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To: "'ceq_nepa@fs.fed.us'" <ceq_nepa@fs.fed.us>
cc: "ptpenny@aol.com" <ptpenny@aol.com>, "Cohen, Eric" <Eric.Cohen@eh.doe.gov>
Subject: RE: NEPA Task Force Notice and Request for Comments

FYI--The Department of Energy's NEPA Office received the following e-mail. However, we believe that we received this message in error and are therefore, forwarding it to the CEQ NEPA Task Force for further consideration. It appears that Ms. Stirling is providing comments on the recent CEQ NEPA Task Force Federal Register notice (7/9/02) that requested comments on ways to improve and modernize NEPA analyses and documentation. Please let us know if you have any questions. Thank you!

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-----Original Message-----

From: ptpenny@aol.com [<mailto:ptpenny@aol.com>]
Sent: Monday, September 23, 2002 6:40 PM
To: denise.freeman@eh.doe.gov
Subject: NEPA Comment/Guest Book Entry

The Office of NEPA Policy and Compliance reports a new Comment/Guest Book Entry:

Name: Penelope, Stirling
E-mail: ptpenny@aol.com
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Comments: 23 Sept 2002

As you review ways to improve NEPA documentation and analysis processes, there are a few considerations I hope you will keep in mind.

Regarding Question C

(1): There is no way to get around it, you must continue to require NEPA analysis at both the programmatic and project levels. The programmatic level is where larger-scale, combined effects and cumulative effects can be evaluated and addressed, where overall management objectives are defined, and where the public can have a greater role. The project level is where the analysis of the effects of that particular action, in that place, at that time are addressed. You cannot do an adequate combined and cumulative effects analysis over broader temporal and spatial scales, at the project level; and you cannot to an adequate analysis of all the specific effects on various resources, at a particular time and place, of each potential action covered under a program.

However, to avoid unnecessary duplication, you might define the parameters of the analysis to suit the situation. This may require your task force to outline perhaps three or four levels of NEPA analysis, the standards for each type, and the criteria for determining which one should be used in each instance. The deciding factors to determine which type or level of analysis is appropriate would be mainly degrees of time, area, and potential impacts. Programmatic level EISs would include analysis of the combined effects of the program if ALL the possible actions allowed under the plan were accomplished, plus cumulative effects analysis of incremental actions and combined effects across the broader geographical area; including analysis of combined effects with other programs in adjacent areas. This analysis would require more theoretical analysis and some reasonable predictions. Smaller, project level analyses would cover only the effects of the particular action, at that place and time, and in association only with other known projects also localized over time and space.

Question D

(1): Critical factors in deciding to use an adaptive management approach include, among others, how well known and understood the effects of the action already are, the degree of variability of the affected resources, the effectiveness of past monitoring strategies on similar actions, and whether any new circumstances are present or new methodologies are being applied. The key is ensuring that the monitoring and response are actually accomplishing what they are designed to do, which should be to identify any negative impacts and mitigate for them.

(2): Environmental impact analyses must incorporate adaptive management as a requirement in ALL EISs, and must be especially thorough in project level EISs as that is the logical place to monitor for effects and evaluate mitigation measures. At the programmatic level, adaptive management would be required any time that program objectives were not being met or programmatic assumptions were called into questions.

Question F: You must ensure that the highest standards are maintained for all aspects of the NEPA process, and that will include not using private contracting for most elements. The FAIR Act notwithstanding, there are some tasks which the private sector can do but which they should not. Private companies' primary focus is profit, and therefore their objective will be to accomplish the task at minimum standards at the least cost. This does not guarantee an adequate or satisfactory product, even with minimum standards in place. For one thing, private-sector employees are immersed in the culture of profit as the prime objective, which means they may be more likely to skimp or cut corners in their analysis or in their output. Government employees, on the other hand, though they are limited by budgets and cost considerations, are more able to focus on non-monetary results. In addition, as we have seen recently, not all companies are completely honest about their accounting practices and they may not be honest as well about their compliance with technical standards. Therefore each unit of each agency involved in actions that may impact the environment must maintain a group of specialists for evaluating effects and preparing environmental analyses.

The requirement of not hiring for-profit contractors goes for all elements in each stage of the NEPA process, whether it is the research, biological evaluations, monitoring, public participation, content analysis of public comment, documentation, or any other element. The government must continue to assume those tasks which may not be financially profitable but are inherently in the public interest. And certainly private corporations should never be charged with any aspect of their own environmental oversight.

Insofar as the content analysis of public comment is concerned, it may be worthwhile to attempt to separate what constitutes substantive comment from statements of preference or personal values, and allow them to be analyzed separately. You could still recognize and acknowledge that personal preferences and values are important, but they do not need to be analyzed for content in the same way that those comments which actually address technical aspects of the proposed action do. If you can develop a clear and comprehensible definition of 'substantive'; that both the public and content analysis personnel can understand, then comments can be separated into statements of personal preference or opinion and values or overall management style, versus statements of fact which could potentially result in revisions to the planned program or action, analysis process, or documentation. Statements of preferences or personal values could be sorted into broad categories and addressed in a short narrative, while statements of fact could be analyzed for relevance and application to the proposed action, and responded to

appropriately.

Another concern regarding public comment is all the form letters that organizations get their members to send. Getting so many forms can cloud issues, waste the time and money of content analysis staff, and make management decisions look like public opinion polls. It would not be appropriate to completely discount form letters, but there must be some way of acknowledging them without wasting a lot of time. Perhaps form letters could just be counted and have their key points summarized.