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Nomination Received by Council on Environmental Quality, Executive Office of the President  
For the CEQ NEPA Pilot Project Program  
<http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project-nominations>

**PART I. NOMINATOR**

<b>First Name:</b>	Larry
<b>Last Name:</b>	Canter
<b>Organization:</b>	National Association of Environmental Professionals
<b>Project Title:</b>	[None Submitted]
<b>Submitted by:</b>	Member of the Public
<b>Date Received:</b>	06/10/2011

**PART II. SHORT ANSWERS**

**I. What Federal agency or agencies will be involved in this pilot project?**

This pilot project is focused on the delineation of Best Practice Principles (BPPs) which can be used in the preparation of environmental assessments (EAs). Across all Federal agencies, the number of EAs prepared annually (more than 50,000) far exceeds the number of annual environmental impact statements (EISs) (about 500). Further, the most frequent NEPA-related plaintiff challenge is related to the need for preparing EISs rather than EAs for numerous actions. The CEQ's 1979 NEPA regulations did not include process-related information for preparing EAs; hence practitioners have never had adequate guidance relative to practical issues. For example, the 2003 NEPA Task Force recommended that new EA guidance should explain the appropriate analysis of alternatives, including the no action alternative; when mitigation measures must be considered; appropriate public involvement; and suitable use of an EA standardized analysis format. Accordingly, the hypothesis of this pilot project is that the assimilation of practitioner knowledge related to effective BPPs for EAs will provide the basis for improvements in EA compliance documents and reduce litigative risk. The anticipated BPPs would be potentially applicable across all Federal agencies that prepare EAs. Federal agency NEPA contacts will be invited to participate in the assimilation process.

**II. What is the Federal action to which this NEPA pilot project applies?**

"The Federal action to which this NEPA pilot project applies is the preparation of EAs by all Federal agencies. The concept is that the developed BPPs can be used in EAs prepared for agency-specific actions. If CEQ would choose to develop an EA guidance document which incorporates the BPPs, this would enhance their usage across all agencies."

**III. How will this pilot project reduce the costs and time needed to complete the NEPA process?**

"EAs are a critical threshold determining document in the NEPA process. They should be used to determine if a proposed action has, or does not have, significant environmental impacts. Over the last 20 years, Federal agencies have tended to write EAs that are hundreds of pages in length and thus are more complex and more difficult to comprehend than originally intended. In the absence of clear guidance on EAs, NEPA practitioners prepared them in the image of EISs, partly because EIS format information is included in 40 CFR 1502.10 - 1502.19. These longer EAs take more time and monetary resources to prepare, and litigation can still occur around issues associated with demonstrating a "hard

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**look” and providing adequate rationale for significance determinations. Usage of the experience-based BPPs will aid agencies in their preparation of EAs that are more timely, cost-effective, and relevant to incorporating environmental issues in decision processes.”**

**IV. How will this pilot project ensure rigorous environmental protection?**

**It is anticipated that several of the BPPs will emphasize necessary compliance with laws, policies, and Executive Orders related to environmental and natural resources, protected species, cultural resources, human health, environmental justice, and other social issues. Examples of such laws include the Clean Air Act, Clean Water Act, several waste management laws, Endangered Species Act, and numerous others. Further, BPPs are also anticipated on scoping, selection and focus on key issues and resources, and the use of “hard look” analyses. In this manner, attention will be focused on compliance with policies and standards related to environmental protection.**

**V. How will this pilot project improve the quality and transparency of agency decisionmaking?**

**The experience-based BPPs for EAs will improve the quality and transparency of agency decisionmaking by giving emphasis to decreasing the length and complexity of EAs, encouraging the use of time and page limit ranges, providing for expedited clearance and processing of EAs, and promoting active and engaged public involvement. Accordingly, EAs based upon the BPPs are anticipated to be shorter, easier to read, give attention to information communication, involve the public through scoping, and be readily available to the public.**

**VI. Will this pilot project develop best practices that can be replicated by other agencies or applied to other Federal actions or programs? Please describe?**

**The focus of this project is on the development of practitioner experience-based BPPs for EAs. Federal agency NEPA contacts and members of the National Association of Environmental Professionals (NAEP) will be invited to participate via the use of Survey Monkey, or a similar instrument. The BPPs could be utilized as resource materials by various Federal agencies as they prepare EAs. Further, individual agencies could choose to add agency-specific BPPs to the generic list from this project, or they could develop a completely new list of agency-specific BPPs.**

**PART III. PROJECT DESCRIPTION**

*(See attachment on following page.)*

## ATTACHMENT 1

### PROJECT DESCRIPTION

- Describe the pilot project. What agency or agencies, geographic area, and natural resource management issues will be involved?

