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The article will also be used as an integral part of graduate education, i.e., to enhance the graduate student's knowledge in the use of radiogenic isotopes and isotopic applications in Oceangraphy and Earth Sciences, as well as train the students in the practical use of such sophisticated instruments. In addition, the article will be used in courses containing basic science material and direct application of research results obtained by the professor in their specialized field of oceanography or geology. Application received by Commissioner of Customs: November 10, 1977.

Docket Number: 78-00046. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Mass. 02139. Article: Calorimetric experimental furnace with 20 water cooled steel elements, including burner, front and chimney end sections and accessories. Manufacturer: International Flame Research Foundation, The Netherlands. Intended use of articles. The article is intended to be used for studies of fossil fuels including coal, coal derived fuels, petroleum fuels and synthetic fuels. The experiments conducted will involve combustion research on the preparation and combustion of various fuels in a pilot scale combustion research facility, equipped to provide detailed information on combustion, heat transfer and emissive characteristics. The Department of Chemical Engineering Graduate and Undergraduate programs will involve laboratory and experimental courses which make use of the article. Application received by Commissioner of Customs: November 6, 1977.

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc. 77-34401 Filed 11-30-77; 8:25 am]

[5310-17]

Office of the Secretary

ADvisory Panels for the New England and Mid Atlantic Fishery Management Councils

Establishment


Each Panel will provide its parent Council with pragmatic advice in counsel of the people most affected by the Council's management activities on matters of fishery management policy, on the preparation of fishery management plans, on their views prior to submission to the Secretary, and on their effectiveness in operation.

Each Panel will consist of approximately 125 members who are either actually engaged in the harvest, processing or consumption of fishery resources. Members of each Panel will be appointed by their respective Council.

The Panels will function solely as advisory bodies, and in compliance with the provisions of the Federal Advisory Committee Act. Copies of each Panel's Charter will be filed under the Act with the concerned congressional committees. Inquiries regarding this notice may be addressed to the Committee's Liaison Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Md. 20852.


G. W. CAMPBELL, Jr., Assistant Secretary for Administration.

[FR Doc. 77-34572 Filed 11-30-77; 8:45 am]

[5125-01]

COUNCIL ON ENVIRONMENTAL QUALITY

NATIONAL ENVIRONMENTAL POLICY ACT

Administered Interpretation

NOVEMBER 28, 1977

AGENCY: Council on Environmental Quality, Executive Office of the President.
NOTICES


SUMMARY: The Council on Environmental Quality has periodically issued Memoranda to Heads of Agencies containing the Council's legal views on specific questions involving the National Environmental Policy Act (42 U.S.C. 4321 et seq.). These memoranda represent the considered views of the Council, which is the agency having the principal responsibility for providing administrative interpretation of NEPA to all federal agencies. Executive Order 11514 as amended by Executive Order 11891 (May 24, 1977). Certain of these memoranda have been the subject of considerable public demand. In order efficiently to respond to such public requests, the most requested memoranda to heads of agencies are published in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT:


NICHOLAS C. YOST,
Acting General Counsel.
August 11, 1977.

MEMORANDUM

To: Heads of All Agencies.

Subject: Interim Guidance to Federal Agencies on Referrals to the Council of Proposed Federal Actions Found to Be Environmentally Unacceptable.

Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment on proposals to control air pollutants that may have an impact on visibility and comfort. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.

CHARLES WARREN,
Chairman.
August 11, 1977.

INTERIM GUIDANCE TO FEDERAL AGENCIES ON REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS FOUND TO BE ENVIRONMENTALLY UNACCEPTABLE

1. Purpose: This guidance establishes procedures for the referral to the Council of Environmental Quality of interagency disagreement over proposed major federal actions that might cause unsatisfactory environmental effects. The purpose of this guidance is to provide a basis for the early resolution of such disagreements.

2. Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment on proposals to control air pollutants that may have an impact on visibility and comfort. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.

3. Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment on proposals to control air pollutants that may have an impact on visibility and comfort. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.

4. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.

5. Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment on proposals to control air pollutants that may have an impact on visibility and comfort. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.

6. Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment on proposals to control air pollutants that may have an impact on visibility and comfort. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.

7. Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment on proposals to control air pollutants that may have an impact on visibility and comfort. The memorandum contains a statement prepared by the President of the Council that is to be addressed to the Council and the public. This memorandum is intended to provide the basis for a decision on whether an action is unacceptable because it is unsatisfied with the standards established for the protection of public health or welfare.
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A copy of the letter signed by the head of the referring agency which has been delivered to the Council informing the lead agency of the referral, the reasons for it, and requesting the lead agency take no action to implement the proposal until the referral is acted upon by the Council. The letter shall include a copy of the document referred to in section 102(2)(A) of the NEPA Act, in which an action, project, or arguably, and the general content of the action, project, or proposal.

