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MEETING NEPA REQUIREMENTS FOR USDA WATER QUALITY PROJECTS

Introduction

The National Environmental Policy Act (NEPA), is our nation's charter for providing environmental protection in federal activities. Since the advent of this law, federal agencies have developed procedures to integrate these environmental requirements into their normal operations.

SCS finalized its NEPA procedures on August 29, 1979. Earlier editions of our environmental rules were written in memorandum form as early as December 7, 1971. SCS regulations for NEPA compliance are in the Code of Federal Regulations (7 CFR 650). SCS environmental policy was first contained in Environmental Memorandum 1 where it remained until final rules were published in 1979. The 1979 rules were slightly modified in 1984 to correspond to SCS nomenclature changes, included in policy statements, and published in the SCS General Manual under Title 190 (Ecological Sciences), Part 410. They now exist as both procedural regulation and policy.

Conservation of water resources has been part of SCS actions since the agency was authorized and the interdependency of water quality and quantity was recognized. SCS actions to manage and improve water quality occur in all of its programs. Planning for improvement of the quality and quantity of water resources must consider the total environment.

SCS NEPA procedures recognize only one overall planning procedure. USDA water quality projects, carried out as part of the SCS Five-Year Plan of Operations for Water Quality and Quantity, that were written in response to the USDA Water Quality Program Plan, require appropriate NEPA compliance. This requirement occurs because, under policy (GM 190 410.2 (or parallel regulation - 7 CFR 650)), NEPA rules apply to all SCS assisted programs without regard to their funding designation. There is a difference in the intensity of specific steps taken with these procedures based on the significance of their environmental impact.

Water Quality Projects and NEPA Compliance

SCS has one planning procedure, one planning manual, and one set of NEPA compliance regulations. An SCS assisted action, even in part, must apply appropriate procedures to consider its NEPA responsibilities.

Nonpoint Source Hydrologic Unit Area Projects and Demonstration Projects are interagency activities of USDA and other agencies. These actions are usually the product of combined SCS, Extension Service, and ASCS actions and frequently are conducted with USGS, USEPA, and state water quality management agencies. All federal agencies must conform to NEPA regulations and Council on Environmental Quality (CEQ) Guidelines (40 CFR 1500 - 1508) in the implementation of their environmental policies and have their own regulations for NEPA implementation.

SCS environmental procedures have been written to serve a broad range of project and nonproject actions. They are adequate to cover the NEPA responsibilities of all federal agencies that cooperate in the water quality projects. The regulations or policies for NEPA

compliance of Extension Service or ASCS may also be adequate to evaluate and document the USDA water quality projects. However, SCS procedures are written to include the compliance concerns of all cooperating agencies. Using the SCS procedures is a reasonable alternative to document NEPA compliance because they provide for inclusion of detail commensurate with significance of environmental impact or variety of program. This note is written with the assumption that SCS procedures would be used to include all agencies in the NEPA documentation of water quality projects.

Environmental Documents

SCS uses an activity in its planning process known as an environmental evaluation (EE) to inventory and evaluate resources and forecast the effects of project actions on the human environment. The EE interfaces efficiently with other planning procedures to define problems, inventory resources, formulate alternative solutions to problems, and assess their potential environmental effects.

SCS resource planning also uses the EE to determine the type of documentation that is needed for NEPA compliance. Two types of environmental documents are used; fact finding or evaluation tools and records of decision. The fact finding documents are the Environmental Assessment (EA) and the Environmental Impact Statement (EIS). ~~The EE is used to determine whether an EA or an EIS would be the appropriate documentation.~~

The review steps and, to some extent, the rigor of public review of the EA or the EIS would differ with environmental effect significance. These documents are used to determine the environmental appropriateness of the proposed action through public input, especially from agencies or groups with resource management expertise. The review of the EA or EIS is part of the public participation and the planning actions required by NEPA for federal actions.

