



GEORGIA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION

THE GEORGIA ENVIRONMENTAL POLICY ACT  
GUIDELINES

JULY 1, 1991

## FOREWORD

The 1991 Session of the Georgia Legislature passed the Georgia Environmental Policy Act and it was signed into law by Governor Miller on April 23, 1991. The Act requires that the Director of the Environmental Protection Division of the Department of Natural Resources issue guidelines to assist government agencies in the preparation of environmental effects reports in accordance with the statute. The guidelines are required to be issued by July 1, 1991. This document serves to fulfill the requirements placed on the Director by the Act.

These guidelines are not Rules as defined by the Georgia Administrative Procedures Act and therefore, are not binding on any responsible government official under the Georgia Environmental Policy Act (GEPA). The intent of the guidelines is to provide one of many information sources to a decision maker in the implementation of GEPA. The only exemptions to GEPA are specified by the language of the Act. Any references in the guidelines to actions that may not significantly adversely affect the environment are not to be construed as adding any further exemptions to the Act. Each responsible government official is ultimately responsible for determining whether or not a proposed government action may have a significant adverse effect on the quality of the environment.

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## INTRODUCTION

The 1991 Session of the Georgia General Assembly passed Senate Bill 97, as amended, and it was signed into law by Governor Miller. The new statute, known as the Georgia Environmental Policy Act (GEPA), principally provides for the disclosure of the environmental effects of proposed state projects.

In passing GEPA, the General Assembly found that:

- (1) "The protection and preservation of Georgia's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the state and is a matter of the highest public priority;
- (2) State agencies should conduct their affairs with an awareness that they are stewards of the air, land, water, plants, animals, and environmental, historical, and cultural resources;
- (3) Environmental evaluation should be a part of the decision - making processes of the state; and
- (4) Environmental effects reports can facilitate the fullest practicable provision of timely public information, understanding, and participation in the decision-making processes of the state".

GEPA includes any proposed governmental action by any department, board, bureau, commission, authority, or other agency of the state. Those actions undertaken by a municipality or county are also included under the Act if more than 50% of the total cost of the project is funded by a grant of a government agency (state) or a grant of more than \$250,000.00 is made by a government agency (state). A proposed governmental action means the following:

- any proposed land-disturbing activity (as further defined by GEPA) by a government agency (state) or funded by a grant from a government agency (state);
- any proposed sale or exchange of more than five acres of state owned land, or;
- any proposed harvesting of five acres or more of trees over two inches in diameter at breast height.

The Act excludes the following actions:

- specified agricultural practices;
- forestry land management practices which include harvesting of less than five acres of trees over two inches in diameter at breast height;
- any action by a non-governmental entity;
- any action of a municipality or county, or an authority of a municipality or county unless more than 50 percent of the total cost is funded by a grant of a government agency or a grant of more than \$250,000.00 is made by a government agency;
- permitting or licensing of an action by a government agency;
- promulgation and implementation of rules and regulations;
- sale of bonds or any other program of loans funded by the sale of bonds;
- litigation decisions;
- emergency measures undertaken in response to an immediate threat to public health or safety;
- activities in which government agency participation is ministerial in nature, involving no exercise of discretion on the part of the government agency.

In general, any covered proposed governmental action by a government agency must be assessed by the responsible official of that agency to determine whether or not the proposed action may significantly adversely affect the quality of the environment. If the official reaches a determination that there may be such a significant adverse impact on the environment the activity that follows focuses on the preparation of an Environmental Effects Report followed by public involvement. The Procedural Requirements, listed in Table No. 1, include the preparation of an environmental effects report, which includes, but is not limited to, designated subject areas in the Act. The environmental effects report must be made available to the public and other interested parties and their comments must be considered by the responsible government agency official before reaching a decision as to whether or not to proceed with the proposed government action.

The role of the Director of the Environmental Protection Division of the Department of Natural Resources is defined by GEPA to be the following:

- Prior to July 1, 1991, issue guidelines to assist government agencies in the preparation of environmental effects reports in accordance with the Act;
- Consultative role during the preparation of the environmental effects report;
- Receive the environmental effects report and associated comments after completion by the responsible agency official; and,
- Receive the Notice of Decision issued by the responsible government agency official.

The information contained in this document constitutes fulfillment of the Director's responsibility under GEPA to prepare and issue guidelines to assist other state agencies in the preparation of environmental effects reports.

