

## NOTICES

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 Oceanography 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: 78-00045. 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 article: The article is intended to be used for studies of fossil fuels including coal, coal derived fuels, petroleum fuels and synthetic fuels. The experiments to be conducted will involve the preparation and combustion of various fuels in a pilot scale combustion research facility, equipped to provide detail information on combustion, heat transfer and pollutant emission characteristics. The Department of Chemical Engineering Graduate and Undergraduate programs in Fuel Engineering and Principles of Combustion will involve laboratory and experimental courses which make use of the article. Application received by Commissioner of Customs: November 8, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

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

[FR Doc. 77-34401 Filed 11-30-77; 8:45 am]

[3510-12]

National Oceanic and Atmospheric  
Administration

COASTAL ZONE MANAGEMENT PROGRAM OF  
STATE OF RHODE ISLAND

Public Hearings on Draft Environmental Impact  
Statement

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the draft environmental impact statement for the Coastal Management Program of the State of Rhode Island.

The hearings will be held on Wednesday, December 14, 1977, at the

State House in room 313 in Providence, R.I.; and on Thursday, December 15, 1977, at the University of Rhode Island at Independence Hall in Kingston, R.I. Each of the hearings will begin at 7:30 p.m.

The views of interested persons and organizations are solicited. These may be expressed orally or in written statements.

Presentations will be scheduled on a first-come, first-served basis, but may be limited to a maximum of ten minutes or as otherwise appropriate. Priority will be given to those with written statements. Time will be available at the end of the meeting for persons without statements to present their views orally. The Office of Coastal Zone Management staff may question any speaker following presentation of his/her statement. No verbatim transcript of the hearing will be maintained, but staff present will record the general thrust of the remarks.

Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management as soon as possible so that an appearance schedule may be drawn up and definite times established for presentations. Please contact:

June Cradick, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, 3300 Whitehaven Street NW., Washington, D.C. 20235, 202-634-4242.

Written comments may also be submitted by mail to the Office of Coastal Zone Management. Such comments should be received before January 10, 1978, to assure adequate consideration for inclusion in the final environmental impact statement.

Copies of the draft environmental impact statement may be obtained by contacting the Office of Coastal Zone Management or:

Daniel Varin, Statewide Planning Program, Department of Administration, 265 Melrose Street, Providence, R.I. 02907.

Comments may address the adequacy of the impact statement and/or the nature of the Rhode Island Coastal Management Program.

Following consideration of the comments received at these hearings, as well as written comments submitted, the Office of Coastal Zone Management will prepare the final environmental impact statement pursuant to the National Environmental Policy Act of 1969 and implementing guidelines.

Dated: November 22, 1977.

R. L. CARNAHAN,  
Acting Assistant Administrator  
for Administration.

[FR Doc. 77-34398 Filed 11-30-77; 8:45 am]

[3510-17]

Office of the Secretary

ADVISORY PANELS FOR THE NEW ENGLAND  
AND MID ATLANTIC FISHERY MANAGEMENT  
COUNCILS

Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. V., 1975)), and the Office of Management and Budget Circular A-63 of March 1974, and after consultation with the OMB, the Department of Commerce has determined that the establishment of the Advisory Panels for the New England and Mid Atlantic Fishery Management Councils is in the public interest in connection with the performance of duties imposed on the Department by the Fishery Conservation and Management Act of 1976, Pub. L. 94-265 (16 U.S.C. 1852).

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, process or consumption of, who are knowledgeable and interested in the conservation and management 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 Liaison Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Md. 20852.

Dated: November 25, 1977.

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

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

[3125-01]

COUNCIL ON ENVIRONMENTAL  
QUALITY

NATIONAL ENVIRONMENTAL POLICY ACT

Administrative Interpretation

NOVEMBER 28, 1977.

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

**ACTION: Information Only: Publication of Memoranda to Heads of Agencies Interpreting the National Environmental Policy Act.**

**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 11991 (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 (issued by the Council between August, 1976 and August, 1977) are reprinted in this issue of the FEDERAL REGISTER.

**FOR FURTHER INFORMATION CONTACT:**

Nicholas C. Yost, Acting General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006; 202-633-7032.

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 Unsatisfactory.

Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of proposed federal actions, including actions for which environmental impact statements are prepared under the National Environmental Policy Act. The scope of the Administrator's review extends to any impact addressed in legislation administered by EPA. If at the conclusion of this review the Administrator determines that the proposed action is "unsatisfactory from the standpoint of public health or welfare or environmental quality," he is directed by Section 309 to refer the matter to the Council on Environmental Quality.

Similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts, are made by other federal agencies under Section 102(2)(C) of NEPA and the Council's Section 102(2)(C) guidelines, 40 CFR 1500.9-1500.11. Under NEPA, these reviews must be made available to the President, the Council and the public. Thus, while EPA is given a mandatory responsibility to refer certain matters to the Council, authority to refer matters to the Council is available to all agencies with relevant expertise under the National Environmental Policy Act.

The Council has never adopted procedures for receiving and handling referrals to it of proposed federal actions which have been found to be environmentally unsatisfactory by EPA or another federal agency. It is our intention to do so now, initially in the form of the interim guidance which is attached. As you know, in compliance with Executive Order No. 11991 (May 24, 1977), we are in the process of developing regulations implementing NEPA generally. More formal referral procedures will be included in such regulations.

The interim procedures in the attached memorandum thus have two purposes:

1. They are intended to guide the process until the adoption of formal regulations.

2. They are presented for use by all agencies so that the final regulations, when adopted, will reflect our experience and collective wisdom.

In Executive Order No. 11991, the President directed the Council to develop procedures in its NEPA regulations "for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution." The procedures in the interim guidance for Section 309 referrals by EPA and similar referrals by other agencies are a first step in fulfilling the President's directive.

We appreciate your anticipated cooperation in making the procedures in the interim guidance work and in aiding us in developing the final regulations.

CHARLES WARREN,  
Chairman.

AUGUST 11, 1977.

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

1. *Purpose.* This guidance establishes procedures for the referral to the Council on Environmental Quality of interagency disagreements 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.

Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of proposed federal actions, including actions for which environmental impact statements are prepared under the National Environmental Policy Act. If at the conclusion of this review the Administrator determines that the proposed action is "unsatisfactory from the standpoint of public health or welfare or environmental quality," he is directed by Section 309 to refer the matter to the Council on Environmental Quality.

Similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts, are made by other federal agencies under Section 102(2)(C) of NEPA and the Council's section 102(2)(C) guidelines, 40 CFR 1500.9-1500.11. Under NEPA, these reviews must be made available to the President, the Council and the public.

This guidance provides procedures for EPA or other federal agencies to refer to the Council proposed major federal actions

which the referring agency believes to be environmentally unsatisfactory. The guidance establishes procedures for the early notice of possible referral, for the timing and content of referrals, for any response by the proposing agency, and for Council action.

It is the Council's policy that these environmental referrals should reflect an agency's careful determination that the proposed action raises significant environmental issues of national importance. In determining what kinds of environmental objections to a proposal are appropriate to refer to the Council, agencies should weigh the proposal's feared environmental impacts in terms of their possible violation of national environmental standards and policies (where they exist) and their severity, geographical scope, duration and precedential importance. Referrals should only be made to the Council after concerted, timely, but unsuccessful attempts to resolve differences with the proposing agency. The nature of the Council's response to referrals will be commensurate with the significance of the proposed actions and their possible impacts.

2. *Definitions.* The following definitions apply to these guidelines:

(a) "Council" means the Council on Environmental Quality.

(b) "Lead agency" means the federal agency which has prepared or has taken the lead role among federal agencies in preparing the environmental impact statement (EIS).

(c) "Referring agency" means the federal agency which has referred any proposal to the Council after a determination that the proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality.

(d) "Proposal" includes:

(1) With respect to the Environmental Protection Agency, any proposed legislation, project, action, or regulation as those terms are used in Section 309(a) of the Clean Air Act, and

(2) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of the National Environmental Policy Act applies.

3. *Procedure for referrals and response.* All agencies subject to NEPA or section 309 of the Clean Air Act shall comply with the following procedures in making referrals to the Council:

(a) The referring agency shall advise the lead agency at the earliest possible time that it intends to refer a proposal to the Council unless the proposal is changed as the referring agency recommends. Such advice shall be included in the referring agency's comments on the lead agency's draft EIS in all cases except where the draft EIS contains insufficient information to permit an assessment of the proposal's environmental acceptability. (Where such needed information is not contained in the draft EIS, the referring agency shall identify the needed information and request that it be made available by the lead agency at the earliest possible time.) Copies of such advice shall be sent to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final EIS has been made available to the Council, commenting agencies, and the public. Except where an extension has been granted by the lead agency, the Council will not accept a referral subsequent to that date.