B. A statement supported by evidence as to the specific facts, or controverted facts, leading to the conclusion that the proposal is unsatisfactory from the standpoints of national public health or welfare or environmental quality. The statement shall (A) identify any material facts in controversy, as well as incorporated (by reference if appropriate) agreed upon facts; (B) identify any existing environmental laws or policies which would be violated by the proposal; (C) present the reasons the referring agency believes the proposal is unsatisfactory; (D) contain a finding of the agency as to whether the issue raised is one of national importance because of the threat to national environmental resources or policies or for some other reason; (E) review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and (F) give the referring agency an opportunity to conduct investigations as to what mitigation, alternatives, modifications, a study, or other course of action (including abandonment or modification of the proposal) are necessary to remedy the situation.

C. Do not later than twenty (20) days after the date of the referral, the lead agency shall deliver a response to the Council and the referring agency. Upon application to the Council by the lead agency and upon assurance that the proposal will not go forward in the interim, the Council may extend this period of time. The response shall fully address the issues raised in the referral, shall be supported by evidence, and shall give the lead agency’s response to the referring agency’s recommendations.

D. After receipt of the referral and any response, the Council shall take one or more of the following actions:

1. Conclude that the process of referral and response has successfully resolved the problem;
2. Initiate discussions with the agencies represented in the referral for remedial action, and for the record, these discussions.
3. Hold public meetings or hearings or other additional meetings and information;
4. Publish the findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of the agency); or
5. On matters of clear national importance, submit the referral and the response together with the Council’s recommendations to the President for decision.

MEMORANDUM TO HEARERS OF AGENCY ON APPLYING THE EIS REQUIREMENT TO ENVIRONMENTAL IMPACTS ABROAD OF MAJOR FEDERAL ACTIONS

September 24, 1976.

NEPA requires analysis of significant environmental impacts of proposed major federal actions on the quality of the environment in the United States. This requirement is not limited to the United States, but includes other countries and areas outside the jurisdiction of any nation, and is applicable to all areas outside the jurisdiction of any nation, and is applicable to all areas outside the jurisdiction of any nation. If an agency receives a referral for action abroad, it should consult with the Council, the National Environmental Policy Act of 1969, and NEPA’s legislative purpose, the Council’s Guidelines, and its goals and precedents.

In a statute in other sections, refer specifically to the national environment, use of the term, or the term as a definition of a new concept. The interpretation of the term, or a definition of the new concept, is necessary and must be considered in that context.

The Council has consistently applied NEPA to U.S. international activities and legislation to recognize the Act’s impact on international policy. In its first Annual Report, for example, the Council pointed out that NEPA “directed all agencies of the Federal Government to recognize the worldwide impacts of its activities.” In 1971 the Council’s Legal Advisory Committee specifically urged federal agencies to apply NEPA to their actions in foreign countries.


Legal Advisory Committee Report to the President’s Council on Environmental Quality, at 13-17 (December 1971).

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1101b(k)2, 101b(x), 201.
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Council's 1973 Guidelines require the assessment of "the national and international environment." The Fifth Annual Report reviewed agencies' experience in applying the law to U.S. actions abroad. In 1976, the report noted some of the benefits of this experience—the growth of environmental impact assessment procedures in foreign countries.

Accordingly, some federal agencies have provided in their NEPA procedures for the preparation of environmental statements when agency actions affect significant environmental impacts beyond U.S. borders, and impact statements have been prepared on U.S. actions in foreign countries. Moreover, in courts and virtually every legal commentary addressing the subject, have supported the Council's belief that an environmental statement is required whenever U.S. actions would have significant environmental impacts on the U.S. or global resources, or on foreign countries.

Of course, significant indirect as well as direct impacts must be considered. 40 CFR 1508.9(a)(3)(ii) (1975); City of Davis v. Coleman, 521 F. 2d 691 (9th Cir. 1975); see CEQ, Environmental Quality Act of 1970, at 410-11 (1974).

The policies underlying NEPA reinforce the interpretation suggested by its language and legislative history. Judicial precedents and administrative policy, analysis and disclosure in an EIS of significant environmental effects provide U.S. decisionmakers with a fuller picture of the foreseeable environmental consequences of their decisions. Impact statements do not dictate actions on foreign soil or impose U.S. requirements on foreign countries. Instead, they guide U.S. decisionmakers in determining U.S. policies and actions.

In addition, EISs provide information to cooperating governments which they then could use in making decisions about projects within, or which may affect, their countries. From being a tool of integration, this information can enhance the value of U.S. assistance or participation. This full disclosure by the United States contributes to the integrity of cooperating governments' policy making, and thus lends support to international cooperation as directed in 102(2)(C), the Blochmann Declaration, and other international agreements.

