

Analytical Studies
for the U.S.
Environmental Protection Agency

VOLUME I

Perspectives on Technical Information for Environmental Protection

A Report to the
U.S. Environmental Protection Agency
from the
Commission on Natural Resources
and the
Steering Committee for Analytical Studies

National Research Council

NATIONAL ACADEMY OF SCIENCES
Washington, D.C. 1977

NATIONAL ACADEMY OF SCIENCES

OFFICE OF THE PRESIDENT
2101 CONSTITUTION AVENUE
WASHINGTON, D. C. 20418

March 18, 1977

The Honorable Douglas M. Costle
Administrator
Environmental Protection Agency
Washington, D. C.

Dear Mr. Costle:

I am pleased to transmit a report entitled "Perspectives on Technical Information for Environmental Protection," the first of a series prepared under Contract No. 68-01-2430 as provided in P.L. 93-135. This report distills the principal conclusions garnered by the National Research Council, led by our Commission on Natural Resources, as we attempted to meet the concerns expressed by the House Appropriations Subcommittee on Agriculture, Environment and Consumer Protection (now the Subcommittee on HUD and Independent Agencies) in House Report 93-275, dated 12 June 1973.

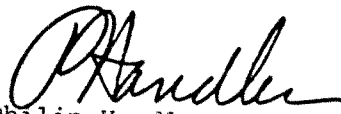
Ten major studies were mounted in all, engaging the efforts of some 200 scientists, engineers, physicians, and attorneys. This report includes executive summaries of those four studies with major implications for the formulation of environmental policy. This and the ten reports to follow, collectively, constitute our response to the charge offered by the House Subcommittee.

The Perspectives here presented are not merely a summary of the reports to follow. They offer both a philosophy and specific recommendations to help guide both the Environmental Protection Agency and the nation as we seek to protect our people and preserve and enhance our national heritage. Subsequent reports will concern themselves, in some part, with previous decisions and regulations. However, the present Perspectives and the individual reports are addressed to the future and the multiple facets of what is required to assure that wisdom and our full national scientific capabilities are brought to bear in the management of the Agency's great responsibilities.

The Honorable Douglas M. Costle
March 18, 1977
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The more technical reports to follow will each be of interest to a somewhat specialized audience. These Perspectives are commended to the attention of all citizens who share our concern for the quality of our environment.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "P. Handler".

Philip Handler
President

CHAPTER 1

INTRODUCTION

PURPOSE OF THE REPORT

This introduction is intended as a summary of and commentary on the more detailed and concrete findings and judgments embodied in the main reports of this series. It represents a broad consensus of those scientists and engineers who, as members of the Steering Committee for Analytical Studies and the Commission on Natural Resources, led the work of some 200 experts in studies of the acquisition and use of scientific information by the U.S. Environmental Protection Agency. It is, of course, not to be expected that each member of the Steering Committee and the Commission will agree with every statement presented here.

The report should be read as an overview in the broader context of the series of individual analytical studies themselves, each of which presents the detailed documentation and more extended rationale essential to its specific recommendations. Those component studies (see Table 1) are the formal product of the program, and the interested reader should refer to them as the basis of the commentary made here.

The executive summaries of four of the reports that have principal implications for environmental regulatory policy are included in Part II of this volume; the complete reports will be published in the near future.

This volume is being released now in an interim typescript edition in limited quantity to assist the new Administration and the Congress at a time when the analyses and advisory recommendations of the NRC program could be most helpful. The report will be typeset and published for wider distribution in the spring of 1977. Thus, although not all the analytical studies were available in final form as this volume went to press, the work of the study committees had progressed sufficiently to allow these perspectives to be drawn from the program.

beneficial effect on the Agency's decision making. The major disadvantage of deadlines could be removed if statutes were to permit extensions in cases in which additional information, essential to sound decision making, would be available in a reasonable amount of time.

- Statutory deadlines should continue to be imposed on EPA's administrative actions. They should reflect a realistic view of the time required to make a reasonable assessment of available information. There should be provisions permitting EPA to extend deadlines under certain conditions and for specified periods.

Any authority granted to EPA to use extension provisions should be conditional on the Agency establishing that: (a) it requires additional time to gather or interpret technical information identified by EPA as essential to a decision; (b) it has made an effort in good faith to obtain this information; and (c) it has considered the adverse effects of postponement. When EPA has decided on the need for and duration of an extension, it should issue a public notice well in advance of the original deadline. EPA's decision should be subject to review by a federal Court of Appeal at the time of the public notice.