The project will consist of the elicitation of knowledge from experienced NEPA practitioners relative to Best Practice Principles for Environmental Assessments (BPPs/EAs). Electronic surveys will be used to aggregate the knowledge and compile the findings into a concise report which could be used: (1) by CEQ to generate an environmental assessment guidance document, (2) by multiple agencies to support their environmental assessment practice, and (3) by consultants as they provide environmental assessment services for such agencies. The findings would be over-arching and thus would not be limited to a specific agency, geographic area, environmental or natural resources issue, or professional discipline. The common characteristics of the identified BPPs are expected to include: (1) compatibility with case law; (2) consistency with fundamental scientific principles and applicable resources-related policies and institutional requirements; (3) prior usage in environmental assessment compliance documentation; (4) support-driven stakeholder and agency-review processes; (5) usefulness within existing process-related analytical frameworks; and (6) adaptability for place-based situations.

- How will the pilot project be implemented?

If selected by the CEQ's NEPA Pilot Program, this BPP/EA pilot project will be implemented as follows:

- (1) A central planning committee (CPC) will develop contextual information on the project and disseminate it to the NAEP membership (about 1100 persons) as well as Federal agency NEPA contacts (about 100 persons). The purpose will be to seek volunteers to participate in an expanded CPC, submit candidate BPPs, and/or complete several electronic survey instruments (by September, 2011). (Note: The initial CPC will be comprised of Dr. Canter, Professor Emeritus, University of Oklahoma, and President, Canter Associates, Inc., Horseshoe Bay, TX; David Keys, Regional NEPA Coordinator, National Marine Fisheries Service, Southeast Region, St. Petersburg, FL; Dr. Robin Senner, CH2M-Hill, Seattle, WA; and Ron Deverman, Immediate Past President, NAEP, and Associate Vice President, HNTB, Chicago, IL. Following initiation of the project, the CPC will be expanded to include one or more NEPA attorneys, several representatives from Federal agencies and consulting firms, and CEQ (ex-officio)).

- (2) Via the use of Survey Monkey, or a similar instrument, the NAEP membership and Federal agency NEPA contacts will be asked to complete a survey related to the viability of an initial list of BPPs, their refinement, and the submission of new BPPs. The initial BPPs will be drawn from agency guidebooks and procedures, other peer-reviewed literature, and synopses of case law (see Attachment 2 for brief background information). The survey will be open for 30 days and completed by end of November, 2011.
  - (3) Pending the findings of the first survey, one or more refinement surveys will be planned, and conducted, and the results will be analyzed. All surveys will be completed by the end of January, 2012.
  - (4) A draft report of BPPs for EAs will then be provided to study participants for their review and comment. Receipt of comments will continue until mid-March, 2012.
  - (5) The final report will be completed and electronically disseminated by May 1, 2012, to study participants, CEQ, Federal agency NEPA contacts, and the membership of NAEP. Additional options for dissemination could include one or more NAEP-sponsored Webinars, and a paper or panel at the 37<sup>th</sup> Annual NAEP Conference (May 20-23, 2012; Portland, Oregon).
- Are you nominating a pilot project that has already been implemented, is currently being implemented, or is proposed for implementation?

This pilot project is proposed for implementation.

- If your pilot project is underway or is proposed for implementation, describe the timeline for implementation: When would the project start? When would it be completed?

The project would be initiated upon notification by CEQ (for example, assume first part of July, 2011), and be completed within 11 months (by the end of May, 2012).

- Describe the resources that will be needed to implement the pilot project. See above description of implementation for key milestones.

