



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO

JAGINST 5090.1
05
3 Feb 03

JAG INSTRUCTION 5090.1

From: Judge Advocate General

Subj: NAVY-MARINE CORPS TRIAL JUDICIARY PARTICIPATION IN
PUBLIC HEARINGS CONDUCTED UNDER THE NATIONAL
ENVIRONMENTAL POLICY ACT (NEPA)

Ref: (a) OPNAVINST 5090.1B (9 Sept 1999)

Encl: (1) Recommended Preparation for Hearing Officers
(2) Proposed Hearing Officer Script

1. Purpose. To promulgate policy and guidance to military judges presiding over public hearings conducted in accordance with reference (a), and in compliance with the National Environmental Policy Act (NEPA).

2. Background. NEPA mandates that Federal agencies (including the armed forces) prepare environmental impact statements for major Federal actions that significantly affect the environment. The Federal agency's draft environmental impact statement (DEIS) is made available to the public for review and comment before final action is taken. Public hearings may be conducted to provide interested members of the public with relevant information concerning the proposed action, and to afford the public an opportunity to comment upon the action and the DEIS. Because of their unique training, background, and experience, military judges have often been requested to serve as Hearing Officers for these public hearings. Military judge participation has been found to be especially effective in contentious hearings.

3. Policy. The Judge Advocate General supports participation of military judges in the NEPA process. The Chief Judge shall maintain oversight authority for all military judge participation as Hearing Officers in the DEIS process. Military judges requested to serve as Hearing Officers under the provisions of reference (a) must liaison with, and receive the approval of, their Circuit Military

JAGINST 5090.1

05

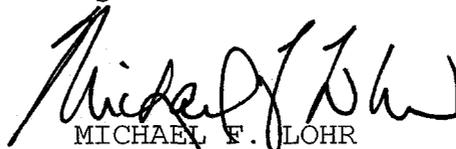
3 Feb 03

Judge (if applicable) and the Chief Judge before any participation may occur. Military judges may serve in this capacity only if such service will not otherwise detract from or interfere with their ability to perform their regularly assigned duties.

4. Action

a. Military judges authorized by their Circuit Military Judge (if applicable) and the Chief Judge to participate as Hearing Officers under the provisions of reference (a) shall be guided in their performance of these duties by the direction and recommendations contained in enclosure (1). Enclosure (2) is provided as a recommended script for the conduct of such hearings. The Chief Judge shall ensure that the relevant line commander is aware of the hearing and the military judge's role prior to the hearing.

b. Upon completion of the hearing, a brief after-action report shall be submitted to the Chief Judge (in writing or via email) detailing any difficulties encountered during the hearing and/or outlining recommendations for improvement of the hearing process. A copy of this after-action report shall also be provided to the Regional Commander.



MICHAEL F. LOHR

Rear Admiral, JAGC, U.S. Navy

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Chief Judges USA/USAF/USCG

JAGINST 5090.1
05
3 Feb 03

**PUBLIC COMMENT HEARING
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Recommended Preparation Steps

1. Review the Executive Summary contained in the Draft Environmental Impact Statement (DEIS).
2. Review Chapter 2 of OPNAVINST 5090.1B concerning the DEIS process and the procedures established therein for conducting public hearings.
3. Request a brief summary of the proposed action, public concerns, and controversial issues from the staff working the proposed action and overseeing the DEIS hearing.
4. Contact the Hearing Officer(s) for any prior hearings that were conducted on the proposed action and seek input from them on what you may expect at your hearing.
5. Establish a single point of contact on the action staff who will be responsible for updating you on all issues, schedule matters, personnel attending (especially distinguished visitors), uniform requirements, travel arrangements, etc.
6. Maintain an up-to-date schedule and recognize that the schedule of hearings may change depending on whether the DEIS is released to the public on time.
7. Make sure you wear your sharpest uniform and that you are well rested.
8. Get an accurate list of elected officials expected to attend, including properly spelled names and correct titles.
9. Bring a notepad and pens, as well as the hearing script (see enclosure (2)).
10. Leave plenty of time to get to each hearing and request accurate, detailed directions, as many hearings are held in out-of-the-way venues.

