

The NEPA & LGEEPA:

Barriers or Facilitators of Border Sustainability

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Origin of the NEPA and the LGEEPA as Promoters of Sustainable Development of the U.S. and Mexico

- **U.S.:** NEPA requirements are invoked when proposals for airports, buildings, military complexes, highways, parkland purchases, and other federal activities take place. It was signed by President in 1969.
- **Mexico:** Activities under federal jurisdiction, including petrochemical, mining, and electricity generation industries, as well as hazardous waste treatment and disposal activities, must obtain an environmental impact authorization according to LGEEPA. In force since 1988.
- 1971: First federal environmental law in Mexico.

Transboundary application of NEPA and LGEEPA: current provisions issued to promoting Border Sustainability

■ Backgrounds in the U.S.:

Trail Smelter Arbitration, US v. Canada (1905):
Smelter in British Columbia that was causing environmental harm in the State of Washington.

■ Some International Declarations and Agreements:

- Stockholm Declaration on the Human Environment.
- Rio Declaration on Environment and Development.
- La Paz Agreement.
- North American Agreement on Environmental Cooperation (NAAEC).

Transboundary application of NEPA and LGEEPA: current provisions issued to promoting Border Sustainability

NEPA	LGEEPA
<p>Section 102(2)(C) of the NEPA and Guidance on NEPA analyses for Transboundary Impacts (1997) require federal agencies to assess the environmental impacts of and alternatives to proposed major federal actions, considering worldwide and long-range character of environmental problems.</p>	<p>Section XVII of the Article 15 of the LGEEPA states Nation is interested that activities developed in Mexico do not cause affectation to ecological balance of foreign countries.</p>

Transboundary application of NEPA and LGEEPA: current provisions issued to promoting Border Sustainability

NEPA	LGEEPA
Recognition of the potential transboundary environmental impact of the projects in the U.S. Executive Order 12114 (Environmental Effects Abroad)	SEMARNAT also recognizes it. Sections III and IV of the Article 5 of the LGEEPA
Possibility to perform binational environmental impact studies related to a proposed action. Section 2-3 of the Executive Order 12114	This possibility is not explicitly stated in the LGEEPA or in its Regulations

North American Agreement on Transboundary Environmental Impact Assessment (NAATEIA)

- **NAATEIA** would provide clarification to Mexico and the United States regarding how to apply NEPA and LGEEPA transboundary provisions in a coordinated and equitable way.

North American Agreement on Transboundary Environmental Impact Assessment (NAATEIA)

- **NAATEIA** would require each country to:
 1. Assess environmental impacts of proposed actions in any of the three countries party of the NAFTA, which would be likely to cause significant transboundary impacts within the jurisdiction of any of the other parties.
 2. Develop a system of notification, consultation, and sharing of relevant information between countries with respect to such projects.
 3. Consider measures to mitigate the potential adverse effects of such projects.

How are NEPA and LGEEPA applied in the U.S. – Mexico Border?

- Application of the NEPA in the U.S. – Canada Border:

Wilderness Society v. Morton. The Court granted intervener status to Canadian environmental organizations that were challenging the adequacy of the trans-Alaska pipeline EIS, because it found that there was a reasonable possibility that oil spill damage could significantly affect Canadian resources, and that Canadian interests were not adequately represented by other parties in the case.

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability

- NEPA & LGEEPA Perceptions:
- NEPA requires extensive resources.
- The time and costs of these laws are inappropriate.
- NEPA and LGEEPA seldom affects actual decision making, because of the quality of a LGEEPA or NEPA analysis is adversely affected by a lack of resources (economic and human) and time.
- The Regulations to implement these statutes are almost exclusively limited to one small portion of the law (projects under federal jurisdiction).
- Neither NEPA nor LGEEPA can address social inequity and poverty.

