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NEWS & ANALYSIS

Environmental Management Systems and NEPA: A Framework for Productive Harmony

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An environmental management system (EMS) is a systematic approach to identifying and managing an organization's environmental obligations and issues that can complement many aspects of the National Environmental Policy Act (NEPA)¹ review process. An EMS is a "set of processes and practices that enable an organization to reduce its environmental impacts and increase its operating efficiency."² As such, EMS is a promising means of bringing progressive private-sector environmental management techniques to federal agency management. The growing use of EMS in federal agencies has been fostered and supported by a series of Executive Orders and policy statements.³ To date, the experience has been somewhat limited and, typically, federal facility-specific.⁴ However, the expanded use

of EMS not only promises to improve the environmental performance of federal agencies but to help federal agencies focus on improvement of their environmental performance, which is—under NEPA—an integral component of every agency's mission.

By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

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1. 42 U.S.C. §§4321-4370d, ELR STAT. NEPA §2-209.
2. See <http://www.epa.gov/ems/index.htm>. For a general discussion of EMS, see Allison F. Gardner, *Beyond Compliance: Regulatory Incentives to Implement Environmental Management Systems*, 11 N.Y.U. ENVTL. L.J. 662 (2003); Stepan Wood, *Environmental Management Systems and Public Authority in Canada: Rethinking Environmental Governance*, 10 BUFF. ENVTL. L.J. 129 (2003); Keith Pezzoli, *Environmental Management Systems (EMS) and Regulatory Innovation*, 36 CAL. W. L. REV. 335 (2000); Christopher L. Bell, *The ISO 14001 Environmental Management Systems Standard: A Modest Perspective*, 27 ELR 10622 (Dec. 1997); Christopher L. Bell, *ISO 14001: Application of International Environmental Management Systems Standards in the United States*, 25 ELR 10678 (Dec. 1995).
3. See Exec. Order No. 13148, 65 Fed. Reg. 24595 (Apr. 26, 2000) and predecessors, Exec. Order No. 13101, 63 Fed. Reg. 49643 (Sept. 16, 1998); Exec. Order No. 13123, 64 Fed. Reg. 30851 (June 8, 1999); Exec. Order No. 13134, 64 Fed. Reg. 44639 (Aug. 16, 1999); Memorandum from James L. Connaughton, Chairman, Council on Environmental Quality (CEQ) and Mitchell Daniels, Director, Office of Management and Budget (OMB), to Heads of All Federal Agencies (Apr. 1, 2002), available at <http://www.whitehouse.gov/ceq/memoranda01.html>. Executive Order No. 13148, §201, mandates that "[t]hrough development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies."
4. Executive Order No. 13148, §401(b) requires federal agencies to develop and implement an EMS for each "appropriate facility":

Therefore, the focus of this Article is on the interplay between NEPA and EMS at federal facilities. To their credit, some agencies have taken a broad view of what constitutes an appropriate facility. See U.S. Army Fort Lewis, *Environmental Policy*, at <http://www.lewis.army.mil/iems>; <http://www.lewis.army.mil/ccca/contentlist.html> ("The scope of the effort included the environmental aspects and impacts of more than 19,000 soldiers and 29,000 family members, and approximately 5,000 contractor civilian personnel training, working and living in the pristine and environmentally sensitive areas of western Washington State."); U.S. Department of Energy (DOE), *Savannah River Site Environmental Management System Policy*, at http://www.ofee.gov/ems/training/DOE_Savannah_River_Environmental_Policy.pdf (endorsed by the General Services Administration, the National Nuclear Security Administration, the U.S. Forest Service, and several nonfederal organizations); Federal Aviation Administration (FAA), *EMS Pilot Projects*, at <http://www.aee.faa.gov/aee-200/EMS/EMS.htm>; see also OFFICE OF THE FEDERAL ENVIRONMENTAL EXECUTIVE (OFEE), *EMS SELF-DECLARATION PROTOCOL* (2004), available at http://www.ofee.gov/ems/training/SelfDeclarationProtocol_memo.pdf.

The potential application of EMS to agency regulatory programs is more theoretical, and ambitious, than the use of EMS at federal facilities. However, an EMS could apply to regulatory activities, even those that may only address a particular location or decision point once, because the regulatory decisionmaking program can benefit from the identification and management of the regulatory program's obligations, environmental aspects, and monitoring. NEPA can use an applicant's EMS as a source of information for environmental documentation. See 40 C.F.R. §1506.5(a):

If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the

The environmental performance improvement focus of EMS implementation is consistent with the purposes of NEPA, though their approaches differ, and complement each other, in some important respects. Because the EMS framework usually focuses on continual improvement and pollution prevention, as well as compliance with environmental laws, it can help improve agency performance in areas that are not generally addressed through enforcement of legal standards, particularly the monitoring of effects of agency actions, evaluation of the efficacy of mitigation measures, and validation of information used to predict the effects of future agency decisions. While much of the EMS process is flexible and adaptive, NEPA serves an essential role in ensuring that specific decision points will be evaluated and documented in accordance with law. Within an EMS framework, which typically calls for systematic identification of, and compliance with, legal obligations, NEPA compliance ensures that fundamental rights of public information and participation in public agency decisionmaking are not lost in the pursuit of management efficiencies. NEPA analysis and documentation also serves as a standard of accuracy and analytical rigor for the evaluation of environmental aspects of specific agency decisions that may otherwise receive less attention in broader programmatic analyses. Because the NEPA process is based on an enforceable set of standards, and thus constitutes an integral part of the EMS, NEPA compliance serves to assure stakeholders that the gains made under an EMS framework do not come at the expense of hard-won rights to know the environmental effects of agency decisions and to have the opportunity to inform the agency of stakeholder perspectives on the agency assessment of those effects. Thus, in the context of EMS implementation by public agencies, NEPA compliance serves an essential role in grounding, and supporting public confidence in the use of, EMS.

