

NEPA DESKBOOK
4TH EDITION

Nicholas C. Yost
DENTONS US LLP

ENVIRONMENTAL LAW INSTITUTE
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Environmental Law Institute
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About the Author



Nicholas C. Yost is a Partner at Dentons US LLP in San Francisco, California, from which he directs the firm's practice of environmental and natural resources law with a focus on the National Environmental Policy Act (NEPA). His practice includes counseling clients on environmental leadership and compliance with state and federal environmental laws, obtaining permits and authorizations, litigation, and representing clients before federal and state agencies on environmental matters. Mr. Yost was General Counsel of the Counsel on Environmental Quality from 1977 until 1981, where he had lead responsibility for the development and drafting of NEPA's implementing regulations. He has also served in the California Department of Justice, forming and heading the Environmental Section, as a private interest lawyer, as a visiting scholar at the Environmental Law Institute, and as a private practitioner in Washington, D.C. Mr. Yost holds an L.L.B. from the School of Law, University of California at Berkeley (Boalt Hall), and an A.B. from Princeton University's Woodrow Wilson School of Public and International Affairs. He has chaired the Standing Committee on Environmental Law of the American Bar Association and the Committee on the Environment of the California State Bar, and has also co-chaired the Environment, Energy, and Natural Resources Section of the District of Columbia Bar. In 2010, he received the ABA's Award for Distinguished Achievement in Environmental Law and Policy.

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Foreword

The Environmental Law Institute (ELI) has a special interest in the National Environmental Policy Act that dates back to our shared birth date in December 1969. This *Deskbook*, now updated, is one of the most popular resources for environmental professionals in the United States and abroad. I was recently asked which statute I thought had the greatest impact on environmental law. Although there are many candidates for this honor, my own candidate is clear: NEPA. Not only did the statute revolutionize federal decisionmaking, but it has been replicated countless times in state statutes and exported to numerous foreign governments to guide their decisionmaking. We should always be proud of our nation's contribution to the worldwide use of NEPA-like statutes to advance environmental action.

Over the years, the Environmental Law Institute and the Council on Environmental Quality (CEQ) have cooperated in conference and research projects. We've watched the birth and application of NEPA, its inculcation into the fabric of the federal government's decisionmaking process, and its journey through many courts, creating a nearly unparalleled body of environmental law. Without question, NEPA has been highly successful in assuring that environmental considerations are factored into federal planning and decisionmaking.

NEPA is a statute of productive dimensions because it impacts the relationships of the body politic. It clearly directs coordination among federal, state, municipal, and private agencies that would not occur otherwise. Even when there is gridlock elsewhere, NEPA has often acted as a consensus-building tool to provide real options that take into account environmental protection. It also empowers citizens to participate directly in environmental planning. In fact, NEPA has been the single most useful development in opening up federal agency decisionmaking to groups that do not have budgets or staff to investigate projects. Citizen groups find environmental impact statements (EISs) particularly useful because they include key information about projects in one, easily accessible document. And, decisionmakers rely on NEPA impact statements, knowing that they must be both comprehensive and balanced to be effective.

The brilliance of NEPA is that it calls for active citizen and interest group participation to forge consensus and wise environmental decisions. And, it provides a record in one place for key decisions. In this effort, there is much work for lawyers. The *NEPA Deskbook* is designed to assist practitioners by assembling the necessary legal materials in one place.

The introductory chapter of the *Deskbook* presents a detailed analysis of the statute by the leading U.S. expert on NEPA. As General Counsel of the CEQ from 1977 until 1981, Nicholas C. Yost led the successful effort to write regulations that put administrative flesh on the bare bones of the statute. This expert legal commentary is accompanied by the text of the statute, the regulations, key policy guidance that gives insight into NEPA's implementation, and sample documents prepared under the statute. An especially useful feature of the *Deskbook* is its collection of summaries of U.S. Supreme Court cases prepared by the staff of ELI's highly regarded *Environmental Law Reporter (ELR)*.

Most of the lawsuits filed under NEPA have arisen from its statutory requirement that the lead agency file an EIS for each "major Federal action significantly affecting the quality of the human environment." These few words, each of them with independent meaning, have become the workhorse of environmental litigation, and lawyers play a key role in assuring compliance with its requirements. Knowledge of case law is especially essential in this area, and the *Deskbook* excels in presenting cases in a clear and understandable fashion.

As with all ELI Deskbooks, the *NEPA Deskbook* is an extremely valuable resource for a skilled practitioner. Keep it by your desk. Carry it to meetings. Our editors have carefully screened materials to include only the information environmental professionals need most.

The Deskbook series is a spinoff of *ELR*'s work in tracking and analyzing legislative, regulatory, and judicial developments. Companion Deskbooks—the *Environmental Law Deskbook*, the *TSCA Deskbook*, the *Wetlands Deskbook*, the *RCRA Permitting Deskbook*, the *Environmental Crimes Deskbook*, the *Natural Resource Damage Assessment Deskbook*, the *Superfund Deskbook*, and the *Oil Pollution Deskbook*—have drawn an enthusiastic response from environmental law practitioners.

As a national environmental research and publishing organization dedicated to the development of more effective and more efficient environmental protection efforts, ELI is pleased to present the fourth edition of the *NEPA Deskbook*. We hope that it will assist environmental lawyers and managers in their efforts to make this central and most important statute work to protect the environment.

— John C. Cruden, President
Environmental Law Institute