Enclosure (1)

JAGAINST 5090.1

05

3 Feb 03

Hearing Tips

1. Be on time (or preferably early).
2. Attend the open house portion only if you are comfortable doing so. Those individuals that you do meet during the open house should understand your role in the process. Let them know you are there solely as the Hearing Officer, and that you take no particular position in regard to the subject of the hearing (i.e., the proposed action and/or the DEIS).
3. Make sure you eat prior to arrival, as most open house sessions run from 1630-1830, and the hearings typically start at 1900 and can last until midnight.
4. Familiarize yourself with the hearing venue and make sure you have water available.
5. Check microphones and lighting.
6. Try to speak with the initial speakers, who are generally elected officials. Explain, or have someone else explain, that utilization of the title "Your Honor" in addressing the military judge serving as Hearing Officer has helped to create an atmosphere that promotes orderly proceedings. If elected officials set this tone of respect in their comments, other speakers tend to follow suit.
7. Talk with the reporter/stenographer before the hearing begins and discuss signals from him/her regarding problems/breaks.
8. Ask speakers to spell their last names for the reporter/stenographer and to speak clearly and slowly.
9. Set a firm, but polite tone early on, indicating that applause and outbursts are inappropriate and will not be tolerated. Inevitably there will be some outbursts and rude comments or interruptions, but you can end them each time with a well placed, "Please, ladies and gentlemen." Emphasize the importance of trying to give everyone a chance to speak when quieting the crowd.

10. Become thoroughly familiar with the process by which speakers will be timed (see enclosure (2)). Once the red card goes up signaling the end of a speaker's time, try to determine if they have acknowledged the signal and are wrapping up quickly. Allow a few seconds for this, but speak up at the break of a sentence to end their time, if they continue. Speakers should normally be allowed three minutes to speak. However, particular circumstances may dictate that you use discretion in determining how strictly to enforce this standard. If a speaker refuses to stop speaking and abuses any latitude you may have given, close the hearing and inform the speaker that comments are no longer being recorded until he or she steps down.
11. Never say the first thing that comes to mind in response to a rude or angry comment or action. Ask yourself if it is the most effective and appropriate way to handle the situation.
12. Leave your ego at home; it gets in the way of your judicial temperament.
13. Be patient, be neutral, be unemotional.
14. Do not answer speakers' questions about the DEIS or Federal action.
15. Do not allow rebuttal from any military/government official of any comment made on the record.
16. Do not allow argument between the speaker and anyone.
17. Do not allow sidebar arguments among the audience.
18. If you decide to speak to the media (which is not recommended), stick to your role as hearing officer and the fact that you are there to make sure every speaker gets an equal opportunity to express their concerns and opinions.
19. Attempt to strictly adhere to the time limits established for the public hearing, but be flexible enough to accommodate additional public comment that may necessitate expanding the originally scheduled time for the hearing. If you decide that

JAGINST 5090.1

05

3 Feb 03

it is too late to continue, simply tell the audience that. Do not make promises you can't keep, such as scheduling another date for comments.

20. Thank your audience for coming and try to emphasize that their presence and/or participation that evening is important and patriotic, regardless of the views they may have expressed.

SCRIPT

[MILITARY JUDGE AS HEARING OFFICER]

**PUBLIC COMMENT HEARING
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Good evening ladies and gentlemen and welcome to the public hearings on the Draft Environmental Impact Statement for the (title or description of proposed Federal action). Let me begin by thanking each of you for your attendance here tonight. I am (title and name of hearing officer), and my role is to serve as the hearing officer, or moderator, for this public hearing. I am a member of the (Judge Advocate General's Corps of the United States Navy) (United States Marine Corps), currently serving as a military judge assigned to the Navy-Marine Corps Trial Judiciary. I am not, and have not been, affiliated in any way with either the (name of Federal program or proposed action) or the Draft Environmental Impact Statement. As a sitting military judge, I am required to remain neutral and to act impartially in all matters under my cognizance. My job here tonight is simple, it is to ensure that we have a fair, orderly, and impartial hearing, during which, consistent with the tenets of the National Environmental Policy Act, all who wish to provide comments will have the opportunity to do so. I expect there will be a wide range of comments expressed this evening and I ask that we treat each other with courtesy and respect. Throughout this hearing, I ask that you keep in mind that this is not an arena for debate; it is not a popularity vote on the Draft EIS; nor is this hearing a question and answer session. This public hearing is your forum to express your views on the adequacy or inadequacy of the Draft Environmental Impact Statement and to have those comments made part of the official record.

