

# Pipeline project would get multimillion-dollar environmental review

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A multimillion-dollar effort is moving ahead to understand how the proposed Alaska gas pipeline project would change the physical, economic, social and cultural environments along the line's path through the state.

The [Federal Energy Regulatory Commission](#) is leading the environmental review of the \$32 billion to \$41 billion project that would pipe 4.5 billion cubic feet a day of North Slope natural gas through Canada to the Lower 48.

FERC also could head the environmental review for a smaller pipeline and liquefied natural gas export project from Alaska if an LNG proposal surfaces.

For the pipeline through Canada, the project sponsor – a partnership of TransCanada and ExxonMobil called the [Alaska Pipeline Project](#) – in January 2012 filed with FERC more than 4,500 pages of material that will serve as background data for the environmental impact statement FERC plans. This material, in [11 draft documents](#) called "resource reports," minutely documents and discusses the project's potential impact on soils, vegetation, streams, lakes, wetlands, water quality, wildlife, fish and other resources along the 803-mile pipeline corridor from the Point Thomson field to Prudhoe Bay to the Canadian border.

[FERC has scheduled public meetings](#) in urban and rural Alaska to get feedback on the draft reports and help define what the project's environmental impact statement will encompass.

Last August, [FERC formally launched](#) the environmental review of the project to the Canadian border. The review could result in a completed EIS as soon as mid-2014, with a FERC decision on whether to approve the project a couple of months later.



Wetlands along the proposed pipeline route south of Delta Junction are checked during summer 2011. Photo courtesy of the Alaska Pipeline Project.

As this review progresses, scores of people from Alaska to Texas to Washington, D.C., will be immersed in trying to make sure they and the public grasp the environmental impacts of what would be the most expensive private sector construction project in North American history.

All this effort stems from a monumental 42-year-old federal law that some have called an environmental Magna Carta. That law, the National Environmental Policy Act of 1969, or NEPA, requires federal agencies to understand and disclose the environmental consequences of their decisions. The term "environment impact statement" is derived from NEPA's language.

NEPA has spawned a massive industry of government workers, consultants, lawyers and others, and a massive backlash from business groups that say the law can entail an overkill of analysis that adds cost and delay to projects – for example, NEPA lawsuits helped stall Alaska oil pipeline construction for a time in the early 1970s.

NEPA arose at a time when V8 sedans burning leaded gasoline populated the nation's roads and it dawned on Americans that the orange haze that made sunsets spectacular might have drawbacks. Less than four months after NEPA became law on Jan. 1, 1970, concerned citizens rallied in the first Earth Day, an event many consider the birth of the modern environmental movement.



## A gelling of environmental policy

The 1950s and 1960s provided many catalysts for NEPA, including an emerging environmental movement, the damming of glorious western canyons, a catastrophic oil spill off California's coast and the surprises residents got when they learned freeways would be bulldozed through their neighborhoods.

Congress was in the mood to redress what some perceived as past wrongs, with legislation not only about the environment but separate bills on civil rights and poverty. Regarding the

environment, Congress passed the Wilderness Act in 1964, the Wild and Scenic Rivers Act in 1968 and, soon after writing NEPA, the Clean Air Act and the Clean Water Act.

For NEPA, a consequential event occurred in 1968, when the Senate Interior and Insular Affairs Committee Chairman Henry "Scoop" Jackson learned the Interior Department and Park Service were acquiring land for Everglades National Park while the Army Corps of Engineers was planning to drain Everglades water to create farm land. Meanwhile, the Transportation Department was proposing to build the world's largest airport six miles from the park. Were these agencies talking with each other about their conflicting plans? Jackson asked. Nope. (The airport project died, in part due to efforts of then-Interior Secretary Wally Hickel, a former Alaska governor.)

Jackson, D-Wash., introduced the bill that became NEPA in February 1969, amid public furor over a massive oil spill offshore Santa Barbara, Calif., that occurred exactly three weeks earlier. Jackson's ideas were melded with those of Sen. Edmund Muskie, D-Maine, and Rep. John Dingell, D-Mich., into the new law. President Richard Nixon signed it on Jan. 1, 1970, while declaring: "It is particularly fitting that my first official act in this new decade is to approve the National Environmental Policy Act."

A key feature arising from the Everglades bungle: The lead federal agency must work with and rely on the expertise of other agencies before making a decision on a project.

### **NEPA: Look before you leap**

NEPA serves up some lofty language about how government and citizens should behave toward the planet:

- Congress recognizes "the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man."
- It is federal policy "to create and maintain conditions under which man and nature can exist in productive harmony."
- Each generation has a responsibility "as trustee of the environment for succeeding generations."
- The federal government has a responsibility "to achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities."

[This language](#) comes from NEPA's Section 101 - a kind of environmental manifesto.

