Viewpoint

Restoring the Credibility and Enhancing the Usefulness of the EIA Process

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Five years ago, in the second issue of the *EIA Review,* I suggested that it was time to shift our attention from impact assessment to strategies for resolving environmental disputes. In his state-of-the-art summary in that same October 1978 issue, David O'Connor reviewed the first twenty environmental mediation efforts in the United States and concluded that "mediation by neutral parties has played a significant role in resolving a number of important and controversial environmental disputes."

The development of more and more information of the sort provided by successful impact statements often exacerbates rather than resolves the value conflicts that are at the heart of most environmental disputes. On the strength of those early successes analyzed by O'Connor, it seems to me that professionals involved in impact assessment might want to explore ways in which they could use dispute resolution techniques as a supplement to the usual tools of impact assessment. It has become incumbent upon impact assessment professionals to develop ways to cope with the conflicts that the present process often helps to sustain.

Dispute resolution techniques are being used throughout the United States in an effort to resolve policy disputes, siting disputes and disputes regarding the design of development projects of every type. National organizations such as the Conservation Foundation have conducted "policy dialogues", helping representatives of divergent interests hammer out suggested environmental policies that each can endorse. EPA is exploring the possibility of using mediation techniques in the rule-making process. If all the groups likely to be affected by a proposed regulation can negotiate a version of the regulation that takes into account everyone's interests and needs subsequent court challenges could well be avoided. At the state level, many facility siting disputes are being mediated and arbitrated now. Massachusetts and Wisconsin have statutes that build on the concept of face-to-face negotiation in statewide siting processes. The National Governor's Association has endorsed this negotiated approach to hazardous waste facility siting.

At present, decisions about the design and development of all kinds of projects are made without any direct negotiations between developers, agency regulators, and the range of stakeholding interests likely to be affected by proposed development. Honolulu is considering legislation that would require developers to prepare the equivalent of neighborhood impact statements that would then be the subject of negotiation between project proposers and elected neighborhood boards. In Boston, the design of the largest development project in the city's recent history was the product of an impact- assessment- cum- mediated- negotiation process.

Impact assessment as we know it (i.e. the generation of scientifically credible information regarding probable future conditions) is no longer sufficient. The concept of an action-forcing "study", is no longer sufficient. We are, I believe, moving away from the model of decision making in which elected and appointed

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officials, armed with studies and accountable only through the hearings process (and ultimately the electoral process) presume to make decisions in the public interest. Out of this system, a model is evolving in which all stakeholding interests demand a direct role in decision making. Technical expertise and power will always be distributed unequally. Elected and appointed officials cannot be expected to give up the final say for which they are statutorily responsible. However, stakeholding interests are no longer willing to settle for a scientific study, a hearing and politics as usual.