However, some have questioned the utility of NEPA analysis and documentation in an EMS framework. Given the apparently similar goals and activities under NEPA and EMS processes, there is obvious potential for redundancy between the two. Done well, however, there are equally obvious opportunities for coordinated synergy (and probably more opportunities yet to be discovered in practice). This Article identifies apparent opportunities for synergistic, complementary implementation of EMS that improves agency NEPA compliance based on agency recognition of the distinct legal and administrative purposes of NEPA and EMS.

list of preparers [*id.* §1502.17]. It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

Similarly, based on the track record of the EMS, the agency could use EMS-based commitments to future mitigation to support a mitigated finding of no significant impact (FONSI) or adaptive management provisions in an environmental impact statement (EIS). Finally, by improving the management transparency of a regulatory program's environmental aspects, an agency may identify efficiencies and opportunities for improved environmental performance. See FAA, *Administrator's EMS Commitment Letter*, at <http://www.aee.faa.gov/aee-200/EMS/MEMO.pdf> ("By documenting and streamlining its processes and procedures, [FAA's Environment, Energy, and Employee Safety Division] has been able to reduce the time for developing policy orders.").

I. NEPA as an Environmental Management Law

In many ways, NEPA was enacted as the nation's first environmental management charter. NEPA has been hailed as the first attempt to systematically incorporate an environmental policy into social decisions in an approach that is more holistic (using terms like "environment," "ecosystem," and "biosphere") than regulatory, remedial, and media-specific responses to environmental problems. With this breadth, NEPA was intended to be an evolving statute, responding to new issues, with the documentation of environmental analysis in an environmental impact statement (EIS) serving to force this evolution by performing a "discovery function" for determining risks and alternatives. Ultimately, NEPA analyses and documentation were intended to fit within a NEPA process that is larger than any single EIS—a national program of environmental learning and leadership involving all levels of government and the public.

This larger vision for NEPA as a model of an EMS was articulated by Sen. Henry Jackson (D-Wash.) when he explained why he introduced the U.S. Senate bill that became NEPA: "As a nation, we have failed to design and implement a national environmental policy which would enable us to weigh alternatives, and to anticipate the undesirable side effects which often result from our ongoing policies, programs and actions."⁵ This bill was based on a *Congressional White Paper on a National Policy for the Environment*, which summarized a joint U.S. House of Representatives-Senate colloquium held to address members' "deep concern" over "the difficulty of reconciling conflicting uses of the environment in the absence of any comprehensive policy guidance."⁶ Participating members of the president's Cabinet and of the U.S. Congress specifically noted that a key barrier to reconciling conflicting uses of the environment is institutional resistance to change.⁷ In the colloquium's section on new approaches in government, Senator Jackson argued that "new approaches to environmental management are now required" and urged the colloquium to "provide thoughts on the possible 'action forcing' processes that could be put in operation."⁸ The white paper described organizational and administrative alternatives for executive branch implementation of a national environmental policy as a range "from definition of rights with court defense, to regulation by Federal agency, to standard setting, to incentives for voluntary conformance, to subsidy of technology for restoration and maintenance."⁹ The white paper's action alternatives for Congress ranged from the creation of a "joint committee or committees on environmental management" to the organization of an "environmental management council" in the Executive Office of the President.¹⁰

5. *National Environmental Policy: Hearings Before the Comm. on Interior and Insular Affairs, U.S. Senate*, 91st Cong. 205, app. 2 (1969) (statement of Sen. Henry M. Jackson).

6. SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS AND HOUSE COMM. ON SCIENCE AND ASTRONAUTICS, 90TH CONG., CONGRESSIONAL WHITE PAPER ON A NATIONAL POLICY FOR THE ENVIRONMENT, LETTER OF SUBMITTAL III (Comm. Print 1968).

7. See 115 CONG. REC. 29080 (Oct. 8, 1969) (statement of Secretary Weaver, Housing and Urban Development) ("There is a serious problem of stubborn resistance of change in our political institutions.").

8. *Id.*

9. *Id.* at 29081 n.1.

10. *Id.*

In enacting NEPA, Congress addressed these management issues by providing a common environmental policy statement for all federal agencies and requiring interagency coordination in the implementation of that policy.¹¹ This policy statement is a general statement of the federal government's commitment to continuous environmental improvement, which is analogous to an EMS policy statement. Congress made this policy part of each agency's mission and authorities. To that end, NEPA §102 provides that the policies, regulations, and laws of the United States "shall be interpreted and administered in accordance with the policies set forth in this Act."¹² Section 105 of NEPA confirms that the "policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies."¹³

In authorizing and directing the agencies of the federal government to implement the general policies of NEPA, Congress included a specific documentation requirement among a list of general mandates. The implementation of NEPA largely depends on this requirement of a "detailed statement," known as the "environmental impact statement," on the environmental impact of and alternatives to a proposed action. The EIS is produced at a legally ascertainable point in agency decisionmaking processes, and reviewed and commented on by affected federal, tribal, state, and local agencies, and the public, and made available to the president and Council on Environmental Quality (CEQ).¹⁴ Compliance with the fundamental requirements of the NEPA process may be enforced, by those with standing to sue, through judicial review of final agency action under the Administrative Procedure Act. The goals of NEPA are also supported by ambitious mandates to, inter alia, share environmental information and advice with states, counties, cities, institutions and individuals, to initiate and utilize ecological information in the planning and development of natural resources, and assist the work of the CEQ.¹⁵ But without the "action-forcing" mechanism of an EIS, NEPA might have become no more than yet another set of lofty, unrealized policy pronouncements.

II. NEPA Process—Linking to Agency Decisions

As implemented under the CEQ's regulations, the NEPA process is designed to apply environmental analysis to individual decision points while encouraging agencies to create a compliance program that informs, and is informed by, these decision-specific analyses. The EIS was never intended to simply inform a single decision. Rather, it is an

"action-forcing device" to ensure that the policies and goals of NEPA are "infused into the ongoing programs and actions of the Federal Government."¹⁶ The CEQ's NEPA regulations advance this approach through the structure and required elements of agency NEPA programs and through the specific requirements for the composition of an EIS and, to a lesser extent, an environmental assessment (EA)¹⁷ or in applying a categorical exclusion (CE).¹⁸

Agency NEPA programs are not simply designed to make environmental information available to decisionmakers and the public. Agency NEPA programs should be structured to ensure that the environmental information provided is useful to decisionmakers and the public, by "emphasizing real environmental issues and alternatives," and that NEPA processes are integrated and concurrent with other required agency decisionmaking procedures.¹⁹ Appropriate emphasis on environmental issues is directed at the NEPA program level by the agency's designation of "major decision points for the agency's principal programs likely to have a significant effect on the human environment" and adoption of NEPA procedures with specific "criteria for and identification of those typical classes of action" that normally have significant environmental effects.²⁰ Explicitly or implicitly, an agency's programmatic review of its actions' environmental significance is also incorporated in an agency's "finding" that particular categories of actions ordinarily do not have significant effects, either individually or cumulatively.²¹