Donation of professional time by members of the initial CPC and an expanded CPC will be required; further, professional time will also be required by individuals completing the surveys. Finally, costs related to the use of Survey Monkey will also be needed and contributed.

- Will the pilot project further an Administration priority?

Yes, this project will support both modernization and reinvigoration of Federal agency implementation of NEPA. Further, it will support Executive Order 13563 by addressing and including public participation (Section 2), integration and innovation (Section 3), flexible approaches (Section 4), and science (Section 5).

- Please describe any consultation you have had with the relevant agency or agencies about this project.

This pilot project cuts across all Federal agencies that prepare EAs. I have had no direct discussions with any specific agency on the need for BPPs for EAs; however, I have conducted numerous training sessions for agencies and addressed needs for improving EAs. However, as a panel member, I spoke on the subject of BPP needs during the 36<sup>th</sup> Annual NAEP Conference (April 26-29, 2011; Denver, Colorado). Professionals from resource and regulatory federal agencies were present at the conference session, and support for BPPs was voiced. The paper from this panel presentation was in the proceedings, and it will also appear in the September, 2011, issue of Environmental Practice (Keys, Canter, and Senner, 2011). Federal agency NEPA contacts and other professionals can view the full journal paper in the September issue. (See Attachment 3 for a summary of the NEPA experience of Dr. Canter).

## ATTACHMENT 2

### BACKGROUND INFORMATION

The Council on Environmental Quality regulations of 1979 included a definition for an environmental assessment, its purposes, and a brief listing of topical contents (40 CFR 1508.9). However, no detailed process-related information for their preparation was included. As a consequence, litigation has often been based on claims of agency inadequacies in preparing and documenting such assessments. Examples of such claims include the absence of a “hard look”, the occurrence of significant impacts and hence the need for an EIS, and inadequacies regarding documentation of findings. Accordingly, there is a persistent need to address these subjects via the development of Best Practice Principles.

When considering the status of Best Practice Principles in the United States, acknowledgement must be given to numerous agencies that have developed NEPA-related guidance and handbooks as a means to generate intra-agency consistency. Examples of such agencies include the Department of Energy, Federal Highway Administration, National Marine Fisheries Service, Nuclear Regulatory Commission, and Department of the Army. The continuing “lessons learned” generated by the DOE also contribute improvements to environmental assessments. The guidance and handbooks typically include generic information on environmental assessments and specific information on substantive topics within them.

Reviews of court decisions on specific topics can also provide a basis for delineating Best Practice Principles for certain topics. For example, Atkinson, *et al.* (2006) examined 32 cases related to incomplete or unavailable information, Smith (2007) reviewed 37 cases related to alternatives analysis, and Steinmann (2001) provided a review of practices related to alternatives and developed recommendations for improving the practice. Another example relates to principles and guidelines developed for addressing social impact assessment (SIA) in NEPA compliance documents. A committee of academicians, consultants, and federal agency professionals engaged in this effort, and their 2003 results are still applicable as Best Practice Principles for SIA (The Interorganizational Committee on Principles and Guidelines for Social Impact Assessment, 2003). Finally, the comprehensive case law review by Mandelker (2009) has detailed information on litigation related to environmental assessments.

The International Association for Impact Assessment has produced several Best Practice Principles documents since 1999. One reason for this attention is associated with supporting impact assessment practice in a wide range of countries, some of which have limited institutional structures. The environmental assessment-related documents address cross-cutting issues on public participation (Andre, *et al.*, 2006) and follow-up involving monitoring and adaptive management (Morrison-Saunders, *et al.*, 2007). Two other documents are related to biodiversity (International Association for Impact Assessment, 2005) and health impact assessment (Quigley, *et al.*, 2006).

The “development model” used by the Association has typically consisted of having one to several subject matter experts prepare a draft of the specific principles. The draft is then reviewed by a small select group of Association members with professional knowledge and practical experience in the subject area. The resultant proposed document is then subjected to Association-wide review and confirmation at an annual meeting. Collectively, the initial subject matter experts have been from government agencies, professional associations, private industry, consulting firms, and academia. Finally, it should be noted that some principles from the above noted IAIA documents could also be useful to United States practitioners.

