

SLSDC NEPA Regulations

NOTICES

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

National Environmental Policy Act (NEPA) Implementing Procedures

Thursday, May 28, 1981

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice.

SUMMARY: This final order revises the Saint Lawrence Seaway Development Corporation procedures for considering environmental impacts to conform with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act, issued November 29, 1978.

EFFECTIVE DATE: May 28, 1981.

FOR FURTHER INFORMATION CONTACT:

M. Kirkey, Office of the Chief Engineer, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, N.Y. 13662, (315) 764-3254.

SUPPLEMENTARY INFORMATION:

1. Background

On November 29, 1978, the Council on Environmental Quality (CEQ) published regulations on the implementation of the National Environmental Policy Act (NEPA) (43 FR 55978). The CEQ regulations direct Federal Agencies to adopt procedures to implement the regulations (40 CFR 1507.3). The Department of Transportation (DOT) published DOT Order 5610.1C, October 1, 1979, (44 FR 56420), thereby providing implementing procedures for all elements within the DOT. This order, designated as SLSDC 10-5610.1C, sets forth specific responsibilities and instructions for Corporation implementation of the CEQ regulations. These implementing procedures outline only these Corporation-specific actions needed for compliance with the NEPA process and must be read in conjunction with the CEQ regulations and DOT Order 5610.1C. This order is an internal directive.



2. Response to Comment

The proposed Order and request for public comment was published on July 10, 1980. Comments were received from two federal agencies, one state agency, and one private environmental organization.

3. Principal Comment

Paragraph 6.b., Categorical Exclusions

The provision for categorical exclusion of several routine items caused concern in that the commenters felt that the excluded activities contained several items which could constitute major federal actions resulting in significant impacts on the environment.

As stated in the Corporation's proposed Order, under Supplemental Information, 1. Background, paragraph 2, the proposed Corporation's procedures must be read in conjunction with the DOT Order 5610.1C and the CEQ Regulations (40 CFR 1500-1508). Both the DOT Order and the CEQ Regulations contain language requiring that an environmental assessment or an EIS be prepared for any action which would otherwise be classified as categorically excluded, but which is likely to involve significant impacts on the environment, or substantial controversy (40 CFR 1508.4) (DOT 5610.1C, 20.b. 2). However, to further alleviate this concern, a statement has been added to Paragraph 6.b. (second sentence), which allows the actions listed under "Categorical Exclusions" to be performed as part of routine maintenance and construction, while insuring that should these activities be undertaken as part of a major program, an environmental assessment or EIS will be prepared. This added statement should make it very clear that the items listed are not contemplated as part of the Great Lakes-St. Lawrence Seaway Navigation Season Extension Program. In addition to the aforementioned clarifying statement, categorically excluded Items 9. (Icebreaking) and 10. (Maintenance Dredging) have been further defined and limited.

The Advisory Council on Historic Preservation commented that a section should be included in the final regulations concerning compliance with Section 106 of the National Historic Preservation Act. It is felt that this is adequately covered in the DOT Order 5610.1C. In consideration of the foregoing, the Saint Lawrence Seaway Development Corporation Order 10-5610.1C "Procedures for Considering Environmental Impacts" is promulgated to read as appears below. Issued in Washington, D.C., on April 13, 1981.

David W. Oberlin,
Administrator, Saint Lawrence Seaway Development Corporation.
Department of Transportation
Saint Lawrence Seaway Development Corporation
Order--SLS 10-5610.1C



Procedures for Considering Environmental Impacts

1. Purpose. DOT Order 5610.1C establishes procedures for consideration of environmental impacts in decision making on proposed DOT actions. The Order provides that information on environmental impacts of proposed actions will be made available to public officials and citizens through environmental impact statements, environmental assessments or findings of no significant impact. These documents serve as the single vehicle for environmental findings and coordination. These procedures provide guidance for implementation of DOT Order 5610.1C.

2. Cancellation. SLS 10-5610.1B, Procedures for Implementation of DOT Order 5610.1B, issued March 31, 1975.

3. Background. The Council on Environmental Quality (CEQ) issued regulations for Implementing the Procedural Provisions of the National Environmental Policy Act on November 29, 1978 (43 FR 55978-56007). The CEQ regulations apply uniformly and are binding on all Federal agencies and direct agencies to adopt implementing procedures which relate the CEQ regulations to the specific needs of each agency's programs and operating procedures.