(c) The referral shall consist of:

## NOTICES

(i) A copy of the letter signed by the head of the referring agency which has been delivered to the lead agency 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 paragraph 3(c)(ii) below.

(ii) A statement supported by evidence as to the specific facts, or controverted facts, leading to the conclusion that the proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall (A) identify any material facts in controversy as well as incorporate (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 environmentally unsatisfactory, (D) contain a finding by 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's recommendations as to what mitigation, alternatives, further study, or other course of action (including abandonment of the proposal) are necessary to remedy the situation.

(d) Not later than twenty (20) days after the delivery of the referral to the Council, the lead agency may 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 address fully 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.

(f) After receipt of the referral and any response, the Council may take one or more of the following actions:

(i) Conclude that the process of referral and response has successfully resolved the problem;

(ii) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies;

(iii) Hold public meetings or hearings to obtain additional views and information;

(iv) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency); or

(v) 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 HEADS OF AGENCIES ON APPLYING THE EIS REQUIREMENT TO ENVIRONMENTAL IMPACTS ABROAD

SEPTEMBER 24, 1976.

In recent months the Council has been involved in discussions with several agencies concerning the application of the EIS requirement in NEPA to U.S. actions with significant environmental impacts abroad (the high seas, the atmosphere, and other areas outside the jurisdiction of any nation; and other countries). We have noted different interpretations and practices among several agencies on this issue, and consequently have seen impact statements filed which reflect varying degrees of consideration of the

impacts abroad of U.S. actions (whether the actions are taken or the decisions made in the United States or abroad).

In order to encourage a consistent application of NEPA to all major federal actions, the Council is issuing the attached Memorandum on the Application of the EIS Requirement to Environmental Impacts Abroad. In it, we advise that NEPA requires analysis and disclosure in environmental statements of significant impacts of federal actions on the human environment—in the United States, in other countries, and in areas outside the jurisdiction of any country.

We believe that by taking account of likely impacts abroad before deciding on a proposal for action, federal agencies can obtain the same benefits of NEPA review that accompany the development of projects or actions with domestic impacts. Moreover, we believe such analyses can be accomplished without imposing U.S. environmental standards on other countries, and without interfering with the execution of foreign policy. To the contrary, such analysis and disclosure can provide useful information to cooperating governments. Finally, if agencies undertake these analyses in cooperation with involved foreign governments, U.S. agencies can promote international approaches to environmental protection as recommended in the Stockholm Declaration and elsewhere.

We recommend that agencies which take actions abroad and/or which take actions in the United States with potential significant environmental impacts abroad consult as necessary with the Council or the Council's staff concerning specific procedures, proposals or programs which may be affected.

RUSSELL W. PETERSON,  
Chairman.

MEMORANDUM ON THE APPLICATION OF 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 human environment. The "human environment" is not limited to the United States, but includes other countries and areas outside the jurisdiction of any country (e.g., the high seas, the atmosphere). The Act contains no express or implied geographic limitation of environmental impacts to the United States or to any other area. Indeed, such a limitation would be inconsistent with the plain language of NEPA, its legislative purpose, the Council's Guidelines, and judicial precedents.

In a statute which in other sections refer specifically to the national environment,<sup>1</sup> use of the term human environment in section 102(2)(c) reflects an intent to cover environmental impacts beyond U.S. borders. This interpretation is consistent with NEPA's stated purpose, declared in the preamble to the Act, to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." It is also consistent with Congress' recognition in section 101 of "the profound impact of man's activity on the interrelations of all components of the natural environment . . . and . . . the critical importance of restoring and

<sup>1</sup>See, e.g., secs. 101(b)(2), 101(b)(4), 201.

maintaining environmental quality to the overall welfare and development of man." Applying the EIS requirement to impacts abroad also implements the mandate in section 102 to all agencies to "recognize the worldwide and long range character of environmental problems." In sum, the broad language of section 102(2)(C) as well as the explicit congressional determination that our national environmental policy must have a global perspective gives section 102(2)(C) a wide scope.