The decision to implement an action is marked by the agency making a decision document available to the public. The decision documents used in the SCS NEPA procedures are the Finding of No Significant Impact (FONSI) or a Record of Decision (ROD). The ROD is the decision document when an EIS is used to obtain public input. The EA is used for fact finding when the FONSI is used as a decision document in cases of no significant environmental impact. The level of public review of these documents may be different because of the variation in significance of environmental effects. However, the planning activities used to obtain information for either of these document sets are expected to be the same and reflect the complexity of the undertaking.

Project and Nonproject. The SCS procedures recognize a difference between project and nonproject activities in policies and regulations dealing with NEPA (190 GM 410.9(d)). This difference relates to how public participation activities are carried out. A difference also occurs in identifying the Responsible Federal Official (RFO) for the SCS action. The SCS chief is the RFO for compliance with NEPA in dealing with proposed legislation, programs, legislative reports, regulations, and program EIS's. The state conservationist is the RFO for NEPA compliance in other SCS-assisted actions.

A project action, as defined under SCS NEPA procedures (190 GM 410.4 (h)), is a formally planned undertaking that is carried out by sponsors for the benefit of the general public. Nonproject actions (190 GM 410.4(f)), are technical and/or financial assistance provided to an individual, group, or local unit of government, primarily through a cooperative agreement with a local conservation agency. Typically these are actions delivered under the Conservation Operations, Great Plains Conservation Program (GPCP), or Rural Abandoned

The EA nearly always results in EA which is used to decide if an EIS is required or if a FONSI may be used for the project.

Mine Programs (RAMP), as well as many actions that would occur in USDA water quality projects.

Frequently, a project action is perceived as requiring either a FONSI or ROD. Nonproject actions are usually perceived to require a lesser degree of documentation rigor. The perceived requirement of more rigorous documentation for projects is not specifically required by SCS NEPA procedures. The choice of NEPA compliance documentation is a result of the application of the procedures and is not specifically bound by regulation. A project or a nonproject action must follow NEPA procedures and might require either type of documentation, although they must have one or the other.

Choosing the Appropriate NEPA Documentation for USDA Water Quality Projects

A question sometimes arises as to the type of documentation for USDA water quality projects that would be required to meet SCS procedural requirements for NEPA compliance because they are called "projects." Documentation choice is not based on whether the action is a project but on results of the EE. Differences in compliance path, based on project versus nonproject, is related only to the requirements for the type of public participation activities or to identify the RFO. NEPA documentation is a function of the environmental impact of the proposed action. USDA water quality projects have wide ranges of impacts, depending on their characteristics, and they may already be covered by existing NEPA documentation.

The interface of SCS planning procedures and NEPA procedural regulations and policy is described in the SCS General Manual and in the Code of Federal Regulations and is diagrammed in figure 1 of each of these documents. These documents should be consulted for in-depth interpretations about SCS NEPA compliance.

A flow chart, (figure 1), entitled "EA for HUAs and DEMs that have SCS Actions" is part of this note. This flow chart is an interpretive amplification of the SCS NEPA regulations and policy cited above as it relates to water quality projects. This procedure follows the same paths for planning actions in all SCS activities.