**TABLE NO. 1**  
**PROCEDURAL REQUIREMENTS FOR COMPLIANCE WITH THE**  
**GEORGIA ENVIRONMENTAL POLICY ACT (GEPA)**

- Proposed governmental action by a governmental agency.
- Determination by the responsible government agency official that a proposed governmental action, if implemented, may significantly adversely affect the quality of the environment, or a finding of no significant adverse effect.
- Begin preparation of an Environmental Effects Report (EER) if there is a finding of a significant adverse effect.
- Consultation with other agencies.
- Complete preparation of the EER.
- Publication of public notice of EER, at least 45 days prior to making a decision as to whether to proceed with the project.
- Provision of a copy of the EER and all other comments to the Director of EPD.
- The responsible government agency official shall make the EER available to the public, counties, municipalities, institutions and individuals upon request.
- If 100 written requests are received by the responsible government agency official from Georgia residents for a public hearing, a public hearing shall be held in each county in which all or part of the proposed governmental action is to take place.
- The responsible government agency official must consider all written comments received or written/oral comments presented at a public hearing before reaching a decision.
- Decision by the responsible government agency official.
- The responsible government agency official shall send the written notice of decision to the Director of EPD.
- The responsible government agency official must publish the notice of decision in the legal organ of each county in which all or each part of the proposed action is to occur.
- Any challenge to the process must be commenced within 30 days after the date that the notice of decision was published by the official.

## SIGNIFICANCE DETERMINATION

The first key decision, under GEPA, by a responsible government agency official is a determination as to whether a particular action being considered qualifies as a "Proposed Governmental Action" in accordance with the Act. Under the Act, an action qualifies as a "Proposed Governmental Action" if:

- the action is to be performed by a government agency.
- the action is funded by a grant from a government agency.
- the action is land disturbing.
- involves scraping, plowing, clearing, dredging, grading, excavating, transporting or filling of land (with the exception of certain agriculture and forestry activities).
- involves the placement of any structure or impervious surface, or dam.
- involves the moving or altering of any structure on or eligible for placement on the Georgia Register of Historic Places.
- the action involves the sale or exchange of greater than five acres of government land.
- the action involves the activity of a municipality, county, or authority where greater than 50% of the cost or \$250,000 is funded by a state grant.

If the action qualifies as a Proposed Governmental Action, then it is a potential candidate for an Environmental Effects Report. If the Proposed Governmental Action could significantly adversely affect the quality of the environment then an Environmental Effects Report is required. An actual definition of a significant adverse impact is not included in the Act, nor is one included in Title 40 of the Code of Federal Regulations on Implementation of National Environmental Policy Act Procedures. This means that the responsible government official has to utilize a deduction approach to reaching a decision as to whether or not the proposed action may have a significant adverse effect on the environment. Considerable judgement must be exercised and if there is uncertainty or it is a "close call", the action probably qualifies since the Act only requires that it be probable to expect a significant adverse impact.



Certain actions are clearly significant whereas others are less clear. Examples of those kinds of activities that are clearly significant include:

- alteration of wetlands
- an action that affects threatened and protected species or their habitats.
- the destruction, alteration, or movement of any structure on or eligible for the Georgia or National Register of Historic Places.
- action that alters a flood plain in a significant manner (as an example, establishment of surfaces that increase amount of flow in or near a populated area).
- action that adversely alters the flow of water in a watershed area upstream from a surface water supply.
- action that would adversely affect the quality of water in a stream or impoundment used for water supply through runoff of sediments or other contaminants.
- action that involves construction within or in the immediate vicinity of a closed or active sanitary landfill.
- action that involves a significant alteration in areas of recognized scenic, recreational, archaeological or historical value.
- timber harvests on state lands in excess of five acres where land use conversion will take place (e.g. silvicultural to agricultural, real estate development, mining, etc).
- an action that results in decreasing the quality of the ambient air.

There are actions for which it is easier to deduce or determine that there may not be a significant adverse impact on the environment. However, the final decision still rests with the responsible government official and, if there are probable impacts not envisioned in this guidance but known to him that would occur even with these projects, that official will have to prepare an environmental effects report.

In order to assist the responsible government official in focusing on the environmental areas to be considered in the decision making process, an Environmental Check List has been prepared and included in this guidance. The descriptive information for each category also includes guidance on sources of additional information as to why it is important.

Whereas the guidance information provided by the Environmental Protection Division, in accordance with the requirements of the Act, is meant to assist the responsible government official in reaching a decision about whether or not a proposed governmental action may significantly adversely affect the environment, it is not meant to be all inclusive or to be used specifically for not preparing an environmental effects report. All available information should be used in reaching the best decisions possible.

Each agency should review all their activities carefully that may fall under the Act and prepare internal decision making policies or procedures for determining which projects may have significant adverse environmental effects.

