

**Request for Public Comment on  
Bilateral Textile Consultations With the  
Government of Turkey on Category  
342/642**

June 5, 1987.

On May 27, 1987, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance

with section 204 of the Textile Act of 1956, requested Turkey to enter in consultations concerning export of certain cotton textile products, produced in Turkey and exported to the United States during the period which began on May 1, 1987 and extends through May 31, 1987, of 119,550 dozen.

The purpose of these consultations is that, if no solution is reached, the United States will impose limits for the entry of these products into the United States warehouse for consumption. The purpose of these consultations is to reach an agreement which would extend the current limits for the entry of these products into the United States warehouse for consumption through May 31, 1987.

A summary of the consultations follows:

Anyone wishing to provide data or information on the treatment of these products to submit such information in ten copies to the Acting Chairman, Implementation of International Trade, Department of Commerce, Room 20230. Because the consultations are ongoing, comments should be submitted promptly. Comments submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

For information contact: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

A description of the textile categories of U.S.A. numbers as published in the Federal Register on April 7, 1983 (48 FR 15175), April 30, 1983 (48 FR 19924), December 14, 1983 (48 FR 307), December 30, 1983 (48 FR 307), April 4, 1984 (49 FR 26622), July 14, 1984 (49 FR 26754), November 9, 1984 (49 FR 25386), and in Appendix 5, Schedule 3 of the Textile Agreements of the United States (49 FR 27068).

*Committee for the  
Implementation of Textile Agreements.*

at

*Cotton and Man-Made  
Fiber Textiles, May 1987*

*Inclusions*

Category 342/642 from 1983 to 1987, more than three times the amount imported a year earlier. Imports of Category 342/642 increased from 60,167 dozen compared to 1985, a 92 percent increase.

Category 342/642 has been the most rapidly increasing category in imports from Turkey since 1983. The sharp increase in imports from Turkey has caused a significant disruption of the U.S. market share.

Imports of cotton and man-made fiber skirts and blouses increased five percent from 6,233 thousand dozen in 1983 to 7,805 thousand dozen in 1985, a 25 percent increase.

Cuttings data for 1986 and 1985 indicate that 1986 production will be down four percent. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 67 percent in 1985. The U.S. market share is expected to decrease further in 1986, to around 57 percent.

**U.S. Imports and Import Penetration**

U.S. imports of Category 342/642 grew from 2,798 thousand dozen in 1983 to 3,794 thousand dozen in 1985, a 36 percent increase. During 1986, imports of Category 342/642 reached 5,995 thousand dozen, 56 percent above the level imported during 1985.

<sup>1</sup> U.S. cuttings data are for women's cotton, wool and man-made fiber skirts and include both woven and knit skirts.

The ratio of imports to domestic production increased from 34 percent in 1983 to 49 percent in 1985. The ratio is expected to reach 77 percent in 1986.

**Duty Paid Value and U.S. Producer's Price**

Approximately 79 percent of Category 342/642 imports from Turkey during the year ending February 1987 entered under TSUSA numbers 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; 384.5146—girls' cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; and 384.3444 (formerly a part of 384.3440)—women's and girls' cotton knit skirts, not ornamented. TSUSA number 384.5251 alone represents 43 percent of Category 342/642 imports from Turkey.

These skirts entered the U.S. at landed duty-paid values below the U.S. producers' prices for comparable skirts.

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**COUNCIL ON ENVIRONMENTAL  
QUALITY**

**Implementation of National  
Environmental Policy Act; Council  
Recommendations**

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

**ACTION:** Information only. Recommendations of the Council on Environmental Quality regarding the proposed amendments to the Army Corps of Engineers' Procedures Implementing the National Environmental Policy Act.

**SUMMARY:** The Council on Environmental Quality's (CEQ) regulations for the implementation of the National Environmental Policy Act (NEPA) includes procedures for referring to CEQ federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects (40 CFR Part 1504).