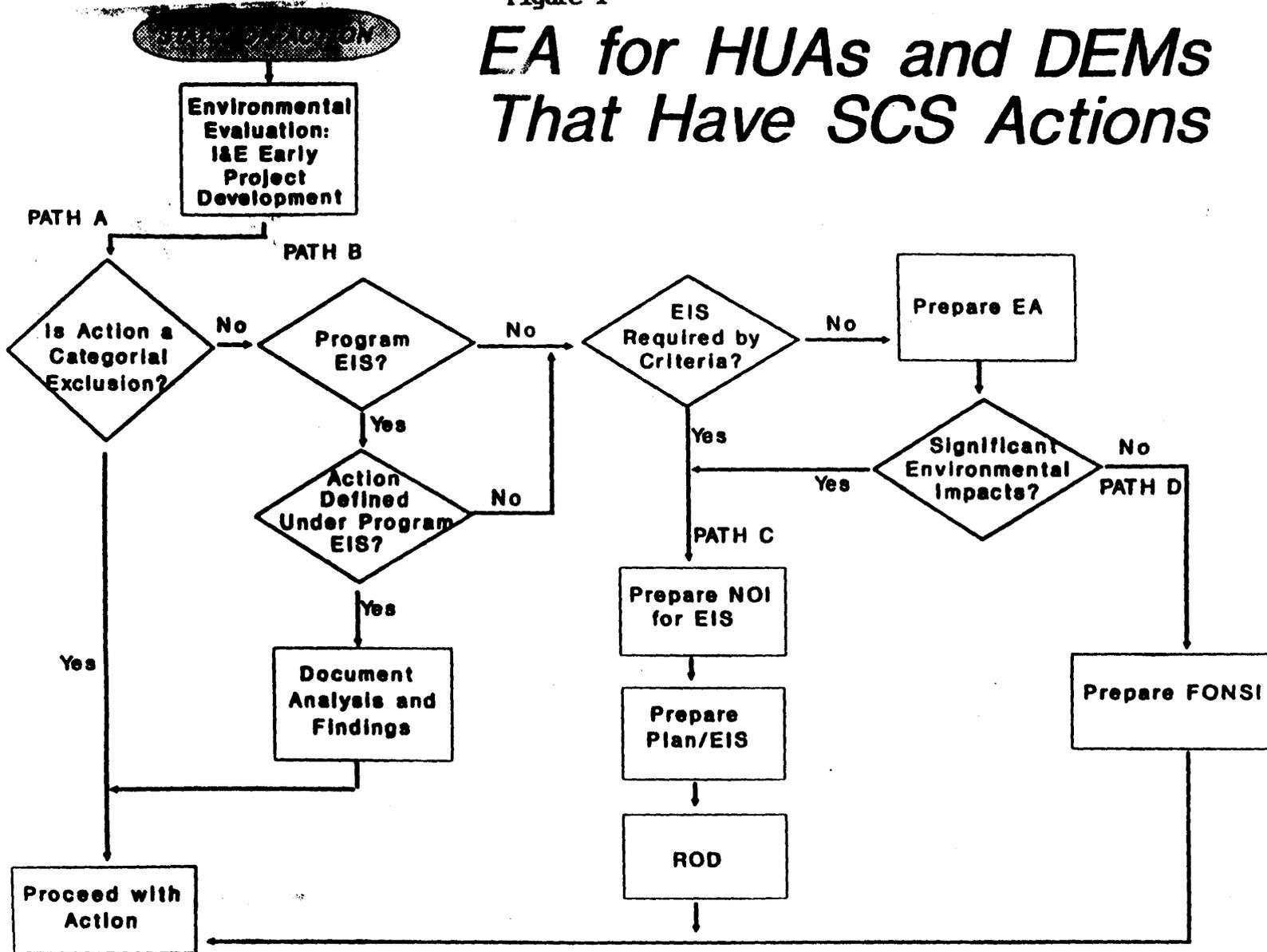
The starting point of NEPA compliance in any SCS assisted action is the environmental evaluation (EE) and the end point is the completion of the action. The EE includes all concepts associated with the project background such as the investigation and analyses of natural, economic and social resources, alternative actions, and their effects.

An EE and preparation of NEPA documentation might follow any of the four paths, labeled A through D, shown in Figure 1. Path A would never be used for a water quality project because it would require a categorical exclusion as defined by SCS regulation. These categorical exclusions, based upon previous NEPA assessment, have been determined not to require further documentation. These exclusions are fact finding activities such as soil survey, snow survey, plant materials development, inventory and monitoring, and certain resource evaluations performed under Public Law 566.

