



Defending Agriculture

Legal, environmental hot button issues that impact U.S. farmers.

Time to Reform NEPA

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Roundup Ready Alfalfa and Sugar beets are in the news! The question is whether genetic modified versions (GMO) of these plants can be approved by USDA.

Sugar beet growers are locked in a life and death struggle as to whether they can plant GMO sugar beets this spring. Alfalfa is in the news because USDA has approved the use of a GMO version of Roundup Ready Alfalfa. Both decisions center around a little known law called the National Environmental Policy Act (NEPA).

NEPA is the granddaddy of environmental statutes signed into law on January 1, 1970. The purpose of the act was simple. It became national policy to protect the environment and NEPA required environmental impact statements (EIS's) be prepared for major federal actions having a significant effect on the environment.

A good act and needed at the time.

This simple act has now taken up hundreds of pages of regulations and thousands of pages of court cases. And, cost thousands of jobs and kept our country from using its oil and gas resources, which will contribute to \$4-plus gasoline!

Will NEPA do the same to agriculture?

Congress has amended NEPA on several occasions because of Congress' frustration with delays and litigation spawned by NEPA. NEPA has been applied to stop many actions undertaken by USDA. In fact, the Forest Service has been a favorite target of environmental groups in terms of stopping timber sales.

The environmental groups have now turned their attention to USDA's Animal and Plant Health Inspection Service (APHIS). APHIS previously approved 74 different genetically engineered crop varieties to be used commercially in the United States. There have been dozens of varieties of corn, cotton, canola, potatoes and soybeans approved because APHIS concluded the gene splicing would create no significant environmental impact.

Now, with help from the Center for Food Safety along with some organic farmers, environmental groups have sought to use NEPA in the federal courts to stop the planting of GMO alfalfa, sugar beets, and turf grass.

The environmental groups take the position that genetically modifying plants which are regulated by the federal government constitutes a "major action" under NEPA.

It is time to have Congress reevaluate NEPA and make major changes. In 2004, for example, a total of 170 NEPA cases were filed and 80 of those cases were filed against USDA.

A Congressional Task Force has examined changes which need to be made in NEPA.

Having defended and won major NEPA lawsuits, and lost one, I believe it is time to seriously review and amend NEPA. The Congressional Research Service (CRS) has also examined streamlining NEPA.

How to improve NEPA

I will not review all the suggested changes that NEPA needs, but address a few key points made by the Task Force and CRS.

The Congressional Task Force made 22 recommendations based on numerous hearings held around the country. Environmental groups and law firms believed NEPA needed little change, whereas representatives of agriculture and industry declared NEPA is too broad, too expensive, and creates costly project delay.

The Task Force recommended NEPA be amended to define the term "major federal action." NEPA applies to too many federal actions and the term should be narrowed to exclude many types of actions such as those undertaken by APHIS.

We should amend NEPA to add mandatory time lines for completion of NEPA documents. The development of these documents sometimes takes years because an agency is afraid that its document will be found inadequate by a court. Presumably the inadequate EIS argument will be the attack on Roundup Ready Alfalfa.

We should amend NEPA to define what is a categorical exclusion (CE), environmental assessment (EA), and environmental impact statement (EIS). Much time is lost by agencies in determining what can be excluded or what needs a less intensive environmental assessment.

We should amend EIS page limits and put this page limit into statute. EIS's are too long and create the need for more consulting firms to be hired and more reviewers in a federal agency.

We should amend NEPA to allow states with their own comparable NEPA laws to prepare environmental statements and avoid duplication. Make state level EIS's "functionally equivalent" to NEPA.

We should amend NEPA to create a citizen's suit provision. Presently NEPA litigation uses the Administrative Procedures Act which has a six year statute of limitation.

We should require challengers to prove an agency did not use the best available information and science; require that opponents to projects exhaust their administrative remedies and require new rules for standing and impose 180-day statute of limitation limit instead of the six year statute of limitations now in place.

The nuclear power industry was brought to its knees and stopped by the use of NEPA. Now the environmentalists have turned their attention to production agriculture. NEPA should be amended and not be used to destroy production agriculture!

Ask your friends in the sugar beet industry if they think NEPA should be amended!

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Environmental policy law is being manipulated and used by environmentalists to sabotage biotech agriculture.

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