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability

- Barrier # 1: The U.S. and Mexico federal, state and local governments often have different interests that result in different priorities.
- Barrier # 2: Timing for the development of binational projects is not standardized.
- Barrier # 3: EIA in the U.S. and EIM in Mexico, generally, do not consider all transboundary environmental impacts.
- Barrier # 4: More capacity building is required.

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability

- Barrier # 5: Excessive discretionary power granted to Mexican and American governmental authorities.
- Barrier # 6: Public Involvement (based on Environmental Justice Principles) and Scoping process are not enough efficient.
- Barrier # 7: Cumulative Effects caused by Population Growth and Socioeconomic Impact Analysis are not efficiently considered in EIM or EIS.
- Barrier # 8: Inadequate funding for binational projects which may facilitate sustainability in the U.S. – Mexico Border.

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability

Construction of CBP-Owned Land Ports of Entry Program Specific Recovery Act Plan *May 15, 2009*

Location	Design/Build	Contract Award	Project Completion
Antelope Wells, New Mexico	\$15,169,565	FY 2010 Q 1	FY 2012 Q 1
Los Ebanos, Texas	\$14,469,565	FY 2010 Q 2	FY 2012 Q 2
US.-Canada Border	\$344,360,870 = 92 %		
Total	\$374,000,000		

http://www.dhs.gov/xlibrary/assets/recovery/CBP_Construction_of_CBP-Owned_Land_Ports_of_Entry_2009-05-15.pdf

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability

- Environmental Assessment for the Proposed Modernization and Operation of the Antelope Wells Land Port of Entry, Hidalgo County, New Mexico

November 2009. Prepared by: U.S. Department of Homeland Security

- After completion of the EA, a Notice of Availability (NOA) was published indicating that the draft EA and draft Finding of No Significant Impact (FONSI) were available for public review.
- An NOA was published in local newspapers (Deming Highlight, Silver City Sun News, Las Cruces Sun News, Sierra Vista Herald, Albuquerque Journal) to inform the public that the EA and draft FONSI were available for review. A single notice was published in the national publication Indian Country.
- A 30-calendar-day review period (starting with publication of the NOA) was established to provide all agencies, organizations, and individuals with the opportunity to comment on the EA and draft FONSI.

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability

- Environmental Assessment for the Proposed Modernization and Operation of the Antelope Wells Land Port of Entry, Hidalgo County, New Mexico

November 2009. Prepared by: U.S. Department of Homeland Security
[Part II]

- At the end of such period, CBP considered comments submitted and published a second NOA to announce the availability of the Final EA and FONSI that includes CBP's response to comments received during the public review period.
- The second NOA also publicizes CBP's approval of the Final FONSI, and that the preparation of an Environmental Impact Statement is not required.

The reduced success of the NEPA and LGEEPA as promoters of Border Sustainability


Appendix D – Leadership in Energy and Environmental Design (LEED) for new construction and major renovation registered project scorecard

Yes	?	No		
	4		REGIONAL PRIORITY	4 Points
	4		Credit 1	
			Regional Priority	1 to 4
			Regionally Defined Credit Achieved	1
			Regionally Defined Credit Achieved	1
			Regionally Defined Credit Achieved	1
			Regionally Defined Credit Achieved	1
40	31	39	PROJECT TOTALS (Certification Estimates)	110 Points

Certified: 40-49 points Silver: 50-59 points Gold: 60-79 points Platinum: 80+ points

How to increase their efficiency and effectiveness in the U.S. – Mexico Border: recommendations for a sustainable scenario in 2030

- Make the process more transparent and simple.
- Increase law enforcement and vigilance.
- Consider climate change in the analysis.
- Conclude negotiations and create NAATEIA.
- Establish more public-private partnerships to increase both funding and staffing levels.
- Make “green buildings”.
- Reduce influence of single-purpose players and increase awareness of environmental justice affairs, including Tribal and Ejido Consultation and Involvement.



The NEPA & LGEEPA:

Barriers or Facilitators of Border Sustainability

Thank you!

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