The public hearing will begin with a brief presentation where a Navy representative will present information to you concerning the environmental impact analysis performed regarding the proposed action. The briefing takes about ____ minutes and is required by statute as part of the National Environmental Policy Act (NEPA) process. Following that presentation, we will begin hearing your comments on the Draft Environmental Impact Statement.

Enclosure (2)

JAGAINST 5090.1

05

3 Feb 03

This hearing is being held in accordance with the provisions of the National Environmental Policy Act and the regulations that are published by the Council on Environmental Quality. The purpose of this hearing is to provide a public forum to summarize the results of the Draft Environmental Impact Statement and, more importantly, to receive your comments on the Draft. These comments will be part of the official record and will be considered in preparation of the Final Environmental Impact Statement (FEIS). Your comments and involvement in this hearing are very important to the decision-making process. Your input provides the decision-makers with the benefit of your knowledge of the local area and any environmental impacts that you think may result from the proposed action.

This hearing is the venue that the Navy uses to gather your concerns, whether they are through oral or written comments, about the adequacy of the environmental analysis and the environmental impacts identified under the proposed action and alternatives. We ask that you focus your comments on the environmental issues at this hearing. Non-environmental issues will take away time from others' opportunities to comment on the analysis of environmental concerns and will not add to the adequacy of the analysis used in the Final Environmental Impact Statement.

As I said earlier, it is my job to ensure that each of you has an equal opportunity to speak. The Navy representatives will not be allowed to respond to your comments. I will also enforce the individual time limits previously established so that all may have an opportunity to speak. Please do not interrupt any speaker, whether you agree or disagree with them. Interfering with the speakers will simply reduce the amount of time available for all of those who desire to be heard. Applause and outbursts will simply take valuable time away and hamper me in trying to afford everyone a chance to speak.

This hearing is scheduled to adjourn at _____. If, after everyone who desires to speak has had an opportunity, and if there is time left, I will permit speakers to use the additional time to continue their earlier comments. If you decide to speak, the stenographer will record your comments. You are also encouraged to continue your comments or elaborate on them

through a written submission. If you have written comments with you tonight, simply turn them in to the reporter/stenographer or any Navy official present this evening. If you desire, you may mail additional comments to the address provided both at the end of the presentation and in the informational material made available to you during the open house. Written comments will be accepted throughout the comment period, which concludes the (date). Comments made at all the public hearings or provided in writing throughout the public comment period will be given equal consideration and are all part of the official record.

When you came in tonight, you should have signed in and received fact sheets. You also should have been asked to indicate if you wished to speak. If you have not done so, and would like to speak, please raise your hand and we'll sign you up.

Elected officials, if present, who choose to comment will be given an opportunity to speak first. Members of the public will then be called upon in the order in which they have signed up to speak. I will call five names using the speaker registration cards that you have filled out. All five should come forward to the microphone area. The first person called will be the first person to speak. Please state your remarks clearly so that the stenographer can more easily record your statement. It is important that each of you speak clearly. State your full name and spell it out so we can record it correctly. If you are representing someone or some group other than yourself, please state that, as well. Please do not provide any personal information in your comments if you do not want that information published in the Final Environmental Impact Statement.

Each person will be allotted 3 minutes to speak. This applies to everyone: public officials, spokespersons, and individuals. You do not have to speak for the full 3 minutes. However, if you do choose to speak for the 3 minutes, a yellow card will be raised when you have only 30 seconds remaining. When your 3 minutes has ended, a red card will be raised and you need to end your statement. Out of respect for others who would like to make comments, I ask that you please honor this time limit and any request I might have for you to stop speaking should you exceed the time limit. If you think you will have more comments than you can present in the time allotted, make the most

JAGINST 5090.1

05

3 Feb 03

important comments first. If you do not have the opportunity to voice all of your comments, you can and should submit them in writing.

I will now turn the floor over to the Navy representative who will provide an overview of the EIS process, and describe the environmental consequences of the proposed action.

[After completion of the EIS process briefing by the Navy representative, the Hearing Officer should begin taking public comment on the proposed action and DEIS by calling upon the first group of speakers.]