

**DEPARTMENT OF ENERGY****Compliance With the National Environmental Policy Act (NEPA); Amendments to DOE Guidelines****AGENCY:** Department of Energy.**ACTION:** Notice of amendments to the Department of Energy's NEPA Guidelines.

**SUMMARY:** The Department of Energy (DOE) is amending section D of its NEPA Guidelines by adding to its list of categorical exclusions three new categorical exclusions that concern: (1) Certain 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) and other authorities; (2) improvements to environmental control systems that reduce the amounts and concentrations of regulated substances in air emissions and water effluents; and (3) site characterization and environmental monitoring under CERCLA and RCRA. A categorical exclusion is a class of DOE actions that normally do not require the preparation of either an environmental impact statement or an environmental assessment. These amendments are necessary to establish categorical exclusions for actions that clearly have no potential for significant impact on the human environment. The intended effect is to facilitate the NEPA review for some environmental restoration and waste management activities.

**EFFECTIVE DATE:** September 7, 1990.**FOR FURTHER INFORMATION CONTACT:**

Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

William J. Dennison, Acting Assistant General Counsel for Environment, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8947.

**SUPPLEMENTARY INFORMATION:****I. Background**

DOE originally published its NEPA Guidelines in the *Federal Register* on March 28, 1980 (45 FR 20694). These Guidelines implemented the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). These Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987 (52 FR 47662). The Guidelines were further amended by a

notice published in the *Federal Register* on March 27, 1989 (54 FR 12474). On April 6, 1990 (55 FR 13064), DOE published a notice requesting comments on additional proposed amendments to section D of its NEPA Guidelines. Today's notice adopts the amendments proposed at that time, with certain changes described below.

**II. Comments Received and DOE Responses**

Publication of the April 6, 1990 notice began a 30-day period during which public comment was invited. Two comment letters were received.

**A. Procedural Comments**

One commenter asserted that any categorical exclusions adopted by DOE should be issued as binding regulations rather than as guidelines. This commenter asserted further that because DOE announced in the April 6, 1990 notice (55 FR 13064) its intention to revise its NEPA Guidelines and publish them for public comment as proposed rules, the proposed categorical exclusions should be considered in the context of the overall revision of the Guidelines rather than in this isolated context.

In Secretary of Energy Notice (SEN) 15-90, dated February 5, 1990, the Secretary of Energy directed that the DOE NEPA Guidelines be revised and published for public comment as proposed regulations using the notice and comment procedures of the Administrative Procedure Act. DOE expects to propose such regulations for public comment in the near future. At that time, the three categorical exclusions adopted herein, as well as all other categorical exclusions and other typical classes of actions, will be subject to public comment in the context of the proposed regulations. However, the need for DOE to use these three categorical exclusions in the near term justifies their adoption at this time.

The same commenter suggested that DOE should reconsider the promulgation of the proposed categorical exclusions before certain questions are resolved regarding the integration of NEPA with RCRA and CERCLA activities. The commenter's concern was that the adoption of the proposed exclusions could prejudice the outcome of the integration issue.

It is DOE's policy to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical, based on DOE's assumption, in the absence of definitive CEQ guidance to the contrary, that NEPA applies to remedial activities under CERCLA. DOE also intends to

establish a similar policy to integrate the procedural and documentation requirements of RCRA and NEPA. DOE believes that the adoption of these categorical exclusions will not prejudice any subsequent resolution of the applicability issue. While DOE's policy of integrating CERCLA and NEPA requirements is subject to change if necessary to be consistent with any subsequent CEQ guidance, the categorical exclusions promulgated today are needed to implement DOE's current policy efficiently.

Finally, the commenter objected to the use of the proposed categorical exclusions on an interim basis pending their final adoption, on the basis that the CEQ regulations require that

categorical exclusions and other NEPA procedures "shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations." (40 CFR 1507.3(a).)