Even the ubiquitous EA, which represents the bulk of most agency NEPA documentation, is designed to inform broader assessments of environmental significance under the CEQ NEPA regulations' model for agency NEPA programs. The EA that results in a finding of no significant impact (FONSI) is designed to serve a gap-filling function by documenting the agency's judgment on actions that do not fit within the established EIS or CE categories.²² It also serves as a mechanism for assessing appropriate alternatives in any proposal which involves unresolved conflicts concerning alternative uses of available resources but which does not require, in the agency's judgment, preparation of an EIS.²³ A record of FONSI's can serve as a crucial element in

11. The environmental management concerns stated in the *Congressional White Paper* are echoed throughout the legislative history of NEPA. See, e.g., S. REP. NO. 91-296, at 71-72 (1969):

If the United States is to create and maintain a balanced and healthful environment, new means and procedures to preserve environmental values in the public interest, to coordinate [g]overnment activities that shape our future environment, and to provide guidance and incentives for [s]tate and local government and for private enterprise must be developed.

12. 42 U.S.C. §4332(1).

13. *Id.* §4335. See also 40 C.F.R. §1500.6, Calvert Cliffs Coordinating Comm., Inc. v. Atomic Energy Comm'n, 449 F.2d 1109, 1112, 1 ELR 20346 (D.C. Cir. 1971) (holding NEPA amends every federal agency's authorities to include environmental considerations).

14. 42 U.S.C. §4332(2)(C).

15. *Id.* §4332(2)(G), (H), (I).

16. 40 C.F.R. §1502.1.

17. An EA is defined as a "concise public document" that serves to, inter alia, "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." *Id.* §1508.9(a). An EA must include "brief discussions of the need for the proposal [for agency action], of alternatives as required by [NEPA §]102(2)(E) [in any proposal which involves unresolved conflicts concerning alternative uses of available resources], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." *Id.* §1508.9(b). The agency must "involve environmental agencies, applicants, and the public, to the extent practicable, in preparing" an EA. *Id.* §1501.4(b).

18. "'Categorical exclusion' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a [f]ederal agency in" adopting agency NEPA procedures, after public review, "and for which, therefore, neither an environmental assessment nor an environmental impact statement is required" *Id.* §1508.4.

19. *Id.* §1500.2(b), (c).

20. *Id.* §§1505.1(b), 1507.3(b)(2).

21. *Id.* §§1507.3(b)(2)(ii), 1508.4.

22. *Id.* §1507.3(b)(2)(iii).

23. *Id.* §1508.9(b).

establishing the basis for a categorical exclusion or for refining the agency description of extraordinary circumstances in which normally excluded actions may have a significant environmental effect. Conversely, for unprecedented actions or actions the agency has identified as normally requiring an EIS, the regulations ensure that the agency provides at least 30 days for public review of any FONSI, which may serve to help the agency further define the significance of its actions.²⁴

In addition to focusing agency NEPA programs on those actions that the agency identifies as requiring EIS or EAs, NEPA analysis and documentation is intended to apply and advance the agency's experience with environmental issues by concentrating environmental analysis on the environmental issues that are truly significant to decisions on individual proposals for agency action.²⁵ The "scoping" that starts the NEPA process serves not only to identify issues, but to eliminate issues from detailed study if they are not significant or if they have been covered by another environmental review.²⁶ The resulting NEPA document should concentrate on the issues that are significant to the decision in question, describing those issues in proportion to their significance, while placing that decision in context with related EA and EIS processes.²⁷ The primary means of eliminating redundancy and focusing analysis in the NEPA document itself is the "tiering" of NEPA documents and adoption or incorporation by reference to available analyses.²⁸ The CEQ's NEPA regulations encourage agencies to "tier," or structure their environmental documentation efforts to avoid repetitive descriptions of issues and focus on the issues that are "ripe for decision at each level of environmental review."²⁹ Tiering is most commonly associated with a static relationship between a "broad" EIS for a program (such as a land management plan) and a subsequent environmental document on an action allowed by that broad EIS (such as a site-specific action that implements the direction decided upon in the plan). However, tiering is also appropriate when analysis is sequenced to proceed through multiple decision stages. Sequential environmental documents may be used on an action at an early stage (such as site selection), updated with a supplement (which is preferred), or a subsequent EIS or EA to document later decisions (such as environmental mitigation decisions).³⁰ Thus, the CEQ's NEPA regulations allow agencies to tier analysis and decision documents in ways that go beyond the traditional "predict-mitigate-implement" model to structure agency decisions and their implementation based on a "predict-mitigate-implement-monitor-adapt" adaptive management model.

Under adaptive management models, agencies evaluate the likely environmental effects of proposed activities and provide for changes and adjustments based on an evolving

understanding of those effects.³¹ By considering adaptive management contingencies in the NEPA analysis and document, agencies may provide managers with the parameters to make certain adaptations without triggering the need for new or supplemental NEPA analyses while providing for substantial unforeseen changes to the action or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.³² This approach allows continuous improvement in management effectiveness and in reduction of environmental impacts within parameters and processes established by the NEPA-informed decision.

The transition to an adaptive decisionmaking structure that actively manages environmental effects of agency actions can help address deficiencies in the way that agencies collect long-term data on the environmental effects of agency actions and the effectiveness of mitigation measures.³³ The CEQ's NEPA regulations encourage agencies to provide for monitoring and require a lead agency to report certain information on monitoring and mitigation "upon request."³⁴ However, they mandate a post-decision monitoring program only insofar as the agency commits to mitigation and other conditions as part of the agency decision.³⁵ While the regulations require agencies to address the means selected to avoid or minimize environmental harm in their record of decision (ROD), it is up to the agency to decide whether and to what extent post-decision monitoring and enforcement are "applicable for any mitigation."³⁶

An adaptive decisionmaking structure differs markedly from the typical approach to NEPA compliance. Instead of relegating NEPA documents to an administrative hurdle in a decisionmaking process, with the document serving primarily as a defensive measure, this structure calls for a "living" NEPA process with documentation serving to support future decisionmaking. As it has in some programmatic decisions, the NEPA document becomes a reference document that helps guide future decisions, monitoring, and analysis of information that was incomplete or unavailable at the time of the decision.

