Capt TAICK

400776

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

May 16, 1972

MEMORANDUM FOR AGENCY AND GENERAL COUNSEL LIAISON ON NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) MATTERS

Subject: Recommendations for Improving Agency NEPA Procedures

In response to a variety of agency inquiries, we are circulating the attached recommendations for improving agency NEPA procedures, taking particular account of judicial decisions construing NEPA. In a previous memorandum dated February 29, 1972 (a copy of which is also attached) Chairman Train drew attention to the continuing need for reviewing and improving agency NEPA procedures and made two basic recommendations:

1. "In particular we are interested in finding ways of consolidating numbers of impact statements into fewer but broader and more meaningful reviews."

2. "On the matter of applying the NEPA statutory language 'major Federal actions significantly affecting the quality of the human environment' to your particular agency programs and pinpointing the precise timing of the NEPA review and interagency consultations called for, your agency procedures must provide the specifics within the framework of the statute and our Guidelines. These procedures are important both in helping to identify the types of action on which impact statements are likely to be necessary and those where statements are not called for."

5005395

02332

2262

In addition to agency inquiries about the effect of court decisions, a number of agencies have raised procedural questions relating to the interpretation of existing provisions of the CEQ Guidelines which we feel deserve clarification in a general memorandum.

Agencies should consider the extent to which the issues discussed in this memorandum and Chairman Train's memorandum of February 29 are adequately dealt with under their existing NEPA procedures. In many cases, actual revision of NEPA procedures may not be necessary. In other cases, procedures or practices may have to be modified. Agencies are requested to inform the Council of the action they take in response to these recommendations.

Timothy Atkeson
General Counsel

Attachments

RECOMMENDATIONS FOR IMPROVING
AGENCY NEPA PROCEDURES

A. Substantive Issues: The Required Content of Environmental Statements.

1. Duty to Disclose Full Range of Impacts.

Court decisions under the National Environmental Policy Act have established that the "detailed" statement referred to in section 102 of the Act must thoroughly explore all known environmental consequences of and alternatives to major proposed actions even though this may lead to consideration of effects and options outside the agency's actual control.

Viewed as simply an application of NEPA's "full disclosure" requirement, this basic principle is meant to ensure that relevant officials and the public are alerted to the environmental impact of Federal agency action. See EDF v. Corps of Engineers, 2 ERC 1260, 1267 (E.D. Ark. 1971).

Furthermore, the range of impacts which must be considered cannot be limited to the traditional area of agency jurisdiction or expertise. NEPA in essence adds a new mandate to the enabling legislation of all agencies, requiring the development of environmental awareness for the full range of impacts of proposed agency action. By failing to discuss reasonably foreseeable impacts or by discussing those impacts in a perfunctory manner, an agency defeats the purpose of the statement and lays

itself open to the charge of non-compliance with the Act.*

In order to ensure full compliance with this requirement it is desirable that agencies develop in advance a list of the typical impacts of those classes of actions that the agency regularly takes. In developing such a list, agencies are reminded that impacts include not only direct effects, but also secondary effects such as "the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question." CEQ Guidelines §6(a)(ii).

By giving consideration to such impacts agencies should also be able to develop an increasingly specific set of standards for determining what constitutes "major," environmentally "significant" actions. Application of such standards to the normal range of agency actions will make possible earlier and more accurate identification of actions subject to the §102 requirement.

*See, e.g., Calvert Cliffs v. AEC, 2 ERC 1779, 1782 (D.C. Cir. 1971) (purpose of statement is to aid agency in its decision and to fully inform other interested agencies and the public of environmental consequences); EDF v. Corps of Engineers, 2 ERC 1260, 1267 (E.D. Ark., 1971) (statement must alert President, CEQ, public, and Congress to all known possible environmental consequences); EDF v. Hardin, 2 ERC 1425, 1426 (D. D.C. 1971) (agency must undertake research in planning stage adequate to expose potential environmental impact); Ely v. Velde, 3 ERC 1286 (4th Cir. 1971) (genuine rather than perfunctory compliance with NEPA requires agency to explicate fully its course of inquiry, its analysis and its reasoning); NRDC v. Morton, 3 ERC 1558, 1562, (D.C. Cir. 1972) (statement is for the guidance of ultimate decisionmakers -- Congress and the President -- as well as agency, and must provide discussion of all reasonable alternatives); Greene County v. FPC, 3 ERC 1595, 1600 (2d Cir. 1972) (statement must present "a single coherent and comprehensive environmental anal[illegible]

