

7. Secondary Statutes

i. National Environmental Policy Act, 42
U.S.C. 4321

The National Environmental Policy Act (NEPA) requires preparation of an environmental impact statement (EIS) on all major federal actions significantly affecting the quality of the human environment. A significant exemption from its coverage is that, by statute, it is generally inapplicable to EPA activities, including those under the Clean Air Act. EIS's are required to be prepared under such other legislation as the Powerplant and Industrial Fuel Use Act, 42 U.S.C. 8301, and other statutes relating to conversion to burning of coal.

The EIS process, which is essentially procedural rather than substantive, offers a significant opportunity for public comment and involvement. Decisions not to prepare EIS's are a matter of public record and draft EIS's must be offered for public review and comment; comments made are to be explicitly responded to in the final EIS by the agency concerned. It has become general U.S. practice to provide concerned Canadian agencies with copies of draft EIS's for their information and review, although the Canadian government has in the past been reluctant to comment formally. Private Canadian parties are free to comment on draft EIS's, notice of whose availability is given in the Federal Register.

Foreign parties have had at best limited success in obtaining standing to sue under NEPA. The broader question -- whether NEPA is designed to "protect" the environment beyond the United States -- has not yet been definitely resolved by the courts. The Executive Branch has taken the position, both through issuance of E.O. 12114 (Jan. 4, 1979) and in court, that an EIS cannot be declared inadequate, and the affected action thereby halted pending its rectification, on the grounds that foreign impacts were not considered.

Under E.O. 12114, the United States has assumed a unilateral obligation to review certain impacts abroad. While that Order expressly provides that it shall not serve as the basis for any legal action by U.S. or foreign parties, it does represent an important step by incorporating into the Administrative process consideration of environmental impacts abroad.

ii. Department of Energy Coal Conversion
Legislation

The Department of Energy currently possesses authority under two statutes, the Energy Supply and