United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, DC 20240

TAKE PRIDE IN AMERICA

SEP 0 9 2005

Memorandum

To: Solicitor
Assistant Secretaries
Bureau and Office Heads

From: P. Lynn Scarlett
Assistant Secretary – Policy, Management and Budget

Subject: Emergency Actions and NEPA

Attached please find guidance from the Council on Environmental Quality (CEQ) for Emergency Actions and the National Environmental Policy Act (NEPA). This guidance is specific to emergency actions related to Hurricane Katrina and highlights several points, including reporting requirements for oil and chemical spills, projected long term recovery efforts, and information on how agencies can respond to emergencies and comply with NEPA.

Existing Departmental policy can be found in section 516 of the Departmental Manual and in Environmental Statement Memorandum (ESM04-11) titled: NEPA Compliance in Emergency Situations. This guidance was previously issued by the Office of Environmental Policy and Compliance (OEPC).

OEPC is currently drafting additional guidance for circumstances where performing emergency activities associated with the aftermath of Hurricane Katrina are not expected to have a significant environmental impact. The guidance is expected to be issued soon.

If you have any questions, please contact me or Chris Kearney at 208-4203.

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

September 8, 2005

MEMORANDUM FOR FEDERAL NEPA CONTACTS

FROM: HORST G. GRECZMIEL
Associate Director for NEPA Oversight

SUBJECT: Emergency Actions and NEPA

This memorandum provides:

- General information on the response to Katrina
- Reporting oil and chemical spills
- Projected long term recovery efforts
- How agencies can respond to emergencies and comply with NEPA.

Please distribute this memorandum to your agency planning and environmental personnel.

General information on the response to Katrina:

Information is available on the FEMA website at http://www.fema.gov and specifics on the government's response are provided at the "What Government is Doing" link which can be directly accessed at http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0712.xml

Reporting oil and chemical spills:

Spills of hazardous substances must be reported to the National Response Center (NRC). The Center is integral to long-established procedures in preparedness and planning for natural disasters like hurricanes. The NRC serves as the sole federal point of contact for reporting oil, chemical, radiological, and biological releases in the United States.

Spills or discharges in the hurricane's aftermath should contact the NRC immediately at (800) 424-8802 or (202) 267-2675. The NRC is available to take calls 24 hours a day, 7 days a week, and 365 days a year.

The NRC supplies Coast Guard and EPA response personnel with incident reports of oil discharges and chemical releases. This information helps them determine next steps in responding to the natural disaster. The information from the NRC reports, coupled with the Federal Emergency Management Agency's Rapid Needs Assessment, will help the Coast Guard and EPA ensure the protection of public health and the environment. For more information on the National Response Center, visit the NRC website http://www.nrc.uscg.mil/nrchp.html.

Projected long term recovery efforts:

a. The White House is establishing an interagency group that will develop and disseminate policies to guide long term rebuild efforts. Further information will be forthcoming.

b. The long term recovery component of the National Response Plan (Emergency Support Function #14) is establishing an environmental coordination group. The points of contact at the Regional and District Field Offices to assist in ensuring that response actions have minimal adverse environmental effects will be distributed in the near future.

How agencies can respond to emergencies and comply with NEPA:

a. Read attachment 1, Emergency Alternative Arrangements under the National Environmental Policy Act, and call CEQ if you are facing an emergency response action and have any questions. This is the time to respond and use NEPA to facilitate, not slow down or hinder, actions necessary to preserve life and resources. It is also the time to demonstrate our continuing commitment to environmental stewardship by ensuring that response and revitalization activities do not inadvertently create unnecessary future environmental problems.

b. Attachment 2, Preparing Focused, Concise and Timely Environmental Assessments, is provided for your use in those cases where NEPA applies and there is no statutory exemption, applicable categorical exclusion, nor need for alternative arrangements (see the attached background paper). This focused EA meets NEPA requirements under all circumstances.

Any questions you have regarding emergency response activities and NEPA should be directed to your agency NEPA contacts or to CEQ and we will ensure our coordination with your headquarters' environmental office (see: http://ceq.eh.doe.gov/nepa/contacts.cfm).

Attachment 1: Emergency Alternative Arrangements under the National Environmental Policy Act

Attachment 2: Preparing Focused, Concise and Timely Environmental Assessments

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EMERGENCY ALTERNATIVE ARRANGEMENTS
Under the NATIONAL ENVIRONMENTAL POLICY ACT

1. CEQ NEPA Regulations: 40 C.F.R. section 1506.11 Emergencies:
"Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review."

2. Is NEPA triggered? Federal action is required (e.g., City or State action does not).
   a. If the proposed emergency response activity does not have "significant" environmental impacts, then the alternative arrangements at 40 C.F.R. §1506.11 do not apply (e.g.,. if your agency have a categorical exclusion that is appropriate to exclude further NEPA analysis)
   b. If the proposed emergency response activity has "significant" environmental impacts, then are you covered by an existing NEPA analysis or applicable exemption? (e.g., implementing pre-existing plans to redeploy vessels and aircraft).
   c. If there are "significant" environmental impacts and you are not already covered (e.g., unsorted disposal of debris at a specific site; permanent replacement of major facilities), then consult with CEQ (Horst Greczmiel, Associate Director, 202-395-0827, Horst_Greczmiel@ceq.eop.gov; Ted Boling, Deputy General Counsel, 202-395-3449, Edward_A._Boling@ceq.eop.gov; Dinah Bear, General Counsel, 202-395-7421, Dinah_Bear@ceq.eop.gov).
   d. Statutorily exempt from NEPA (e.g., certain FEMA response actions under the Stafford Act see: http://www.fema.gov/library/stafact.shtm)?