On January 11, 1984, the U.S. Army Corps of Engineers published proposed amendments to the Army NEPA procedures. On February 25, 1985, the Environmental Protection Agency referred the proposed amended regulations to CEQ. Following interagency negotiations, the matter was re-referred to CEQ by Administrator Thomas on December 11, 1986.

After extensive study of the proposed amendments to the Army regulations, including participation from all

interested agencies and members of the public. CEQ has concluded its examination of the proposed amendments and has reached a consensus on findings and recommendations about the issues raised in the referral. To summarize those findings and recommendations:

The Army's current regulation addressing the scope of analysis can "federalize" private or state or local projects over which, absent one Army permit, the federal government has neither control or responsibility. CEQ finds that Army's proposal to amend this regulation is generally within reasonable, implementing agency discretion and that policy and management considerations favor amending the regulation to provide formal and consistent guidance to Army field personnel.

However, CEQ offers comments and recommendations to improve the usefulness of the Appendix B guidance to District Commanders charged with determining the scope of analysis.

With respect to the amended regulation on purpose and need, CEQ finds that the proposed regulation is generally adequate, but recommends that additional language be inserted in the amendment to the effect that the agency must, in all cases, exercise independent judgment regarding the public purpose and need of the proposal.

When preparing an environmental assessment, there is no legal requirement to include a specific reference to "water dependent activities" under the section 404(b)(1) guidelines in the Army's NEPA procedures. However, CEQ recommends that in the spirit of consistency with the CEQ regulations and as sound management policy, specifically to reduce duplication and paperwork and to increase efficient compliance with both NEPA and the Clean Water Act, the Army's procedures retain the requirement to integrate into the environmental impact analysis the alternatives to non-water dependent activities under section 404(b)(1).

CEQ finds that the Army's proposed regulation concerning page limits to be premature in that the Army has not presented any evidence demonstrating that there has been a conscious effort to abide by the CEQ page limit recommendations. CEQ recommends that the Army attempt concerted compliance with the CEQ regulation before proposing a reduced page limit length.

Dated: June 8, 1987.

A. Alan Hill,  
Chairman.

#### COUNCIL ON ENVIRONMENTAL QUALITY

##### Findings and Recommendations on Referral From U.S. Environmental Protection Agency Concerning Proposed Amendments to U.S. Army Corps of Engineers Procedures for Implementing the National Environmental Policy Act

###### Introduction

Section 309 of the Clean Air Act and the Council on Environmental Quality's (CEQ) regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) direct the Administrator of the Environmental Protection Agency (EPA) to review and comment publicly on the environmental impacts of federal activities, including proposed regulations published by a department or agency, if, upon review, the "Administrator determines that the matter is 'unsatisfactory from the standpoint of public health or welfare or environmental quality,' section 309 directs that the matter be referred to the Council." (40 CFR 1504.1(b))

On January 11, 1984, the U.S. Army Corps of Engineers (Army) published proposed amendments to the Army NEPA procedures. On March 12, 1984, EPA submitted written comments to the Army pursuant to section 309 of the Clean Air Act. After several months of discussion between EPA and the Army, the Army transmitted draft final regulations to CEQ on January 28, 1985. The EPA determined that the proposed regulations were "unsatisfactory" and on February 25, 1985, referred the proposed amended regulations to the Council on Environmental Quality.

In his original letter referring the matter to CEQ, Administrator Lee Thomas stated that Army's proposal would have an adverse effect on EPA's program to review significant environmental impacts of proposed federal actions, and its ability to prevent unacceptable adverse effects of dredge and fill discharges under section 404 of the Clean Water Act. On April 18, 1986, after several extensions of time at the request of the Army,<sup>1</sup> the Army responded to EPA's referral, stating that its latest proposal indicated a good faith effort to reach a compromise with EPA and was well within the range of reasonable agency discretion.