**ENVIRONMENTAL CHECK LIST  
GEORGIA ENVIRONMENTAL POLICY ACT**

GEORGIA AREA/CATEGORY	IS AREA AFFECTED?			IF AFFECTED, HOW SEVERE?			
	NO	YES	UNKNOWN	MINOR	MEDIAN	MAJOR	UNKNOWN
1. Wetlands							
2. Flood Plain/River Corridor							
3. Water Supply							
4. Water Resources							
5. Groundwater Recharge Area							
6. Storm Water							
7. Waste Water							
8. Air Quality							
9. Solid Wastes							
10. Soil Stability/Erodibility							
11. Protected Mountains							
12. Protected Species							
13. Critical Habitats							
14. Historical							
15. Archeological							
16. Parks/Recreation							
17. Energy Supplies							
18. Beaches							
19. Dunes							
20. Shoreline							
21. Estuary							
22. Forest Land							
23. Barrier Island							
24. Aquatic Life/Trout Streams							

**ENVIRONMENTAL CHECK LIST**  
**GEORGIA AREA/CATEGORY INFORMATION**

**1. WETLANDS - Will the action occur in a "wetlands" area?** The definition of wetlands is included in the Federal Regulations, 33 CFR 32.93. The DNR Rules for Environmental Planning, Chapter 391-3-16-.03, incorporate the federal definition as well as both acceptable and unacceptable uses of wetlands. Under current federal law and state policy, alterations or degradations of wetlands should be avoided unless it can be demonstrated that there will be no long-term impacts or net loss of wetlands. A Federal Permit is required for most wetland activities.

**2. FLOODPLAIN/RIVER CORRIDOR - Will the action occur in a floodplain or a river corridor?** Floodplains are designated areas of land that become flooded with water during periods of rainfall that increase the primary stream flow. Many floodplain areas are shown on Federal Floodplain Maps which have been prepared in support of the National Flood Insurance Program. Additional maps and information on floodplains are available from the DNR's Environmental Protection Division (EPD). Most proposed government actions that occur directly in a floodplain area or which may alter the size or character of the floodplain area are considered significant. Under H.B. 643, passed by the 1991 Session of the General Assembly, lands adjacent to major rivers are protected from certain types of development. DNR is charged with developing rules for the River Corridor protection program.

**3. WATER SUPPLY - Does the proposed action have the potential for decreasing either the quality or quantity of water available for water supply?** Water supply means a source of water that is used for drinking water in addition to other consumptive purposes. The DNR Rules, Chapter 391-3-16, contain criteria for water supply watersheds. These criteria establish a basis to allow development in a water supply watershed without contaminating the water source to a point where it cannot be treated to meet drinking water standards. EPD can provide information to state agencies as to whether their proposed projects lie within water supply watersheds.

**4. WATER RESOURCES - Will the proposed action result in large demand for water from the available water resources? Will the proposed action result in a degradation of the quality of waters of the state?** The waters of the state include surface and groundwater that is not wholly confined to a single privately owned piece of property. Water resources management is one of the most important issues facing Georgia now and in the future. A growing population and the potential for water shortages focus on the importance of adequate amounts of good quality water. The DNR Rules for Surface Water Withdrawals, Chapter 391-3-6, provide the regulatory framework for withdrawal, diversion or impoundment of surface waters of the State. DNR Rules for Groundwater Use, Chapter 391-3-2, establish regulatory procedures for withdrawing, obtaining or utilization of groundwaters of the state.

**5. GROUNDWATER RECHARGE AREA - Will the action result in the disturbance or altering of a groundwater recharge area?** Groundwater recharge areas are those portions of the earth's surface where water infiltrates into the ground to replenish an aquifer. The Significant Recharge Areas of the state are those areas mapped by the DNR in Hydrologic Atlas 18 (1989 Edition). The DNR Rules for Environmental Planning Criteria, Chapter 391-3-16, contain specific criteria for protection of groundwater recharge areas.

**6. STORMWATER - Will the project result in increasing the amount of storm water runoff for downstream property owners?** The primary concern related to storm water is the creation of impervious surfaces that contribute to an increase of the amount of storm water runoff to the point where there is damage or a threat to downstream property owners. Another very important issue is the potential contamination of stormwater through increased contact with contaminants.

**7. WASTEWATER - Will the project produce wastewater that is discharged to a surface stream?** Wastewater means contaminated water (sewage or other contaminants) that must be treated and disposed of either by direct discharge to a surface stream or indirect discharge to an existing municipal sewer system. Even if the wastewater from a state project is to be discharged to a municipal sewer system, the effect can be significant if that wastewater causes the municipality to expand its sewage treatment system.

