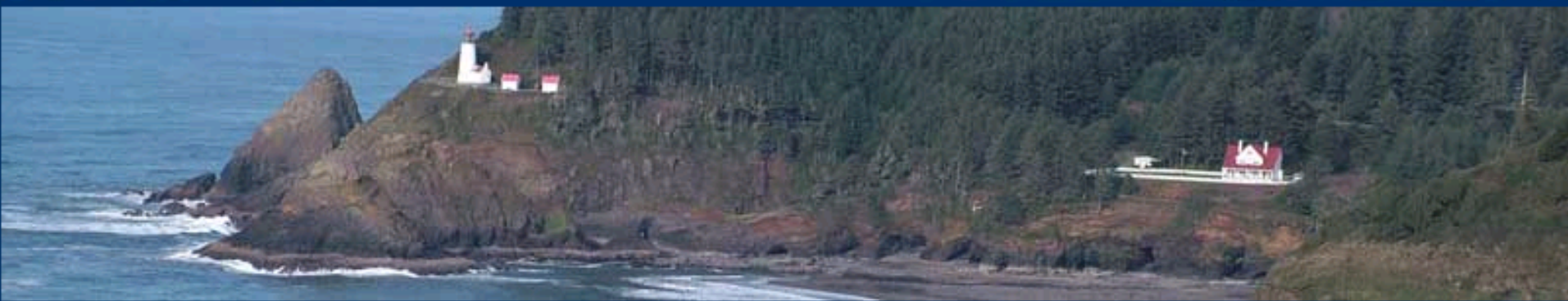


Fraud, Lies, Omissions, Plagiarism, False Statements, Chicanery, Dishonesty, and Non-Disclosure in EIAs – *What to do?*

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Please join me in a search.

It is a true search for solutions.

I don't know the answer.

Perhaps we can find some solutions together.

Or maybe there is no problem? (Hah!)

Dishonesty, Omissions, and Fraud

Australia – strange cost/benefit numbers

Warkworth and Boggabri coal projects

**Profits to foreign owners were counted as
“community benefits” – 75% of the profits!**

– Overstating community benefits by \$1.4 billion

Rod Campbell, Matt Grudnoff, “Economic assessment of environmentally damaging mining and gas developments in New South Wales,” April 2013

Dishonesty, Omissions, and Fraud

Australia

Ocean sewage pipe (“outfall”)

- Scientific studies that demonstrated harm (from the Fisheries Research Institute) were omitted**

Prof. Sharon Beder, “Bias and Credibility in Environmental Impact Assessment”

Dishonesty, Omissions, and Fraud

China

Nuclear Plant

- Complaints filed by 4 former government officials
- Data on affected population were falsified

Cui Zheng, “Ex-officials Battle Plan to Build Nuclear Project,” *Caixin Online*, March 9, 2012

