

DEPARTMENT OF ENERGY**Compliance with the National Environmental Policy Act (NEPA); Amendments to DOE's NEPA Guidelines****AGENCY:** Department of Energy.**ACTION:** Amendments to the Department of Energy's NEPA Guidelines with request for comments.

SUMMARY: The Department of Energy (DOE) proposes to amend section D of its NEPA guidelines by adding to its list of categorical exclusions. A categorical exclusion is a class of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, normally do not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). DOE proposes three additional categorical exclusions that concern: (1) Removal actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and actions similar in scope under the Resource Conservation and Recovery Act (RCRA), (2) improvements to environmental control systems to comply with environmental permit conditions, and (3) site characterization and environmental monitoring under CERCLA and RCRA. Public comment is invited on this proposal. DOE will use these categorical exclusions on an interim basis, pending notice of final action on the proposed amendments in the *Federal Register*.

DATES: Comments by May 7, 1990.**ADDRESSES:** Send comments to Carol M. Borgstrom at the following address.**FOR FURTHER INFORMATION CONTACT:**

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 3E-080, Washington, DC 20585, (202) 586-4600.

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SUPPLEMENTARY INFORMATION:**A. Background**

On March 28, 1980, DOE originally published (45 FR 20694) guidelines¹ for

¹ Pursuant to a recent decision by the Secretary of Energy, the DOE NEPA guidelines will be revised shortly and published for public comment as proposed regulations.

implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). In accordance with these regulations, section D of the DOE guidelines lists three classes of agency actions: (1) Those that normally require an EIS, (2) those that normally require an EA but not necessarily an EIS, and (3) those that normally do not require either an EA or an EIS.

Identification of this third class of actions, termed "categorical exclusions," was required by § 1507.3(b)(2)(ii) of the CEQ regulations. Section 1508.4 of the CEQ regulations defines a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The CEQ regulations permit agency discretion, in that "[a]n agency may decide in its procedures or otherwise, to prepare environmental assessments * * * even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." *Id.*

The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in section D based on experience gained during the implementation of the CEQ regulations and these guidelines." The last amendments to Section D were published on March 27, 1989 (54 FR 12474). Before that, amendments were published on December 15, 1987 (52 FR 47662), concurrently with republication of DOE's NEPA guidelines in their entirety. Under the DOE guidelines, substantive revisions are to be published in the *Federal Register* and adopted only after opportunity for public review (52 FR 47667).

The amendments below concern categorical exclusions for certain actions under CERCLA or RCRA. However, it is the policy of DOE, where DOE remedial actions under CERCLA trigger the procedures set forth in NEPA, to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical. The primary instrument for this integration will be the Remedial Investigation/Feasibility Study (RI/FS) process, which will be supplemented, as needed, to meet the procedural and documentation requirements of NEPA. In addition, the public review processes of CERCLA and NEPA will be combined for RI/FS-

NEPA documents, where appropriate. DOE also intends to establish, for cases where DOE corrective actions under RCRA trigger the procedures set forth in NEPA, a policy to integrate the procedural and documentation requirements of RCRA and NEPA, wherever practical.

B. Amendments

DOE proposes to amend Section D of its guidelines further by adding three categorical exclusions. The first categorical exclusion proposed is for removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and for actions similar in scope under RCRA (including those taken as partial closure actions and those taken before corrective action).

DOE proposes to limit this categorical exclusion to those actions that: (1) Are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers. The proposed categorical exclusion includes examples of covered actions (such as capping or other containment of contaminated soils or sludges; stabilization of berms, dikes, impoundments, or caps; and closing of surface impoundments).

DOE uses the following CERCLA terms in this categorical exclusion: CERCLA section 101(23) defines "remove" or "removal" to mean the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. CERCLA section 101(24) defines "remedy" or "remedial action" to mean those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that

they do not migrate to cause substantial danger to present or future public health or welfare or the environment. CERCLA section 101(25) defines "respond" or "response" to mean remove, removal, remedy, and remedial action.

In proposing to categorically exclude certain RCRA actions that are similar in scope to CERCLA removal actions, DOE uses the term "partial closure" as defined in 40 CFR 260.10 and "corrective action" as referred to in sections 3004 (u) and (v), 3008(h), and 9001-9010 of RCRA.

This categorical exclusion is proposed because DOE believes that CERCLA removal actions and actions similar in scope under RCRA that are limited as described above do not have the potential for significant effects on the human environment. DOE intends to apply the categorical exclusion regardless of time or cost to implement the actions. DOE's presumption that these actions have no potential for significant environmental impact and therefore do not require preparation of an EA or EIS is independent of the extent of documentation or public review that may be provided under CERCLA or RCRA.