DOE's application of the proposed amendments on an interim basis was consistent with its previous practice. DOE consulted with CEQ regarding the proposed amendments published on April 6, 1990, in accordance with 40 CFR 1507.3. DOE addressed CEQ's comments and CEQ made no objection to the publication of the April 6, 1990 notice. However, CEQ was not specifically asked for its opinion on whether the categorical exclusions could be used on an interim basis, and CEQ's approval of publication of the categorical exclusions was not an endorsement of such use. Because the categorical exclusions are today being finally adopted, DOE believes that there is no longer an issue requiring resolution.

**B. Comments on the Proposed Categorical Exclusions**

1. *Removal actions including those under CERCLA and similar actions under RCRA.* Both commenters expressed overall concern about this categorical exclusion and asserted that the actions included have the potential for significant effects on the environment. One commenter cited three factors supporting this concern. First, the commenter said that DOE provided no justification to support its contention that the actions included in this exclusion do not have the potential for significant effects on the human environment. Second, the categorical exclusion was not limited to the actions illustrating the exclusion, and the commenter perceived the reference to "actions similar in scope under RCRA" as vague and imprecise. Third, because removal activities under CERCLA do not

require a Remedial Investigation/Feasibility Study, the commenter regarded the exclusion of these actions from NEPA documentation as particularly significant when considered together with the breadth of the exclusion, which exceeded the scope of the removal actions described in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (55 FR 8843; March 8, 1990.)

DOE agrees that its intended application of this categorical exclusion, as proposed in the April 6, 1990 **Federal Register** notice, was too broad. In that notice, DOE stated that it intended to apply this categorical exclusion "regardless of time or cost to implement these actions." In addition, some of the examples of actions proposed to be categorically excluded exceeded the scope of examples of appropriate removal actions set forth in the recently revised CERCLA NCP regulations (55 FR 8843; March 8, 1990).

However, the underlying determination that most actions described in this categorical exclusion do not have the potential for significant effects on the human environment is based on experience with many similar types of activities over the past several years. For example, DOE has considerable experience with excavating contaminated soils from drainage and other areas and capping contaminated soils or sludges, performing both types of actions to reduce contact with, or the migration of, hazardous substances, pollutants, and contaminants. This experience demonstrates that such actions do not have the potential for significant effects on the human environment so long as they are carried out in accordance with appropriate requirements. As a result, this categorical exclusion would apply to excavation and capping actions only when accomplished in accordance with applicable statutory, regulatory, and permit requirements, including the requirements of DOE Orders.

As a result of this comment, DOE intends to limit its application of this categorical exclusion to removal actions under CERCLA (and actions similar in scope under RCRA and other authorities) that meet the statutory limits and exemptions set forth in the NCP regulations. These limits for removal actions (other than those authorized under section 104(b) of CERCLA) are: The actions shall not either (1) cost more than \$2 million or (2) take longer than 12 months from the time that activities begin on-site. Exemptions to these cost and time limits can be applied when "(i) there is an

immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or (ii) continued response action is otherwise appropriate and consistent with the remedial action to be taken." (55 FR 8843; March 8, 1990).

The language of this categorical exclusion has been revised to paraphrase more closely the language used in the CERCLA NCP regulations. The phrase "and other authorities" has been inserted to make clear that there are other authorities under which DOE may take similar actions. In addition, two proposed removal actions—the removal of polychlorinated biphenyl items and the removal of asbestos-containing materials—have been deleted from the list of examples of removal actions under CERCLA and established as separate categorical exclusions, so as not to imply inadvertently an overly broad scope for removal actions under CERCLA and because these activities are not always performed as RCRA or CERCLA activities.

DOE does not agree with the comment that an unreasonably broad categorical exclusion is created by the use of a noninclusive list of examples of excluded removal actions. In providing a list of examples that is comprehensive but not all-inclusive, DOE has followed the lead set in the CERCLA NCP regulations, which sets forth a list of appropriate removal actions that is not "exhaustive." (55 FR 8843; March 8, 1990.)

Both commenters expressed concern regarding the scope of the three limitations proposed to apply to this categorical exclusion. These limitations provided that removal actions be categorically excluded only 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." In the discussion that follows, these limitations will be referred to as "limitation 1," "limitation 2," and "limitation 3," respectively.