But the meat of NEPA is found in Section 102.

The guiding principle of this section is that federal agencies will make better decisions if they consider as well as reveal to the public the environmental consequences of their decisions.

Agencies are to give environmental effects equal footing with the economic, technical and social considerations they had used previously in making decisions. The lead agency for a project should tap the expertise of other federal agencies before deciding to authorize a project.

For "major federal actions significantly affecting the quality of the human environment," the agency must prepare "a detailed statement" on the "environmental impact of the proposed action." This is the language in federal law that birthed environmental impact statements.

The agency must study alternatives to the proposal and, most important, it must involve the public.

## How NEPA works

The 1969 law also created the [Council on Environmental Quality](#) under the president. The council's mission: "Formulate and recommend national policies to promote the improvement of the quality of the environment."

In 1978, that council issued the first [NEPA regulations](#). The regulations flesh out how NEPA will work, from how extensive the environmental review should be to how to involve the public.

**HOW EXTENSIVE A REVIEW** – The regulations let agencies follow several paths in considering an action's environmental effects.

The shortest path is called a "categorical exclusion." Agencies take this path for routine actions that have no significant environmental impact. This path sidesteps the full-scale NEPA process. FERC generally declares categorical exclusions for decisions involving rate reviews, sale or transportation of gas that involves no construction, routine installation of meters in a pipeline right of way and abandonment of short segments of minor pipelines if site restoration occurs.

A middle path involves doing an "environmental assessment." This term does not appear in the NEPA text but is in the NEPA regulations. Agencies do an assessment to clarify the magnitude of the potential environmental harm and determine whether a full-blown environmental impact statement is necessary.

### NEPA documents circa 2003

#### Small environmental assessments

**10-30** Pages

**2-8 weeks** Time to complete

**\$5,000-\$20,000** Cost

#### Large environmental assessments

(More controversial, higher-profile projects)

**50-200+** Pages

**39-78 weeks** Time to complete

**\$50,000-\$200,000** Cost

#### Environmental impact statements

**200-2,000+** Pages

**1-6 years** Time to complete

**\$250,000-\$2 million** Cost

Source: The NEPA Task Force Report to the Council on Environmental Quality: "Modernizing NEPA Implementation" September 2003.  
<http://ceq.hss.doe.gov/nftr/repofit/totaldoc.html>

Environmental assessments can result in a document called a "finding of no significant impact," which means no extensive EIS is needed and the environmental review is finished. Sometimes this finding occurs after the project backer agrees to changes that minimize or mitigate environmental harm.

The other possible outcome of environmental assessments: A decision to do an EIS.

Federal agencies issue far more assessments than impact statements – tens of thousands assessments annually vs. a couple hundred impact statements.

Sometimes an agency will skip the environmental assessment and leap right into an EIS because it's clear the project is so substantial that it will need one.

An EIS, of course, is the longest, most complicated path, typically involving years of work and costing millions of dollars. The Alaska gas pipeline project to Canada is required to have an EIS.

**LEAD AGENCY, COOPERATING AGENCY** – An agency with major responsibility for the project will take the lead in studying environmental impacts. Other agencies, known as cooperating agencies, will participate and use the EIS studies and analyses when making their own decisions about the project.

For the Alaska gas pipeline to Canada, Congress designated the Federal Energy Regulatory Commission as the lead agency. So far, nine federal agencies and one state of Alaska office have signed on as cooperating agencies. These are the Bureau of Land Management, Fish and Wildlife Service, Environmental Protection Agency, Army Corps of Engineers, Pipeline and Hazardous Materials Safety Administration, Coast Guard, Air Force, U.S. Geological Survey, Office of the Federal Coordinator, and the Alaska State Pipeline Coordinator's Office.

Many cooperating agencies [oversee aspects of a project](#). For example, if the Alaska gas pipeline is built:

- FERC will authorize construction and operation.
- BLM will OK use of federal land for the pipeline route.
- Fish and Wildlife Service, in consultation with FERC, will ensure construction doesn't worsen the status of threatened or endangered species, migratory birds, and bald and golden eagles.



The Alaska Pipeline Project recently began testing pipe in Canada for use in the Alaska natural gas pipeline. Photo courtesy of the Alaska Gas Pipeline Project Office.

- The pipeline safety office will ensure the pipeline itself remains safe if the builder diverges from federal standards in the belief that its pipe coating or spacing of sleeves to stop cracks exceed the standards.
- The Army Corps of Engineers will authorize some river crossings and impacts to wetlands.

FERC must consider the information needs of the cooperating agencies, because the cooperating agencies must rely on the FERC-prepared environmental impact statement for their separate, individual decisions on the project. For example, one agency might want the environmental effects examined within two miles of a certain point along the pipeline route while another agency needs to look within five miles of that point. The lead agency will make sure five miles are examined to meet both of these cooperating agencies' needs.