Recommendation #1: Agencies should develop a list of the full range of impacts likely to be involved in the typical types of actions they undertake. This will require a listing both of typical agency actions affecting the environment, see, e.g., Forest Service NEPA procedures, 36 Fed. Reg. 23670 (1971), as well as a list of related, potential impacts, see, e.g., Water Resources Council "Proposed Principles ...," 36 Fed. Reg. 24159-62 (1971). This description of potential impacts will help guide officials responsible for preparation of impact statements by ensuring that critical impacts are not overlooked and by making possible earlier, more accurate identification of "major," environmentally "significant" actions.

2. Duty to "Balance" Advantages and Disadvantages of the Proposed Action.

Inherent in the duty imposed on any agency by NEPA to promote environmental quality is the obligation to weigh the possible environmental effects of a proposal against the effects on other public values the agency is mandated to consider. If the environmental effects are adverse, the agency must consider whether they outweigh the benefits of the proposal in deciding whether to go ahead. This implicit requirement is confirmed by the directive of Section 102(2)(B) that agencies develop methods for giving "presently unquantified environmental amenities and values ... appropriate consideration in decisionmaking along with economic and technical considerations."

However, NEPA does not specify whether this balancing of environmental and other considerations must be spelled out in the environmental impact statement under Section 102(2)(C). Each of the five items expressly required to be included in the statement relates to environmental effects -- except the third, which does not specify what type of information should be given about "alternatives to the proposed action." From the bare language of Section 102(2)(C), it is not wholly clear whether the 102 statement is to catalog only the environmental effects of the proposed action and of alternatives, or whether the statement is to discuss all of the important considerations bearing on the wisdom of the proposed action.

The legislative history suggests that Congress did expect the 102 statement to record the agency's trade-offs of competing values. In explaining the bill on the Senate floor, Senator Jackson said:

> Subsection 102(c) establishes a procedure designed to insure that in instances where a proposed major Federal action would have a significant impact on the environment that the impact has in fact been considered, that any adverse effects which cannot be avoided are justified by some other stated consideration of national policy, that short-term uses are consistent with long-term productivity, and that any irreversible and irretrievable commitments of resources are warranted. 115 Cong. Rec. 29055 (Oct. 8, 1969). (Emphasis added.)

This interpretation is supported by several statements in court decisions. In the Calvert Cliffs case the court stressed the necessity for "balancing" under NEPA and the role of the 102 statement in showing how the balancing was done:

> In some instances environmental costs may outweigh economic and technical benefits and in other instances they may not. But NEPA mandates a rather finely tuned and "systematic" balancing analysis in each instance.
>
> To insure that the balancing analysis is carried out and given full effect, Section 102(2)(C) requires that responsible officials of all agencies prepare a "detailed statement" covering the impact of particular actions on the environment, the environmental costs which might be avoided, and alternative measures which might alter the cost benefit equation. 2 ERC at 1781-82.

Similarly, in Natural Resources Defense Council v. Morton, the court observed that:

> The impact statement provides a basis for (a) evaluation of the benefits of the proposed project in light of its environmental risks, and (b) comparison of the net balance for the proposed project with the environmental risk presented by alternative courses of action. 3 ERC at 1561.

These judicial comments do not, however, detract from the primary purpose of the 102 statement: the assessment of the environmental effects of possible actions. NEPA was enacted out of a concern that environmental considerations were not being fully canvassed before action, and the purpose of Section 102(2)(C) is primarily to require a "detailed statement" of environmental effects. Where an agency's proposal entails adverse environmental consequences, the 102 statement must identify the countervailing interests that would support a

decision to go ahead. This does not mean that the statement may be used as a promotional document in favor of the proposal, at the expense of a thorough and rigorous analysis of environmental risks. In most cases it may be impossible and unnecessary to discuss the countervailing interests in the same detail as environmental factors. The court in the Morton case observed that "the consideration of pertinent alternatives requires a weighing of numerous matters, such as economics, foreign relations [and] national security ...." 3 ERC at 1561. A detailed discussion of each of these subjects could require as much space as the environmental analysis itself, destroying the focus of the 102 statement and undercutting the purpose of NEPA. What is necessary is a succinct explanation of the factors to be balanced in reaching a decision, thus alerting the agency decisionmaker, as well as the President, Congress, and the public to the nature of the interests that are being served at the expense of environmental values.