At the request of Army, CEQ returned the referral on May 1, 1986, to EPA for further negotiation by the referring and

lead agencies, (40 CFR 1504.3(f)(5)).<sup>2</sup> However, further negotiations between Army and EPA were unsuccessful, and the disagreement was resubmitted to CEQ by EPA on December 11, 1986. In that letter, Administrator Thomas stated that:

"... EPA and [Army] continued working to resolve issues in the referral. We appreciated the opportunity to negotiate on the proposed regulatory language, but regret there are remaining unresolved substantive concerns which must be addressed.

"We are at a stage in this effort where the opportunity to initiate the Council's Sunshine Act authority... would help to expedite a mutually satisfactory resolution to the outstanding issues. The potential environmental consequences of these issues are so significant as to warrant comment from interested parties from outside of the lead and referring agencies." Letter from the Honorable Lee M. Thomas, Administrator of Environmental Protection Agency to the Honorable A. Alan Hill, Chairman, Council on Environmental Quality, December 11, 1986.

CEQ commenced its consideration of this referral by announcing a series of Sunshine Act meetings to facilitate the participation of outside parties. On January 8, 1987, CEQ held a meeting, open to the public, for the purpose of being briefed by the CEQ General Counsel on the issues raised in the referral. On January 12, 1987, CEQ held a second meeting, open to the public, to hear from the representatives of the Army, EPA, and other federal agencies regarding the issues raised in the referral. At a third meeting, held on February 5, 1987, members of the public had an opportunity to present views on the issues raised in the referral to the CEQ. Finally, written comments were received by CEQ from December 23, 1986 to February 11, 1987.<sup>3</sup> The Council sincerely appreciates receiving the diverse views of all interested parties. The Council has made copies of information presented to it available to all interested parties.

###### Major Issues and Standard of Review

To facilitate its review, CEQ has identified four major issues in dispute: (1) Scope of analysis, or "small federal handle" issue; (2) purpose and need; (3) analysis of alternatives in environmental assessments; and (4) page limits on environmental impact statements. These findings and recommendations will address each of these issues.

The issues raised in this referral contain elements of both law and policy. CEQ has arrived at its findings of law by considering the requirements of NEPA, the directives of Executive Order 11514,

<sup>1</sup> Footnotes at end of article.

as amended by Executive Order 11991 (Protection and Enhancement of Environmental Quality), and the CEQ regulations implementing the procedural provisions of NEPA. Further, CEQ has evaluated the issues in light of relevant case law and in light of the "rule of reason" as expressed in those cases.

CEQ's recommendations regarding the referral issues reflect both NEPA policy considerations and this Administration's policies towards regulatory reform, as well as CEQ's concern for efficient management of the NEPA process. CEQ is also cognizant of the directive to the Army from the Presidential Task Force on Regulatory Relief, which states that:

"The Army will also revise its own regulations to reduce substantially the time it currently takes to prepare Environmental Impact Statements and other documents required by the National Environmental Policy Act." *Administrative Reforms to the Regulatory Program Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act*, p. 3., transmitted by letter from Christopher DeMuth, Executive Director, Presidential Task Force on Regulatory Relief, to the Honorable William R. Gianelli, Assistant Secretary of the Army (Civil Works), May 7, 1982.

There should be no confusion on the part of a federal agency as to what the goals of regulatory relief really are. It is not an exercise in relieving the Army or any other federal agency from fulfilling its procedural responsibilities under NEPA. The goal of regulatory relief is to relieve the private sector of government-induced and imposed regulatory burdens, delays, and expense that exceed what is clearly required by law.

CEQ also notes that, at this time, it is not reviewing the proposed regulations for more minor, technical changes. Such review will take place after the proposed revisions to Army's regulations are submitted to CEQ under 40 CFR 1507.3(a) of the CEQ NEPA regulations for review for conformity with NEPA and the CEQ regulations.