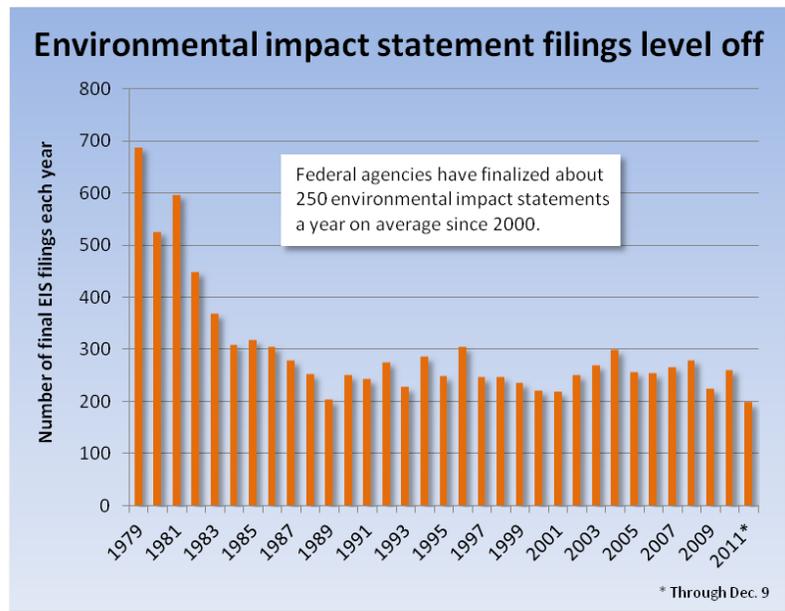
**PUBLIC INVOLVEMENT** – The regulations say agencies must "encourage and facilitate public involvement in decisions which affect the quality of the human environment." The rules designate certain points in the NEPA process where public outreach must occur.

First comes "scoping." During this time, the lead agency holds public meetings to ensure the EIS will include issues that people and other agencies believe are important. These are the meetings FERC has scheduled in January and February for the Alaska gas pipeline project. FERC is holding the meetings after receiving the 11 draft resource reports from APP to give the public and other government agencies time to digest the data and analysis already compiled.

The goal of scoping meetings is to identify what environmental effects will be studied. The public and other agencies also can comment to the lead agency outside of the scoping meetings.

In addition, formal public outreach occurs after an agency drafts its EIS. The lead agency typically circulates the document to anyone who requested a copy, then responds to the feedback when finalizing the EIS.

When FERC formally notified the public in August 2011 that it will conduct an EIS for the Alaska pipeline project to Canada and hold scoping meetings, it published the notice in the Federal Register and sent it directly to over 2,200 people and organizations that told FERC they want to be informed about the project.



Sources: Humboldt State University; U.S. Environmental Protection Agency

Separately, FERC posts documents, comments, decisions and other material for the Alaska project [on its website](#) under Docket Number PF09-11. Once the pipeline sponsor files its formal application, required in October 2012 under its cost-reimbursement contract with the state, FERC will assign a new docket number. FERC's site is set up so that an individual can be [notified automatically](#) when a docket contains anything new.

## NEPA for the Alaska project

NEPA and the Council on Environmental Quality's regulations are two of the four federal documents controlling the content and timing of the Alaska-Canada pipeline's environmental review.

The other documents are FERC's own regulations about NEPA and the Alaska Natural Gas Pipeline Act of 2004.

**FERC'S REGULATIONS** - These were mentioned above briefly in noting when FERC skips a robust NEPA review and issues a categorical exclusion instead.

Beyond this, [FERC regulations](#) spell out advance work required of anyone wanting to build a gas pipeline. When applying for FERC permission to build and operate the line, the sponsor must submit detailed documentation of the route's environment and potential harm.

FERC calls these documents "resource reports." FERC regulations spell out what the reports must cover, and FERC will reject an application if the resource report documentation is too flimsy.

The 11 resource reports
<a href="#">Resource Report 1</a> – Detailed project description, maps
<a href="#">Resource Report 2</a> – Wetlands, rivers, streams, lakes, water uses and quality
<a href="#">Resource Report 3</a> – Fish, wildlife, vegetation, endangered species
<a href="#">Resource Report 4</a> – Cultural resources, archeology
<a href="#">Resource Report 5</a> – Socioeconomics, housing, job and government impacts
<a href="#">Resource Report 6</a> – Geological resources, hazards
<a href="#">Resource Report 7</a> – Soils, potential erosion
<a href="#">Resource Report 8</a> – Current land use, recreation, esthetics
<a href="#">Resource Report 9</a> – Air and noise impacts
<a href="#">Resource Report 10</a> – Project alternatives
<a href="#">Resource Report 11</a> – Pipeline system reliability, safety

TransCanada and ExxonMobil, sponsor of the Alaska gas line project, have spent tens of millions of dollars in recent years [compiling the data](#) within the 11 draft resource reports. Each report concerns a different aspect of the environment, from soils and vegetation to wildlife counts, earthquake faults, archeological sites and even how much Alaska's population could grow if the project is built. The Council on Environmental Quality has termed [analyzing alternatives](#) the "heart of the EIS," and resource report No. 10 is to focus on alternatives.