Recommendation #2: Wherever adverse environmental effects are found to be involved in the proposed action, the impact statement should indicate what other interests and considerations of Federal policy might be found to justify those effects. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects. In this connection, agencies that prepare cost-benefit analyses of proposed actions should attach such analyses to the environmental impact statement.

3. Duty to Consider Opposing Views.

In Committee for Nuclear Responsibility v. Seaborg, 3 ERC 1126 (D.C. Cir. 1971), the Court of Appeals considered the duty to discuss opposing views under NEPA. The Court observed that in order for the 102 statement to meet adequately the "full disclosure" requirement, it must "set forth the opposing views" on significant environmental issues raised by the proposal. To omit from the statement any reference whatever to such views would be "arbitrary and impermissible." Again, however, the court noted that "only responsible views need be included." What is required is "a meaningful reference that identifies the problem at hand" for the agency decisionmaker. 3 ERC at 1129.

An earlier district court opinion stressed this requirement in even stronger terms:

> Where experts, or concerned public or private organizations, or even ordinary lay citizens, bring to the attention of the responsible agency environmental impacts which they contend will result from the proposed agency action, then the §102 statement should set forth these contentions and opinions, even if the responsible agency finds no merit in them whatsoever. Of course, the §102 statement can and should also contain the opinion of the responsible agency with respect to all such viewpoints. The record should be complete, EDF v. Corps of Engineers, 2 ERC 1260, 1267 (E.D. Ark. 1971).

Again the relevance of this requirement for agency NEPA procedures is primarily a matter of ensuring that opposing views are fairly treated and discussed in the process of preparing draft and final statements.

Recommendation #3: Agencies should make an effort to discover and discuss all major points of view in the draft statement itself. Where opposing professional views and responsible opinions have been overlooked in the draft statement and are brought to the agency's attention through the commenting process, the agency should review the positive and negative environmental effects of the action in light of those views and should make a meaningful reference in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement with respect to adverse environmental effects, indicating the agency's response to the issues raised. All substantive comments received on the draft should be attached to the final statement, whether or not each such comment is thought to merit individual discussion by the agency in the text of the statement. At the same time that copies are sent to the Council, copies of final statements, with comments attached, should also be sent to all entities -- Federal, State and local agencies, private organizations and individuals -- that made substantive comments on the draft statement, thus informing such entities of the agency's disposition of their arguments.

4. Reasonable "Alternatives" to the Proposed Action.

The recent decision in NRDC v. Morton, supra, discussed the "full disclosure" requirement in relation to the requirement that agencies consider the "alternatives" to the proposed action. See also EDF v. Corps of Engineers, 2 ERC 1260, 1269 (E.D. Ark. 1971) (discussing respects in which consideration of alternatives in proposed dam project was legally deficient). The most significant aspect of the Morton decision is the court's conclusion that all alternatives reasonably available to the Government as a whole must be discussed - even if some of those alternatives are outside the control of the agency preparing the statement. Discussion of such alternatives is required in order to guide the decision at hand as well as to inform the public of the issues and to guide the decisions of the President and Congress.

The court in this case was careful, however, to emphasize that it was not requiring the impossible. "A rule of reason is implicit in this aspect of the law, as it is in the requirement that the agency provide a statement concerning the opposing views that are responsible." 3 ERC at 1561 (citing Committee for Nuclear Responsibility, Inc. v. Seaborg, 3 ERC 1126, 1128-29 (D.C. Cir. 1971)). What NEPA requires is "information sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned." 3 ERC at 1563. Detailed discussion is not required of alternatives that "are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies." 3 ERC at 1564. And the agencies need not indulge in "'crystal ball' inquiry" in assessing the effects of alternatives. The agency will have taken the "hard look" required by NEPA if it has discussed the reasonably foreseeable effects with a thoroughness commensurate with their severity and the significance of the action.