DOT Order 5610.1C implements NEPA and the CEQ regulations within the Department of Transportation and replaces Order DOT 5610.1B of 9-30-74. The Order provides instructions for implementation of relevant environmental laws and executive orders in addition to NEPA.

DOT Order 5610.1C provides that an operating administration may rely on the Order as its implementing procedures, with issuance of supplementary guidance applying the environmental process to the Administration's programs. Therefore, this notice presents the final SLSDC Order SLS 10-5610.1C, "Procedures for Considering Environmental Impacts", as guidelines for implementation of NEPA procedures, under DOT Order 5610.1C, within the Corporation.

4. Definitions. a. The term "Assistant Secretary" means the Assistant Secretary for Policy and International Affairs, Office of the Secretary, U.S. Department of Transportation, and his authorized representatives.

b. The term "Corporation" means the Saint Lawrence Seaway Development Corporation.

c. The term "Chief Engineer" means the Chief, Office of Engineering, Saint Lawrence Seaway Development Corporation and his authorized representatives.



d. The term "General Counsel" means the General Counsel, Saint Lawrence Seaway Development Corporation.

e. The term "Office Heads" includes the Director, Office of Program Review; Comptroller; General Counsel; Director, Office of Comprehensive Planning; Director, Office of Systems & Economic Analysis; Chief Engineer; Director, Office of Procurement & Supply; Director, Office of Administration; Chief, Office of Marine Services; Chief, Office of Maintenance and Chief, Office of Lock Operations, and their authorized representatives, Saint Lawrence Seaway Development Corporation.

5. Scope. These guidelines provide instructions for implementation of Section 102(2) of the National Environmental Policy Act of 1969 (Pub. L. 91-190, hereinafter "NEPA") and the Regulations for Implementing NEPA issued by the Council on Environmental Quality, 11-29-79 (40 CFR 1500-1508); Sections 2(b) and 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 1653, hereinafter "the DOT Act"); Sections 309 and 176 of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.); Section 106 of the National Historic Preservation Act of 1966 (Pub. L. 89-665, hereinafter "the Historic Preservation Act"); Sections 303 and 307 of the Coastal Zone Management Act of 1972 (Pub. L. 92-583); Section 2 of the Fish and Wildlife Coordination Act (Pub. L. 85-624); Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1533); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1314 et seq.); and the various Executive Orders relating to environmental impacts.

6. Environmental Processing Choice. a. Environmental Impact Statements. An EIS shall be prepared for any proposed major Federal action significantly affecting the environment. (See also: CEQ 1508.27, paragraphs 7 and 10.) Listed below are types of Corporation actions which normally require the preparation of an EIS:

1. Legislation. A Legislative EIS will be prepared to accompany a bill or legislative proposal to Congress, recommended by the Corporation, significantly affecting the quality of the human environment.

2. Construction Projects (major) involving significant disturbances to earth, air or water.

b. Categorical Exclusions. The following actions are not major Federal actions with a significant impact on the environment, and do not require either an environmental assessment or an environmental impact statement. In case of extraordinary circumstances whereby any of the following items, which are normally excluded, may have a significant effect on the environment, or cause substantial controversy, an environmental assessment or EIS will be prepared.



1. Administrative procurements (e.g. general supplies) and contracts for personal services;
2. Personnel Actions (e.g. promotions, hirings);
3. Project amendments (e.g. increases in costs) which do not significantly alter the environmental impact of the action;
4. Issuance of vessel passage permits as a matter of routine Seaway procedures;
5. Amendments to the Seaway Regulations;
6. Reconstruction, repair and maintenance of existing navigation aids and construction of new fixed aids;
7. De-icing equipment and measures at the locks and lock approaches;
8. Modifications to the Saint Lawrence Seaway Tariff of Tolls;
9. Icebreaking: Icebreaking activity is limited to the intermediate pool and approximately three miles above Eisenhower Lock (vicinity of Metropolitan Petroleum Co.) and one-half mile below Snell Lock (training dike area.)
10. Maintenance dredging; In some areas, the river bottom has high spots caused by silting in from the banks, anchor dragging and/or river current. In these areas, Maintenance dredging is required to maintain our congressionally mandated 27 ft. waterway. No other dredging will be allowed under this category. Our maintenance dredging is performed under specific permit conditions approved by the New York State Department of Environmental Conservation and the U.S. Army, Corps of Engineers.
11. Modifications to and maintenance of lock operating equipment, vessel traffic control equipment, buildings, grounds, floating plant, and existing facilities;
12. Equipment purchases and operating expenses;
13. Grants of leases, licenses, permits or easements for use of Corporation-owned property.



