

Health Impacts Analysis in Environmental Permitting

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Agenda

1. Introduction
2. Administrative-Legal Function
3. Some Entry Points
4. Administrative Law and Policy –
Potential Risks, Rewards, and Questions

Introduction

Why is analysis of health impacts important?

Some reasons

- Fulfill a primary objective of environmental law (consider Carlson's *Silent Spring*)
- Bridge environmental and public health decisionmakers, institutions, and professionals, *and* affected communities
- Institutionalization of analysis of impacts and alternatives focusing on public health

Administrative-Legal Function

Way to *comply with or fill gaps in* existing law

Some form of health impacts analysis is often already required, even if not called an “HIA” – *Entry points* coming up

Device for *environmental health risk analysis*

Administrative-Legal Function

Impacts (Risk Assessment)

- Biophysical and environmental health
- Environmental stressors – *eg*, as a result of social, economic, psychological, aesthetic / recreational, cultural, infrastructural impacts or disruption

Alternatives (Risk Assessment / Management)

- Quantitative risk assessment
- Holistic and comparative risk assessment
- Alternatives , no action, and mitigation

Some Entry Points

Federal Laws – eg, NEPA, RCRA, CAA

Exec. Orders – Administrative Decisionmaking

Other Federal Decisionmaking – eg, CERCLA / Brownfield cleanups, CAA endangerment findings and the NAAQS, FIFRA / TSCA / FDCA / FPQA

State / Local Decisionmaking – eg, SEPAs, Land Use Planning, CWA Permits and Water Quality Standards, State / Local Health Agencies, State EJ Laws and Policies, Ad Hoc

NEPA's Function

42 U.S.C. §§ 4321, 4331(a) – Declares “a national policy which will encourage *productive and enjoyable harmony* between [humankind] and [its] environment”; seeks to “*create and maintain conditions* under which [humankind] and nature can exist in productive harmony”

42 U.S.C. § 4331(b) – “[U]se all practicable means” to, consistent with national policies, “assure for *all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings*”

NEPA's Scope of Review

40 C.F.R. § 1508.8(b) (Scope of Impacts / Effects) – “Effects includes ecological ..., aesthetic, historic, cultural, economic, ***social, or health***, whether direct, indirect, or cumulative”

40 C.F.R. § 1508.27 (Significance Determinations) – Consideration of a project's intensity turns on the severity of the impact, including “the degree to which the ***proposed action affects public health*** or safety”

RCRA's "Omnibus Clause"

42 U.S.C. § 6925(c)(3) – “Each permit issued under this section shall contain ***such terms and conditions*** as the Administrator (or the State) ***determines necessary to protect human health*** and the environment ”

CAA Criteria Pollutants (*Attainment*)

42 U.S.C. § 7475(a)(2) (Attainment Area Permitting) – Major source permits are subject to review and a public hearing “on the air quality impact of such source, alternatives thereto, ... and *other appropriate considerations*”

CAA Criteria Pollutants (*Nonattainment*)

42 U.S.C. § 7503(a)(5) (Nonattainment Area Permitting) – Major source permits may be issued if “analysis of alternative sites, sizes, production processes, and environmental control techniques ... demonstrates that benefits of the proposed source ***significantly outweigh the environmental and social costs imposed***”

CAA Hazardous Pollutants

42 U.S.C. §§ 7412(d)(2), (f)(2), (g)(2) (Public Health Risk Analysis and MACT) – Requiring an emissions standard for major sources that will ensure an “***ample margin of safety to protect public health***”

Cf. 42 U.S.C. § 7412(c)(3) (Area Sources) – Regulation of area sources posing a public health threat in urban areas

Executive Orders

Exec. Order 12,898 (1994) – *Federal Actions to Address EJ in Minority Neighborhoods*

Exec. Order 13,045 (1997) – *Protection of Children from Environmental Health Risks and Safety Risks*

Administrative Law and Policy

Potential Risks (Focus on Freestanding HIAs)

- **Transparency** + Who's in Charge
- **Participation** + Collaboration – eg, public (cooperative agency approach), private (public health and environmental community, stakeholders, the public)
- **Adequacy** and variability of scope, methodology, and depth of analysis
- **Accountability** – eg, administratively / judicially enforceable standards, HIA's role, risk management elements, monitoring

Administrative Law and Policy

Potential Rewards (Focus on Freestanding HIAs)

- ***May apply*** when NEPA/SEPA do not
- ***Flexibility*** from a rigid bureaucratic practice
- ***Liberating*** in that it may avoid concerns of a diluted or narrowed NEPA/SEPA review
- ***Experimentation*** to develop best practices, especially in a highly collaborative process
- ***Leading the way***

Administrative Law and Policy

Additional Questions

- ***Handling the divide*** between risk assessment and risk management
- ***Administrative resources and funding***
- ***Handling scientific uncertainty***
- ***Specificity in mitigation and monitoring***
- ***Best practices*** for variability of scope and methodology, and depth of analysis
- ***Opportunities for hybrid approaches*** – eg, HIA depth of analysis, but within original NEPA / SEPA scoping of impacts

For More Information

<http://www.healthimpactproject.org/hia?id=0007> – HIA resources, links, case studies, and citations

www.cdc.gov/healthyplaces/NEPA.htm – CDC

<http://www.ph.ucla.edu/hs/health-impact/> – UCLA

<http://www.who.int/hia/tools/toolkit/en/index.html>;

<http://www.euro.who.int/healthimpact> – WHO

<http://www.humanimpact.org/index.html> – Human Impact Partners

[http://en.wikipedia.org/wiki/Health_impact_assessment#Further reading30](http://en.wikipedia.org/wiki/Health_impact_assessment#Further_reading30) – Wiki links