The relevance of this decision for agency NEPA procedures is primarily one of ensuring that the reference to "alternatives" is interpreted consistently with applicable judicial opinions. In most cases a judicial interpretation of a statutory term does not require an amendment of related documents employing the term. Presumably the term will be applied and interpreted by an agency in accordance with governing judicial decisions. However, in view of the importance of the Morton decision and in view of the conflicting practices of some agencies prior to the decision, it seems preferable to expand the reference to "alternatives" in agency NEPA procedures at least to the extent of indicating that all reasonable alternatives will be evaluated, even though they may not all lie within the agency's control. Such a revision would not add in any way to an agency's current legal responsibilities, and might ensure that officials preparing the statements keep in mind the proper scope of alternatives they must consider.

Recommendation #4: Agencies should indicate that all reasonable alternatives and their environmental impacts are to be discussed, including those not within the authority of the agency. Examples of specific types of alternatives that should be considered in connection with specific kinds of actions should be given where possible. Such examples should include, where relevant:

(1) the alternative of taking no action;

(2) alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts (e.g., a fossil fuel v. a nuclear power plant);

(3) alternatives related to different designs or details of the proposed action, which would present different environmental impacts (e.g., pollution control equipment on a nuclear plant).

In each case, the analysis of alternatives should be sufficiently detailed and rigorous to permit independent and comparative evaluation of the benefits, costs and environmental risks of the proposed action and each alternative.

B. Procedural Issues: Preparation and Circulation of Environmental Statements.

1. The "Pre-Draft" Stage. No!

The issues discussed above with reference to the required content of impact statements necessarily have implications for the procedures that agencies follow in preparing such statements. It has already been noted, for example, that agencies should make every effort to anticipate and discuss all major points of view on the impact of the proposed action in the draft statement itself. A related procedural question concerns the extent to which agencies should formally seek advice from other agencies or members of the public prior to preparing a draft statement.

The CEQ guidelines do not require a formalized "pre-draft" consultation process. Indeed, the reason for requiring a draft statement in the first place was in order to satisfy the "prior consultation" requirement found in §102 of the Act, which refers only to a "detailed statement." At the same time, however, in order for the draft statement to present an adequate basis for discussion and comment, it must provide a fairly thorough discussion of the impacts of the proposed action and alternatives. Where an agency lacks the expertise for making such an evaluation, it

should not hesitate to solicit help on an informal basis from other agencies. Cooperative arrangements of this sort have already been tried in a number of cases. Furthermore, in preparing a draft statement any agency should welcome whatever helpful information may be forthcoming from other agencies or from the public.

In order for such information to be forthcoming, however, agencies would need to develop means of alerting other agencies and interested members of the public to the fact that a draft statement is being prepared. An announcement to this effect, at least with respect to administrative actions, would serve three useful functions:

(1) it would enable agencies and interested persons with relevant information to make such information available in time for use in the draft statements;

(2) it would provide advance notice of the fact that a draft statement will soon be available for comment;

(3) it would furnish evidence of the point in time in the agency decisionmaking process that the 102 process is initiated.

Recommendation #5: Agencies should devise an appropriate early notice system, by which the decision to prepare an impact statement is announced as soon as is practicable after that decision is made. (Compare in this respect the "notice of intent" provisions contained in §8b of the NEPA procedures of the Environmental Protection Agency and the provisions for early public notice contained in paragraphs 12 and

14 of the NEPA procedures of the Corps of Engineers.) In connection with the development of such a procedure, an agency should consider maintaining a list of statements under preparation, revising the list as additions are made and making the list available for public inspection.

2. Draft Statement Reference to Underlying Documents.

The concern that underlies many of the judicial interpretations of the §102 requirement is one of ensuring that the 102 process provides an adequate opportunity for comment and participation by other agencies as well as interested members of the public.

In addition, the requirement that agencies consider and respond to opposing views suggests that the 102 statement must consist of more than simple assertions about expected environmental impacts; the statement must also reflect the underlying information on which those assertions are based. One of the primary reasons for the injunction issued in EDF v. Corps of Engineers, for example, was the discrepancy between assertions made in the impact statement and the evidence on which those assertions were based. See 2 ERC at 1267-69. This problem can largely be avoided by indicating in the draft statement the basis relied on for assertions that are likely to prove controversial or debatable.