c. Environmental Assessment. An environmental assessment is a document concisely describing the need for the proposal, the environmental impacts of a proposed action, its alternatives and a list of agencies and persons consulted. If a decision has not been made to prepare an EIS and a proposed action has not been classified as a categorical exclusion, an environmental assessment shall be prepared. The assessment will be the basis for the Corporation's determination to prepare an EIS or to publish a finding of no significant impact (FONSI). (See CEQ 1508.9)

d. Finding of No Significant Impact (FONSI). 1. If the environmental assessment reveals that the proposed action will not have a significant impact on the environment, a FONSI shall be prepared and attached to the environmental assessment. The FONSI will not be coordinated outside the Corporation, except as set forth in Paragraph (2) below. Notice of availability will be provided to the public in accordance with CEQ 1506.6.

2. If the proposed action is similar to one which normally requires an EIS, the nature of the action is one without precedent, or the action is likely to have more than minimal impact on properties protected by Section 4 (f) and Section 106 of the Historic Preservation Act or is inconsistent with any Federal, State or local law or administrative determination relating to the environment, a copy of the environmental assessment shall be provided to the Assistant Secretary for Policy and International Affairs (Assistant Secretary), and the documents made available to the public (including state and areawide clearing houses) for a period of 30 days before the FONSI is made and the action is implemented. Consultation with other Federal agencies as suggested in DOT 5610.1C shall be accomplished during the 30-day period.

7. Corporation Decision Making Procedures. a. All Office Heads shall forward a description of proposed major programs or actions to the Chief Engineer for review at the time of initial technical studies.

b. All such proposed programs received by the Chief Engineer will be reviewed and a determination made, under these procedures, as to whether the program is one which (1) normally requires an EIS or (2) normally does not require an EIS or an environmental assessment (categorical exclusion). If the action is not covered by either of the foregoing, the Chief Engineer shall prepare an environmental assessment within 30 days of receipt of the document.



8. Preparation and Processing of Draft Environmental Statements. a.

Responsibility. The Chief Engineer is responsible for the preparation and processing of Draft Environmental Impact Statements. Professional services for this preparation may be obtained from other Federal, State, or local agencies, universities, or consulting firms; however, the Chief Engineer must review and evaluate the documents. The Corporation's General Counsel shall review all Corporation environmental statements for legal sufficiency.

b. Timing. The Chief Engineer shall commence preparation of the draft EIS at the earliest practical time after receipt of notification of the proposed action and determination that the action will significantly affect the quality of the human environment. As soon as a decision to prepare a draft EIS has been made, the Chief Engineer shall undertake the scoping process identified in CEQ 1501.7. For construction projects directly undertaken by the Corporation, the EIS shall be prepared at the feasibility stage, and supplemented at a later date, if necessary.

c. Preparation of Draft. The Corporation will follow the Format and Content shown as Attachment 2 to DOT Order 5610.1C. See also CEQ Part 1502.

d. Inviting Comments on the Draft EIS. The Chief Engineer shall circulate the draft EIS for comment to (1) all Federal agencies which have jurisdiction by law or special expertise with respect to the environmental impact involved; (2) interested parties; (3) EPA Office of Federal Activities, and (4) the Assistant Secretary.

9. Ensuring Environmental Documents are Actually Considered in Agency Decision Making. Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision making. To implement these requirements, Corporation officials shall:

1. Consider all relevant environmental documents in evaluating proposals for agency action;
2. Make all relevant environmental documents, comments and responses part of the record in formal rule making or adjudicatory proceedings;
3. Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing agency review processes;
4. Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for agency action;



5. Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

For each of the Corporation's principal programs, the following chart identifies the point at which the NEPA process begins, the point at which it ends, and the key agency officials or offices required to consider environmental documents in their decision making.

Principal Program	Start of NEPA process	Completion of NEPA process	Key officials or offices required to consider environmental documents
Construction Projects (major, involving sig. disturbances to earth, air or water).	When description of proposed project is received.	At the time the Project is approved or denied.	Chief Engineer, General Counsel.

Mitigation measures identified in the EIS will be included in the construction contract with requirement for compliance by the Contractor. This requirement shall be monitored and enforced by the Project Officer for the project.