3. **Do not delay** immediate actions necessary to secure lives and safety of citizens to consult, but **consult with CEQ as soon as feasible** – CEQ will contact your headquarters NEPA contacts in the event you are unable to reach them (see http://ceq.eh.doe.gov/nepa/contacts.cfm).

4. The "alternative arrangements" take the place of an Environmental Impact Statement and only apply to Federal actions with "significant environmental impacts." Lesser actions may be subject to agency NEPA procedures. Agency NEPA personnel should be contacted regarding agency-specific definitions of "significant" actions and actions that are "categorically excluded."

5. "Alternative arrangements" for compliance with NEPA may be subject to judicial review. "Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance.

6. Alternative arrangements are limited to "the actions necessary to control the immediate impacts of the emergency." They will be developed, based upon your specific facts and circumstances, during the consultation with CEQ.

7. Courts afford CEQ substantial deference regarding its determination of emergency alternative arrangements. Alternative arrangements have been unsuccessfully challenged three

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times (including Westover, MA, overflights for Desert Storm training). Once the alternative arrangements are established, CEQ will provide documentation spelling out the alternative arrangements and the considerations on which they are based.

8. Factors to address when crafting "alternative arrangements": nature and scope of the emergency; actions necessary to control the immediate impacts of the emergency; potential adverse effects of the proposed action; components of the NEPA process that can be followed and provide value to decisionmaking (e.g., coordination with affected agencies and the public); duration of the emergency; and potential mitigation measures.

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Preparing Focused, Concise and Timely Environmental Assessments

In those situations where:

- there is no statutory exemption from NEPA requirements,
- there is no categorical exclusion is available, either because the agency has none that covers the activity or there are extraordinary circumstances,
- the proposed recovery/response actions are not covered in an existing NEPA analysis (EA or EIS), and
- the expected environmental impacts of the proposed recovery/response action is not considered to be significant,

a concise and focused environmental assessment can be prepared in a short time.

The following outline with notations addresses the core elements of an EA:

- the need for the proposal,
- alternatives as required by NEPA section 102(2)(E),
- the environmental impacts of your proposed action and the alternatives, and
- the agencies and persons consulted. 40 CFR 1508.9

Need for the Proposal

- Briefly describe information that substantiates the need for the project; incorporate by reference information that is reasonably available to the public. [*For example: This agency is preparing to erect a temporary emergency response facility to replace facilities disrupted or destroyed by hurricane Katrina in order to facilitate rescue and/or relief efforts in an effort to [minimize further death/ adverse health conditions/restore communications/restore power.]*
- Briefly describe the existing conditions, the projected future conditions of the area impacted by the project. [*For example: The area(s) in which the temporary facility will be located or relocated is identified in the attached map. This area consists of [add brief description of the environmental state of the area that will be affected by the location and operation of the facility, focusing on those areas that are potentially sensitive – the goal is to show that refueling sites are not on top of aquifers, nesting areas, graves, sacred sites etc – these are examples to show the utility and need to identify actual place based environmental issues rather than compiling laundry lists of environmental resources that are not at issue.*]

Proposed Action and Alternatives

- List and briefly describe your proposed action and any alternatives that meet the project purposes. You have discretion as to the number of alternatives. [*The alternatives should be focused by the purpose and need statement. For example, the need to use existing infrastructure necessary to support the facility is a potential basis for focusing on a discreet number of alternatives*]
- When there is consensus about the proposed action based on input from interested parties, you can consider the proposed action and proceed without consideration of

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additional alternatives. Otherwise, you need to develop reasonable alternatives to meet project needs. (NEPA section 102(2)(E)). [*see the note above*]

Environmental Impacts of the Proposed Action and Alternatives

- Describe the environmental impacts of your proposed action and each alternative. Your alternatives must meet the purpose and need.
  Your description should provide enough information to support a determination to either prepare an environmental impact statement or find no significant impact.
- Concentrate on whether the action would "significantly" affect the quality of the human environment. You should use CEQ's definition of "significantly," 40 CFR 1508.27, as a general guide and, where applicable, cite to agency guidance, policies, monitoring and experience, including significance determinations documented in related or analogous NEPA decisions [*Use your agency NEPA contacts and contacts at resource agencies to assist*].
- Tailor the length of your discussion to the complexity of the each issue. [*Focus on those human and natural environment issues where impacts are a concern – telephone or e-mail, discussions with local, Tribal, and state agencies and other federal agencies that operate in the area will help focus those issue*]
- You may discuss the impacts (direct, indirect and cumulative) of each alternative together in a comparative description or discuss each alternative separately [*Use the approach that will be most effective in the time available*].
- You may contrast the impacts of the proposed action and alternatives with the current condition and expected future condition in the absence of the project. This constitutes consideration of a no-action alternative as well as demonstrating the need for the project.
- Incorporate by reference data, inventories, other information and analyses you relied on. The use of hyperlinks in web-based documents is encouraged. This information must be reasonably available to the public. [*For example, include relevant existing programmatic agreements and generally accepted best management practices.*]
- You should be clear and concise about your conclusions.

Agencies and Persons Consulted.

- List the agencies and persons consulted. [*For example, include the people/offices/agencies that you coordinated with to ensure that the location of the project did not unintentionally cause an adverse impact – coordination to comply with substantive environmental requirements such as any coordination under the CWA, ESA or NHPA. Note that the ESA emergency provisions at 50 CFR 402.05 may be applicable.*]

Note: CEQ provided similar guidance at:
http://ceq.eh.doe.gov/nepa/regs/guidance_for_environmental_assessments.pdf

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