One commenter asserted that limitation 1 did not ensure the absence of deleterious environmental impacts because of gaps in regulations. The other commenter asserted that limitation 1 is unnecessary because removal actions under CERCLA or RCRA must be in compliance with the law.

In response to these comments, limitation 1 has been revised to restrict application of the categorical exclusion to only those actions that "would not threaten a violation of applicable statutory, regulatory, and permit requirements, including requirements of DOE Orders." The revised language conforms more closely to the CEQ regulations at 40 CFR 1508.27(b)(10), which provide guidance on determining the severity of environmental impact.

One commenter asserted that limitation 2 is inadequate because it does not include as a disqualifying factor the construction of waste storage facilities, which is particularly important when removal actions include the storage of what the commenter described as "virtually unlimited quantities of wastes for virtually unlimited periods of time."

DOE has determined not to change limitation 2 in the manner suggested by the commenter. However, in response to the substance of the comment, DOE has deleted the storage of waste pending treatment, recovery or disposal as a separate example within this categorical exclusion. Storage of wastes has been added to another example, and is categorically excluded only if it occurs at "existing facilities permitted for the type of waste resulting from the removal action, where needed to reduce the likelihood of human, animal, or food chain exposure."

Both commenters asserted that limitation 3 as proposed was inadequate. The commenters preferred a more expansive definition of "environmentally sensitive areas" and made a number of suggestions in that regard. DOE has adopted these suggestions, with one exception. DOE has chosen not to include "population centers" in the definition of environmentally sensitive areas, because DOE believes that, considering the three limitations applied to the use of the categorical exclusions, populations centers are not threatened. DOE has limited the definition of environmentally sensitive areas to those areas that legislation and Executive Orders have recognized as deserving of special protection.

One commenter noted that the proposed categorical exclusion failed to explain when and how the

determination of environmental sensitivity would be made. All three of the limitations discussed above, when applicable to a categorical exclusion, function as threshold limitations. Their applicability must be established before any determination is made that a particular action falls within the categorical exclusion, and their consideration must be documented.

One letter commented on most of the examples listed in this proposed categorical exclusion. The following discussion describes each of these comments that has not already been addressed.

*Excavation or consolidation of contaminated soils, etc.* The commenter asserted that this action should not be categorically excluded because soil or sediment removal can, under certain circumstances, accelerate groundwater contamination and because the action as proposed exceeds the "excavation or consolidation" activity described as appropriate in the CERCLA NCP regulations. DOE has revised the description of this action to limit it to areas "that are not receiving contaminated surface or waste water" and "where surface or groundwater would not collect" to eliminate the possibility of accelerating groundwater contamination. DOE has further limited excluded actions of this type to those that "would reduce the spread of, or direct contact with, the contamination" to be consistent with language used in the CERCLA NCP regulations.

*Removal of drums, barrels, tanks, etc.* The commenter stated that there would be no objection to this categorical exclusion if it were limited to small-scale removal actions or the threat of a release. As discussed above, DOE will apply the CERCLA statutory limitations, which limit the dollar amount and the duration of categorically excluded removal actions under CERCLA, and exemptions. In response to this comment, DOE has further limited this exclusion to situations in which the action "would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain."

*Removal of asbestos-containing materials, etc.* The commenter stated it would not object to the categorical exclusion of this action provided that language were added to require compliance with state and local requirements, including certification of removal contractors and technicians, and oversight by Federal or authorized state Occupational Safety and Health Administration (OSHA) inspectors. In response to the first point, DOE has revised the description of this action to

limit its exclusion to actions carried out in accordance with "appropriate state and local requirements, including certification of removal contractors and technicians." DOE has not adopted the second comment because not all DOE operations are legally subject to OSHA oversight. However, the categorical exclusion has been revised to include, in addition to 29 CFR 1926.58, compliance with "other appropriate OSHA standards in title 29, chapter XVII of the CFR" as a condition of its application. DOE has adopted for its operations the regulations issued pursuant to OSHA and is currently working with Federal OSHA officials to improve DOE's program for oversight and inspection of worker health and safety.

