

U.S. Department of Energy
Washington, D.C.



Secretary of Energy
NOTICE

SEN-15-90

SUBJECT: NATIONAL ENVIRONMENTAL POLICY ACT

DATE: 2-5-90

In announcing my 10 point initiative to ensure that all Departmental activities are carried out in full compliance with the letter and spirit of environmental statutes and regulations, I indicated that many of the Department's activities under the National Environmental Policy Act (NEPA) had been carried out in a decentralized, non-uniform and self-defeating manner. I also stated my intention to become personally involved in NEPA decisionmaking, and to ensure that NEPA actions are more closely coordinated with the Governors of the states which host DOE facilities. I directed that the Department's NEPA procedures be revised to accomplish these goals and to correct the problems in NEPA compliance which had been previously identified.

After a thorough review of the Department's NEPA procedures and past practice (including DOE Order 5440.1C, the DOE NEPA Guidelines and relevant Departmental guidance memoranda), I am convinced that the Department's line organizations, which have the responsibility for preparation of NEPA documents, have not sufficiently incorporated the requirements of NEPA into the planning process for new projects at the various DOE sites. Every line manager and employee must understand that, as with all other environmental and safety requirements, compliance with NEPA should be entirely consistent with efficiency in achieving mission goals if NEPA requirements are considered early in the planning process. Indeed, mission goals are best served by early and adequate NEPA planning, which avoids the delays that often follow eleventh hour consideration of NEPA requirements, the resulting failure to comply fully with those requirements and, ultimately, the necessity to cure NEPA-related deficiencies before an important project may proceed. If the Department is to err in its judgment as to the extent of NEPA review required of new projects, it should err on the side of full disclosure and complete assessment of environmental impacts.

Therefore, in order to correct the deficiencies and accomplish the objectives discussed in my 10 point initiative, I am directing that the following revisions be made in the Department's NEPA compliance procedures:

I. REVISIONS TO DOE ORDER 5440.1C

A. Any prior delegations of authority from Secretarial Officers¹ to operations office managers to approve Memoranda-to-File (MTF) are

¹ For purposes of this Notice, Assistant Secretaries, Directors of the Offices of Environmental Restoration and Waste Management, Energy Research, New Production Reactors and Civilian Radioactive Waste Management, as well as the Administrators of the Western Area Power Administration and the Bonneville Power Administration, are considered to be Secretarial Officers.

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withdrawn. The operations office managers will retain the authority to make decisions regarding the appropriate level of NEPA documentation only for those categories of actions specifically listed in Section D of the DOE NEPA guidelines. This authority may not be redelegated. Each decision to apply a categorical exclusion or other Section D category will be documented and reported to the appropriate Secretarial Officer and EH-25 within two weeks. Within two weeks thereafter, EH will indicate in writing to the appropriate operations office manager and Secretarial Officer any objection to the use of the Section D category. (As indicated in paragraph IIC, the "catch-all" categorical exclusion will be eliminated and effective immediately is not to be used. The list of categorical exclusions will be supplemented and the language of the exclusions will be reviewed to assure that the need for subjective judgment is minimized.) Notwithstanding EH oversight responsibilities, which shall include periodic NEPA compliance audits, Secretarial Officers will be responsible for monitoring the application by the operations office managers of Section D categories in their respective program areas.

B. The use of MTFs will terminate as of September 30, 1990 (end of FY 1990). Until MTFs are eliminated, Secretarial Officers will make decisions regarding whether MTFs are appropriate and will approve MTFs when appropriate, i.e. only when the proposed action is clearly insignificant from an environmental impact point of view. This authority may not be redelegated. All MTFs will immediately be sent to EH, which will monitor compliance of the programs with the established criteria for use of MTFs and within two weeks of receipt of an MTF report any non-compliance to the responsible Secretarial Officer and to the Secretary.

C. For actions not covered by Section D of the DOE NEPA Guidelines, EH-1 will make all determinations whether to prepare Environmental Assessments (EAs) or Environmental Impact Statements (EISs), based upon recommendations of the Secretarial Officers. EH will raise significant or controversial proposals to the Secretary for his decision whether to proceed initially with an EA or EIS.

D. Secretarial Officers will be responsible for ensuring that appropriate NEPA reviews are performed early in the project planning process so that required NEPA documentation can be prepared in a timely fashion. Secretarial Officers will review all FY 1990 and FY 1991 projects to verify that NEPA compliance planning has been incorporated into project planning and will provide a status report to EH-1, with a copy to the Secretary, within 90 days. EH will monitor project planning within the project management system administered by MA through DOE Order 4700.1, to ensure that NEPA milestones are incorporated into project planning documents. The internal budget review process will include a mandatory NEPA status report, reviewed by EH, to ensure that project schedules include appropriate NEPA compliance planning.

E. Each headquarters office having NEPA responsibilities and each operations office will augment its environmental compliance staff as appropriate so that a variety of environmental disciplines is represented sufficient to ensure (1) that the preparation of NEPA documents is properly supervised and (2) that the documents are technically complete and accurate before they undergo EH review. A NEPA Compliance Officer will be designated in each headquarters office having NEPA responsibilities and in each operations office.

F. Secretarial Officers will forward EAs and EISs to EH-1 for approval. On a monthly basis, EH-1 will report to the Secretary in writing regarding each EA or EIS that is expected to be forwarded for EH-1 approval during the ensuing 90 days. The Secretary personally will approve all programmatic and site-wide EISs, and any other EAs or EISs identified either by EH or through the Secretary's review of the EH monthly report which warrant Secretarial approval. Whenever EH determines that an EA or EIS forwarded by a Secretarial Officer should be disapproved for lack of compliance with the requirements of NEPA and is returned to the responsible office for revision, a copy of the memorandum to the Secretarial Officer notifying him/her of the deficiencies in the document will be sent to the Secretary.