To the extent national security or essential foreign policy considerations make control cirded. Section 102(2)(C) of the National Environmental Statements necessary, NEPA provides sufficient procedural flexibility to accommodate this. Section 102(2)(C) provides exceptions to public circulation of documents by incorporating the Freedom of Information Act and its exemptions. Public access to environmental statements or portions of these have been classified, for example, when necessary to protect national security. Presumably, if public examination of proposed U.S. action in another country would jeopardize U.S. foreign policy in a given instance, circulation of the environmental statement could be restricted in accordance with these statutory procedures.

In general, however, Congress has mandated that environmental statements are public documents.

In summary, the Council believes that the impact statement requirement in 102(2)(C) of NEPA applies to all significant effects of proposed federal actions on the quality of the human environment. In the United States, in other countries, and in areas outside the jurisdiction of any country. Accordingly, agency officials responsible for analyzing the potential environmental effects of proposed actions, must assess the potential impacts outside the United States, as well as those within it; if any of these potential impacts are likely to be significant, an impact statement should be prepared.


See, e.g., Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972; Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Oct. 12, 1940.

See, e.g., U.S. Army, final EIS, Transit Satellite (June 1972).

Thus, NEPA incorporates a procedure for ensuring that the execution of U.S. foreign policy and U.S. environmental policy are consistent. Of course, no agency has the authority otherwise to deviate from NEPA's requirements for foreign policy or other matters. Culver City v. AEC, 449 F. 2d 1109 (D.C. Cir. 1971).

MEMORANDUM TO HEADS OF AGENCIES ON "KLEFFE V. SIERRA CLUB" AND "FLINT RIDGE v. SCENIC RIVERS"

September 16, 1976.

In June, the Supreme Court decided two cases on NEPA, Kleffe v. Sierra Club and Flint Ridge Development Co. v. Scenic Rivers. The Court has held that NEPA does not apply to the Court has the authority to instruct the Chief Justice and Rockfish R. Co. v. LSCAP No. 1, decided last year. Moreover, two of these cases—but particularly Kleffe—represent the first extenuate interpretation of NEPA by the Supreme Court.

Last November, the Court issued a memorandum to agency heads on SCRAP 11, over our past practice of issuing memoranda on important and other significant NEPA issues and developments. The attached memorandum on Kleffe and Flint Ridge Development Co. v. Scenic Rivers is, as a result, more appropriate and accurate. It provides a description and analysis of these decisions in the context of the Court's rulings, other sources of NEPA guidance, and agency activities.

Most of the Court's rulings deal with program environmental statements, labeled comprehensive statements by the Court. Under what has been called the "scrub" test, what their scope should be, and what actions can proceed before a comprehensive statement is completed. This memorandum discusses the principal points which emerge from the opinions:

(1) Comprehensive statements are necessary, by all agencies, on all federal programs and on all land acquisition activities or concurrent proposals with cumulative environmental impacts.

(2) Comprehensive statements should reflect consideration of future program-related activities, sequential steps or phases, or other proposals which may compound the effects of a present action.

The Court also touched on agencies' responsibilities to implement NEPA in the field. It emphasized the need for early and thorough integration of environmental factors into agency planning and analysis. It also noted that agencies have authority and responsibility to implement NEPA in areas of activity in which the EIS requirement may not apply.

If agencies have questions concerning possible specific effects of these decisions on their programs, we recommend that they consult with the Council before taking action. For the Council's part, we stand ready to meet with agency officials to discuss these decisions, the Council's memo, and agencies' general approaches to NEPA implementation.

Russell W. Peterson, Chairman.

September 15, 1976.

MEMORANDUM ON "KLEFFE v. SIERRA CLUB" AND "FLINT RIDGE DEVELOPMENT CO. v. SCENIC RIVERS ASSN. OF OKLAHOMA"

The Supreme Court cases on NEPA were decided in late June. These opinions, issued in tandem, constitute the first extenuate Supreme Court interpretation of NEPA.

Kleffe v. Sierra Club

The more significant decision was the Supreme Court's reversal of the Ninth Circuit's decision in Kleffe v. Sierra Club, the Northern Great Plains case. The Sierra Club sued the Department of the Interior and other agencies responsible for approving a pipeline through the Blackfeet Indian Reservation. The Court reversed the lower court's decision, holding that NEPA required an EIS for the proposed pipeline. The Court held that NEPA applies to actions taken by federal agencies, regardless of whether the action is "domestic" or "foreign." The Court also held that NEPA requires an EIS for actions that "may affect the environment outside the United States." The Court's decision has important implications for future NEPA cases.

Flint Ridge Development Co. v. Scenic Rivers

The other significant decision was the Supreme Court's reversal of the Fourth Circuit's decision in Flint Ridge Development Co. v. Scenic Rivers Assn. of Oklahoma. The Court held that NEPA does not apply to actions taken by federal agencies in the absence of a "clearly articulated federal policy or program." The Court's decision has important implications for future NEPA cases.

See footnotes at end of article.