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Subject: Response to request for comment

The State of Tennessee's Official response is attached below as word documents and is listed below in this message window.

electronic letter -

September 23, 2002

NEPA Task Force
ceq_nepa@fs.fed.us

Dear NEPA Task Force Members:

The Federal Register notice dated July 9, 2002 (67 FR 45510- 45512) announced that the Council on Environmental Quality (CEQ) had created a National Environmental Policy Act task force and invited comment. This serves as the official comments on behalf of the State of

Tennessee submitted in electronic form at the above e-mail address.

I am Governor Don Sundquist's lead contact for NEPA reviews. As the state's central point of contact, I have had 6 years of experience in reviewing federal NEPA documents for the Governor. This letter supports streamlining the NEPA process and using it more effectively to ensure state government input and federalism.

I should add that I am inherently suspicious of potentially expensive and time-consuming bureaucratic planning processes. I do not believe in planning or processes for the sake of their existence. I do, however believe in the substance of knowing what alternatives are available, having the best information to select an alternative and having the opportunity to gauge public support. More practically, states should have significant input to federal agency decisions, particularly when those agencies reside within the state being affected. As a former Governor, President Bush understands this concern very well.

During my six years in state government, NEPA has proved to be the most significant process available for state input to major federal agency decisions in Tennessee. I can think of no better example of federalism and state input to executive branch actions. Unpredictable political channels, federal rule making and congressional hearings are not direct links to federal agency managers and their decisions.

NEPA can be and is being abused. Some seek to pervert the process and to use it for tactical delays. I have found however, that adequate input by the state and other parties can be achieved in a timely manner. This relies on the leadership, dedication and competence of the federal agency seeking comment. In addition, if efforts are made to organize a schedule, to give people proper expectation of deadlines, opportunities for comment, and to manage the process for what it is meant to do, and then abuse can be significantly reduced. I believe that the role of litigation to enforce compliance with NEPA should be reexamined and at a very minimum, substantial sanctions should be available to the federal agencies in abuse cases.

I have also found that state input and a unique form of federalism can be achieved when the state gets involved early. Determining study questions, identifying alternatives and collecting information are needed for a sound state and federal policy decision. Through early involvement, we have seen federal decisions incorporate and respond positively to state policy needs.

The NEPA process has become inflated over time. The detailed aspects NEPA process such as environmental assessments and environmental impact statements should be limited to large-scale projects that have a substantial footprint and cost to the taxpayer. Proper vetting of such ideas can eliminate controversy and legal challenges. Detailed NEPA Analysis should also be limited to major actions such as petitions, licenses and major permits that will result in large scale economic, cultural, social, watershed or ecosystem level impacts. A "broader net" should be cast for a greater number of categorical exclusions. Smaller scale projects and actions should be excluded from study entirely so that the NEPA process can focus on the most important actions.

It is important to note why the NEPA process works for states and how we duplicate that process

for our own policy best practices. In Tennessee, we have organized a network of state agency contacts in every state agency. This network develops technical comments, which are forwarded to a policy team. The policy team then digests the information and packages recommendations for the Governor's Office to review and consider. Often, new alternatives or options emerge at the Governor's level, based on the detailed, "bottom-up" input of state experts. Political considerations can then be effectively addressed after the state experts have voiced their technical concerns through drafts of NEPA documents submitted to us and through our analysis.

The result of proper state coordination is a single multi-agency, state policy decision. It is communicated to the federal agency, within the comment period and supported by technical analysis. The NEPA process also allows the state to vet with the public its policy decision. This process works extremely well to ensure that federal agencies consider both technical knowledge that is increasingly the domain of state experts and the political preferences of a state's leadership and at times its population.