III. EMS—NEPA Synergy

EMS elements can assist all elements of an agency NEPA program, and can help agencies transition to a NEPA adaptive management model for proposed actions that are suitable for an adaptive management approach. Executive Order No. 13148, *Greening the Government Through Leadership in Environmental Management*, requires federal agencies to implement EMS at all appropriate facilities.³⁷ The EMS approach is intended to push organizations to not only document their environmental analyses and alternatives evaluations, but also translate that knowledge into defined and measurable objectives on the ground. These objectives must be achieved through specific programs and procedures

24. *Id.* §1501.4(e)(2).

25. *Id.* §1500.1(b).

26. *Id.* §1501.7(a)(3).

27. *Id.* §§1501.7(a)(5), 1502.2(b).

28. *Id.* §§1500.5(h), 1501.7(a)(3), 1502.20, 1502.21, 1506.3.

29. *Id.* §§1502.20, 1508.28.

30. *Id.* §1508.28.

31. NEPA—A STUDY OF EFFECTIVENESS AFTER 25 YEARS 32-33 (CEQ 1997), available at <http://ceq.eh.doe.gov/nepa/nepa25fn.pdf> [hereinafter NEPA EFFECTIVENESS STUDY].

32. THE NEPA TASK FORCE REPORT TO THE COUNCIL ON ENVIRONMENTAL QUALITY: MODERNIZING NEPA IMPLEMENTATION 4.1-4.6 (2003), available at <http://ceq.eh.doe.gov/ntf/report/index.html>.

33. NEPA EFFECTIVENESS STUDY, *supra* note 31, at 31.

34. 40 C.F.R. §1505.3.

35. *Id.* §1505.2(c), .3.

36. *Id.* §1505.2(c).

37. 65 Fed. Reg. at 24595.

integrated into agency day-to-day decisionmaking and long-term planning processes, across all agency missions, activities, and functions. One benefit of linking EMS and NEPA is to encourage agencies to make NEPA more of a “live” process that has actual beneficial impact in the field. A faithful application of what NEPA requires, combined with the implementation approach of EMS, could overcome the shortcomings of mere document production and extend the NEPA process to actual implementation and results.

The International Organization for Standardization (ISO) EMS standard, known as ISO 14001, is the most widely recognized EMS model and is the choice of most federal agencies where the agencies have decided to implement an EMS.³⁸ The ISO 14001 model contains the following elements:

An environmental policy with a commitment to continual improvement, pollution prevention, and compliance with relevant environmental legislation and regulations.

Procedures to identify an organization’s or facility’s environmental impacts, legal and other responsibilities, and set objectives and targets with environmental management programs.

System implementation and operation, including identification of responsibilities, training and awareness, documentation, and operational controls.

Checking and corrective actions, including monitoring and measuring performance toward continual improvement targets.

Management reviews to ensure that the EMS is suited and continually adapted to changing conditions and information.

Using the EMS, an organization identifies the important elements of its activities, products, or services that can interact with the environment. These elements are called “aspects” in the ISO 14001 standard. The organization sets objectives regarding those aspects, establishes programs, and implements defined operational controls and procedures to achieve those objectives. The organization must measure actual performance to verify that the EMS is being implemented properly (including meeting the objectives and implementing the controls and procedures). An EMS provides order and consistency for organizations to systematically identify and address environmental obligations (including legal requirements) and concerns through the allocation of resources, assignment of responsibilities, and ongoing evaluation of practices, procedures, and processes.

EMS is a policy and management approach that may be particularly applicable for adaptive management of actions subject to NEPA review. In such cases, integrating the NEPA process and EMS provides a synergy that can encourage a robust analysis when the EMS information is extensive, current, and available for use in the NEPA analyses. In addition, such integration may more effectively prevent environmental degradation, promote sustainability, and further the pol-

icy goals contained in §101 of NEPA. For example, EMS objectives and targets should consider actions and mitigation measures analyzed during the NEPA process and select certain of them, thus transforming the somewhat speculative analysis of alternatives into defined, measurable and specific goals against which the agency’s performance can be evaluated. The monitoring and adjusting procedures associated with the checking and corrective action elements of the EMS could then provide the basis for adaptive management adjustments, as conditions or requirements change to meet the EMS objectives and targets, as well as verify the mitigation results described in an EIS or relied upon in an EA with a mitigated FONSI.

IV. EMS Elements and NEPA Programs

EMS that are consistent with the ISO 14001 standard may provide a consistent framework and process for managing the impacts of agency actions in accordance with agency authorities and other laws. ISO 14001 does not itself define substantive performance measures and outcomes, or specific direction on how to best manage the agency programs: that direction is provided by laws, regulations, best management practices, and agency policies. ISO 14001 provides a credible framework for identifying and meeting the legal and other obligations that are established through the public process, it does not pretend to intrude upon authorities of government agencies to define goals for environmental performance. The ISO 14001 standard was never intended to replace or be implemented outside of the legal and political context that establishes environmental policy. Therefore, an ISO 14001 EMS does not replace NEPA, but rather provides a systematic framework for effectively identifying and meeting NEPA obligations.

For the facilities that an agency determines are appropriate for EMS development, the following 14 ISO 14001 EMS elements³⁹ can complement NEPA processes and the agency NEPA program.

A. Policy

The statement of policy provides the overall direction for the EMS and should be drafted in a manner consistent with the policies of NEPA (and other applicable requirements), the agency’s strategic planning, and the overall agency mission.

B. Environmental Aspects

ISO 14001 calls for identifying and determining the organization’s environmental aspects that are “significant.” In plain language, ISO 14001 uses the term *significant* to describe the *important* environmental issues that the organization should be managing through its EMS. The identification of environmental aspects is an ongoing process that determines the past, current, and potential impact of an organization’s activities on the environment and determines which of them are significant enough to be managed by the system. The environmental aspects analysis contemplated by ISO

38. “The Plan-Do-Check-Act/Continual Improvement approach used by ISO 14001 and similar models has proven to be effective as applied to environmental management, but not all facilities have modeled their EMS on ISO 14001.” See U.S. Environmental Protection Agency (EPA), *EMS: About EMS*, at <http://www.epa.gov/ems/index.htm>.