#### Findings and Recommendations

##### 1. Scope of Analysis.

###### Abstract

The Army's current regulation addressing the scope of analysis can "federalize" private or state or local projects over which, absent one Army permit, the federal government has neither control or responsibility. CEQ finds that Army's proposal to amend this regulation is generally within reasonable, implementing agency discretion and that policy and management considerations favor amending the regulation to provide formal and consistent guidance to Corps field personnel.

However, CEQ offers comments and recommendations to improve the usefulness of the Appendix B guidance to District

Engineers charged with determining the scope of analysis.

The issue before us is the Army's guidance to its District Commanders for determining the scope of analysis of impacts and alternatives for purposes of NEPA compliance when the proposed federal action is an Army Corps of Engineers permit. Generally speaking, the permit actions subject to this guidance are dredge and fill permits under section 404 of the Clean Water Act and section 10 permits under the Rivers and Harbors Act of 1899.

The current Army regulation reads, in relevant part:

"The EA [Environmental Assessment] shall be a brief document (should normally not exceed 15 pages) primarily focusing on whether or not the entire project subject to the permit requirement could have significant effects on the environment. . . . (For example, where a utility company is applying for a permit to construct an outfall pipe from a proposed power plant, the EA must assess the direct and indirect environmental effects and alternatives of the entire plant.)" 33 CFR Part 230, Appendix B, Section 8(a).

The proposed Army regulation reads: "Scope and Analysis

"(1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district commander should establish the scope of the NEPA document (e.g., the EA or EIS [Environmental Impact Statement]) to address the impacts of the specific activity requiring a Department of the Army permit and those portions of the entire project over which the district commander has sufficient control and responsibility to warrant Federal review.

"(2) The district commander is considered to have control and responsibility for portions of the project beyond the limits of [Army] Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action. . . .

"(3) For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the specific activity requiring a Department of the Army permit and any other portion of the project that is within the control or responsibility of the [Army] Corps of Engineers. . . ." 33 C.F.R. Part 230, Appendix B, Section 7(b).

The Army's current regulation addressing the scope of analysis can "federalize" private or state or local projects over which, absent one Army permit, the federal government has neither control or responsibility. The

Army has regarded the current regulation as overly expansive, and, indeed, has implemented it by employing a rule of reason and common sense. The federal courts have also evaluated the proper scope of analysis by examining the facts of a particular case. Thus, in *Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir.), cert. denied, 499 U.S. 836 (1980), the United States Court of Appeals for the Eighth Circuit determined that an EA prepared by the Army for a Section 10 permit under the Rivers and Harbors Act for a river-crossing portion of a proposed transmission line need not examine the impacts of and alternatives to the entire transmission line. In that case, the river-crossing portion of the line was approximately 1.25 miles out of 67 miles. Given the facts surrounding the construction of that particular transmission line (for example, no direct or indirect federal funding for the project), the court found that the Army did not have such sufficient control and responsibility over the entire project such that nonfederal segments had to be included in the environmental assessment.

In *Save the Bay, Inc. v. Corps of Engineers*, 610 F.2d 322 (5th Cir.), cert. denied, 449 U.S. 900 (1980), the United States Court of Appeals for the Fifth Circuit upheld the Army's determination that the issuance of permits for installation of an effluent pipeline in navigable waters to serve a chemical manufacturing plant was not a major federal action significantly affecting the quality of the human environment, and thus did not require an EIS, even though the factory that the pipeline was to serve would have major impacts on the surrounding counties. This case has been frequently cited as support for the Army's current proposal. However, the court noted that it was not expressing an opinion as to the proper scope of an EIS should one have been necessary; rather, its holding rested on its conclusion that the granting of the pipeline construction permit, after issuance by EPA of a National Pollutant Discharge Elimination System permit was not a "major federal action" requiring an EIS. In so deciding, the court noted that the Clean Water Act specifically exempts the issuance of such permits from NEPA review, and prohibits any other federal agency from reviewing any effluent limitations established by such a permit.