*Removal of polychlorinated biphenyl (PCB) items, etc.* The commenter suggested that this action be limited to those situations in which there is an imminent threat of fire or offsite release, because the disposal of PCB materials offers a range of alternatives. This categorical exclusion, however, applies only to the removal of the PCB items, and not to their disposal. Disposal of removed PCB items would be subject to further NEPA review unless such disposal fell within the scope of another categorically excluded action, such as the one described in paragraph 1.c.(16) of the amendments being adopted today.

*Treatment (including incineration), recovery, or disposal of wastes, etc.* The commenter asserted that the categorical exclusion of this action is unnecessary because it appears to include a requirement for NEPA review where such review has already occurred. On the other hand, the commenter would object to the categorical exclusion of this action if it were interpreted to exclude NEPA review of actions that would result in significant changes in the operations of a waste facility. In response to this comment, DOE has deleted the requirement that such actions be carried out at "existing permitted facilities for which, if they are federal facilities, appropriate NEPA review has been completed" and added language to limit excluded actions to those that are carried out at "existing facilities permitted for the type of waste resulting from the removal action, where needed to reduce the likelihood of human, animal, or food chain exposure."

*Capping or other containment of contaminated soils or sludges.* The commenter objected to the categorical exclusion of this action because such actions could reduce or eliminate the use of long-term remedial alternatives. As a result of this comment, DOE has revised the description of this action to limit its categorical exclusion to

situations in which there would be no "effect on future groundwater remediation and where needed to reduce migration" of hazardous substances, pollutants or contaminants into soil, groundwater, surface water, or air.

*Closing of man-made surface impoundments.* The commenter objected to the categorical exclusion of this action based on the assertion that such actions are not considered appropriate removal actions under the CERCLA NCP regulations and could have substantial impacts. On the basis of this comment, DOE has revised the description of the action to limit its exclusion to situations in which such action is needed to maintain the integrity of the impoundment, to be consistent with language used in the CERCLA NCP regulations.

*In-situ stabilization, etc.* The commenter objected to the categorical exclusion of this action in the manner proposed, because of the lack of clarity concerning what documentation or considerations would constitute a land-use management plan, and because the characterization of such actions as removal actions might eliminate review under environmental statutes other than NEPA. After considering these comments, DOE has determined to delete this example. DOE may, however, redefine the action and include it in the proposed NEPA regulations that will be published for comment in the near future.

*Confinement or perimeter protection, etc.* In response to a comment that the extent of such actions should be limited, DOE has limited the categorical exclusion of this action to situations in which the action is "needed to reduce the spread of, or direct contact with, the contamination."

*Stabilization of berms, dikes, etc.* This action has been revised to adopt the commenter's suggestion that "stabilization" not include any expansion of the affected structures.

*Drainage controls.* In response to a comment that this action should be narrowed, the description of this action has been revised to conform substantially to a similar removal action in the CERCLA NCP regulations.

*Use of chemicals and other materials to neutralize wastes.* This action has been limited to the neutralization of pH, as suggested by the commenter.

*Installation and operation of gas ventilation systems, etc.* The commenter pointed out that the "potentially explosive gases" referred to in this action could include toxic gases or be associated with toxic and/or radioactive

co-contaminants. The commenter indicated, however, that there would be no objection to the categorical exclusion of this action if it were limited to "situations involving methane or petroleum vapors without any toxic or radioactive co-contaminants, and where appropriate filtration or gas treatment was in place." The description of this action has been revised in accordance with this comment.

2. *Improvements to environmental control systems.* One commenter expressed the view that two changes should be made to this categorical exclusion if it were adopted. The commenter suggested that the phrase, "within an existing facility," be changed to "within an existing plant or structure" because the term "facility" could be interpreted to encompass an entire site. DOE agrees with this comment and has revised the phrase to "within an existing building or structure." The commenter also believed that this categorical exclusion should be limited to situations where there is a clear net environmental benefit and where source reduction and waste minimization alternatives have been considered. The commenter was concerned that the categorical exclusion of these improvements would eliminate an opportunity to consider various alternatives and impacts.