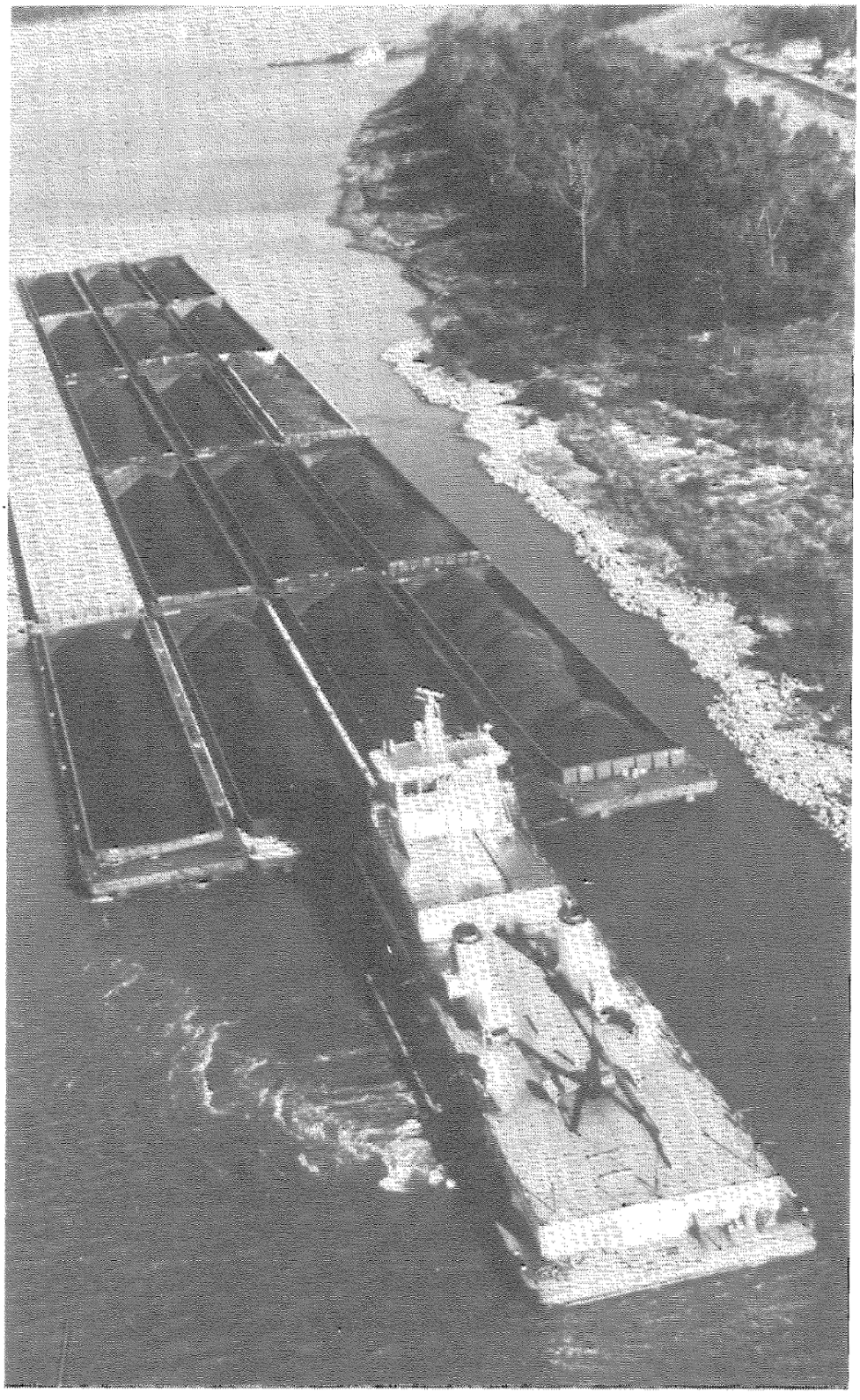
As I see it, the shift from the traditionally republican to a more democratic model of decision making has been propelled, in part, by the misappropriation of the environmental impact statement concept. As dissident groups learned that they could contest (and at the very least delay) decisions that did not please them simply by claiming that an EIS was required or that a recently completed EIS was inadequate, more groups gained leverage in the decision-making process. The additional leverage, facilitated by the courts' decision to broaden the rules of standing, made it difficult for decision makers to act unilaterally (scientific studies and hearings notwithstanding). Once stakeholding groups found that they had a means of injecting their concerns into the policy-making process in a way that could not be ignored, the game shifted.

Unfortunately, the EIS concept became a casualty. Indeed, many EISs (even afer the addition of scoping and other efficiency-enhancing reforms), are now irrelevant to the decisions they were designed to improve. Too many agencies merely go through the motions, expecting to be challenged in court. Once any group has misappropriated an EIA process, its representatives may well presume that other groups can — and probably will — do the same. In short, the EIA process has been politicized to the point where its reliability and usefulness is sorely limited.

Yet we still need to make environmental resource allocation decisions. To begin restoring the credibility of the impact assessment process we must (1) involve all the stakeholding groups in the design and implementation of each EIS, (2) extend the EIA process beyond mere information gathering and forecasting to the obvious next step of negotiated decision making, (3) insist that elected and appointed decision makers justify why they choose *not* to accept decisions emerging from a negotiation process, and (4) recognize that environment/development disputes are basically value conflicts. In my view, such disaccord is not likely to be resolved by more information but only by face-to-face negotiation through which informed solutions can be found.

If we think of EIA as the joint fact-finding phase in a negotiation process, a number of issues emerge. Who should represent the key stakeholding interests? How will inequalities in the abilities of different groups to participate effectively be handled? What kinds of trade-offs can be negotiated? How can such negotiations be integrated into the formal decision-making process? The early practitioners of environmental mediation have had to face these thorny issues. Through experimentation they have made substantial and rapid progress.

The purpose of impact assessment must be transformed to make it a facilitating process of joint fact finding, aimed at producing an informed resolution of conflict. As this evolution accelerates, impact assessment professionals will want to broaden and deepen their understanding of environmental dispute resolution.



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