**8. AIR QUALITY - Will the action result in a release or discharge of contaminants into the ambient air?** Any action that results in the release or discharge of contaminants into the air such that existing ambient air quality may be diminished is a significant action. All discharges or releases may be subject to regulation under the Georgia Air Quality Control Act and/or the U.S. Clean Air Act.

**9. SOLID WASTES - Will the project result in the generation of solid wastes for disposal, or will the proposed actions occur near or in an active or closed landfill?** Solid waste is defined in the Georgia Comprehensive Solid Waste Management Act. It includes different categories of wastes which exist in a solid form (household garbage, demolition material, land clearing debris, commercial non-hazardous waste material, etc). Whereas the amount of solid waste generated that requires disposal is of concern, another primary issue relates to a land disturbing activity in the vicinity of an active or closed landfill.

**10. SOIL STABILITY/ERODIBILITY - Will the action displace soils that will be carried off site and pose a threat to surface waters or property?** Under the Georgia Soil, Erosion and Sedimentation Act, local governments which have authorized management programs under the Act establish control procedures and permit the project. If the action takes place in a county or municipality that does not have such authorization, EPD is the regulating agency. In either case, a technical guidance book is available from either the local government or EPD.

**11. PROTECTED MOUNTAINS - Will the project involve the alteration of lands with high elevations and steep slopes?** Under House Bill 643, which was passed by the 1991 Session of the General Assembly, land which lies above 2,200 feet in elevation and has slopes of twenty-five (25%) or more, are identified as Protected Mountains. In accordance with the Act, DNR is charged with promulgating Rules for implementation of a "Mountain Protection" program. At the time of preparation of this GEPA guidance, those rules are currently under development.

**12. PROTECTED SPECIES - Will the proposed action harm or reduce the population of protected species?** Endangered species is used in both the generic sense for protected species and in a more narrow definition sense under the U.S. Endangered Species Act. With respect to the GEPA, the term protected species is more applicable. Protected species includes those plant and animal species protected by the State in accordance with the Georgia Wildflower Preservation Act of 1973 and the Georgia Endangered Wildlife Act of 1973. DNR Rules, Chapter 391-4-10, provide more detailed criteria for the state's protected species.

**13. CRITICAL HABITATS - Is the proposed action expected to involve any critical habitats?** Critical habitats are those sites on which the State's protected species are dependent for their survival. They also include U.S. Forest lands, U.S. Wildlife Refugees, Wilderness Areas, and Wild or Scenic Rivers.

**14. HISTORICAL - Will the proposed action involve disturbance of any historic property?** GEPA specifies consideration of any structure on or eligible for the Georgia Register of Historic Places. In addition, the regulations of the President's Advisory Council on Historic Preservation (36 CFR 800) which implements Section 106 of the National Historic Preservation Act contains definitions and criteria of adverse effect for the protection of historic properties.

**15. ARCHEOLOGICAL - Will the proposed action involve disturbance of any archeological property?** Archeological properties are the physical remains of the past that can be studied by archaeologists and other scholars to answer questions about prehistory and history. In addition, the regulations of the President's Advisory Council on Historic Preservation (36 CFR 800) which implement Section 106 of the National Historic Preservation Act contain definitions and criteria of adverse effect for the protection of archeological properties.

**16. PARKS/RECREATION - Will the proposed action involve disturbance or otherwise have a significant impact on the State's cultural resources?** GEPA includes cultural resources within the consideration focus of a proposed government action. In addition to the archeological or historic value, cultural resources may also include park lands, preserves, and other public lands or areas of recognized scenic and/or recreational value.

**17. ENERGY SUPPLIES - Will the proposed action have significant impact on the reduction in the available energy supplies?** This primarily refers to the source of energy (electrical, gas/oil, solar, etc) that will be consumed by the project in relation to the total available in the area.

**18. BEACHES - Will the proposed action involve the disturbance of any ocean beach area?** The Georgia General Assembly has found that ocean beaches provide an unparalleled recreation resource which is vitally linked to the economy of Georgia's Coastal Zone and to that of the entire state. They are also part of the sand-sharing system which provides habitats and acts as a protective buffer for other areas. This natural resource system is costly, if not impossible to reconstruct or rehabilitate once adversely affected by man-related activities. Therefore, any action in these areas should be considered highly significant.

**19. DUNES - Will the proposed activity alter coastal sand dunes?** Coastal sand dunes, beaches, sandbars, and shoals, comprise a vital natural resource system, known as the "sand-sharing system", which acts as a buffer to protect real and personal property and natural resources from the damaging effects of floods, winds, tides, and erosion. The coastal sand dunes are the most inland portion of the sand-sharing system and because they are a fragile product of shoreline evolution, they are easily disturbed by action harming their vegetation or inhibiting their natural development. They are protected under the Georgia Shoreline Assistance Act of 1979.