G. Secretarial Officers will determine whether a field office or the responsible headquarters office should more appropriately have responsibility for initial preparation of the required EA or EIS, based upon criteria to be developed by EH within 90 days.

H. Following completion of each EIS, the responsible Secretarial Officer will prepare an action plan for implementation of any commitment(s) made in the EIS/Record of Decision for mitigation of environmental impacts associated with the project. A copy of the action plan will be sent to EH. Each office responsible for preparing an EIS will also be responsible for tracking, and submitting related annual reports to EH regarding, the progress made in implementing the action plan. The same procedures will be used for any EA/Finding of No Significant Impact (FONSI) for which the FONSI is based, in significant part, on the commitment to take mitigative actions.

I. EH will have the responsibility for ensuring consistency in the agency-wide application of NEPA. As part of this task, EH will review on a continuing basis and, where necessary, augment its two-volume NEPA Compliance Guide, which shall be used by all Secretarial Officers and their organizations as guidance in the preparation of NEPA documents. EH will also develop training programs to assure that all personnel (headquarters and field), who are responsible for NEPA compliance, understand the statute, the Council on Environmental Quality regulations, the DOE NEPA guidelines, and their responsibilities in the preparation of the various levels of NEPA documentation. Workshops will be conducted on a regular basis both in the field and at headquarters

regarding NEPA compliance. In addition, where circumstances so justify, the EH Office of NEPA Project Assistance will continue to provide, upon request, guidance and assistance regarding NEPA compliance issues to Secretarial Officers and Operations Office managers.

J. DOE Order 5440.1C will be revised as appropriate by EH/GC to reflect the initiatives announced above, and submitted to the Assistant Secretary for Management and Administration within 120 days, and then to the Secretary for final approval.

II. REVISIONS TO DOE GUIDELINES

A. The DOE NEPA guidelines, revised as appropriate to reflect the initiatives announced below, will be published for public comment as proposed regulations using the notice and comment procedures of the Administrative Procedure Act. Any conforming changes necessitated by the revisions to DOE Order 5440.1C directed above should be included. A draft proposed rule should be prepared by EH/GC and submitted within 120 days for approval of the Secretary.

B. A draft agency-wide policy for development and updating of site-wide EISs will be developed by EH and submitted to the Secretary for preliminary approval within 60 days. When approved, the new policy will be incorporated into the proposed rulemaking package which will be prepared pursuant to the direction in paragraph IIA.

C. After seeking input from each Secretarial Officer, EH/GC will develop a revised and expanded list of categorical exclusions to be incorporated into the proposed rulemaking package which will be prepared pursuant to the direction in paragraph IIA. The language of the proposed categorical exclusions should be formulated so that the necessity for subjective judgment is minimized. The following categorical exclusion (the so-called "catch-all" exclusion) will be eliminated and, effective immediately, is not to be used:

Actions that are substantially the same as other actions for which the environmental impacts have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is still valid.

D. Scoping meetings will be required for all EISs, as will public hearings on all draft EISs. The minimum scoping period for all EISs will be 30 days.

E. All EIS implementation plans will be made public for information purposes.

F. Host states and, as appropriate, adjacent states will be notified of initial determinations regarding the level of NEPA documentation for all proposed DOE projects in the state.

G. All new MTFs prepared for the remainder of FY 1990 concerning proposed DOE projects will be sent to host states and, as appropriate, adjacent states for information purposes.

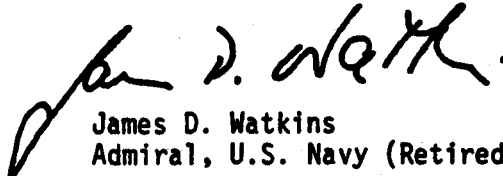
H. Each EA for proposed DOE projects will be provided to host states and, as appropriate, adjacent states for a 14-30 day comment period prior to EH (or Secretarial) approval. The length of the comment period will depend on the nature of the project evaluated in the EA and the extent of the analyses contained therein.

I. Analyses prepared pursuant to Section C.2 of the DOE NEPA guidelines to determine whether an EIS supplement is required will be made public for information purposes.

J. Pursuant to criteria to be developed by EH/GC and submitted for Secretarial approval as part of the proposed rulemaking package referred to in paragraph IIA, any deviations from the DOE NEPA Guidelines must be approved by the Secretary.

While, as described above, the Assistant Secretary, EH retains the approval authority for EAs and EISs, it should be emphasized that DOE Order 5440.1C squarely places the responsibility for preparation of timely and adequate NEPA documents on the DOE line organizations which carry out the projects analyzed in those documents. This is as it should be. Review by EH is not a substitute for competent, professional workmanship and supervision by the line organizations in the initial preparation of NEPA documents. I intend to hold each Secretarial Officer whose line organization is responsible for preparation of NEPA analyses personally accountable for the quality and sufficiency of those analyses. As this notice indicates, I will be notified of each instance in which a draft EA or EIS submitted by a Secretarial Officer is returned by EH for revision to cure significant deficiencies related to technical completeness or accuracy of the documents. Where there are gaps in the required expertise for the proper supervision of the preparation of NEPA documentation, the line organizations will be augmented to acquire the necessary talent.

Incorporation of NEPA requirements early in the project planning process together with attention to detail in the initial preparation of the required documents are mandatory if the Department is to both efficiently carry out its statutory mission and serve the goal of environmental "full disclosure".



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