The holdings in both of these cases have been adopted by the Army in guidance to field offices, issued in August of 1980. Since that date, the Army has reduced the number of EISs

considerably<sup>4</sup> and no appellate court has overturned the Army guidance based on the above two cases.<sup>5</sup> Further, the type of action which was the subject of the *Save the Bay* case is now included within the Corps' system of nationwide permits and is categorically excluded from NEPA review. It is also important to note that no decision in any court has held that implementation of the current Army regulation is improper, inappropriate, or illegal.

Given this history of the implementation of the current Army regulation, the question has been asked—why change this regulation at all? An argument can be made that the implementation—as opposed to the letter—of Army's current implementing procedures has been fair and reasonable and has not been unduly burdensome. While such an argument has some appeal, CEQ finds that the Army's proposal is generally within reasonable implementing agency discretion and that policy and management considerations favor amending the regulation to provide formal and consistent guidance to the Army's field personnel.

However, CEQ offers the following comments and recommendations to improve the usefulness of the Appendix B guidance to District Commanders charged with determining whether the scope of analysis would be confined to the direct, indirect and cumulative effects of (1) the Army's permit action only, or (2) the Army's action and additional portions of the overall project having federal involvement or, (3) the entire project. In general, this will be determined by the degree of federal control and responsibility based on the facts and circumstances of each individual case. The proposed amendment enumerates four factors to be considered in making this determination. While these factors appear to be helpful in determining the extent of those actions within the Army's control and responsibility, they do not seem to us to be as useful in determining the extent of cumulative federal involvement. Also, they appear to envision only two opposite poles of federal involvement: those portions requiring the Army's permit, and the entire project. Surely there will be cases that fall somewhere in between. It strikes us that the District Commander's determinations would be made more accurately and more consistently if a process were followed to explicitly take into account the extent of cumulative federal control and responsibility which may (depending on the facts in each case) extend beyond the Army's own control and responsibility to that of

other federal agencies involved in the project. Once that "scope of action" is determined (which could include the entire project if the cumulative federal control and responsibility is determined by the Army to be sufficiently great), then the direct, indirect, and cumulative effects of such federal action would be subject to analysis for purposes of NEPA compliance.

Specifically, CEQ offers the following comments on the specific factors proposed in the Army's Appendix B guidance:

(i) Whether the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project). CEQ finds that this factor is consistent with NEPA case law<sup>6</sup> and recommends retention of this factor.

(ii) Whether there are alternatives available to the applicant that would not require an Army permit. CEQ observes that this factor is inappropriately narrow. There is no compelling reason why the existence of an alternative method of achieving a proposal without an Army permit (an alternative which the applicant, by definition, has not pursued) should weigh in favor of less comprehensive environmental review.<sup>7</sup> CEQ recommends that the Army reconsider this factor, and if it believes it is useful, better articulate the logical relationship between alternatives available to the applicant and the District Commander's determination of the appropriate scope of analysis.

(iii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity. CEQ finds that this factor is consistent with NEPA and NEPA case law. For purposes of clarification, CEQ recommends adding specific examples to illustrate the application of this factor.

(iv) The extent to which the entire project will be within the Army's jurisdiction. This factor is consistent with the requirement to determine the Army's control and responsibility for a proposed action. However, it does not adequately address the extent of the cumulative federal control and responsibility for the proposed action. CEQ is particularly concerned that the process of determining the scope of analysis help insure that the NEPA analysis is not inappropriately segmented. See *Sierra Club v. Marsh*, 769 F.2d 868 (1st Cir. 1985). Therefore, CEQ recommends development of an additional factor. The following language is offered as a suggestion. In its proposed revision ultimately

reviewed by CEQ, the Army is free to adopt this language, to amend it, or to propose a substitute that addresses the determination of cumulative federal control and responsibility.