**20. SHORELINE - Will the project involve activities in the Georgia Coastal Shoreline area or in areas covered under the river corridor protection requirements of Georgia House Bill 643?** In accordance with DNR Rules, Chapter 391-2-2, protective measures and procedures are provided for the implementation of the Georgia Shoreline Assistance Act. Construction, erection, or engaging in any shoreline engineering activity or land alteration which alters the natural topography or vegetation of any area is highly regulated under the Act. In addition, the 1991 General Assembly passed House Bill 643 which also provides for the protection of coastal river corridors. DNR is authorized to promulgate Rules for the implementation of House Bill 643 and they are currently being developed.

**21. COASTAL MARSHLANDS - Will the proposed action alter the Georgia coastal marshlands environment?** Georgia's coast contains the saltwater marshes. These marshes have been identified as one of the most extensive and productive marshlands systems in the United States. Georgia's marshes, sands, and near-shore ocean water produce more food and energy than any other estuarine zone on the eastern seaboard. They are also an essential life support system for Georgia's multi-million dollar seafood industry. Any activities that affect this area are closely regulated under the Georgia Coastal Marshlands Protection Act.

**22. FOREST LAND - Will the proposed action involve changes in forested areas?** GEPA specifically provides that a proposed government action includes the harvesting of five acres or more of trees over two inches in diameter at breast height. The secondary effects of tree removal as well as other land disturbing activities that may impact a forested area are of concern. Depending on the type of harvesting methods, tract locations and other variable criteria, there may exist a potential for erosion and sedimentation, habitat alteration, and other changes for concern. Manuals on Best Management Practices (common sense forestry associated practices which minimize the impact on the environment) are available from the Georgia Forestry Commission. These practices were developed by statewide task force, appointed by the Governor, with input from all aspects of forestry in Georgia.

**23. BARRIER ISLAND - Will the proposed action involve activity on or near a barrier island?** Along the Georgia Coast, an extensive system of salt marshes, tidal estuaries, and sounds separate a chain of eight major and several smaller barrier islands from the mainland. Two-thirds of Georgia Barrier Islands are parks, refuges, or preserves. Sand beaches and dunes protect the islands from erosion and flooding. The islands shelter the marshes from the force of storms. Any proposed action that involves the barrier islands should be considered highly significant.

**24. AQUATIC LIFE/TROUT STREAMS - Will the proposed action involve an action that significantly impacts freshwater aquatic life?** Georgia has an abundance of freshwater lakes, streams, and bodies of water that support aquatic life. The freshwater fisheries are important for the total food chain. Primary and secondary trout streams should be protected.



## CONSULTATION

In accordance with Section 12-16-4(b) of the Act, "prior to the issuance of the environmental effects report, the responsible official should consult with and obtain the comments of any agency which has jurisdiction by law, special expertise, or other interest with respect to any environmental impact or resource". The intent of this part of the Act is to provide a mechanism whereby the responsible official can gain input that may be useful in the preparation of the environmental effects report. Such input may be advice on the application of regulatory requirements on the project or it may involve technical or other expert assistance on various aspects of the proposed actions.

One issue is the mechanism for consultation. The Act does not specify a mechanism. It only states that such consultation should take place prior to the issuance of the environmental effects report. Thus, it is left to each individual state entity to establish its own mechanism for consultation. It would seem that there is a range of alternatives open to each agency for establishing the mechanism. One scenario may involve an initial solicitation of other state agencies with continuing interest in the action of another agency followed by the establishment of checklist criteria to be used for the environmental effects report. Another mechanism may involve wholesale notice on every proposed action to all state agencies with a solicitation for comments. Each state agency should establish a mechanism that best fits its need and that can be defended against a later challenge. In some instances it may also be necessary to consult, with federal as well as local government agencies, depending on the project.

A second issue involves the point at which consultation is sought. State agencies should keep in mind that the purpose of the consultation is not to review and approve the environmental effects report, but rather to identify those issues that need to be addressed in the report. Therefore the consultation should begin as soon as the responsible official reaches a determination that an environmental effects report will be required.

A third issue relates to what a responsible official does when a given agency does not comment after being solicited. Since the Act does not place a mandatory requirement on state agencies to provide comments to a responsible official, it would seem that if an official attempts to get comments within a reasonable time frame (30-45 days) and still doesn't get them, it would be reasonable to expect to move on to the next step in the process.

