether challenging the NEPA analysis in court may be viable</li> </ul>	p. 161