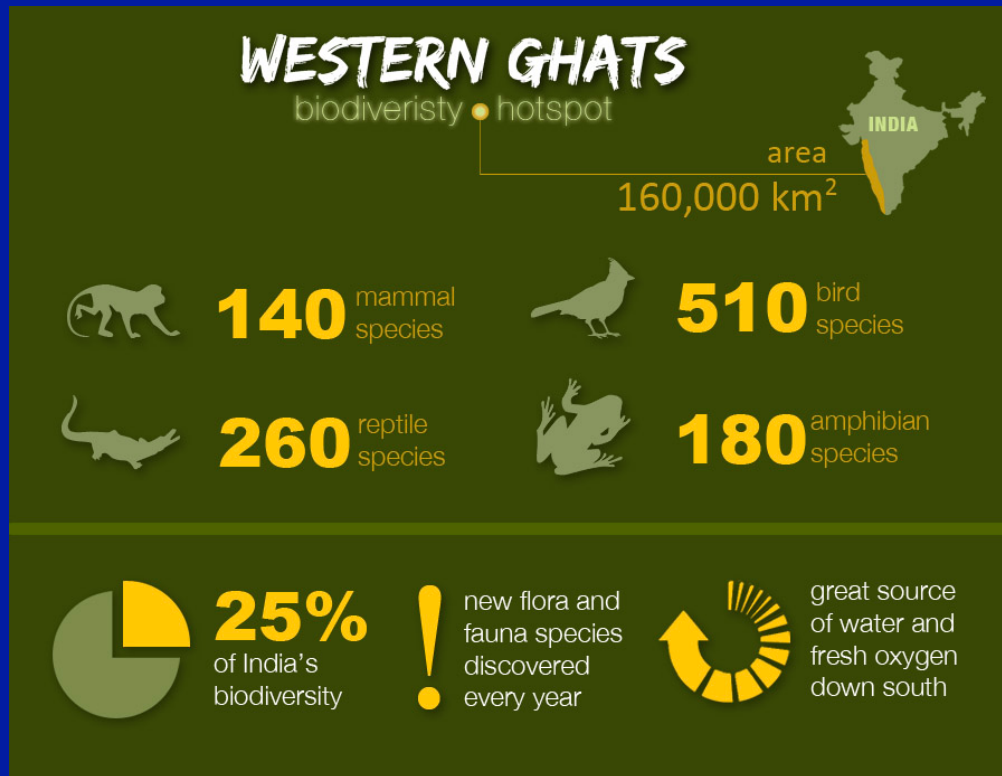
Dishonesty, Omissions, and Fraud

China

- **95% of EIAs contain falsified data**
 - Feng Yongfeng, founder of the NGO Green Beagle
- **Hundreds of cases about forged environmental impact assessment reports**
 - Prof. Wang Canfa, Center for Legal Assistance to Pollution Victims

Veronica Wang, "Amid Smog Deluge, China Environmental Reports Accused of Fraud," *The Epoch Times*, January 16, 2013

Dishonesty, Omissions, and Fraud



India

“rarely a case of honest environmental clearance”

— Chairman of the Western Ghats Ecology Expert Panel

Dishonesty, Omissions, and Fraud

Ukraine

EIA claimed that a nuclear accident would cause “low emissions”

Communication from attorney at Environment-People-Law, Ukraine

Dishonesty, Omissions, and Fraud

USA

- Lots of examples!
- Because more litigation?

USA – 1

Highway project, New York

- To support its EIS in court, the government produced an expert, saying no striped bass were present in the area.
- In cross-examination, however, the NGO produced a study written by the same expert that had shown the presence of the fish in the area.
- *Sierra Club v U.S. Army Corps of Engineers*, 614 F.Supp. 1475, 1511 (D.N.Y. 1985)

USA – 1

- The judge wrote in his decision:

The expert “responded in a fashion which must be remarkable in the annals of courtroom testimony. He stated that he does not agree with [his own] statements [that the fish were present], and did not agree with them when he wrote them in October and when they were put in typed form in December.

“[His] testimony is a collection of assertions so irresponsible that it is shocking that the Government ever [presented] him as a witness.”

USA – 2

Cattle on public lands, Arizona

- The U.S. Bureau of Land Management claimed it had done studies on the effect of cattle grazing on the *Sonoran desert tortoise*. Later an access to information request showed that no such studies had been done.

Personal communication from attorney colleague

USA – 3

Water extraction, Maine

- **The U.S. Bureau of Reclamation claimed that a quantitative study of cumulative impacts of water extraction was impossible. But the Bureau had just conducted that exact quantitative study on the same proposal in a consultation process under the Endangered Species.**

USA – 4

Oil and gas, Colorado

- The environmental assessment claimed that “mitigation measures” would protect a sensitive aquifer. But such measures for the project “were not even developed, much less evaluated.”

San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Service, 657 F.Supp.2d 1233, 1245 (2009).

Dishonesty, Omissions, and Fraud

Greece

Majority of EIAs from 1993-2003

(Ancient History?)

- Omitted needed information
- “performed rather poorly in respect of most indicators used.”