In response to this concern, DOE has restricted the scope of this categorical exclusion by applying the three limitations discussed above, which were previously applicable only to the categorical exclusion dealing with removal actions. DOE disagrees that the categorical exclusion of such improvements will eliminate the opportunity to consider alternatives. DOE directives (such as the DOE Orders for the Department's environmental protection program, hazardous and radioactive mixed waste program, and radioactive waste management) require development and implementation of waste minimization programs. In addition, on June 27, 1990, DOE issued a waste reduction policy statement to consolidate these minimization requirements and to initiate a pollution prevention program.

3. *Site characterization and environmental monitoring activities.* One commenter expressed the belief that the terms "site characterization" and "environmental monitoring" should be defined if this categorical exclusion were adopted. In response to this comment and as a result of DOE's own consideration of how best to clarify the scope of this exclusion, it has been revised to list as examples 11 specific

activities that could qualify for the categorical exclusion.

### III. Other Revisions to the Proposed Amendments

In addition to revisions made in response to comments and other revisions already discussed, DOE has made a number of editorial, stylistic and format revisions. DOE has also made the following substantive changes for clarity and consistency.

As previously indicated, DOE has clarified the three limitations applicable to the first categorical exclusion, and has applied them to the second categorical exclusion as well. The phrase "construction or expansion" in proposed limitation 2 has been revised to read "construction or major expansion." This revision was made because DOE believes that the minor expansion of a waste facility consistent with permit requirements does not have the potential for significant effects on the human environment.

DOE has added two actions to the list of examples of categorically excluded actions. One example—use of chemicals and other materials to retard the spread of a release or to mitigate its effect under certain limited circumstances—is also listed in the CERCLA NCP regulations. DOE believes that the second example—removal of an underground storage tank in certain limited circumstances—is consistent with the intent of the proposed categorical exclusion.

DOE has revised one example of a categorically excluded removal action. The example as proposed, "segregation of reactive wastes," has been revised to read "segregation of wastes that react with one another to result in adverse environmental impacts" for clarification.

The second categorical exclusion, as proposed, involved improvements to environmental permit conditions. DOE has expanded this exclusion to include improvements made to lower emissions or effluents regardless of whether the action is motivated by a permit requirement. This revision does not affect the scope and nature of the types of improvements categorically excluded.

DOE has again consulted with CEQ regarding these amendments to section D of DOE's NEPA Guidelines, in accordance with 40 CFR 1507.3. CEQ has found that these amendments set forth procedures that are in conformance with NEPA and the CEQ regulations. Therefore, DOE adopts these amendments to Section D of its NEPA Guidelines, effective immediately.

Issued in Washington, DC, on August 31, 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

Section D of the DOE NEPA Guidelines is amended by adding the following items at the end of the subsection entitled "Classes of Actions Generally Applicable to All of DOE" under the column entitled "Normally Do Not Require EAs or EISs":

1. The removal actions and other actions described below, if it is determined that such an action would not threaten a violation of applicable statutory, regulatory, or permit requirements, including requirements of DOE Orders; would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, or groundwater); and would not adversely affect environmentally sensitive areas as defined in Paragraph 4 below:

a. 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 Standards for Asbestos); 40 CFR Part 763 (Asbestos), Subpart G (Asbestos Abatement Projects); 29 CFR Part 1910, Subpart I (Personal Protective Equipment), § 1910.134 (Respiratory Protection); Subpart Z (Toxic and Hazardous Substances), § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); 29 CFR Part 1926 (Safety and Health Regulations for Construction), Subpart D (Occupational Health and Environmental Controls), § 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite), and other appropriate OSHA standards in title 29, chapter XVII of the CFR; and appropriate state and local requirements, including certification of removal contractors and technicians.

b. Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

c. 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 actions

similar in scope under the Resource Conservation and Recovery Act (RCRA) and other authorities (including those taken as partial closure actions and those taken before corrective action). These actions could include, but are not limited to, the following types of actions:

(1) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, where surface water or groundwater would not collect, and where such actions would reduce the spread of, or direct contact with, the contamination;