39. These elements are drawn from the *Summary of ISO 14001 Requirements* prepared by the OFEE. See <http://www.ofee.gov/ems/training/facts.htm>. The text of ISO 14001 may be obtained on the Internet at <http://www.iso.org/iso/en/iso9000-14000/iso14000/iso14000index.html>.

14001 can be viewed as analogous to the process of identifying environmental impacts in a NEPA EA or EIS.⁴⁰ An organization that is subject to NEPA and is implementing ISO 14001 could structure its aspects identification and analysis process to be incorporated into NEPA documents at the appropriate points in the decisionmaking process. It could also use information from existing NEPA analyses to inform the aspects identification and analysis process. Thus the environmental aspects identified for the EMS can draw from, and inform, that agency's identification of environmental issues at the NEPA program level as "major decision points for the agency's principal programs likely to have a significant effect on the human environment" and "criteria for and identification of those typical classes of action" that normally have significant environmental effects.⁴¹ NEPA analyses and documentation can help where agencies may have the most trouble with EMS implementation: impact identification and prioritization. Rather than having an EMS process and a NEPA process, an agency could have a single integrated procedure for identifying its environmental issues.

Since an organization wishing to conform with ISO 14001 must keep its aspects identification and analysis current, that current data set should be available to plug into new NEPA reviews as necessary. One benefit of this approach is that the organization would generate and keep current a holistic evaluation of all of its environmental issues that is not based on a piecemeal approach driven by specific projects or decisions. Subsets of this information could then be pulled out to support NEPA evaluations of specific projects or plans. This approach would be consistent with the holistic approach envisioned when NEPA was first enacted, and provide the agency and the public with a better overall sense of the significance of environmental impacts associated with the agency's actions and plans. It could also be more efficient, because new analyses for each NEPA decision would not have to be conducted from scratch. It would also allow agencies to maintain an "evergreen" data set that is actually used on a regular basis rather than disappearing into project-specific NEPA documents that might rarely be pulled off the shelf and used once NEPA compliance for the project has been completed. The evaluation of environmental aspects can provide a compilation of information for use in environmental analysis of future project and activity deci-

sions, and be useful for analyzing cumulative effects in project and activity EAs or EIS. Managers could see, and even quantify, the value to the agency of collecting and maintaining data by examining the actual use of such "evergreen" data in agency NEPA processes and other agency activities.

C. Legal and Other Requirements

The EMS standard requires that organizations identify applicable legal and other requirements to ensure that the plans, projects, and activities of the organization meet those requirements. The EMS provides the management structure to help the agency, among other things, address its NEPA requirements. In turn, NEPA provides the agency with certain procedures called for by the EMS, such as impact identification. The CEQ's NEPA regulations require that NEPA be integrated to the fullest extent possible with other environmental planning and review procedures (which includes the EMS), whereas an EMS requires "uploading" into the system all legal and other requirements that apply to the agency (which would include NEPA compliance). Therefore, an effective EMS should enhance an organization's ability to identify, evaluate, and meet all of its environmental requirements in a holistic manner, rather than compartmentalizing its NEPA obligations from those that arise under other environmental statutes. That same process can be used to address a wider range of legal and nonlegal obligations to consider broad issues such as the agency's contributions to sustainable development and other stakeholder interests. For example, ISO 14001 also requires organizations to take the same approach to "other requirements" it may commit to meet. In other words, once an agency commits to do something, even if it was not required by law to do so, ISO 14001 requires that organization to address that commitment through its EMS as if it was required by law.

D. Objectives and Targets

Objectives are the overall goals for environmental performance identified in the environmental policy. When establishing its objectives an organization should take into account the relevant findings from environmental reviews, and the identified environmental aspects and associated environmental impacts. The objectives and targets must be consistent with the organization's policy commitments, including the commitment to comply with legal requirements. Therefore, organizations that are subject to NEPA must be sure that their objectives and targets are consistent with their NEPA obligations (and their obligations to comply with other environmental laws and commitments). Environmental targets can be set to achieve objectives within a specified time frame. Targets should be as specific as possible and measurable. The NEPA process can provide information necessary to establish relevant objectives and performance measures that are needed to assess attainment of objectives and targets. The NEPA process may also provide the procedures necessary to ensure that the views of interested parties are considered, e.g., through public scoping and document review and comment, when establishing objectives, as required by the standard. Finally, specific NEPA-driven projects, such as mitigation measures, can themselves be considered EMS objectives that will then be tracked and the results acted upon as required by the system.

40. Environmental aspects may be found to be significant to the EMS, based on the policy direction of the EMS, but not significant from the standpoint of NEPA, or vice versa. Differences in the way environmental significance is assessed reflect the differences between the EMS focus on significance of environmental aspects to an organization and the NEPA focus on significance of environmental effects on society. See 40 C.F.R. §1508.27 (defining "significantly" as requiring consideration of the contexts of a proposed action (human, national, the affected region, affected interests, and the locality) and the intensity or severity of impacts). Written for governmentwide application to a myriad of federal agency proposals for action, this definition serves as an analytical framework rather than a set of specific thresholds for identifying significant effects. *Spiller v. White*, 352 F.3d 235, 243 (5th Cir. 2004), *cert. denied sub nom. City of Austin v. Brownlee*, 2004 U.S. LEXIS 5526, 73 U.S.L.W. 3205 (U.S. Oct. 4, 2004) ("[T]he factors listed in the regulation do not appear to be categorical rules that determine by themselves whether an impact is 'intense' and therefore significant. As such, all that would have to be shown is that all the factors were in some way addressed and evaluated."). Agency-specific NEPA procedures may be informed by experience with an EMS to help the agency further define actions and effects that are, or are not, significant under NEPA.

41. 40 C.F.R. §§1505.1(b), 1507.3(b)(2); see also *id.* §1507.2 (required elements of agency NEPA programs).

