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Mr. Horst Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality
722 Jackson Place NW
Washington DC 20503

Re: NEPA Modernization (CE)
Proposed Guidance, "Establishing, Revising and Using Categorical Exclusions under
The National Environmental Policy Act" (71 Fed. Reg. 54816, September 19, 2006)

Dear Mr. Greczmiel:

The American Petroleum Institute (API) is pleased to have this opportunity to comment on the above-captioned proposed guidance document prepared by the Council on Environmental Quality (CEQ). API represents nearly 400 companies that are involved in all aspects of the oil and natural gas industry, including exploration and production activities that provide the oil and natural gas that are essential to America's energy security and economic growth.

API supports modernization of National Environmental Policy Act (NEPA) implementation, including measures to make the NEPA process more objective and timely and policies that encourage agencies to establish and use Categorical Exclusions (CEs). Decisions made by federal agencies are vital to our ability to meet future US demand for clean-burning natural gas and oil, and CEs are among the tools in the NEPA tool box to be used where appropriate in the course of sound and practical exercise of NEPA responsibilities. NEPA comes into play at many stages in the search for, and development and transportation of, energy supplies. While we need to use energy wisely, we must address the supply side by providing greater access to federal lands both onshore and offshore. A key component of the access equation is the removal of procedural impediments to domestic resource development. Inefficiencies in the NEPA process have had the effect of putting significant volumes of these vital resources off limits, or have raised the cost and/or uncertainty of some energy projects to such a degree that companies have had to withdraw proposals, or have had to place them on the shelf for an indefinite period of time.

API supports the purpose of the September 14 proposed guidance, which 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)". However, in its present form, the proposed guidance lacks the economy and clarity found in existing CEQ regulations at 40 C.F.R. Sections 1507.3 and 1508.4. As a consequence, this guidance could have the unintended result of discouraging rather than encouraging use of CEs. There is a risk that the Guidance Document could lead to more paperwork in the course of an agency's development of a new CE; could lead to the



inclusion of extraneous and unnecessary data in the decision record; and could obscure rather than make clear whether an agency has made the necessary environmental analysis. We believe that CEQ has quite the opposite intent in developing this guidance, which is why we would encourage a revision of the proposed guidance document to conform to the broad aims of Section 1502 of CEQ's regulations.

Accompanying this letter is a version of the proposed guidance document that includes our recommended edits. In general, the guidance document will be more useful to agency decision makers and the public if the proposed guidance document:

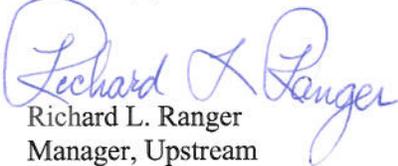
- Acknowledges that it applies to new categorical exclusions agencies establish under their regulatory authority, and not to those categorical exclusions established by statute. The final document should specifically state that the guidance does not apply to the categorical exclusions established by Section 390 of the Energy Policy Act of 2005;
- Encourages agencies to continue to establish categorical exclusions for those categories of actions which do not individually or cumulatively have a significant effect on the human environment;
- Explains that agencies should seek to describe the activity which is considered for a categorical exclusion in as precise terms as possible;
- Simplifies documentation requirements. The guidance should direct agencies to base categorical exclusions on existing data, rather than suggest that agencies must engage in a lengthy information collection process. To this end, the guidance should endorse information gathering and documentation efforts that are analytic rather than encyclopedic, that incorporate prior agency decision documents by reference where suitable, that emphasize information useful and necessary to a determination that a categorical exclusion is appropriate, and that de-emphasize or discourage use of background information;
- While encouraging informal consultation with interested members of the public when considering a new class of categorical exclusion, avoids burdening or appearing to burden the agency with cumbersome and potentially inconclusive review and comment and feedback processes, which are unnecessary for activities that do not have an impact on the environment;
- Avoids burdening the agency with redundant or unnecessarily time and resource consuming decision and documentation processes in connection with the use or application of a categorical exclusion to a particular activity.
- Avoids confusing end-user agencies. In its current form, the guidance is not easily understandable and could complicate rather than simplify agency processes.

Overall, in finalizing the proposed guidance document, CEQ should recognize that categorical exclusions are to be favored under Sections 1500.4, 1500.5, 1507.3 and 1508.4 of CEQ's regulations when an activity can reasonably be shown not to have an effect, cumulatively or individually, on the human environment. The proposed guidance document should avoid language or creation of decision and review processes that suggest that categorical exclusions are unusual or exceptional agency actions under NEPA. Instead, consistent with existing CEQ regulations at 40 C.F.R. Sections 1500 et seq. CEQ guidance should reiterate that CEs are among the NEPA alternatives for an agency to use where appropriate in the course of sound and practical exercise of its NEPA responsibilities.



API commends CEQ for its effort to date. More detailed recommendations are included in the mark-up version of the Proposed Guidance document that is the Attachment to this letter. If you need additional information, please contact Richard Ranger at 202.682.8057.

Very truly yours,

A handwritten signature in blue ink that reads "Richard L. Ranger". The signature is written in a cursive style with a large initial "R".
Richard L. Ranger
Manager, Upstream