Path B makes use of the program EIS completed for the USDA National Conservation Program (NCP). This documentation was conducted under the Resource Conservation Act in the early 1980's. This path follows the procedures for NEPA documentation actions that are used in the Conservation Operations Program. These types of actions tend to be diffuse in their location and focus and use Conservation or Resource Plans and subsequent agreements for their installation. Most of the activities of the USDA water quality projects are the same as those described in the National Conservation Plan.

Figure 1

EA for HUAs and DEMs That Have SCS Actions



When following path B, individual environmental evaluations (EE) for conservation plans are part of the assistance to each land owner and no new environmental decision documents are created. The EE for these actions uses resource analysis documents such as check sheets or the or other planning documents (CPA 6). Planning and coordination activities for water quality projects must provide appropriate analyses to forecast if the effects of the proposed action will agree with the findings of the NCP Program EIS. A summary of the results of this environmental evaluation, signed and dated by agency planners, provides an appropriate NEPA documentation. This analysis document would be filed at offices of the cooperating agencies and be publicly available. If questions or controversy arise, the document would demonstrate the results of the NEPA compliance procedures because it is in function an Environmental Assessment (EA). Path B is the NEPA documentation track that is expected to be most frequently used for actions taken under the Conservation Operations Program and is expected to be suitable for many water quality projects.

The third path (C) is used when there is a set of directed, extensive, and focused actions to solve a specific resource problem. This type of action frequently produces effects that exceed impacts described in the NCP Program EIS. An example of this action could be a set of land treatment practices or structures to trap sediment and nutrients to improve the quality and restore the uses of a water body. If the specific actions of such a water quality project would require an EIS, based on defined criteria established by policy or regulation (GM 190 - 410.7(a)), or a significant environmental impact would result from the project (GM 190 - 410.7(b)), then an EIS would be prepared and followed by a ROD.

If there were no significant negative impacts on the environment resulting from the USDA water quality project, the required documentation might consist of an EA followed by a FONSI. This latter action is shown as path D.

Summary

The content of this note describes an application of SCS policy and regulation to a water quality project. Cooperative actions of other USDA agencies and other state and federal agencies or groups readily fall within the provisions of these procedures. It is not required that only SCS NEPA procedures be used for other USDA agencies in water quality projects. The NEPA procedural regulations of any of the cooperating USDA agencies may be used where appropriate. In any case, SCS actions as a partner of the water quality project must be evaluated and NEPA compliance appropriately documented.

It is anticipated that most water quality projects would follow NEPA Compliance Path B of figure 1. A few projects would follow Path D such as was demonstrated by a Hydrologic Unit Area project that has already been filed in Virginia. An EIS might be required if mitigation of the project's effects, that would be considered harmful could not be made part of the action. Resources where such impacts have occurred include cultural resources and wetlands.

When the findings of an EE indicate that the action is covered by the NCP Program EIS, a written statement should be prepared for the file to document this evaluation. This written statement documents the NEPA compliance of the USDA water quality project, and it is open to public review. If the project's effects do not fit those described by the program NCP EIS, appropriate additional NEPA documentation would be warranted.

References Cited

Council on Environmental Quality (1978) Regulations for Implementing The Procedural Provisions of the National Environmental Policy Act, 40 CFR 1500 - 1508.

Soil Conservation Service (1979) Final Rules for Implementation of the National Environmental Policy Act (NEPA) in SCS - assisted project actions, published August 29, 1979 in the Federal Register (FR 44, 169, 50575 - 50587), and Codified under 7 CFR 650.

Soil Conservation Service (1984). Compliance with NEPA, General Manual, Title 190, 410, Subpart A - Procedures for SCS - Assisted Programs, Pages 410-1 - 410-21.

Soil Conservation Service (1990) Water Quality and Quantity - SCS Five-Year Plan of Operations, October 1, 1989 - September 30, 1994.

U. S. Department of Agriculture (1989) Water Quality Program Plan to Support the President's Water Quality Initiative, July 1989.



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