E. Programs

Environmental management programs (EMPs) are essentially a road map for how an organization will achieve its objectives and targets. Agencies implementing an ISO 14001 would have to identify the “who, when, and how” necessary to achieve the defined objectives and targets. Again, this enhances internal and public accountability by pushing agencies to be quite specific in describing how the goals will be met. These programs must be kept up to date to reflect changing conditions, data, legal requirements, etc. For example, where NEPA reviews have been completed for new or modified activities or services, EMPs may use the results of the NEPA review or environmental monitoring data to update its objectives and targets and the programs to achieve them. Milestones associated with the NEPA review processes may also serve as objectives (or targets) for managing aspects related to the organization’s mission. Also, the process of updating the identification and evaluation of environmental aspects may reveal changed environmental conditions that suggest changes to programs. The emphasis on management of change is an important benefit of EMS that should drive agencies to view their environmental programs generally, and NEPA in particular, as an ongoing and living process, rather than a one-time document creation step. This is consistent with and provides a structure to support the adaptive management trend in NEPA.

F. Roles and Responsibilities

Successful implementation of an EMS requires clear articulation of environmental responsibilities across the different elements, programs, and levels of an organization. This requirement is similar to the required elements of an agency NEPA program,⁴² but provides important operational details. The responsible official documents and communicates roles and responsibilities within the EMS. Management must ensure that resources that are essential to the implementation and control of the EMS are provided, just as they must ensure sufficient resources to meet their NEPA responsibilities. Resources include human resources and specialized skills, technology, and financial resources. The responsibility and resources for monitoring activities may assist the NEPA process where monitoring is necessary to allow, for example, an adaptive management approach to the planning and decisionmaking process. A much stronger case can be made for using adaptive management when the responsibilities and resources for carrying it out are clearly identified in the EMS.

G. Training

The ISO 14001 standard requires that all personnel whose work may create a significant impact upon the environment receive appropriate training. Training that is relevant to the achievement of environmental policies, objectives, and targets should be provided to all personnel within the organization covered by the EMS. An appropriate knowledge base would include training in the methods and skills required to perform their tasks in an efficient and competent fashion and knowledge of the impact their activities can have on the

environment if performed incorrectly, including the practices necessary to comply with applicable laws such as NEPA. This training applies the goals of NEPA from the highest levels of an agency all the way out to the field so that individuals know what they have to do at their job on a day-to-day basis to meet the agency’s environmental commitments. This competency requirement applies particularly to NEPA participants in which NEPA reviews or their outcomes are linked to the organizations’ significant aspects, objectives and targets, and operational controls. EMS can also facilitate the NEPA process by supporting adequate training for, and in support of, NEPA practitioners.

H. Communication

Required communication procedures for an EMS include those for internal communication between the various levels and functions of an organization, and others for receiving, documenting, and responding to relevant communication from external interested parties. Internal communication ensures that employees understand the various elements of the EMS and raises awareness of the organization’s environmental policies, objectives, targets, and programs. External communication facilitates public understanding of the EMS and also informs the organization of the views of interested parties. The EMS model states that the organization must have procedures to receive, document, and respond to inquiries from external stakeholders. NEPA has specific public comment and public participation requirements. Since the EMS obligates organizations to implement the controls necessary to comply with applicable laws, specific opportunities for public involvement in the NEPA process should be adopted and integrated into the broader communication procedures required for the EMS. In turn, the NEPA scoping process may be directed and informed by experience with EMS external communications. Through EMS-based evaluation of the relative success of the organization’s communication with stakeholders, NEPA documents may be improved to better communicate the information that is valued by stakeholders and encourage stakeholders to communicate effectively with decisionmakers.

I. Documentation and Records

These two required elements of the ISO 14001 standard are related in that EMS documentation describes what is to be done in carrying out the EMS, and the records are the evidence that the activities actually were done. The ISO standard requires that the organization covered by the EMS maintain procedures for controlling all documents related to the implementation of each EMS element, and how the various elements relate to each other. Records for an EMS can cover a complex range of information. This includes, among other things, legislative and regulatory requirements, environmental aspects and their impacts, and monitoring data. Effective management of these records is essential to the successful implementation of the EMS. To the extent that EMS documentation and records are developed in the consideration of proposals for agency actions covered by the NEPA review process, agency NEPA documentation could be used to support these EMS elements. This process would be similar to document tiering, adoption, and incorpora-

42. *Id.* §1507.2.

tion by reference used in the NEPA process to avoid unnecessary redundancy.

J. Operational Controls

Operational controls and related procedures must be established and maintained where necessary to implement the organization's policy and achieve its objectives and targets. An agency must identify the activities, services, and products that cause the significant environmental aspects and impacts, and then implement the necessary controls and procedures. This very important EMS element is intended to translate the organization's policy, objectives, and targets into practical and documented controls, procedures, and instructions so that individuals know what to do to consistently protect the environment and comply with the law. NEPA-related activities, particularly those designed to mitigate impacts, would be part of the organization's EMS operational controls. For activities encompassed by the EMS for which there may be some uncertainties regarding the potential environmental impacts, an adaptive management approach defined and analyzed by the NEPA review process may be an appropriate type of operational control.

K. Monitoring

The primary purpose of monitoring in an EMS is to track key parameters and relevant operational controls, and to measure an organization's progress toward controlling its significant aspects and achievement of its environmental objectives and targets. Similarly, the essential component of adaptive management under NEPA is monitoring to assess whether predictions of environmental effects are correct and that any mitigation implemented is functioning as intended. Without monitoring, there would be no basis for making corrections or adjustments to either the EMS or the action (including mitigation) covered under the NEPA process. EMS monitoring activities also include the evaluation of compliance with relevant environmental legislation and regulations. Results of EMS monitoring are used to determine areas of success and to identify activities requiring corrective action and improvement. In addition, monitoring may provide information the agency could use to keep the public informed on the agency's environmental performance. Monitoring activities implemented for an EMS may subsume or complement the monitoring needed to accomplish adaptive management in the NEPA process. The availability and use of EMS and NEPA monitoring activities provides one of the most important examples of the potential for synergy between NEPA and EMS.

L. Preventive and Corrective Action

The ISO 14001 standard requires that an organization establish and maintain procedures for taking action to mitigate any impacts caused, and for initiating and completing corrective and preventive action. The purpose of this EMS element is to prevent problems from occurring, to fix problems that are detected, and to take the actions necessary to avoid the recurrence of problems. Findings, conclusions, and recommendations reached as a result of monitoring and audits of the EMS are the basis for corrective and preventive actions and the systematic follow-up to ensure their effective-

ness. This is essentially the same approach as adaptive management under the NEPA process. For agency actions reviewed under NEPA and also covered by an organization's EMS, monitoring and adaptation associated with the NEPA adaptive management process may fall squarely within the purview of an EMS' preventive and corrective action program. As with the EMS monitoring requirements, this is another example of the complementary nature of NEPA and EMS.