(2) 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, or hazardous wastes under 40 CFR part 261, where such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(3) Removal of an underground storage tank, including its associated piping and underlying containment systems, in compliance with 40 CFR part 280, where such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(4) Repair or replacement of leaking containers;

(5) Capping or other containment of contaminated soils or sludges where the capping or containment would not affect future groundwater remediation and where needed to reduce migration of 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, into soil, groundwater, surface water, or air;

(6) Drainage or closing of man-made surface impoundments where needed to maintain the integrity of the structure;

(7) Confinement or perimeter protection using dikes, trenches, ditches, or diversions, where needed to reduce the spread of, or direct contact with, the contamination;

(8) Stabilization, but not expansion, of berms, dikes, impoundments, or caps where needed to maintain the integrity of the structures;

(9) Drainage controls (e.g., run-off or run-on diversion) where needed to reduce offsite migration of 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, or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(10) Segregation of wastes that react with one another to result in adverse environmental impacts;

(11) Use of chemicals and other materials to neutralize the pH of wastes;

(12) Use of chemicals and other materials to retard the spread of the release or to mitigate its effects, where the use of such chemicals would reduce the spread of, or direct contact with, the contamination;

(13) Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants, and where appropriate filtration or gas treatment is in place;

(14) Installation of fences, warning signs, or other security or site control precautions, where humans or animals have access to the release;

(15) Provision of an alternative water supply that would not create new water sources where necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy; and

(16) Treatment (including incineration), recovery, storage, or disposal of wastes at existing facilities permitted for the type of waste resulting from the removal action, where needed to reduce the likelihood of human, animal, or food chain exposure.

2. Improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents, if (a) the improvements would be conducted within an existing building or structure; (b) any substance captured or produced thereby during subsequent operations of the environmental control systems would be recycled, released, or otherwise disposed of within existing permitted facilities; (c) for any such substance identified within the definition of hazardous substances under section 101(14) of CERCLA that is collected or produced in increased quantity or was not previously collected or produced, there are applicable statutory or regulatory requirements or permit conditions for its disposal, release, or recycling; and (d) it is determined that such improvement would not threaten a violation of applicable statutory, regulatory, or permit requirements, including

requirements of DOE Orders; would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, or groundwater); and would not adversely affect environmentally sensitive areas as defined in paragraph 4 below.

3. Site characterization and environmental monitoring, including siting, construction, or operation of characterization and monitoring devices, under CERCLA and RCRA, if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances as defined in section 101(14) of CERCLA, pollutants or contaminants as defined in section 101(33) of CERCLA, or non-native organisms, and would not adversely affect environmentally sensitive areas as defined in paragraph 4 below. Activities covered include but are not limited to:

a. Geological and engineering surveys and mapping, including the establishment of survey marks;

b. Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, geophysical exploration tools, and drilling of slim core holes;

c. Drilling of groundwater or vadose (unsaturated) zone sampling and monitoring wells;

d. Well logging;

e. Aquifer response testing;

f. Installation and operation of water-level recording devices in wells;

g. Installation of ambient air monitoring equipment;

h. Sampling and characterization of water, soil, rock and contaminants;

i. Sampling and characterization of water effluents, air emissions, or solid waste streams;

j. Installation of meteorological towers and associated activities, including assessment of potential wind energy resources; and

k. Sampling of flora or fauna.

4. For purposes of paragraphs 1 through 3 above, areas considered to be environmentally sensitive include:

a. Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance, as officially designated by Federal, state, or local governments, including those eligible for listing on the National Register of Historic Places;

b. Potential habitat (including critical habitat) of Federally-listed endangered, threatened, proposed, or candidate

species or of state-listed endangered and threatened species:

c. Floodplains and wetlands;

d. Natural areas such as Federally- and state-designated wilderness areas, National Parks, National Natural Landmarks, Wild and Scenic Rivers, coastal zones, state and Federal wildlife refuges, and marine sanctuaries;

e. Prime agricultural lands; and

f. Special sources of water (such as Class I groundwater, sole-source aquifers, wellhead protection areas and other water sources that are vital in a region).

[FR Doc. 90-21103 Filed 9-6-90; 8:45 am]

BILLING CODE 6450-01-M