

William A. Fontenot
632 Drehr Ave.
Baton Rouge, LA 70806
Ph. # 225-383-5673
wafont@cox.net
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NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building

nepataskforce@mail.house.gov

Thank you for this opportunity to present some thoughts, comments, and recommendations on the subject, which is before this task force. How is the National Environmental Policy Act, NEPA, doing after 35 years in our country and can, or should, the NEPA be changed or modified? I was unable to attend any of the hearings, which were held around the country because of other issues, like personal health and job related work.

I appreciate the opportunity to participate in this process because I have been involved with the NEPA since 1969 when this law was enacted. These comments are my own and I am not representing the interest of any group in this letter. I recently retired after 27 years of service in the Louisiana Attorney General's Office. My job was to assist individuals, officials, other agencies and businesses with environmental problems. In that capacity I have worked on environmental issues in almost every state in the country. I have also had the opportunity and pleasure of serving with citizen's organizations in both staff and board positions.

In 1971, while living in New Orleans, I became involved in what I believe was the first lawsuit in Louisiana under the provisions of the NEPA. The organization I headed was the Citizens for Sound Planning. We were concerned, along with a number of other groups, individuals, officials, businesses and agencies, that the proposed Interstate Highway 410 Loop around New Orleans was a bad idea and would present many problems for future generations. In 1975 the U.S. 5th Circuit Court of Appeals agreed with us and sent the project back to the federal and state agencies and proponents. The original Environmental Impact Statement for I-410, a 52 mile Interstate highway with two large bridges across the Mississippi River, was only fifteen pages long, double-spaced. There was absolutely no consideration of either environmental resources or possible adverse impacts, to land, air, water, economics and human health.

Our I-410 efforts succeeded in getting our public officials and agencies to start following the various laws at the local, state and federal levels. Part of the highway was finally built

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as I-310 with one bridge across the Mississippi River and major modifications to the remaining highway. We also became involved in another project, which was closely connected with I-410. This second project was the Lake Pontchartrain and Vicinity Hurricane Protection Project. In 1965 hurricane Betsy had struck the Louisiana coast just south of New Orleans with sustained winds of more than 150 miles per hour. This was a real Category V strength hurricane and major portions of the New Orleans Metropolitan Area, along the Mississippi River Gulf Outlet, the MRGO, were severely flooded. By 1972 we had learned this “so called” Lake Pontchartrain and Vicinity Hurricane Protection project by the U.S. Army Corps of Engineers and various state and local agencies would only protect New Orleans from a Category I strength hurricane with sustained winds of 85 (eighty-five) miles per hour. This same project was being planned to protect the undeveloped wetlands of New Orleans East and St. Charles Parish from a stronger Category III strength hurricane.

After another successful lawsuit by several groups led by Save Our Wetlands, which was decided in their favor in 1979, the Corps of Engineers abandoned the speculative wetlands development plan. The Corps developed a new hurricane levee system, which was suppose to protect New Orleans from a Category III strength hurricane. This levee upgrade was finally completed by 1992, almost thirty years after hurricane Betsy had devastated parts of the metropolitan area. None of the procedural and legal actions by the various groups delayed any government agencies from providing an adequate hurricane flood protection levee system for New Orleans. What these groups did was force the Corps to provide more protection for the city than their original plans which were totally inadequate.

What we had uncovered was an effort to build two massive federal projects, an interstate highway loop through the wetlands around New Orleans and a “hurricane flood protection project” which would be used to drain the swamps and help to make millions of dollars for speculative land developers and some public officials. These two projects were expected to cost about one billion dollars each and they would do nothing to either improve hurricane flood protection for New Orleans or to help with the evacuation of the city.

According to the colonel in charge of the New Orleans District of the Corps of Engineers in 1970, their Cost-Benefit ratio only justified protecting the already developed city of New Orleans from a Category I strength hurricane. The colonel and the Corps of Engineers reasoned that wetlands around the city could be protected by a bigger and stronger levee because of the increased values that would be realized by developers with the land going from “raw wetlands” to urban. The Corp’s strange economic model did not justify protecting the already developed areas of the city with bigger and stronger levees but did justify bigger levees to promote speculative urban development in wetlands around the city.

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In 2005 the new colonel in charge of the New Orleans district was interviewed two days after hurricane Katrina struck. He stated on national television, an ABC News special on Katrina, that the levees around New Orleans were only built to withstand a Category III strength hurricane. Katrina was apparently bigger than Betsy and had sustained winds of more than 150 mph when it hit the coast. The Colonel explained how the Cost-Benefit Ratio used by the U.S. Army Corps of Engineers did not justify building anything bigger and stronger to protect the New Orleans Metropolitan Area. While the levees around the city of New Orleans were raised by 1992 to supposedly withstand the waters and winds of a Category III strength hurricane we know that was not enough.

If the various officials and agencies who were proposing and planning I-410 and the Lake Pontchartrain and Vicinity Hurricane Protection Project had actually applied the requirements and mandates of the National Environmental Policy Act in 1970, 1975, 1980, 1990, 2000 and 2005 the New Orleans Metropolitan Area would not have been flooded by Hurricane Katrina and more than \$50,000,000,000 (fifty billion dollars) of damage would have been avoided. Laws and requirements like the NEPA cannot stand alone. Our officials and agencies must take their jobs to protect the health, safety and welfare of the people seriously..