10. Citizen Involvement. As soon as the Chief Engineer decides that an Environmental Statement is to be prepared, the Chief Engineer shall solicit citizen comments by any or all of the following means: conducting hearings, making personal contact with interested parties, issuing press releases, placing notices in newspapers, and publishing a notice of intent in the Federal Register. The Chief Engineer shall develop lists of interested parties at the national, state and local levels. Citizen involvement and environmental issues raised in the public commenting process will be documented in the environmental statement. The Chief Engineer shall determine whether a public hearing is required and shall consider the following factors in making this determination: the magnitude of the costs, environmental impact, degree of interest evidenced by the public, the complexity of the issue and the extent to which public involvement has been achieved through other means. If a public hearing is to be held, the Office of the Chief Engineer shall make the draft EIS or environmental assessment available to the public at least 30 days prior to the hearing.

Interested persons may obtain information on Corporation environmental procedures and on the status of EISs issued by the Corporation from the Office of the Chief Engineer, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662, telephone 315-764-3254.



11. Final Environmental Impact Statement. a. Preparation. The draft statement shall be revised as appropriate, reflecting comments received, issues raised, preferred alternatives, and measures to mitigate adverse impacts. The final statement shall reflect consultation and efforts made to resolve issues raised, including an explanation of why any remaining issues have not been resolved.

b. Legal Review. All Corporation final environmental statements shall be reviewed for legal sufficiency by the Corporation's General Counsel or his designee. The legal review should be completed within 30 days after receipt of the statement. When the review is complete, the General Counsel will return the statement to the Office of the Chief Engineer for final processing, as outlined in paragraph d. below.

c. Internal Processing. Final environmental impact statements may be approved by the Administrator or a designee originating the action, but only after concurrence of the Assistant Secretary. The Assistant Secretary after review of a draft EIS for a proposed action may decide that the final EIS may be processed without prior concurrence. (See DOT 5610.1C, para. 11. d. (6)). Concurrence of both the Assistant Secretary and the DOT General Counsel is required for actions which involve a 4(f) determination.

d. Final Processing. Two copies of final environmental statements, together with all comments received on the draft from responsible Federal, State and local agencies and private organizations shall be submitted to the Assistant Secretary, by the Chief Engineer, for concurrence. The final statement may be deemed to be concurred in by the Assistant Secretary unless, within two weeks after its receipt, the Assistant Secretary notifies the Chief Engineer to the contrary or requests an extension of the review period or unless it is a statement including a section 4(f) determination. Final statements for actions with section 4(f) involvement may be deemed concurred in by the Assistant Secretary and the DOT General Counsel after 30 days, unless the Assistant Secretary notifies the Chief Engineer to the contrary or requests an extension of the review period.

e. Availability pending approval. Proposed final statements, with a notation that the statement is not approved and filed, should be made available to the public and Federal, State or local agencies prior to final approval and filing with EPA.

f. Availability of Statements to EPA and the Public. After approval, copies of final statements shall be transmitted to EPA and commenting agencies and made available to the public as described in DOT 5610.1C, h. and CEQ 1506.9.

g. Record of Decision. The Office of the Chief Engineer shall prepare a draft record of decision which shall accompany the proposed final EIS through the approval process (See DOT 5610.1C, paragraph 11.i, and CEQ 1502.2.)



12. Proposals for Legislation. An EIS shall be prepared for any Corporation originated legislative proposal or when the Corporation develops the Departmental position on the report on proposed legislation for which DOT is primarily responsible. (See DOT 5610.1C, paragraph 15).

13. Timing of Corporation Actions. No decision shall be made on a proposed action sooner than the later of the following dates:

a. Thirty (30) days after a final EIS covering the action has been submitted to EPA, as measured from the date the EPA publishes a notice of the final EIS's availability in the Federal Register; or

b. Ninety (90) days after a draft EIS has been made available to the public, as measured from the date the EPA publishes a notice of the draft EIS's availability in the Federal Register.

When Corporation officials believe it is necessary to shorten the prescribed time periods for EIS processing, consultation with EPA through the Assistant Secretary is required.

Where emergency circumstances make it necessary to take on action with significant environmental impacts without observing the provisions of this Order, DOT 5610.1C and the CEQ regulations, the Chief Engineer shall consult with CEQ through the Assistant Secretary.

[FR Doc. 81-15893 Filed 5-27-81; 8:45 am]