The legislative history of NEPA supports the inclusion of impacts globally and in other countries within the scope of the EIS requirement. A 1968 "Congressional White Paper on a National Policy for the Environment," summarizing the joint House-Senate colloquium on national environmental policy that led to NEPA's introduction, and inserted into the record by Senator Jackson during debate, stated, "although the influence of the U.S. policy will be limited outside its own borders, the global character of ecological relationships must be the guide for domestic activities." Both the House and the Senate reports on NEPA, reflecting the testimony of numerous witnesses at the hearings, recognized the statute's global perspective.<sup>2</sup> Statements to the same effect were made during the floor debates, including an explanation by Senator Jackson of NEPA's statement of environmental policy:

"What is involved [in NEPA] is a congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind; That we will not intentionally initiate action which will do irreparable damage to the air, land and water which support life on earth."<sup>3</sup>

The House Merchant Marine and Fisheries Committee during oversight hearings specifically rejected the argument that NEPA should not be applied to actions occurring within the jurisdiction of another nation:

"Stated most charitably, the committee disagrees with this interpretation of NEPA. The history of the act makes it quite clear that the global effects of environmental decisions are inevitably a part of the decision-making process and must be considered in that context."<sup>4</sup>

The Council has consistently applied NEPA to U.S. international activities and has urged federal agencies to recognize the Act's global perspective. In its first Annual Report, for example, the Council pointed out that NEPA "directed all agencies of the Federal Government to recognize the worldwide and long-range character of environmental problems."<sup>5</sup> In 1971 the Council's Legal Advisory Committee specifically urged federal agencies to apply NEPA to their actions in foreign countries.<sup>6</sup> The

<sup>2</sup>115 Cong. Rec. 29082 (Oct. 8, 1969).

<sup>3</sup>See, e.g., Sen. Rep. No. 91-206, 91st Cong., 1st sess., at 17, 43-45 (1969); H.R. Rep. No. 91-378, 91st Cong., 1st sess., at 5, 7 (1969).

<sup>4</sup>115 Cong. Rec. 19009 (July 10, 1969); see also 115 Cong. Rec. 14347 (May 29, 1969); 115 Cong. Rec. 26575-16476 (Sept. 23, 1969); 115 Cong. Rec. 29056 (Oct. 8, 1969).

<sup>5</sup>H.R. Rep. 92-316, 92nd Cong., 1st sess., at 32-33 (1971).

<sup>6</sup>CEQ, Environmental Quality—1970, at 200 (1970).

<sup>7</sup>Legal Advisory Committee Report to the President's Council on Environmental Quality, at 13-17 (December 1971).

Council's 1973 Guidelines require the assessment of "both the national and international environment." The Fifth Annual Report reviewed agencies' experience in applying the EIS process to U.S. actions abroad. In 1976 the Council reported on one of the benefits of this experience—the growth of environmental impact assessment procedures in other countries.<sup>40</sup>

Accordingly, some federal agencies have provided in their NEPA procedures for the preparation of environmental statements when agency actions cause significant environmental impacts beyond U.S. borders, and impact statements have been prepared on U.S. actions in foreign countries.<sup>41</sup> Moreover, the courts<sup>42</sup> and virtually every legal commentary addressing the subject<sup>43</sup> 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., on global resources, or on foreign countries.

Of course, significant indirect as well as direct impacts must be considered. 40 CFR 1500.8(a)(3)(i) (1975); *City of Davis v. Coleman*, 521 F. 2d 661, (9th Cir., 1975); see CEQ, Environmental Quality—1974, at 410-11 (1974).

<sup>40</sup> 40 CFR sec. 1500, 8(a)(3)(i) (1975).

<sup>41</sup> CEQ, Environmental Quality—1974, at 399-400 (1974).

<sup>42</sup> CEQ, Environmental Quality—1975, at 653-54 (1976).

<sup>43</sup> See, e.g., 38 FR 34135-46 (1973) (Coast Guard); 37 FR 19167-68 (1972) (Department of State); 41 FR 26913-26919 (1976) (Agency for International Development).

<sup>44</sup> See, e.g., Department of Transportation, draft EIS, Darien Gap Highway (March 1976); Department of the Interior, final EIS, Alaska natural gas transportation system (March 1975).