The final issue encompasses the priority given to the consultation process. Since the process used by a responsible official may be challenged later legally as a result of a decision, it would be advisable to employ a consultation procedure that documents the solicitation process and implements the consideration of a responding agency's comments in the preparation of the environmental effects report.

## **ENVIRONMENTAL EFFECTS REPORT**

If the responsible official determines that the proposed governmental action is one that may significantly adversely affect the quality of the environment, the government agency responsible for the project shall prepare an environmental effects report. The Act requires that the report address, at a minimum the following:

- The environmental impact of the proposed governmental action.
- Alternatives to the proposed governmental action, including no action.
- Any adverse environmental effects which cannot be avoided if the proposed governmental action is undertaken.
- Mitigation measures proposed to avoid or minimize the adverse impact of the proposed governmental action.
- The relationship between the value of the short term uses of the environment involved in the proposed governmental action and the maintenance and enhancement of its long-term value.
- The effect of the proposed governmental actions on the quality and quantity of water supply.
- The effect of the proposed governmental action on the energy use or energy production.
- Any beneficial aspects of the proposed governmental action, both short-term and long-term, and its economic advantages and disadvantages.

By the time a responsible official reaches a determination that an environmental effects report is required for a project, the agency involved is most likely in a position to define the alternative that is to be the implemented action should the project go forward.

The question then arises as to how many alternatives should be examined in the environmental effects report. The solution to this issue rests in a degree of reasonableness. As with the federal regulations for implementing the National Environmental Policy Act of 1969, "reasonable" alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.

The format for an environmental effects report that incorporates a discussion of the areas specified in Section 12-16-4(a) of the Act and is also similar to reports prepared pursuant to the National Environmental Policy Act is shown in Table No. 2.

**TABLE NO. 2**  
**SUGGESTED FORMAT FOR AN ENVIRONMENTAL EFFECTS REPORT**

- Cover Sheet
- Executive Summary
- Table of Contents
- Project Description
- Environmental Setting Without the Project
  - Location
  - Geology/Soils
  - Surface/Groundwater hydrology
  - Wetlands/floodplain
  - Flora/Faura
  - Archaeology/history
  - Cultural (Recreation/Aesthetics)
  - Energy
- Environmental Effects of the Proposed Action
- Adverse Environmental Effects which cannot be avoided if the proposed action is undertaken (includes discussion of mitigation measures)
- Alternatives to the Proposed Action
- Relationship between short term use of Environment and Long Term Value
- Benefit Statement
- Appendices

In preparing an environmental effects report, the responsible agency should regard it as a necessary and integral piece of the information base from which will come a decision as to whether the project will be implemented or not. The report must be factual, inclusive, and defensible. Since the report may be read and used by a variety of decision makers, it should be both readable and understandable. Authors of such a report should refrain from the perception that the more voluminous a report is, the better it becomes. Rather, the use of checklists, tables, charts, and graphs should be used to illustrate, where possible, the important information that a reader should grasp. In particular agencies should note in the EER when information is incomplete so as to not mislead the decision maker.

## **COMMENTS ON THE PROPOSED ACTION BY PUBLIC, PRIVATE ORGANIZATIONS, AND INDIVIDUALS**

The Act requires that once an environmental effects report has been completed, public notice must be provided and that comments received be considered before a responsible governmental official reaches a decision as to whether or not to proceed with the project. After a decision about the project is reached by the responsible official, a public notice must be provided to this effect.

The following procedure is suggested for meeting the requirements of the Act:

- In each county affected by the proposed action a legal notice must be published in the county legal organ and should be published in a newspaper of general circulation if the county legal organ is not sufficient to provide timely notice to the public. The notice must state that an environmental effects report has been prepared, briefly describe the proposed action, announce the beginning of a 30 day public comment period, inform the public of the locations of where the report may be reviewed, and provide an address for receipt of written comments. (Remember that the Act requires that such public notice be published at least 45 days before making a decision as to whether or not to proceed with the project).
- In each county affected by the proposed action, a depository for the environmental effects report should be arranged. Usually a library or county courthouse will suffice for this purpose. The report should be made available for review by the public during normal business hours for 30 days from the date of publication of the notice.
- If, during the 30 day comment period, the responsible official receives requests in writing for a public hearing from at least 100 persons who are residents of the State of Georgia, a public hearing must be held in each county where the proposed governmental action or any part of that action is to take place.
- All written comments received and written or oral comments made at the public hearing(s) must be reviewed and considered before a decision is made. The responsible agency should list a response for the record as to whether the comment is germane and how it is incorporated into the decision making process.