We believe that federal agencies in Tennessee and others who forward NEPA documents to our state should use a standard central point of contact. We miss numerous opportunities to participate in the NEPA process. As the supervisory entity of the NEPA process under federal law, the White House Council on Environmental Quality could request states to provide a central point of contact for every state, keep it updated annually and then require federal agencies to use it. The Department of Energy does this very well and could provide a model for CEQ. Additionally, criteria could be established to help federal agencies determine which local governments should be contacted and how other contacts need to be established, given the unique needs of each federal agency.

The President does not need to re-institute the previous A-95 State Clearinghouse executive order. Every state and local government has different needs and their own institutional preferences for coordination within their branches of government.

Thank you again for your office's interest in reviewing and possibly improving the NEPA process. Attached is our state NEPA contact list, review process and brief success stories.

Sincerely,

Justin P. Wilson
Deputy to the Governor for Policy

c: James L. Connaughton, Chairman
White House Council on Environmental Quality
- new page

A Sample of Success Stories

OSM Land's Unsuitable Petition for Mining EIS near Fall Creek Falls State Park

Summary: The Clinton Administration sought to allow coal mining in the watershed of the South's most popular state park, Fall Creek Falls. The state's scoping comments and draft EIS comments, with private environmental organization input, helped the Department of Interior identify legal mechanisms to avoid a takings claim for a decision to limit or ban mining. Local tourism was protected by a legally sound decision.

TVA Land Between the Lakes EIS

Summary: The state commented in response to a proposal by TVA to consider disposing of the Land Between the Lakes property to focus more on its power and river roles. Many options were considered. With local and private input, the state position highlighted the need to preserve the land for its traditional uses. The state's reviews showed that the LBL transfer to the Forest Service was economically, technically and politically appropriate. This option was chosen.

TVA Columbia Dam Land Disposition and Water Supply EIS's

Summary: Early state involvement and cooperative agency status helped TVA navigate a 25-year-old controversy. Close coordination under NEPA was initiated between the state, TVA and local government to address a trust fund audit, disposition of funds, two environmental impact statements, a problem state agency and a state land use plan for the property. Based on thorough research by the state and TVA, the state received the land for recreation, trust funds provided for local water needs created by the abandoned TVA dam project, an EIS identified local water options and the state created a newly protected State Scenic River. TVA repaired a very damaged public image.

DOE Cleanup of the Oak Ridge Reservation

Summary: Numerous environmental assessments and environmental impacts statements issued by DOE help the state to track numerous environmental and technical issues in the cleanup of the Oak Ridge reservation. Decades of chemical and radioactive contamination exist. Without the NEPA process to break the issue into manageable pieces, these extremely complex and technically detailed issues could not be analyzed and resolved effectively. The DOE NEPA process ensures state and local input.

Sound State Policy Development

Summary: The State of Tennessee models its most critical policy assessment on the NEPA process. Scoping, broad technical input and review, general public and private organization consultation, alternatives analysis and impact assessment as a process help the state resolve many complex policy issues with less controversy and failure. When the process is not followed we invariably fail. This process applies to all major policy concerns.

G. Dodd Galbreath
Director of Policy

CQ543

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21st Floor, L&C Tower
401 Church Street, Nashville, TN 37243
615-532-8545 phone
615-532-0120 fax
615-532-0736 for urgent calls or Secretary
dodd.galbreath@state.tn.us (regular e-mail)
dodd.galbreath@my2way.com (pager e-mail)



CEQlette.doc



NEP-GENL.doc

GENERAL LIST of TENNESSEE AGENCY CONTACTS for NEPA REVIEWS

For use by all agencies except the US Department Of Energy (DOE)

All federal or state agencies requesting National Environmental Policy Act (NEPA) reviews (**See boxes below**):

Please send 1 copy of:

- all NEPA Documents **and**
- your document distribution list.

1. Mr. Justin P. Wilson, Deputy to the Governor for Policy
Governor's Lead Point of Contact for NEPA Reviews
Attention: Mr. Dodd Galbreath, Director of Policy
Dep. of Environment and Conservation - Environmental Policy Office
21st Floor L&C Tower
401 Church Street
Nashville, TN 37243-1530
Phone: 615-532-8545
Fax: 615-532-0120

If any of the following issue categories or agencies are pertinent to the NEPA review, in addition, requesting agencies should forward **copies as indicated** of NEPA review documents to the following state agency contacts.