Ioannis Androulidakis, Ioannis Karakassis, “Evaluation of the EIA system performance in Greece,” *Environmental Impact Assessment Review* 26 (2006) 242 – 256

Dishonesty, Omissions, and Fraud

Greece EIAs (1993-2003) (ancient history?)

- 86.5% did not discuss the existing environment
- 1/3 of EIAs did not discuss impacts of the operation of the project
- 60% inadequately discussed construction impacts
- 40% of EIAs described only positive impacts of construction and operation
- 70% did not mention any monitoring method

Dishonesty, Omissions, and Fraud

Greece (1993-2003)

- 78% of EIAs did not estimate costs and benefits of projects
- 43% of EIAs did not cite reference sources
- 92% of EIAs made no reference to public participation
- Two EIAs showed “essentially the same text” with various “copy–paste” attributes

Toxicology Fraud (but not EIA)

USA

- **Industrial Biotech Laboratories provided 1/3 of all the toxicology testing in the USA for pesticides, pharmaceuticals, cosmetics, etc.**
- **“Thousands of its studies were revealed through EPA and FDA investigations to be fraudulent or grossly inadequate.”**
- **Three officials were found guilty.**
- **(Then Congress left products on the market.)**

Coppolino, Eric Francis; Hilary Lanner, Brenda Shawley (September–October 1994). "Pandora's poison". In Rauber, Paul. *Sierra* 79 (5): 40.

“Federal Court Finds IBT Officials Guilty of Fraud,” *Science*, 4 November 1983, Vol. 222 no. 4623 p. 488. <http://www.sciencemag.org/content/222/4623/488.2.citation>

Are EIA consultants in the EU more honest than others?

Poland

- **EIAs**
 - **Subcontracted expert reports modified by the EIA consultant in the EIA**
 - **In one consultant company, an employee tried to prevent this through contract provisions**
 - **The employee left that employment**

Information obtained on a confidential basis from a colleague.

Are EIA consultants in the EU more honest than others?

Romania (2012)

SEA – Coal-fired power plant, Galați City (Delta)

- An expert had studied bird migration – many Natura 2000 sites – protected species**
- Local authorities in July 2011 granted the change of the intended use of the area from “destined to offices and other activities” to “area for industrial purposes.”**

Are EIA consultants in the EU more honest than others?

Romania (2012)

SEA – Coal-fired power plant, Galați City (Delta)

- **Zoning change required an SEA**
- **Same expert was hired**
- **He wrote that no protected species were found in the area**
- **After the SEA report, monitoring took place**
- **Surprise!! Protected species found**

Are EIA consultants in the EU more honest than others?

Spain - Murcia

- There was an orchard of lemon trees
- A developer bought the land and cut down the trees



Are EIA consultants in the EU more honest than others?

- **He applied for changes in the land use plan (to “urbanization” area)**
- **In the application, he said there was “no agricultural activity in the area”**

Copy-and-paste EIAs

India

- **Dandeli Dam in Karnataka**
 - EIA by Ernst & Young
 - Copied 65 pages from the Tattihalla Augmentation Scheme EIA
 - “They didn’t even correct our spelling mistakes.”

Communication from Indian environmental advocate

Consultants plagiarise report to get Karnataka power project cleared

NEW DELHI: Can the environmental impact of two dam projects at different locations and on two different rivers be exactly the same? Can the villages to be submerged, the areas' flora and fauna, even the soil and water analysis data be exactly identical?

Yes, if Ernst & Young, which calls itself ``one of the world's leading professional services organizations" is to be believed.

Copypat dam study puts Ernst & Young in a spot

An environmental assessment study for an Indian dam project has been found to be almost totally copied from a study for another dam project

**By NIRMAL GHOSH
INDIA CORRESPONDENT**

THE STRAITS TIMES

NEW DELHI -- A small power project in south India may prove to be a major embarrassment for the international consultancy firm Ernst & Young and the investment-hungry state government of Karnataka.

Sixty of the 65 pages from the EIA of the Tattihalla Augmentation Scheme, a state government project, were reproduced verbatim in the EIA for the Dandeli project.