- A formal decision document should be prepared as to whether the responsible agency intends to proceed with the project or not. The public comments and analysis document should be appended to this formal record of decision.
- Once a decision is prepared (but no sooner than 45 days after the start of the comment period) a notice of the decision must be published in the legal organ of each county in which any part of the action is to occur. This notice should also be published in a newspaper of general circulation.

## **SINGLE-PROGRAM ENVIRONMENTAL EFFECTS REPORTS**

In Section 12-16-8 of GEPA, the issue is raised as to the preparation of a single environmental effects report for a project that consists of a number of phases as compared to preparing a report for each phase. While the Act does not place a responsibility on a government agency to prepare such a single program report, it certainly recognizes the existence of the possibility.

The Act provides that the Director of the Environmental Protection Division shall include guidance to government agencies on the possibility of the preparation of single program reports if:

- A series of individual actions, each of which may have minimal adverse significance, may result in a cumulative significantly adverse effect on the environment; or,
- A series of proposed government actions are related geographically; or,
- A series of proposed government actions related as logical parts in a chain of contemplated action.

When evaluating projects of this type, the responsible government agency has a very complex and difficult decision to make regarding how the project is to be considered. Since the Act clearly contemplates the possibility of an environmental effects report, the responsible official must be very careful to consider the overall project and not just the parts as being independent. In general, an environmental effects report should be prepared on the whole project if;

- the project consists of a number of relatively independent phases;
- each phase is logically linked to prior and subsequent phases and is not an independent, stand-alone project, and;
- the cumulative impact of the entire project may have a significant adverse environmental effect.

The reason for preparation of a single program report is two-fold:

- to encourage decision makers to consider the overall project up front before getting too far along with any one increment, and
- to establish a "caution light" for those decision makers that try to use a piecemeal approach to avoid the intent of the Act.

Any decision regarding the preparation of a single program report must rest with the responsible government official. Since the Act doesn't actually require the preparation of such a report and is silent on any other specific information, any decisions by the responsible official should be based on the reasonableness of the situation. The following two scenarios can be used to demonstrate how a reasonableness test might be applied in helping reach a decision about whether or not to prepare a single program environmental effects report.

#### Scenario A

There is a plan, which has been in existence for some time, that provides for adding two additional northbound lanes and two additional southbound lanes to a major portion of the existing Interstate Highway. Several particulars are known about the project:

- It involves 20-30 miles and traverses two counties.
- The specific location is fixed by the existing highway.
- The action is to be taken in a near term time frame, 2-5 years.
- Funding for the project has been identified and there is a reasonable assurance that the money will be available.
- The existing environment without the project is unlikely to change significantly over the same five year time frame.
- One or more of the segments will involve a significant adverse impact.

In this scenario, it is reasonable to consider the entire project as an overall proposed action and prepare a single program environmental effects report instead of preparing a report on each proposed segment of the project.

#### Scenario B

There is a general plan for constructing a new highway through a large geographical area of the state. Whereas the short term includes initiation of construction of one portion of the highway, the remainder is subject to changes in state policy and availability of funding before it can be defined as a proposed action. Additional information about the project includes:

- There has not been any right of way purchased for other than



the initial segments of the project.

- There is not a specific defined location of the roadway so that the existing environment can be identified.
- The completion of the whole road might take 20-30 years if state policy is favorable and funding is available.
- Because of the long time frame it is reasonable to expect changes in the general environment without the project.

In this particular case, it seems reasonable to prepare an environmental effects report, if there are probable significant adverse effects, for only the initial segment of the road construction. Too little is known and conditions will probably change considerably over the long term, thus the inclusion of the entire road in the report will not assist the decision maker or serve any other useful purpose. Although a plan exists, there is not a proposed governmental action. Lack of funding by itself may not be defensible as a reason for not preparing a single program report but lack of a defined action, a changing environment, and the possibility of a change in state policy regarding the plan collectively support a decision not to prepare a single program report.

An example of a situation that might be perceived as a deliberate attempt to circumvent the intent of the Act might involve a forester that harvests 4.9 acres of trees over two inches in diameter, leaves a twenty foot strip of trees; removes another 4.9 acres of trees; and repeats the sequence. The ultimate result is the removal of considerably more than five acres of trees but the justification for not preparing an environmental effects report is based on each removal action rather than the total project. In this case, it is clear that if there are contemplated significant adverse effects on the environment, a single program report would be necessary.

The decision as to whether or not to prepare a single program report is dependent on what is known about the project and each government agency will have to reach the appropriate decision on the best information available.

