

NEW TOWER RULES
THE FCC APPROVAL PROCESS INVOLVING
NEPA ENVIRONMENTAL COMPLIANCE AND
ANTENNA STRUCTURE REGISTRATION
OCTOBER 2012

NEPA/SHPO ENVIRONMENTAL COMPLIANCE

Many broadcasters believe that construction of a radio tower is a matter requiring only FAA, local and possibly state approval prior to commencing construction. When it is learned that the FCC has very specific environmental assessment requirements which must be completed before the construction permit can be granted, the unplanned cost, potential complications and delay are never welcome. The purpose of this article is to explain the process so that it is not a surprise and, in fact, can be incorporated into the schedule and budget from the very beginning. The good news is that often the local approval process requires some of the same studies that are required by the FCC.

What is the FCC looking for? First, that the investigator answering the questions listed below meets the Secretary of the Interior's Professional Qualification Standards¹ - this is not a process that can be handled "in house." If the investigator is able to answer "No" to each question, no further investigation is required for FCC environmental purposes. If any of the questions have a "Yes" answer, an Environmental Assessment must be completed and filed with the FCC. No construction may begin until the FCC has reviewed the assessment and approved the proposal. The questions requiring a "No" answer are:

1. Will the facility be located in an officially designated wilderness area?
2. Will the facility be located in an officially designated wildlife preserve?
3. Will the facility affect Federally listed, threatened or endangered species or designated critical habitats, is the facility likely to jeopardize the continued existence of any Federally proposed endangered or threatened species, or likely to result in the destruction or adverse modification of Federally proposed critical habitats?
4. Will the facility affect districts, sites, buildings, structures, objects or other cultural resources listed, or is it eligible for listing, in the National Register of Historic Places?

¹ Standards may be accessed at http://www.nps.gov/history/local-law/arch_stnds_9.htm

5. Will the facility affect Indian religious sites?
6. Will the facility be located in a flood plain?
7. Will the construction of the facility involve a significant change in the surface features (e.g., wetland fill, deforestation, or water diversion)?
8. Will the antenna tower and/or supporting structure be equipped with high intensity white lights and be located in a residential neighborhood, as defined by local zoning laws?
9. Will the proposed facility fall outside the categorical exclusions contained in Table 1 of 47 CFR Section 1.1307(b)(1) and potentially cause exposure of workers or the general public to levels of radiofrequency radiation in excess of the emissions limits set forth in Section 1.1310?
10. Will the proposed facility be constructed within one (1) mile of the centerline of a National Scenic Trail and has the Trail Management Office indicated that the proposed construction will have a significant adverse effect?

In order to properly answer these questions the investigator will typically visit the site and then submit a site plan to the State Historic Preservation office ("SHPO") and go through the Tribal Notification process available through the FCC website. The investigator (environmental consultant), like all professionals are not always equal in terms of price, turnaround time and experience. You can control your costs by encouraging your environmental consultant, FCC attorney, consulting engineer, local land use attorney, civil engineer and chief engineer to share information and work together as a team. You will find that both your FCC legal counsel and consulting engineer will have worked with multiple environmental consultants and can direct you to a firm that they know and trust. The environmental research is not always straightforward. Knowing when a SHPO or tribal group is asking for more than what is appropriate takes experience and good negotiating skills.

The FCC Audio Division staff reviews every application for new tower construction to confirm that the National Environmental Policy ACT ("NEPA") requirements have been met before a construction permit is granted. It should be noted that the FCC, as a Federal Agency, must uphold the requirements of the Declaration of National Environmental Policy created by the federal government; the regulations were not created by the FCC itself. Members of the FCC Audio Division Supervisory Staff were kind enough to offer guidance for AM & FM broadcasters in regard to the filing of an application for construction permit involving tower construction.

- Σ Take a few minutes to review the information found at http://wireless.fcc.gov/siting/EA_checklist.pdf to understand what the environmental process is all about.
- Σ Check “yes” for the box saying that the proposal will not have a significant environmental impact and complies with OET-65 Guidelines. Do not add qualifying language regarding environmental impact. Do not submit a copy of the environmental consultant’s environmental analysis.
- Σ Applicants are cautioned not to check “yes” if the environmental analysis has not been undertaken. Tower construction is a hot topic in many sectors of society including the bird community, historic preservation and groups that oppose towers due to visual impact or an expectation of lowered property values. These organizations watch for opportunities to file a petition to deny or informal objection which can delay application processing or result in a CP grant being rescinded, at a minimum. Checking the “yes” box without having undertaken the requisite environmental analysis could leave the applicant open to sanctions for false certification or misrepresentation.

MODIFICATIONS TO THE ANTENNA STRUCTURE REGISTRATION (ASR) PROCESS

On December 9, 2011, the Commission issues a “Order on Remand” in WT Dockets 08-61 and 03-187 which deals with the effects of communications towers on migratory birds. A pre-application notification process was instituted in conjunction with this Order to provide the public with an opportunity to comment on the potential environmental effects of proposed antenna structures that require registration with the Commission. Such structures would include those over 200’ in height and which would require FAA approval and registration in the Commission’s Antenna Structure Registration (ASR) database. Additionally, any proposed tower over 450’ in height will be required to submit a full Environmental Assessment (EA).

These new requirements do slow the prior ASR process. The tower proponent must provide local public notice of the proposal which contains the specific information submitted in the proposal and alert the public that it has thirty (30) days during which they can file a request for additional environmental study. If no such request is submitted during this time period, the application will be able to be finalized. Should a request by the public for further study be submitted, however, this will

slow down the ASR process. If an EA was submitted in conjunction with the application, the Commission will require the requestor to substantiate why the EA was insufficient in resolving the concerns raised and, if the Commission agrees, additional EA will be required. If the Commission does not agree with the concerns raised, the request will be denied and the application can then be processed.

Specifics relating to both the NEPA/SHPO and EA with respect to the potential effect of new tower construction on migratory birds and the ASR process should be addressed by your FCC attorney and consulting engineer.

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