TABLE NO. 4.1
WATER QUALITY ANALYSIS

| Parameter | Station-1 | Station-2 |
|-------------------------------|-----------|-----------|
| Turbidity, (Secchi), cm | 7.0 | 4.0 |
| Salinity, pp ⁺ | Nil | Nil |
| pH | 8.1 | 8.2 |
| Dissolved Oxygen, mg/l | 7.0 | 7.42 |
| Free CO ₂ , mg/l | 4.0 | 3.7 |
| Carbonate Alkalinity, mg/l | Nil | Nil |
| Bi-Carbonate Alkalinity, mg/l | 88.0 | 128.0 |
| Free Ammonia, mg/l | Nil | Nil |
| Phosphates | Traces | Trace |
| Silicates, mg/l | 1.20 | 1.20 |
| Nitrites, mg/l | Traces | Trace |
| Nitrates, mg/l | 0.180 | 0.16 |
| Iron (Ferric), mg/l | 0.16 | 0.16 |

DANDELI MINI HYDEL PROJECT
Rapid Environmental Impact Assessment Study Report

Water Quality Analysis
Table No. 4.1

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Copy-and-paste EIAs

India

No Russian forests in India

The environmental impact assessment (EIA) for a bauxite mining project in Ratnagiri, Maharashtra, India, was based on data simply copied from a Russian bauxite mine report that had nothing to do with Ratnagiri's vegetation or ecology.

Communication from Indian environmental lawyer

Copy-and-paste EIAs

India

- According to the EIA, “The primary habitat near the site, for birds, is the spruce forests and the forests of mixed spruce and birch.” However, such tree species do not exist in India.
- “Unless, by some amazing coincidence, mineralization in the Barja river in India and the Vorykva river in Russia both peak at 452.95mg/l during the summer months, then the water quality information in the Indian EIA for the Ashapura project in Ratnagiri is fraudulent.”

Report by Dr. Mark Chernaik, Environmental Law Alliance Worldwide (2007).

Copy-and-paste EIAs

Ukraine

**They forgot to change the city name from
“Kyiv” to “Lviv.”**

(That’s hard to mistake even in Cyrillic)

Київ

Львів

Communication from attorney at Environment-People-Law, Ukraine

Copy-and-paste EIAs

USA

**Gulf of Mexico oil emergency plan copied from
Alaska plan – no walruses in the Caribbean**

Copy-and-paste EIAs

USA

- A federal government agency simply cut and pasted Monsanto's reports into the appendices of an EIA, presenting the reports as the agency's own work product (without any citations).
 - U.S. federal judge accepted this.
 - The material had been “independently evaluated” by the government body.
 - I try to keep this case away from my own students.
 - They might be tempted by the invitation to “independently evaluate” things they read on the Web and paste them into their research papers.

Center for Food Safety v. Vilsack, 844 F. Supp. 2d 1006, 1022-23 (N.D. Cal. 2012)

How to Enforce Quality & Honesty?

- **Ethics codes?**
- **Academic sanctions?**
- **Cancellation of project approval?**
- **Cancellation of accreditation?**

Laws about Lying

- **Estonia: Environmental Impact Assessment and Environmental Management System Act (2005)**
 - License for EIA preparation can be suspended if holder submitted inaccurate or false information or incorrect assessment (sec. 22).
 - The penalty? 40 hours of training!
 - Then suspension is lifted.

How to Enforce Quality & Honesty?

- Criminal responsibility for dishonesty and non-disclosure?
- Civil financial liability?
- Independent reviews?
- Immediate availability of all underlying data and studies used in EIAs?
- Independent citizen litigation?
 - But by whom? Who has the money?

**Is more citizen enforcement needed?
(by “authentic citizens and NGOs”?)**

**Is the Aarhus Convention the answer?
Maybe not, according to NGOs:**

**“Individuals and NGOs are often effectively
barred from seeking justice . . .**

**“In such situations, the Aarhus Convention may
be seen as consisting of two pillars and a
broken stick.”**

The Almaty NGO Appeal for Justice (2005)