



December 1, 2006

Mr. Horst Greczmiel
Associate Director for NEPA Oversight
COUNCIL ON ENVIRONMENTAL QUALITY
722 Jackson Place, NW
Washington, DC 20503

By E-Mail

Re: NEPA Modernization (CE): Comments on The National Environmental Policy Act –
Guidance on Categorical Exclusions as Proposed by the CEQ on September 19, 2006

Dear Mr. Greczmiel:

The Domestic Petroleum Council (DPC), representing 24 of the largest independent exploration and production companies in the United States, and the Independent Petroleum Association of America (IPAA) that represents the thousands of independent oil and natural gas producers and service companies across the country, appreciate the opportunity to comment on proposed guidance on National Environmental Policy Act categorical exclusions (CEs) as published in the *Federal Register* on September 19, 2006 – and in doing so emphasize, above all, that any final guidance must clearly differentiate between CEs directed and defined by Congress and those initiated by federal agencies that are the subject of the proposed guidance.

As leaders in the search for new natural gas and oil supplies in the United States, independents are among the most active in using improved permit processes of the Interior Department's Bureau of Land Management (BLM), the Agriculture Department's U.S. Forest Service (FS) and other agencies. Input from DPC and IPAA member companies in response to the proposed CE guidance has reaffirmed that categorical exclusions directed by Congress have begun to make a dramatic difference in the ability to receive approved applications for permits to drill (APDs) and other such permits in a timely manner.

In addition, the DPC and IPAA believe that we will see increased evidence that the availability of CEs can improve environmental compatibility by encouraging the siting of natural gas and oil drilling in areas, on existing well sites, and even by use of existing wellbores, that qualify for CEs as a result of congressionally defined criteria.

These trends in permit processing improvements, coupled with potential increased environmental compatibility, must not suffer by lack of clarity that the proposed guidance is not intended to apply to the congressionally directed CEs, as is discussed further below.

DPC and IPAA endorse comments submitted by the American Petroleum Institute (API) and Public Lands Advocacy (PLA). Both organizations provide further detail of concerns expressed by the exploration and production sector and how this proposed guidance will impact its ability to access public lands to find and develop the energy resources that this country desperately needs to promote security and become less dependent on foreign sources of oil and gas.

In addition, DPC and IPAA emphasize the following specific points with respect to the proposed guidance:

- As noted above, CEQ has not clearly addressed the issue of statutory categorical exclusions (CEs) created by Congress in Section 390 of the Energy Policy Act of 2005 (EPAAct) and whether or not this proposed guidance will apply. Those statutory CEs are specific to oil and gas development and the intention of Congress was to provide language that would streamline the permitting process and assist the agencies (BLM/FS) in moving forward with the approval of APDs in a timely manner. The statutory requirement is a very separate process from the CEs established through the regulatory agencies to which this proposed guidance applies. Although it is clear to the DPC and IPAA that the proposed guidance is not intended to apply to the statutory CEs created by Congress, CEQ needs to include language in the final proposed guidance that unambiguously exempts CEs created by Section 390 of the EPAAct.
- CEQ states that the "...purpose of a categorical exclusion is to eliminate the need for unnecessary paperwork and effort under NEPA for categories of actions that normally do not warrant preparation of an environmental impact statement (EIS) or environmental assessment (EA). Developing appropriate categorical exclusions promotes the cost-effective use of agency NEPA related resources." We agree.

However, CEQ then outlines a series of nine steps it recommends to establish new CEs. Instead of simplifying the process, the proposed steps appear to be much more cumbersome with, for example, additional requirements for documentation, statement of conformity and public participation. While this guidance is intended to apply to all industries and situations across the country, it would put unnecessary burdens on agencies that have a wealth of experience in considering permits for natural gas and oil activity and already have experience with congressionally directed CE procedures. These agencies, with future industry technology and management practice improvements, may at various times need to initiate CEs not envisioned by Congress. Yet the process may make it virtually impractical if not impossible for agencies to initiate CEs for energy development beyond those directed by Congress. (And, once again, the nine steps highlight the need for language to exempt Section 390 statutory CEs from this guidance.)

Again, DPC and IPAA appreciate the opportunity to provide these comments in addition to the joint API and PLA ones for which our members also provided input.

Should you or others have questions, please do not hesitate to contact Dru Bower at Devon Energy (307-347-4477) or William Whitsitt (202-742-4300) for DPC, and Dan Naatz (202-857-4739) for IPAA.

Sincerely,



William F. Whitsitt
President
Domestic Petroleum Council



Barry Russell
President
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