M. Auditing

Periodic audits of the EMS are a requirement of the ISO 14001 standard. The EMS audit verifies whether the EMS conforms to the ISO standard and is properly implemented and maintained. Or, stated another way, the EMS audit is where the organization evaluates how well it is *managing* its environmental issues. This information supplements other measurement information on actual progress toward controlling aspects, objectives, and targets. These are not simply paper audits; conditions are observed, individuals are interviewed, and records are reviewed. Results of an EMS audit are part of management review. Commitments for mitigation made pursuant to the NEPA process may be part of the EMS audit where such commitments are linked to legal and other requirements, objectives and targets, or operational controls in the EMS. In these cases, the EMS audit is another means for ensuring that agency commitments made under NEPA are appropriately implemented.

N. Management Review

Where an agency organization has developed an EMS, management is responsible for reviewing the EMS to ensure its continuing suitability, adequacy, and effectiveness as consistent with the ISO 14001 standard. This internal review is separate from the EMS audit described above. The review involves examining monitoring information, audit findings, program accomplishments, changes in circumstances and the environment, the concerns of interested parties, other relevant information, and the commitment to continual improvement. Based on this assessment, the responsible manager will determine if there is a need for changes in the EMS. This review is an opportunity to review the effectiveness of the NEPA program, adjust procedures to take advantage of NEPA/EMS synergy, and enhance areas in which NEPA and EMS procedures are complementary. This EMS element encourages direct and frequent management participation in the EMS to ensure that it works. Management review under ISO 14001 can be accomplished by frequent management attention to key issues such as performance, monitoring and measurement data, and the status of preventive and corrective action.

V. NEPA's Role in EMS for Public Agency Administration

EMS generally, and ISO 14001 in particular, are intended to enhance organizations' ability to systematically identify and meet their environmental obligations. The "plan, do, check, act" approach of ISO 14001 was intended to encourage organizations to integrate their EMS into their normal organizational processes. An effective EMS, such as one

based on ISO 14001, can assist organizations to systematically, consistently, and efficiently meet their NEPA, as well as other, environmental obligations. This does not mean that an EMS would replace NEPA or any other environmental obligation an organization might have. Rather, an EMS provides the structure and tools that enhance an organization's ability to meet those requirements. Therefore, an ISO 14001 EMS implemented by an organization subject to NEPA would have to include in that EMS the applicable NEPA requirements, and would certainly not eliminate or weaken any NEPA obligations. The EMS of such organizations would actually have a far greater emphasis on stakeholder involvement, natural resources development and public policy considerations than would the EMS of a typical private-sector manufacturing firm that is not subject to NEPA.

Many of the requirements of NEPA are already consistent with the basic structure of an EMS. Therefore, as noted above, NEPA can assist public-sector EMS implementation in the identification and prioritization of environmental aspects, setting targets and objectives, and providing a framework for external communications. The disciplined EMS approach can, in turn, enhance the ability of organizations to implement NEPA and meet their other environmental obligations as well. In particular, EMS can be of significant assistance in making environmental documents "live," in giving current data sets continuing value, and in translating studies and alternatives analysis into defined commitments, concrete actions, and measurable performance.

The ISO 14001 EMS implemented by public agencies may look quite different from those implemented by the private sector. While public agency administration can benefit from many lessons learned in private-sector management of organizations, public agencies perform uniquely governmental functions that require particular emphasis on outside involvement in agency decisionmaking. The NEPA process serves all levels of government and the public by providing legally enforceable standards for informed and participatory decisionmaking. The environmental documentation and public participation requirements of NEPA are law because they are essential aspects of democratic government and impose unique requirements on the public sector. In these respects, NEPA compliance serves as an invaluable element of public-sector EMS implementation.

Of course, public agencies have communication and coordination challenges not faced by most private-sector organizations. Whereas most EMS being implemented in the private sector seek to improve the environmental performance through better environmental management within organizations, in enacting NEPA, Congress sought to address national environmental problems that result as much from uncoordinated actions of many organizations as the unformed decisions of individual agencies. Therefore, NEPA's declaration of federal policy is premised on "cooperation with State and local governments, and other concerned public and private organizations," and requires the federal government "to improve and coordinate Federal plans, functions, programs, and resources" to meet NEPA's policy goals.⁴³ The NEPA process serves to facilitate coordination of actions between public agencies as well as to inform an agency of the plans and perspectives of private entities and the public. This coordination function is so impor-

tant that agencies with jurisdiction by law or "special expertise" with respect to environmental impacts have duty to comment.⁴⁴ Under the CEQ's NEPA regulations and guidance, these requirements for interagency coordination are buttressed by provisions for the designation of co-lead and "cooperating agencies" to structure coordination.⁴⁵ All of this will make public agencies' EMS much more "outer-directed" than those of a typical private-sector organization.

NEPA also requires analytical rigor in the consideration of alternatives for environmental improvement, making the consideration of opportunities for environmental improvement a management *and* legal consideration. For example, the alternatives analysis is the "heart" of an EIS, which "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice."⁴⁶ Apart from the EIS requirement for proposed actions significantly affecting the quality of the human environment, consideration of alternatives is required for any "proposal which involves unresolved conflicts concerning alternative uses of available resources."⁴⁷ An agency must not only identify and study reasonable alternatives on its own initiative, but also analyze and consider significant alternatives that are called to its attention by other agencies, organizations, communities, a member of the public.⁴⁸ Public and interagency participation in this evaluation of alternatives is designed to ensure that, at least at the point when an agency makes a decision that may significantly affect environmental interests, the policy goals of NEPA (and EMS) are given due consideration by the public agencies charged with implementation of NEPA. Implementing a formal EMS could enhance this process by requiring that the selected alternative(s) be implemented through the structured EMS process described above. EMS takes the organization through disciplined steps after the consideration stage, moving to systematic and accountable on-the-ground implementation. This supports the concept of adaptive management, which depends on a structured feedback loop from implementation, while NEPA standards for professional integrity and scien-

44. *Id.* §4332(2)(C); 40 C.F.R. §1503.1(a)(1).