In the case of deadlines for submission of comment by interested parties on EPA's proposed rulemaking, there is a need to provide more time for better informed and more effective comment. (For the full discussion supporting this recommendation see the corresponding Section F in the Committee's report.)

G: PROCEDURAL REQUIREMENTS FOR DECISION MAKING

Traditional procedural requirements established by statutes and court decisions for agency action have not always been well suited to the types of decisions made by EPA. As a result, EPA, under the direction of federal courts and on its own initiative, has experimented with innovations in procedures. A number of these innovations have had a beneficial effect on the decision-making process and can be used more widely. Several additional changes in the procedures could be developed to assist in decision making and to make the decision-making process more open to external review.

- EPA should make greater use of procedural innovations developed within EPA and other federal agencies that, when combined with steps to increase openness in the Agency and the use of explicit analysis, will reduce the need to rely on formal

procedures characteristic of trials and adjudications.

Unless formal trial procedures are required by law, EPA should use procedures that may be less time consuming and expensive than trial-type procedures, such as the exchange of documents and informal questioning. Such procedures should neither materially reduce the consideration of scientific and technical information, nor deny parties fairness or due process of law.

Formal trial procedures generally should not be imposed on EPA decision-making processes; however, when Congress has chosen to do so, steps should be taken to streamline the procedures.

EPA should institute a more orderly procedure for compiling the relevant documentary record and making its contents easily available to the public. In addition, EPA should explicitly define and adhere to policies stating which information submitted by regulated parties and which internal memoranda should be available to the public.

EPA should make public an understandable summary of the rationale for each regulatory decision (including decisions not to take action) by publishing at the time of notice of proposed rulemaking a complete statement of the basis for its findings and its reasoning, including descriptions of (1) the scientific, economic, and other information (including information on statutory requirements and judicial decisions) relied on to evaluate the alternatives and the uncertainties in the information; (2) the analyses used in making the decision; and (3) the relative importance given to conflicting considerations in reaching the decision. Revisions of this statement should be included within the preamble to the final decision. (For the full discussion supporting this recommendation see the corresponding Section G in the Committee's report.)

H: INTERAGENCY REVIEW

The requirement that proposed and final EPA regulations be circulated for formal review to other federal agencies and the Office of Management and Budget (OMB) prior to publication has had a positive effect on the Agency's decisions. Environmentalists have expressed concern that the reviews may lead to undue influence by those who emphasize national goals that conflict with environmental improvement. Although experience in a few cases has supported this concern, it is overshadowed by the improved EPA analysis of the consequences of its actions that has

resulted, at least in part, from the review process. Interagency review can, however, unnecessarily delay the promulgation of EPA rules.

- For proposed rules, present procedures for interagency review should be retained, except that they should be conducted concurrently with public notice-and-comment procedures rather than preceding them. Interagency review of final regulations should be greatly expedited. Some of the time saved by these changes should be used to extend the period for outside comments on proposed rules and to introduce a short period for submission of replies to the first round of comments.

The prescribed procedural change would allow extension of the review-and-comment period both for the interested executive agencies and for private parties without lengthening the total duration of the decision process. (For the full discussion supporting this recommendation see the corresponding Section H in the Committee's report.)

I: JUDICIAL REVIEW

Judicial review of EPA's administrative actions has played a major role in shaping and improving the Agency's decision-making process. The judicial review process has impeded EPA's programs only when federal courts have given conflicting interpretations to statutes intended to be administered uniformly throughout the country.

- The current structure and standards for judicial review should be maintained with the exception that legislative changes should be made to provide that certain EPA decisions that apply uniformly over the nation be reviewed only in the U.S. Court of Appeals for the District of Columbia. (For the full discussion supporting this recommendation see the corresponding Section I in the Committee's report.)

J: PUBLIC PARTICIPATION

Citizen organizations have played a significant role in EPA's development and implementation of environmental policy. However, the extent of their involvement is limited by the amount of funds available for public participation in EPA and judicial proceedings.

- EPA, perhaps through an impartial body, should provide some of the financial support of groups or individuals who can contribute to rulemaking or

STEERING COMMITTEE FOR ANALYTICAL STUDIES FOR THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
(see the front matter, page iv)

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