The antiquated economic model, the Cost-Benefit Ratio, used by the U. S. Army Corps of Engineers to avoid building an adequate hurricane flood protection system for the New Orleans Metropolitan Area is a clear and obvious failure of our agencies and officials at the local, state and federal levels. My greatest regret is that back in 1971 we did not understand what the Corps was using to calculate the value of New Orleans. If we had we would have made the Corp's Cost-Benefit Ratio a major challenge in the lawsuit against the Corps.

My question is, will the NEPA committee look at the economic models, and other models, which are used by our various officials and public agencies to justify, or not justify projects like an adequate hurricane flood protection system for the New Orleans Metropolitan Area or any other human or natural resource in this country? If real economic values are not given to people, property, structures, cities, and natural resources like wetlands and water, then we will continue to see unnecessary losses of life, property and natural resources in this country.

On the question of ways to improve NEPA I would suggest a requirement that all officials shall be mandated to read and understand the NEPA. Then there might be some advanced learning requirements that all officials must attend classes on an annual basis to improve their understanding of this important law. This requirement should definitely be mandatory for those staff whose jobs involve the permitting, use and application of the law.

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In the discussion, which your committee provided on-line there was a mention of how some presenters felt that litigation under the NEPA has delayed many projects and how these delays were “a necessary evil”. While there may be some clear examples of what might be excessive use of power or the use of delaying tactics by some corporations, officials or groups one would be hard pressed to describe these delays as “evil”. Some officials and interest groups probably do have “evil” or self interest motivations in their actions. These examples would, I believe, be in a small minority of issues that come before agencies, officials and the courts. That is one of the reasons there should be clear, effective and strong requirements and checks and balances in any system.

What most people fail to understand is the full rights of applicants, interested persons and opponents to participate in public decision-making in which they have an interest or which may affect them. All permitting processes lay out some sort of logical system an applicant must follow to get a permit or approval for a project, activity or similar thing they hope to do. The hearing rules adopted by an agency are not the only “rules” which an applicant or opponent must be aware of and follow. Even if someone gets a permit to build a dam in the middle of a city or a park there are usually many other permits, approvals and clearances, which must be realized before the project can get started. This is not a matter of simply the overlapping of jurisdictions and the duplication of permitting processes. In each situation there are many things, which must be considered and many interests, which must be given their opportunity to have their voice heard or to have their day in court.

The ability of individuals, groups, corporations and agencies to participate in something like proposing or challenging a project should not be onerous or impossible on either the applicant or for those who might want to question, comment on or challenge that project.

Last year I was contacted by individuals who wanted to participate in a permit process by the Department of Energy for a proposed new nuclear power plant in the state of Mississippi. The proposed site is across the Mississippi River from Louisiana where an existing power plant has operated for years. The DOE had adopted some regulations, which limited public participation in their permitting process to people living within 55 miles of a proposed facility. Anyone who might live 60, 70 or 80 miles away would not be allowed to participate in the permitting process. We all know that the adverse impact areas as a result of the accidents at Three Mile Island and Chernobyl were much more than 55 miles from those facilities.

In testimony before your committee on the NEPA process there has been some discussion about limiting the input of people and groups who do not live near the proposed activity. I strongly disagree with this limitation. All people should be encouraged to participate in the decision making process, whether under NEPA or any other federal, state or local jurisdiction, program or law. The involvement of the public in permitting processes can be lengthy, untidy or confusing but I believe to deny public access to government

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decision making processes is a real mistake and not in step with the constitution and our model of government of by and for the people.

The web site also identified a number of complaints of costs and process burdens realized by applicants and agencies as a result of having to comply with the NEPA. When someone plans a major project, or action, that might affect hundreds or thousands of people or hundreds or thousands of acres of natural resources the applicant should understand some delays might happen. Some delays can be easily anticipated but delays are not always easy to anticipate or avoid. Just because someone comes up with a great idea for a new canal, highway, airport, shipyard, chemical plant, building, dam or whatever, this does not mean the project will happen. Some adverse impacts can be anticipated, avoided, reduced, minimized, etc. but some cannot. If the adverse impacts are serious enough, or if unexpected impacts are discovered the project may not be embraced by everyone.

These problems are not the fault of the National Environmental Policy Act. The Act was adopted to try and reduce uncontrolled activities, which were having adverse impacts on human health, the environment and our economy. Congress finally recognized by 1969 that the national interest was not being served by denying people a clear and understandable process for the orderly development of our country. Your web site has clearly stated that the NEPA has served our country well. Like any human action or reaction, there have been some problems with the application or use of the NEPA. The problems, which were identified by various presenters at the public hearings, by the mail and the Internet need to be considered and evaluated with the idea of improving the NEPA. What needs to be avoided would be changes that weaken or damage the NEPA. Most of the problems, which were made available on the web site, seem to be more a problem of the failures of agencies or officials to fully understand the NEPA and the application of this law.

The draft recommendations of the NEPA Task Force have apparently identified a number of issues, which will become part of the continuing process of trying to determine what final recommendations will be presented to the Congress. I have not yet had a chance to read and evaluate all of these recommendations but I hope to be involved in the process as much as possible.

Sincerely yours,

William A. Fontenot
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