Recommendation #6: Draft statements should indicate the underlying studies, reports, and other information obtained and considered by the agency in preparing the statement. The agency should also indicate how such documents may be obtained. If the documents are attached to the statement, care should be taken to ensure that the statement remains an essentially self-contained instrument, easily understood by the reader without the need for undue cross-reference.

3. Publication and Circulation of Statements.

Section 10 of the CEQ guidelines emphasizes the importance of preparing and circulating draft statements "early enough in the agency review process before an action is taken in order to permit a meaningful consideration of the environmental issues involved. The Council has recently received complaints from a number of agencies, as well as from members of the public, that the minimum periods established for comment and advance availability of statements are being unduly shortened by the delay in actual receipt of the statement. Confusion appears to have developed over whether the time periods are to run from the date the agency mails the statement, or from the date the statement is received by the commenting group.

In accordance with §10(b) of the CEQ Guidelines, the Council's policy has been to calculate the time periods from the date the statement is received at the Council on Environmental Quality. This date will appear in the Council's weekly publication in the Federal Register of statements received during the past week as well as in the monthly 102 Monitor. In order to avoid future confusion on this issue, agencies should ensure that their practices in calculating the minimum time periods reflect this policy.

In many cases, of course, a time lag will still occur between the date of receipt of a statement by the Council and the date of receipt by other agencies or members of the public. To some extent, the problems created by this delay can be avoided by adoption of the early notice device described in Recommendation #5, supra: such a device would enable potential commenting entities to request direct notification as soon as the draft statement is available. In large measure, though, the problem of providing "timely public information," see Executive Order 11514, §2(b), requires agency initiative in publicizing the fact that a draft statement is available.

Agencies should not rely solely on the fact of Federal Register publication by the Council, but should consider adopting such practices as publication in local newspapers and automatic notification of (and possible automatic distribution of statements to) organizations and individuals that the agency knows are likely to be interested in the project.

Recommendation #7: Agencies should ensure that the minimum periods for review and advance availability of statements are calculated from the date of receipt of the statement by the Council on Environmental Quality, as noted in the Council's Federal Register and I02 Monitor announcements. Agencies should also devise appropriate methods for publicizing the existence of draft statements, for example by publication in local newspapers or by maintaining a list of groups known to be interested in the agency's activities and directly notifying such groups of the existence of a draft statement, or sending them a copy, as soon as it has been prepared.

4. Actions Which Involve More than One Agency.

Some confusion has arisen in applying the "lead agency" concept to actions involving more than one agency. Section 5(b) of the CEQ Guidelines provides that the lead agency is "the Federal agency which has primary authority for committing the Federal Government to a course of action with significant environmental impact." This description of "lead agency" was not meant to foreclose the possibility of having a statement prepared jointly by all agencies involved in the program or project. The critical consideration is that the cumulative impacts of the entire project be evaluated, even though each individual agency's

action relates only to a part of the project. In some cases it will be most efficient for the agencies involved to agree on a single lead agency to prepare the statement on the entire project, obtaining assistance as necessary from the other agencies involved or from other agencies with relevant expertise. Relevant factors in determining the proper agency to assume such a role include: the time sequence in which the agencies become involved in the project, the magnitude of their respective involvement, and their relative expertise with respect to the project's environmental effects. But these criteria are not absolute and do not foreclose either a cooperatively prepared statement, or advance agreement on designation of a "lead agency" for purposes of ensuring leadership and assigning responsibility. Whichever procedure is followed, the two critical considerations inherent in the provisions of Section 5(b) are: (1) evaluation of the entire project; and (2) preparation of the 102 statement before any of the participating agencies has taken major or irreversible action with respect to the project. See Upper Pecos Ass'n v. Stans, 2 ERC 1418 (10th Cir. 1971), pet'n. for cert. pending, 40 USLW 3444 No. 71-1133, Mar. 6, 1972).

Recommendation #8: In resolving "lead agency" questions, agencies should consider the possibility of joint preparation of a statement by all agencies involved, as well as designation of a single agency to assume leadership responsibilities in preparing the statement. In either case, the statement should contain an environmental evaluation of the entire project, and should be prepared before major or irreversible actions have been taken by any of the participating agencies.