#### Suggested Language

(v) The extent of cumulative federal control and responsibility.

a. The district commander is further considered to have control and responsibility for portions of the project beyond the limits of Army Corps jurisdiction where the cumulative federal involvement of the Army Corps and other federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).<sup>8</sup>

b. In determining whether sufficient cumulative federal involvement exists to expand the scope of federal review, the district commander should consider whether other federal agencies are required to take federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Executive Order 11990, Protection of Wetlands, 42 U.S.C. 4321 (1977), and other environmental review laws and executive orders.

In recommending such a process, CEQ is not suggesting that the Army Corps of Engineers should be the lead agency in each of these cases. That would be determined as it is under current procedures implementing CEQ's lead agency regulations. Rather, CEQ is reiterating that the environmental review that is required for a proposed federal action which involves several federal actions should be conducted in a cohesive manner within the procedural framework of the NEPA process.

Additionally, CEQ recommends that the Army's procedures insure that the scope of analysis for analyzing impacts and alternatives in the NEPA process is the same as the scope of analysis for purposes of analyzing the benefits of a proposal. See 40 CFR 1502.23; *Sierra Club v. Sigler*, 695 F.2d 957 (5th Cir. 1983).

#### Z. Purpose and Need

##### Abstract

CEQ finds that the proposed regulation is generally adequate, but recommends that additional language be inserted in the amendment to the effect that the agency must, in all cases, exercise independent judgment regarding the public purpose and need of the proposal.

The issue before us is how the purpose and need for a project is defined by the Army when preparing an EA or EIS for a federally permitted action.

The current Army procedures state that this section of the EIS:

"shall briefly recognize that every application has both an applicant's purpose and need and a public purpose and need. These may be the same when the applicant is a governmental body or agency. In most instances when an EIS is required and the applicant is not a governmental body or agency, the applicant is a manner of the private sector engaged in providing a good or service for profit. At the same time, the applicant is requesting a permit to perform work which, if approved, is considered in the public interest (i.e., provides a public benefit). This public benefit shall be stated in as broad, generic terms as possible. For instance, the need for a water intake structure requiring (an Army) Corps permit as part of a fossil fuel power plant shall be stated as the need for energy and not be limited to the need for cooling water. In a similar way, the need for housing near canals or near marinas, etc., shall be expressed as the need for shelter and not as the need for recreation near water." 33 CFR Part 230, Appendix B, Section 11(b)(4).

The proposed Army regulation reads, in relevant part:

"If the scope of analysis for the NEPA document . . . covers only the proposed specific activity requiring a Department of the Army permit, then the underlying purpose and need for that specific activity should be stated. (For example, The purpose and need for the pipe is to obtain cooling water from the river for the electric generating plant.) If the scope of the analysis covers a more extensive project, only part of which may require an Army permit, then the underlying purpose and need for the entire project should be stated. (For example, The purpose and need for the electric generating plant is to provide increased supplies of electricity to the (named) geographic area.) Normally, the applicant should be encouraged to provide a statement of his proposed activity's purpose and need from his perspective (for example, 'to construct an electric generating plant'). However, wherever the NEPA document's scope of analysis renders it appropriate, the [Army] Corps also should consider and express that activity's underlying purpose and need from a public interest perspective (to use that same example, 'to meet the public's need for electric energy')." 33 CFR Part 230, Appendix B, section 9b(4).

The CEQ regulation reads:

"§ 1502.13 Purpose and need. The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

CEQ's regulation thus makes no distinction between a private and public purpose and need". On the one hand, the very fact that a particular project

requires the issuance of a federal permit necessarily implies a degree of federal review and responsibility from the public interest perspective. On the other hand, a reasonable evaluation of the proposed action and alternatives must include a thorough understanding of the applicant's purpose and need.