Finally, some potential benefits of having BPPs for EAs would include facilitation of the preparation of both timely and cost-effective documents, reductions in the risk of litigation, and the effective use of best available scientific and policy information.

### Cited References

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The Interorganizational Committee on Principles and Guidelines for Social Impact Assessment. 2003. Principles and Guidelines for Social Impact Assessment in the USA. *Impact Assessment and Project Appraisal*, Vol. 21, No. 3, pp. 231-250

## ATTACHMENT 3

### PROFESSIONAL EXPERIENCE OF DR. CANTER

Dr. Larry Canter is a Professor Emeritus from the University of Oklahoma (August, 2000), and is now engaged in teaching Environmental Impact Assessment (EIA)-related short courses and consulting on the preparation and review of impact studies and the development of EIA policies, procedures, methods, and tools. He has written six books related to EIA and is also the author or co-author of numerous book chapters, refereed papers, and research reports related to impact studies. He has also written EAs and EISs, or portions thereof, on projects such as power plants, gas pipelines and compressor stations, highways, wastewater treatment plants, industrial plants, flood control and water supply dams, waterway navigation systems, dredged material disposal, and use of in-situ leaching for uranium recovery. Since 1970, he has taught short courses on EIA for several federal agencies, including the U.S. Army Corps of Engineers. In addition he has presented short courses, or served as advisor on EIA to institutions in over 20 countries and various development banks and international organizations. Dr. Canter served on the U.S. Army Corps of Engineers Environmental Advisory Board from 1983 to 1989. In November, 2008, he was Co-Chair of the International Association of Impact Assessment's (IAIA's) Special Topic Meeting on Assessing and Managing Cumulative Environmental Effects. In May, 2009, he received the prestigious Rose-Hulman Award from IAIA. The Award was based upon his major contributions to cumulative effects and EIA methodology over a sustained 40-year period. Dr. Canter was a faculty member at the University of Oklahoma for 31 years; during the 1990s he was the Sun Company Chair of Ground Water Hydrology, George Lynn Cross Research Professor, and Director, Environmental and Ground Water Institute. He received his Ph.D. in environmental health engineering from the University of Texas, M.S. in sanitary engineering from the University of Illinois, and B.E. in civil engineering from Vanderbilt University.

Dr. Canter has taught short courses on EIA, Advanced Topics in EIA, Cumulative Effects Assessment, Programmatic Impact Studies, EIA for the Corps Regulatory Program, Cultural Resources, Risk Assessment in the EIA Process, Environmental Site Investigations, Review of NEPA Documents (CAA Section 309), NEPA-Related Judicial Decisions and Companion Environmental Laws, NEPA Project Management, Writing Better EAs and EISs, Use of Tiering in the NEPA Process, Planning for the Scoping Process, NEPA and Adaptive Management, NEPA and Air Impacts, and Integrating NEPA and CWA Section 404 for Regulators. In 2007, EIT (Environmental Impact Training) initiated an innovative training program involving the use of e-learning interactive courses, reference CDs, blended learning, and topical Webinars. An EIA Vault containing downloadable reference documents was started in 2009. Information on these innovative group and self-training opportunities can be found at [www.eiatraining.com](http://www.eiatraining.com). Finally, a total of 14 on-line courses was announced in January, 2011 (see [www.EIACampus.com](http://www.EIACampus.com)).

Specialized consulting services have included EIA curriculum development, reviews of draft programmatic and project-level environmental impact statements, participation in a Corps of Engineers cumulative effects study within the preparation of a programmatic impact statement for a navigation system rehabilitation investment plan for the Ohio River, a training needs assessment, participation in the planning of an EIS on Hawaiian spinner dolphins and human interactions, and collaboration in the preparation of a Generic EIS on uranium recovery by the insitu-leach process. He has also prepared or reviewed environmental assessments on small pipeline projects, license renewals, and regulatory program applications. Further, various District offices of the Corps and

installations of the U.S. Army and the U.S. Navy, along with the U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Nuclear Regulatory Commission, and others have been clients for on-site short courses and/or the consulting services.