

## **Why were public comments at public meetings not officially recorded by the Navy or Forest Service? And what did this do for the “legal standing” of those people who attended and spoke out?**

Due to the high volume of complaints received after the public learned about the Navy’s electromagnetic warfare plans six weeks after the comment period on its Environmental Assessment had closed (and the Navy noted that no comments had been received,) Congressman Derek Kilmer asked the Navy to meet with the public in affected communities. Forks, Port Angeles and Pacific Beach were chosen. The Forest Service did not bother to show up at the Pacific Beach meeting, which disappointed the nearly 200 people who attended. But even at the other meetings, every time the Forest Service was asked a direct question, the Navy intervened and answered it for them.

Instead of holding hearings as required under NEPA (the National Environmental Policy Act of 1969) when controversy exists over a proposed federal action, however, the Navy and Forest Service held “Informational Meetings.” Because they were not official hearings due to the irony of being held after the official 15-day comment period had closed unknown to the public, neither the Navy nor the Forest Service felt obligated to record any public comments at these meetings.

This has further upset people’s confidence in government and muddied the understanding of the NEPA process. Many wonder why they aren’t getting a fair shake under normal NEPA procedure. The White House Council on Environmental Quality (CEQ) regulations require that agencies “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6(a)). “Informational meetings” such as the ones held in these three communities fulfilled neither NEPA requirements nor the public’s desire to comment, ask questions, and receive answers, especially when people were given one minute to speak and then interrupted frequently. The Navy failed to conduct a proper NEPA process.

**When hearings are required:** Public meetings or hearings “...are required when there may be substantial environmental controversy concerning the environmental effects of the proposed action, a substantial interest in holding the meeting, or a request for a meeting by another agency with jurisdiction over the action.” (40 CFR 1506.6 (c)). Proper hearings under NEPA were held in affected communities, and the usual citizen’s right to register comments at public hearings was denied. Therefore the Navy and the Forest Service have violated NEPA in this regard, too.

Why are the Navy and Forest Service discounting the extreme level of public sentiment that is being amply demonstrated in other ways besides formal written comments?

Since none of the hundreds of people who spoke out at the Navy’s informational meetings had their comments officially recorded, even though many brought written comments that were also not accepted, none of them have any legal

standing in the NEPA process, unless they also knew to submit their comments in writing to an official address or via a web site, neither of which were easy to find because NO PUBLIC NOTICES HAD BEEN GIVEN IN ANY NEWSPAPERS DIRECTLY SERVING THOSE COMMUNITIES. The circularity of this irony is breathtaking.

Had those meetings been true public hearings, those commenters would now have legal standing. The public's right to a full hearing is codified in the Code of Federal Regulations at 40 CFR, and in the State of Washington Revised Code, at RCW 42.30.

**What legal standing means:** Any grievances the public has about electromagnetic warfare testing and training MUST be addressed in public comments submitted in writing, in specific places, during specified comment periods, in order to have legal standing. What these comments do is to say we the people are giving the Forest Service and the Navy notice that we think these grievances should be addressed. If those grievances are not rectified in follow-up documents, any legal actions on behalf of the public that follow would have more authority, because the Navy had been aware of the grievances yet chose not to address them. Without legal standing, those legal actions on behalf of the public would likely have less authority due to the implication of no notice of grievance being given in public comments. So, if you did not submit comments in writing to the exact address or on the exact web site during the exact times the comment periods were open, you have no legal standing with which to take or participate in any legal action initiated on the basis of those grievances, to mitigate, amend or stop the proposed activity.

Failure to hold proper hearings in affected communities and to officially record public comments was a denial of due process as stipulated in NEPA, and the reduced number of comments that these agencies actually considered represent a distortion of the true amount of public concern. On page 1-8 of the Environmental Assessment, the Navy states, "No comments were received on the draft EA." That is *exactly* the fear of people who attended those meetings, that their comments would not be acknowledged and that the absence of their comments will be reflected similarly by the Navy as it did in their Environmental Assessment, thus implying less public interest than there really is.

**Written comments are also being discounted:** Despite the level of public concern remaining extremely high, the Forest Service District Ranger was recorded on videotape during the meeting in Port Angeles saying that as of November 6, with regard to formal written public comments, the Forest Service had received "nothing substantive" that would stop him from signing the permit. He remarked that he was looking exclusively for defects in the Environmental Assessment, and insisted that public opinion doesn't count if people simply express their objections. He also said that the 2,000 written comments that had come in as of that date were "not a lot" and had had no effect on him. The comment period was extended twice, yet the public still struggled to wade through thousands of pages of scientific and technical documentation, much of which still remained unavailable to them. By not allowing the public sufficient time to catch up with a process they entered late, through no

fault of their own, and by not allowing them time to develop substantive comments, the Forest Service also compromised NEPA law.

As of early 2015, the Forest Service announced that it is considering all of the comments, some of which came in after the comment period closed, and made the total as of the end of 2014 more than 3,800 comments. A decision on whether to issue the Special Use Permit for the Navy to use Forest roads for its mobile emitters will not be made until “deep into 2015.” Despite this announcement, what is the point of a public comment process if the Forest Service publicly declares it ignores public opinion?

And why were the hundreds of people who spoke out at meetings never recorded and thus given no legal standing?

You can view all of the public meetings on videos made by RainDagger Productions, in the following locations:

In Forks: <http://vimeo.com/album/3091035>

In Port Angeles: <http://vimeo.com/album/3121050>

In Pacific Beach: <http://vimeo.com/album/3144813>