NEPA case law has interpreted this requirement to consider both public and private purpose and need. Courts have stressed the need to consider the objectives of the permit applicant, *Roosevelt Campobello International Park Comm'n. v. EPA*, 684 F.2d 1041 (1st Cir. 1982), but have also emphasized the requirement for the agency to exercise independent judgment as to the appropriate articulation of objective purpose and need. *City of Angoon v. Hodel*, 803 F.2d 1016 (9th Cir. 1986), *Petition for cert. filed*, 55 U.S.L.W. 3783 (U.S. April 10, 1987) (No. 86-1627). Courts have cautioned against blindly accepting only the applicant's statement of purpose and need, both for purposes of public interest review and for formulation of alternatives in the NEPA process. *Abeema v. Fornell*, 807 F.2d 633 (7th Cir. 1986).

The proposed regulation is an effort to achieve consideration of both the applicant's and the public's purpose and need by instructing the District Commander to normally focus on the applicant's purpose and need, as articulated by the applicant, but to consider and express the activity's purpose and need from a public interest perspective "whenever the NEPA document's scope of analysis renders it appropriate." CEQ finds that the proposed regulation is generally adequate and consistent with the proposed approach to the scope of analysis. CEQ recommends that additional language be added to the proposed regulation to the effect that the agency must, in all cases, exercise independent judgment regarding the objective purpose and need of the proposal.

### 3. Analysis of Alternatives in Environmental Assessments.

#### Abstract

There is no legal requirement to include a specific reference to "water dependent activities" under the Section 404(b)(1) guidelines in the Army's NEPA procedures. However, CEQ recommends that in the spirit of consistency with the CEQ regulations and as sound management policy, specifically to reduce duplication and paperwork and to increase efficient compliance with both NEPA and the Clean Water Act, the Army's procedures retain the requirement to integrate into the environmental impact analysis the alternatives to nonwater dependent activities under Section 404(b)(1).

The issue before us is the determination of when the Army must examine alternatives in an EA.

The current Army regulation reads:

"a. Environmental Assessment (EA). The District engineer shall prepare an EA as soon as practicable after all relevant information has been made available to the district engineer (i.e., after the comment period for the public notice announcing receipt of the permit application has expired) and prior to preparation of the Findings of Fact (FOF). The EA shall include a discussion of reasonable alternatives. However, when the EA confirms that the impact of the applicant's proposal is not significant, there are no unresolved conflicts concerning alternative uses of available resources. . . (Section 102(2)(E) of NEPA), and the proposed action is a water dependent activity, the EA need not include a discussion on alternatives to the proposal. In all other cases the EA must address all the alternatives that go before the ultimate decision maker. This discussion will include suggested means by which the environment might be protected and by which adverse impacts could be reduced by conditioning of the permit. The EA shall be a brief document (should not normally exceed 15 pages) primarily focusing on whether or not the entire project subject to the permit requirement could have significant effects on the environment but shall not be used to justify a decision. (For example, where a utility company is applying for a permit to construct an outfall pipe from a proposed power plant, the EA must assess the direct and indirect environmental effects and alternatives of the entire plant.) The EA shall conclude with a FONSI (See 40 C.F.R. 1508.13) or a determination that an EIS is required." 33 C.F.R. Part 230, Appendix B, Section 8(a).

The proposed Army regulation reads:

"EA/FONSI Document. (See 40 C.F.R. 1508.9 and 1508.13 for definitions).  
"a. Environmental Assessment (EA) and Findings of No Significant Impact (FONSI). The district commander should complete an EA as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice of the permit application has expired) and prior to completion of the statement of finding (SOF). The EA should normally be combined with other required documents (EA/404(b)(1)/SOF/FONSI). When the EA confirms that the impact of the applicant's proposal is not significant and there are no unresolved conflicts concerning alternative uses of available resources . . . (section 102(2)(E) of NEPA), the EA need not include a discussion of alternatives. Note: The above rule would not preclude the district commander from considering alternatives not discussed in the EA during the course of the public interest review for the permit application if that would be appropriate. In all other cases where the district commander determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the