45. 40 C.F.R. §§1501.5, 1501.6, 1508.5; Memorandum from James L. Connaughton, Chairman, CEQ, to Heads of All Federal Agencies (Jan. 30, 2002), available at <http://ceq.eh.doe.gov/nepa/reg/cooperating/cooperatingagenciesmemorandum.html> ("The purpose of this Memorandum is to ensure that all [f]ederal agencies are actively considering designation of [f]ederal and nonfederal cooperating agencies in the preparation of analyses and documentation required by [NEPA], and to ensure that [f]ederal agencies actively participate as cooperating agencies in other agency's NEPA processes.").

46. 40 C.F.R. §1502.14.

47. 42 U.S.C. §4332(2)(E); 40 C.F.R. §1508.9 (must be included); *Friends of the Ompompanoosuc v. Federal Energy Regulatory Comm'n*, 968 F.2d 1549, 1558 (2d Cir. 1992) ("range of alternatives an agency must consider is narrower when, as here, the agency has found that a project will not have a significant environmental impact").

48. *Dubois v. Department of Agric.*, 102 F.3d 1273, 1290, 27 ELR 20622 (1st Cir. 1996); *Seacoast Anti-Pollution League v. NRC*, 598 F.2d 1221, 1329, 9 ELR 20384 (1st Cir. 1979) (comments provided sufficient notice to "alert[] the agency" to the alternative being proposed and the environmental concern the alternative might address) (quoting *Vermont Yankee Power Corp. v. National Resources Defense Council*, 435 U.S. 519, 553, 8 ELR 20288 (1978)).

49. 40 C.F.R. §1502.24.

43. 42 U.S.C. §4331.

tific accuracy of information remain applicable to subsequent agency decisionmaking.⁴⁹

Amongst many practitioners and decisionmakers, “doing NEPA” means generating the NEPA documents rather than enhancing actual management; too often NEPA processes are seen as a liability and a distraction from work that is considered more valuable. Ultimately, the transition to a NEPA adaptive management structure depends on agencies making NEPA program decisions that look beyond minimalist, decision-specific approaches designed to survive judicial review of agency compliance with the fundamental documentation requirements of NEPA. The CEQ’s NEPA regulations start with the premise that enforcement of the substantive requirements of NEPA §101 is a responsibility shared by the president, federal agencies, and the courts.⁵⁰ In structuring their NEPA procedures to correspond with agency decisionmaking procedures, agencies are required to use decision-based NEPA documentation to achieve the broader environmental sustainability goals presented in the *Congressional Declaration of National Environmental Policy*.⁵¹ However, the federal courts’ role is generally limited to review of specific agency decisions that constitute “final agency action” under the Administrative Procedure Act (APA).⁵² Agency compliance with NEPA is largely immune from judicial review until the agency decides to take a final agency action that affects protected environmental interests.⁵³

Once the traditional NEPA documentation process is completed, agency compliance with any adaptive management commitments made in a ROD is subject to judicial review only insofar as the agency has reiterated duties the agency is already obligated to perform or if language in the ROD itself creates a commitment binding on the agency.⁵⁴ Agency monitoring commitments are often general and provide insufficient basis for federal court jurisdiction under

the APA’s limited provision for judicial review of agency action “unlawfully withheld or unreasonably delayed.”⁵⁵ However, an agency may decide to undertake enforceable monitoring commitments to further legitimate public policy interests, such as providing assurance that adaptive management commitments will be met.⁵⁶ Thus, agencies may exercise a substantial degree of control over the extent to which their reliance on adaptive management will be subject to judicial review.

VI. Conclusion

Institutional barriers to change, rather than legal barriers, remain the major challenge for agency efforts to create the “new approaches to environmental management” that, in 1969, Senator Jackson argued “are now required.” The ISO 14001 EMS and NEPA processes include many elements and provisions that are complementary. This is particularly evident when using an adaptive management approach under NEPA, where monitoring and adaptation may be essentially the same as the monitoring and corrective action elements of the EMS. By taking advantage of the complementary nature of NEPA and EMS, agency managers and NEPA practitioners have the opportunity to improve the quality of environmental analysis, decisionmaking, and further the policy goals of §101 of NEPA. Ultimately, although they come from very different origins, both NEPA and EMS intend to improve environmental performance and steward-

not be plucked out of context and made a basis for suit under §706(1).”); *Ecology Ctr., Inc. v. U.S. Forest Serv.*, 192 F.3d 922, 926 (9th Cir. 1999) (refusing to grant relief under §706(1) where the “Forest Service merely failed to conduct its duty in strict conformance with [a National Forest] Plan and [National Forest Management Act] Regulations” because doing so “would discourage the Forest Service from producing ambitious forest plans” and the monitoring activity at issue was considered merely precursor data-gathering activity to support later planned final agency action in amending or revising a forest plan).

50. *Id.* §1500.1.

51. 42 U.S.C. §4331; 40 C.F.R. §1505.1(a).

52. 5 U.S.C. §704, available in ELR STAT. ADMIN. PROC.

53. 40 C.F.R. §§1500.3, 1506.1(a).

54. *Norton v. Southern Utah Wilderness Alliance*, 124 S. Ct. 2373, 2384, 34 ELR 20034 (2004).

55. 5 U.S.C. §706(1), available in ELR STAT. ADMIN. PROC.; see *Norton*, 124 S. Ct. at 2384 (“A statement by [the Bureau of Land Management (BLM)] about what it plans to do, at some point, provided it has the funds and there are not more pressing priorities, can-

56. *Seattle Audubon Soc’y v. Lyons*, 871 F. Supp. 1291, 1324, 25 ELR 20711 (W.D. Wash. 1994) (“Monitoring is central to the [Northwest Forest Plan]’s validity. If it is not funded, or not done for any reason, the plan will have to be reconsidered.”); *Oregon Natural Resources Council Action v. U.S. Forest Serv.*, 59 F. Supp. 2d 1085, 1096, 30 ELR 20021 (W.D. Wash. 1999) (“The [Northwest Forest Plan]’s adaptive management approach is adequate to deal with any new information plaintiffs have identified. If circumstances warrant, the ROD gives the Forest Service and BLM the flexibility to reduce or halt logging in order to comply with their statutory mandates.”).

ship through better organizational management of environmental issues.