FERC, the cooperating agencies and the public are vetting the draft resource reports. FERC likely will ask the sponsor for additional information. TransCanada and ExxonMobil face a deadline to finalize the reports before they file in October 2012 for a FERC certificate to build and operate the pipeline.

The resource reports will serve as a foundation for the EIS. FERC staff and its contractors, working with the cooperating agencies, plan to verify the information within the reports and do additional environmental research in preparing the EIS.

FERC regulations build in measures to ease environmental impacts, such as requiring projects to maximize use of existing rights of way and controlling how new rights of way are cleared. FERC regs also limit the alternatives it studies to those that offer a significant environmental advantage, are economically feasible and meet the project objectives within the same time frame as the proposed project. Alternatives considered must include different pipeline routes, energy conservation and rejecting the project.

**THE ALASKA NATURAL GAS PIPELINE ACT** – This 2004 federal law addresses the NEPA chain of events in several ways.

First, it mandates an environmental impact statement for the project to pipe Alaska gas through Canada to the Lower 48. No categorical exclusion or environmental assessment allowed. The project is "a major Federal action significantly affecting the quality of the human environment," the law states.

Second, the law names FERC as the lead agency for the EIS. It also requires other federal agencies with jurisdiction over the gas pipeline project to cooperate with FERC and use the impact statement for their own approvals.

Third, it sets deadlines. FERC has 12 months to draft an environmental impact statement after determining the application for a certificate is complete. Then it has six more months to finalize the EIS. If the application is received in October 2012, and assuming FERC accepts it then as complete, the draft EIS could be done in fall 2013 and the final EIS in spring 2014.

### **Goal of 'excellent action'**

The final NEPA step is called a "record of decision" that states what the agency has decided about the project. FERC takes this step for pipelines when it issues or denies a certificate to a

project sponsor to build and operate the line. When FERC awards a certificate, the commission often requires the pipeline builder to mitigate some environmental harm the EIS identified.

An important aspect of NEPA is that it doesn't require an agency to decide in favor of the least environmentally harmful option for a project. NEPA merely requires that the agency understand the project's environmental impacts, consider alternatives that might be less harmful, including the option of rejecting the project, and disclose what it learns to the public.

Then the agency can decide whether or not to authorize the project.

Council on Environmental Quality regulations say this about the law:

"NEPA's purpose is not to generate paperwork - even excellent paperwork - but to foster excellent action."

The purity of that ideal is not always achieved in practice.

For many years after NEPA's enactment, each new EIS from an agency seemed to trump the agency's last EIS in volume.

A problem is that the law calls for examining significant impacts of major federal actions without sharply defining "significant" or "major." Many lawsuits have successfully challenged NEPA reviews for lack of thoroughness. So agencies have tended to pile on the analysis to blunt challenges.

A [1997 NEPA critique](#) by the Council on Environmental Quality found that "frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use, and training for agency officials at times is inadequate."

Further, no one really knows how much better the environment is as a result of the law, or whether the benefit is worth the cost.

A [2006 U.S. House Natural Resources Committee task force report](#) noted the thinness of data on NEPA-related costs. Among other recommendations, it called for the Council on Environmental Quality to determine the costs of environmental reviews and recommend cost caps to Congress. In part to contain costs, the report endorsed an 18-month time limit for environmental impact statements and a nine-month limit for assessments. "Sensible timeframes will make for better federal decisions," the report said.

[Other critiques](#) note that agencies do a poor job making sure the mitigation they order for a project actually occurs so that the environmental damage is avoided or reduced.

The Council on Environmental Quality issues regular guidance to agencies on how to comply with NEPA. In 2011 it issued guidance calling for [completing environmental reviews more quickly](#) and [monitoring required mitigation more rigorously](#).

Despite the criticism, few dispute that because of NEPA the government has amassed a treasure trove of baseline information on the status of the nation's environment.

And nearly everyone agrees NEPA has brought meaningful change to federal decision making.

An often-cited statement from the council's 1997 critique sums up this sentiment:

"NEPA's most enduring legacy is as a framework for collaboration between federal agencies and those who will bear the environmental, social and economic impacts of their decisions. ... (A)gencies today are more likely to consider the views of those who live and work in the surrounding community and others during the decision-making process."