Please use this address for each TDEC contact that follows

TN Department of Environment and Conservation (TDEC)
[Name]
TDEC NEPA Contact
[Division]
[Floor number]
L&C Tower
401 Church Street
Nashville, TN 37243

For each TDEC contact you select, send 1 copy of the NEPA document

- **Threatened and Endangered Species:** Mr. Reggie Reeves, Division of Natural Heritage, 8th Floor (615-532-0431) Fax: 532-0046
- **Wild/Scenic Rivers and State Parks:** Mr. Mark Williams, Assistant Commissioner, 7th Floor (615 532-0001) Fax: (615) 532-0046
- **Public Recreation:** Ms. Joyce Hoyle, Div. of Recreation Services, 10th Floor (615-532-0748) Fax: 532-0778
- **Water:** Mr. Paul Davis, Division of Water Pollution Control, 7th Floor (615-532-0625) Fax: 532-0503
- **Air:** Ms. Barry Stephens, Division of Air Pollution Control, 9th Floor (615-532-0554) Fax: 532-0614
- **Surface/Subsurface Drinking Water Sources:** Mr. David Draughon, Division of Water Supply, 6th Floor (615-532-0191) Fax: 532-0503
- **Septic Systems:** Mr. Kent Taylor, Division of Ground Water Protection, 10th Floor (615-532-0761) Fax: 532-0778
- **Superfund:** Mr. Jim Haynes, Division of Superfund, 4th Floor (615-532-0900) Fax: 532-0938

General List of TN Agency Contacts for NEPA Reviews (continued)

(TDEC Contacts continued)

**If selected
send 1 copy**

- **Underground Storage Tanks:** Mr. Wayne Gregory, Division of UST, 4th Floor L&C Tower (615-532-0945 Fax: 532-0938
- **Solid/Hazardous Waste:** Mr. Mike Apple, Division of Solid Waste Management, 5th Floor (615-532-0780) Fax: 532-0886
- **Radiological Health:** Mr. Rubin Crosslin, Division of RH, 3rd Floor (615-532-0424) Fax: 532-7938

**If selected send
2 copies**

2. TDEC/TN Historical Commission
 Mr. Herbert Harper, THC NEPA Contact
Attention: Mr. Joe Garrison, Historical Reviews
Mr. Nick Fielder, Archeological Reviews
 Clover Bottom Mansion
 2941 Lebanon Rd.
 Nashville, TN 37243-0442
 (615-532-1559) Fax: 532-1549

**If selected
send 1 copy**

3. TN Department of Agriculture (TDA)
 Mr. Louis Buck, Deputy Commissioner
 TDA NEPA Contact
 Ellington Agricultural Center
 Box 40627
 Nashville, TN 37204
 (615-837-5103) Fax: 837-5333

**If selected
send 1 copy**

4. TN Department of Transportation (TDOT)
 Mr. Glen Beckwith, Planning Division Director
 TDOT NEPA Contact
 Suite 900, James K. Polk Building
 Nashville, TN 37243-0334
 (615-741-3421) Fax: 532-8451

**If selected
send 1 copy**

5. TN Wildlife Resources Agency (TWRA)
 Mr. Dan Sherry
 TWRA NEPA Contact
 Box 40747
 Nashville, TN 37204
 (615-781-6572) Fax: 741-4606

**If selected
send 1 copy**

6. TN Department of Economic and Community Development (TDECD)
 Mr. Wilton Burnette
 TDECD NEPA Contact
 Rachel Jackson Building, 7th Floor
 320 6th Avenue North
 Nashville, TN 37243-0405
 (615-741-3282) Fax: 741-5829