5. Statements which Cover More than One Action.

Related to the above problem, is the problem of determining the proper scope of an environmental impact statement in connection with Federal programs that may involve a multiplicity of individual "actions." Section 10(a) of the CEQ Guidelines makes reference to the need for such "program" statements in certain cases, and this topic was explored in some detail at our agency review sessions in December. In part, the problem requires careful agency attention to the definition of the "action" that the agency is undertaking. If the definition is too broad and the program too far removed from actual implementation, the resulting analysis is likely to be too general to prove useful. On the other hand, an excessively narrow definition is likely to result in impact statements that ignore the cumulative effects of a number of individually small actions, or that come so late in the process that basic program decisions are no longer open for review.

Individual actions that are related either geographically or as logical parts in a chain of contemplated actions may be more appropriately evaluated in a single program statement. Such a statement also appears appropriate in connection with the issuance of rules, regulations, or other general criteria to govern the conduct of a continuing program, or in the development of a new program that contemplates a number of subsequent actions. Examples of such program statements include the Interior Department's statements on its oil shale program and on its exploitation of geothermal steam under the Geothermal Steam Act of 1970. In all of these cases, the program statement has a number of advantages. It provides an occasion for a more exhaustive consideration of effects and alternatives than would be

practicable in a statement on an individual action. It ensures consideration of cumulative impacts that might be slighted in a case-by-case analysis. And it avoids duplicative reconsideration of basic policy questions. The program statement can, of course, be supplemented or updated as necessary to account for changes in circumstances or public policy and to measure cumulative impacts over time.

A program statement will not satisfy the requirements of Section 102, however, if it is superficial or limited to generalities. Where all significant issues cannot be anticipated or adequately treated in connection with the program as a whole, statements of more limited scope will be necessary on subsequent, individual actions in order to complete the analysis.

Recommendation #9: In preparing statements, agencies should give careful attention to formulating an appropriate definition of the scope of the project that is the subject of the statement. In many cases, broad program statements will be appropriate, assessing the environmental effects of a number of individual actions on a given geographical area, or the overall impact of a large-scale program or chain of contemplated projects, or the environmental implications of research activities that have reached a stage of investment or commitment to implementation likely to restrict later alternatives. Preparation of program statements in these cases should be in addition to preparation of subsequent statements on major individual actions wherever such actions have significant environmental impacts that were not fully evaluated in the program statement.

6. Environmental Protective Regulatory Activities.

Section 5(d) of the CEQ guidelines indicates that certain activities of the Environmental Protection Agency do not constitute "actions" for purposes of Section 102. A number of agencies have been confused by the reference in this section to activities "concurred" in by EPA. That reference is not meant to permit agencies to avoid the 102 process merely because the views of the EPA have somehow been secured with respect to environmental aspects of proposed activities.

Additional confusion has been created by recent district court decisions, severely restricting the applicability of §5(d) with respect to regulatory activities taken by agencies other than the EPA. See Kalur v. Resor, 3 ERC 1458 (D. D.C. 1971); Sierra Club v. Sargent, 3 ERC 1905 (W.D. Wash. 1972). These cases are being appealed. In addition, legislative proposals have been introduced seeking Congressional clarification of some of the issues involved. In this respect, agencies should be aware of the testimony given by Chairman Train on March 22, 1972 before the Fisheries and Wildlife Conservation Subcommittee of the House Committee on Merchant Marine and Fisheries:

> There has been some confusion about the Council's views on the Kalur decision and what clarification of NEPA's applicability to environmental protective regulatory activity is necessary. In my opinion, the most narrow possible legislative action, addressed only to the water quality permit program, is desirable. With respect to EPA's other environmental protective regulatory activities we are asking EPA to study and revise its NEPA procedures to state specifically what activities and authorities are included under Section 5(d) of our Guidelines and the rationale for such inclusion.

Recommendation #10: Except for the Water Quality permit program, and those activities of the Environmental Protection Agency determined by EPA and the CEQ to justify inclusion under Section 5(d) of the CEQ Guidelines, no other agency actions should be considered as exempted from the requirements of Section 102 under Section 5(d).