The second categorical exclusion DOE proposes is for improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices in water treatment systems) that reduce the amount or concentration of regulated substances in air emissions or water effluents in order to comply with environmental permit conditions. DOE proposes that this categorical exclusion apply only if: (1) the improvements will be conducted within an existing facility, (2) any substance captured or produced thereby during subsequent operations of the facility will be disposed of or otherwise released through existing facilities and clearly in accordance with applicable statutory and regulatory requirements and permits, or these substances will be recycled through existing permitted facilities, and (3) for any such substance identified within the definition of hazardous substances under section 101(14) of CERCLA, there are applicable statutory or regulatory requirements or permits for its disposal, release or recycling.

The third categorical exclusion DOE proposes is for site characterization and environmental monitoring activities (including the installation of field monitoring stations) under CERCLA or RCRA. This categorical exclusion would only apply to activities that: (1) Will not introduce or spread substances identified within the definition of hazardous substances under section

101(14) of CERCLA, pollutants or contaminants as defined by section 101(33) of CERCLA, or non-native organisms; and (2) will affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole-source aquifers.

DOE proposes the categorical exclusions for improvements to environmental control systems and for CERCLA and RCRA site characterization and environmental monitoring activities because DOE believes that, under the conditions proposed for use of the categorical exclusions, the actions do not have the potential for significant effects on the human environment.

Categorically excluding certain classes of actions from environmental analysis under NEPA only creates a rebuttable presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from categorically excluded actions, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to determine the appropriate level of NEPA documentation.

DOE has consulted with CEQ regarding these proposed amendments in accordance with 40 CFR 1507.3. DOE has addressed CEQ's comments, and CEQ has no objection to publication of this Notice.

Comments concerning the proposed amendments to section D of the DOE NEPA guidelines should be submitted to Carol M. Borgstrom at the address given above.

Pending notice of final action on the proposed categorical exclusions in the **Federal Register**, the DOE will use the categorical exclusions set forth below on an interim basis.

Issued in Washington, DC, on April 2, 1990.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

The DOE NEPA Guidelines are hereby amended by adding the following at the end of section D:

Classes of Actions Generally Applicable to All of DOE Normally Do Not Require EAs or EISs

1. Removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (including those taken as final response actions and those taken before remedial action) and for actions similar in scope under the Resource

Conservation and Recovery Act (RCRA) (including those taken as partial closure actions and those taken before corrective action), where the actions: (1) Are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers.

These removal and similar actions could include, but are not limited to, the following types of actions:

- Excavation or consolidation of contaminated soils or materials from drainage channels or retention basins;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain substances identified within the definition of hazardous substances under section 101(14) of CERCLA or pollutants or contaminants as defined by section 101(33) of CERCLA;
- Removal of asbestos-containing materials from existing buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), part 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), part 1910.1001 (Asbestos, tremolite, anthophyllite, and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), part 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite).
- Removal of polychlorinated biphenyl (PCB) items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other above-ground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions);
- Storage of wastes in Department of Transportation approved containers or at storage facilities in compliance with RCRA pending treatment (including incineration), recovery, or disposal;

- Treatment (including incineration), recovery, or disposal of wastes at existing permitted facilities for which, if they are Federal facilities, appropriate NEPA review has been completed;
- Repair or replacement of leaking containers;
- Capping or other containment of contaminated soils or sludges;
- Closing of man-made surface impoundments;
- In-situ stabilization using conventional, widely-used technologies (e.g., grouting with cement) where consistent with existing long-term land-use management plans for which appropriate NEPA review has been completed;
- Confinement or perimeter protection using dikes, trenches, ditches, or diversions;
- Stabilization of berms, dikes, impoundments, or caps;
- Drainage controls;
- Segregation of reactive wastes;
- Use of chemicals and other materials to neutralize wastes;
- Installation and operation of gas ventilation systems in soil to remove

methane or other potentially explosive gases;

- Installation of fences, warning signs, or other security or site control precautions;
- Provision of an alternative water supply that does not involve new water sources.

2. Improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents in order to comply with environmental permit conditions, where:

- (1) The improvements will be conducted within an existing facility,
- (2) any substance captured or produced thereby during subsequent operations of the facility will be disposed of or otherwise released through existing facilities and clearly in accordance with applicable statutory and regulatory requirements and permits, or these substances will be recycled through existing permitted facilities, and
- (3) for any such substance identified within the definition of

hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, there are applicable statutory or regulatory requirements or permits for its disposal, release, or recycling.

3. Site characterization and environmental monitoring activities (including the installation of field monitoring stations) under the Comprehensive Response, Compensation and Liability Act (CERCLA) or Resource Conservation and Recovery Act, where the activities:

- (1) will not introduce or spread substances identified within the definition of hazardous substances under section 101(14) of CERCLA, pollutants or contaminants as defined by section 101(33) of CERCLA, or non-native organisms; and
- (2) will affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole-source aquifers.

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