## **ENVIRONMENTAL EFFECTS REPORTS FOR ACTIONS PRIOR TO JULY 1, 1991**

One of the issues on which the Act requires the Director of the Environmental Protection Division to issue guidelines is the possibility of the preparation of modified environmental effects reports on remaining decisions significantly adversely affecting the quality of the environment. The Act does stipulate that these decisions are related to actions begun before but not completed before July 1, 1991.

The Act does not define the term "decision" as used in this section, but throughout the statute it focuses on the term as that which determines whether the project proceeds or not. Assuming this is the context in which the term is also used in Section 12-15-8(4), then those actions which may qualify as candidates for modified environmental effects reports include:

- a decision that was made prior to July 1, 1991 to implement an action and the action was begun but not completed; the action involves a significant adverse environmental effect.
- a decision to make a change in an existing project started before July 1, 1991; the change action may involve a significant adverse environmental effect.
- a decision was made to implement an action that is an integral part of a much larger action and the accumulated effects on the environment of the entire project may be significantly adverse; at least one integral part of the overall project was implemented prior to July 1, 1991.

As with the issue of single-program environmental effects reports, the Act does not require a government agency to actually prepare a modified report for those actions begun but not completed before July 1, 1991. It raises the possibility of the preparation of such reports and requires the Director of EPD to provide guidelines. Because the possibility is raised, a government agency may need to establish a procedure for dealing with the issue.

An example of such a procedure is as follows:

- Conduct an internal review of all projects that were begun prior to July 1, 1991 but not completed by that date.
- For each project, make a determination if the action involves a single action project or a single program accumulated effects project.

- If the action involves a single action project, make a determination and establish a record as to whether it involves a significant adverse effect on the environment.
- For a single program-accumulated effects project determine if it is reasonable to predict whether or not there will be an accumulated significant adverse effect on the environment.
- For each project for which a determination is made that a significant adverse effect on the environment may exist, consideration should be given to preparing a record document which demonstrates the Agency has dealt with the issue.
- Any record document should identify the significant adverse environmental effects of the project and discuss the mitigating measures used to minimize or eliminate the significant adverse effect on the environment.

Finally, with respect to this issue, the Act is not clear regarding whether or not modified environmental effects reports are subject to the same public notification and comment procedures. Since the preparation of such documents is a voluntary matter and not required, the question of whether or not these documents are subject to the other procedures in the Act is not addressed in the Act. Each agency will have to develop its own policy and procedure regarding this aspect. However, it should be noted that a significant portion of the intent of the Act is to make the public aware of actions that may have a significant adverse effect on the environment. Agencies are encouraged to follow the procedures in the Act for modified environmental effects reports.

## **DOCUMENTS PREPARED PURSUANT TO THE NATIONAL ENVIRONMENTAL POLICY ACT**

Section 12-16-7 of GEPA provides that for a proposed governmental action that requires and has received federal approval of an environmental document prepared in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations, the responsible government agency shall be deemed to have complied with the requirements of GEPA.

NEPA documents are prepared for major actions that involve the expenditure of federal money and/or the federal licensure of a project. The cognizant state agency that is the subject of the federal action must contribute to the development of the NEPA document. One example of a state action which results in a NEPA document being prepared in compliance with the federal implementing regulations, is a "dredge and fill" project covered under Section 404 of the U. S. Clean Water Act. For the specific area covered by the 404 Permit, the NEPA document satisfies the state agency responsibilities under GEPA. However, the 404 permit may not satisfy the state agency responsibilities for other portions of the project which may have a significant adverse effect and, for these other portions, and environmental effects report would still have to be prepared. For example, if the project is funded by federal funds, the NEPA document must encompass the entire project and not just the part that is subject to a 404 permit. If the project is funded by state funds the NEPA document only pertains to the specific area covered by the 404 permit.

## **MULTIPLE AGENCY PROJECTS**

There may be proposed governmental actions that involve more than one agency. Examples include: tree harvesting, purchase or sale of land, and construction of buildings for use by another agency. The issue then arises as to which agency is responsible for implementation of GEPA procedures. In the definition of a proposed governmental action, the Act states that this "means a project proposed to be undertaken by a government agency or agencies...". However, GEPA does not state whether one agency or all agencies involved are responsible for the decisions. It would seem that an agency which funds the action cannot avoid being responsible for GEPA requirements. This may be a justification for determining the lead agency when multiple agencies are involved. These agencies should develop coordinating procedures for determining the respective roles each agency will play in the implementation of GEPA.

Even though a lead agency may have overall GEPA implementation responsibility, other agencies can fulfill information gathering functions in support of the lead agency. In addition the coordinating procedures may include common policy, philosophy, and operating practices used to determine if there may be a significant adverse environmental effect for a proposed governmental action.