<sup>45</sup> In *Wilderness Society v. Morton*, 463 G. 2d 1261 (D.C. Cir. 1972), the court granted standing to Canadian intervenors concerned with the trans-Alaska pipeline, holding that the intervenors' interest in the significant impacts of the pipeline in Canada were within the zone protected by sec. 102(2)(c). In *Sierra Club v. Coleman*, 405 F. Supp. 53 (D.D.C. 1975), the court held, inter alia, that DOT's impact assessment on portions of the Pan-American Highway was deficient because it failed to address the environmental impacts of alternative highway corridors through Panama and Columbia. Since the significant impacts of corridor alternatives lay exclusively in Panama and Columbia, the case necessarily holds that impacts in foreign national territory are within the scope of sec. 102(2)(C).

<sup>46</sup> See, e.g., Committee on Environmental Law of the Section on International and Comparative Law of the American Bar Association, Opinion on the International Scope of NEPA (July 1971); Strausberg, The National Environmental Policy Act and the Agency for International Development, 7 Int'l Law. 46 (1972); Robinson, Extraterritorial Environmental Protection Obligations of Foreign Affairs Agencies: The Unfulfilled Mandate of NEPA, 7 Int'l Law. Pol. 257 (1974) Note, The Extraterritorial Scope of NEPA's Environmental Impact Statement Requirement, 74 Mich. L. Rev. 349 (1975); Appelbaum, Controlling the Hazards of International Development, 5 Ecol. L.Q. 321 (1976).

The policies underlying NEPA reinforce the interpretation suggested by its language and legislative history, judicial precedents and administrative practice. Analysis and disclosure in an EIS of significant environmental effects provide U.S. decisionmakers 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. Far from being an imposition, 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 environmental cooperation as directed in 102(2)(F),<sup>47</sup> the Stockholm Declaration, and other international agreements.<sup>48</sup>

To the extent national security or essential foreign policy considerations make controlled circulation of environmental statements necessary, NEPA provides sufficient procedural flexibility to accomplish this. Section 102(2)(C) provides exceptions to public circulation of documents by incorporating the Freedom of Information Act and its exemptions by reference. Environmental statement or portions of them have been classified, for example, when necessary to protect national security.<sup>49</sup> Presumably, if public examination of a 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.<sup>50</sup> 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 should fully 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.

<sup>47</sup> See H.R. Rep. 92-316, 92nd Cong., 1st sess., at 33 (1971).

<sup>48</sup> 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.

<sup>49</sup> See, e.g., U.S. Navy, final EIS, Transit Satellite (June 1972).

<sup>50</sup> 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, on foreign policy or other grounds. *Calvert Cliffs' Coordinating Comm. v. AEC*, 449 F. 2d 1109 (D.C. Cir. 1971).

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

SEPTEMBER 16, 1976.

In June, the Supreme Court decided two cases on NEPA, *Kleppe v. Sierra Club* and *Flint Ridge Development Co. v. Scenic Rivers Association*. These are the only opinions on NEPA the Court has issued since *Aberteen and Rockfish R. Co. v. SCRAP II*, decided last year. Moreover, these two cases—but particularly *Kleppe*—represent the first extensive interpretation of NEPA by the Supreme Court.

Last November the Council issued a memorandum to agency heads on *SCRAP II*, following our past practice of issuing memoranda on important court decisions and other significant NEPA issues and developments. The attached memorandum on *Kleppe* and *Flint Ridge* continues this practice, and provides briefing and analysis of these decisions in the context of the Council's Guidelines, existing case law, 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 conditions they must be prepared, what their scope should be, and what actions can proceed before a comprehensive statement is complete. The principal points which emerge from the opinion are:

- (1) Comprehensive statements are necessary, among other circumstances, on coherent Federal programs and on related Federal activities or concurrent proposals with cumulative environmental impacts; and
- (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 beyond the EIS requirement. It emphasized the need for early and thorough integration of environmental factors into agencies' planning and analysis. It also said that agencies have authority and responsibility to implement NEPA in areas of activity to which the EIS requirement may not apply.

If agencies have questions concerning possible specific effects of these decisions on their activities, we recommend consulting with the Council's staff 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 16, 1976.

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

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

"KLEPPE V. SIERRA CLUB"

The more significant decision was the Supreme Court's reversal of the Court of Appeals for the District of Columbia in *Kleppe v. Sierra Club*, the *Northern Great Plains* case.

The Sierra Club sued the Department of the Interior and other agencies responsible

See footnotes at end of article.