



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

March 20, 2009

The Honorable Steven Chu
Secretary, Department of Energy
1000 Independence Avenue, SW, Room 7A-257
Washington, D.C. 20590

Dear Secretary Chu:

I write in response to your letter of March 19, 2009, asking for the Council on Environmental Quality's (CEQ) views on the Department of Energy's (DOE) consideration of the use of categorical exclusions to address National Environmental Policy Act (NEPA) compliance requirements when addressing certain activities under the Advanced Technology Vehicles Manufacturing Incentive Program (Auto Loan Program) established under section 136 of the Energy Independence and Security Act of 2007, as amended.

The CEQ NEPA regulations provide for categorical exclusions as a means to comply with NEPA when an agency has identified a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing" the CEQ NEPA regulations, which include the requirement that the agency NEPA procedures "provide for extraordinary circumstances in which a normally excluded action may have a significant effect." 40 C.F.R. § 1508.4.

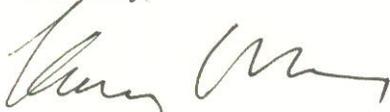
The categorical exclusions DOE is considering for acting on the Auto Loan Program applications were adopted in the DOE NEPA regulations at 10 CFR 1021 and provide for extraordinary circumstances. The DOE NEPA regulations at 10 CFR 1021 set forth categorical exclusions that describe the activities that would take place as a result of DOE loan approvals, and DOE experience has shown that such activities, when are undertaken directly by DOE, do not result in significant environmental impacts.

Applying the categorical exclusions under these circumstances is consistent with longstanding CEQ guidance that encourages agencies to focus on the underlying activities and criteria which characterize the types of activities and their effects. See "Guidance Regarding NEPA Implementation" (CEQ 1983). In this case, the focus of the analysis for determining whether a categorical exclusion applies is appropriately on the underlying activity that is funded in whole or in part by DOE – not on whether that activity is directly undertaken by DOE – and the determination of the incremental effect of the proposed federal action on the underlying non-federal activity (e.g., production of

advanced technology vehicles). When considering the appropriate application of the categorical exclusions set out in the DOE NEPA procedures, DOE must determine whether there are extraordinary circumstances. It is therefore appropriate and necessary for the environmental professionals at DOE to evaluate the information obtained to determine whether there are any extraordinary circumstances that indicate the need to conduct further environmental analysis. The process outlined by DOE for reviewing the loan applications with regard to the proposed activities, the environmental consequences of those activities, and the circumstances surrounding those activities to determine whether the proposed actions are categorically excluded from further NEPA analysis, comports with NEPA and the CEQ regulations.

We appreciate the opportunity to have reviewed this process with your staff and are available in the event you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy H. Sutley', written in a cursive style.

Nancy H. Sutley
Chair
Council on Environmental Quality