reasonable alternatives which are to be considered by the ultimate decision-maker. The decision options available to the [Army] Corps, which embrace all of the applicant's alternatives, are issue the permit, issue with conditions, or deny the permit. 'Appropriate conditions' may include project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). The decision option to deny the permit results in the 'no action' alternative (i.e. no construction requiring an Army Corps permit). The combined document normally should not exceed 15 pages and shall conclude with FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district commander may delegate the signing of a combined document. Should the EA demonstrate that an EIS is necessary, the district commander shall follow the procedures outlined in paragraph 8 of this appendix. In those cases where it is obvious an EIS is required, an EA is not required."

EPA objects to the deletion, in the proposed Army regulation, of the requirement that alternatives be evaluated in an EA if the proposal is not "water dependent" within the meaning of EPA's guidelines for section 404 permits under the Clean Water Act. The Army's argument for deleting this reference in the alternatives section is that neither NEPA nor the CEQ implementing regulations include any reference to "water dependency", and therefore, the Army NEPA regulations need not include such a reference. While this is literally a true statement, it does not reach the entire issue. The requirement to analyze alternatives which are not water dependent actions remains a requirement of the section 404 permit program. Under Army's current procedural regulations, the section 404(b)(1) alternatives analysis is intertwined with the alternatives analysis in the NEPA process; in fact, the section 404(b)(1) guidelines themselves state that in most cases, NEPA documents will provide the information for the evaluation of alternatives under those guidelines. 40 CFR 230.10(4). Under those guidelines:

"(3) Where the activity associated with a discharge which is proposed for a special aquatic site . . . does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not 'water dependent'), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

"(4) For actions subject to NEPA, where the [Army] Corps of Engineers is the permitting

agency, the analysis of alternatives required for NEPA environmental documents, including supplemental [Army] Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines . . ." 40 CFR 230.10(a) (3) and (4).

CEQ's NEPA regulation, "Environmental review and consultation requirements," states:

"(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders." 40 CFR 1502.25(a).

Still another CEQ NEPA regulation entitled "Combining documents" states:

"Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork." 40 CFR 1506.4.

CEQ finds that there is no legal requirement to include a specific reference to "water dependent activities" under the section 404(b)(1) guidelines in the Army's NEPA procedures. However, CEQ recommends that in the spirit of consistency with the CEQ regulations and as sound management policy, specifically to reduce duplication and paperwork and to increase efficient compliance with both NEPA and the Clean Water Act, that the Army's procedures retain the requirement to integrate into the environmental impact analysis the alternatives to non-water dependent activities under section 404(b)(1).

With respect to alternatives analysis in general, CEQ reiterates its earlier guidance that the alternatives to be analyzed must always be reasonable alternatives, "bounded by some notion of feasibility" to avoid NEPA from becoming 'an exercise in frivolous boilerplate.' "Guidance Regarding NEPA Regulations. Memorandum from Chairman A. Alan Hill to Heads of Federal Agencies, 48 FR 32463 (1983), quoting *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978).

#### 4. Page Limits on Environmental Impact Statements

##### Abstract

CEQ finds that the Army's proposed regulation to be premature in that the Army has not presented any evidence demonstrating that there has been a conscious effort to abide by the CEQ page limit recommendations. CEQ recommends that the Army attempt concerted compliance

with the CEQ regulation before proposing a reduced page limit length.

The issue before us is the length of an EIS to insure adequate analysis of impacts and alternatives. The current Army regulations do not specify page limits for EIS(s).

The proposed Army regulations state that:

" . . . a 50-page text would, in most cases, be adequate to discuss succinctly the relevant NEPA issues and to meet legal and technical requirements. To the extent practicable, and consistent with producing a legally and technically adequate EIS, district commanders will make all reasonable efforts to limit the text to a concise, readable length of 50 pages." 33 CFR 230.13.

The CEQ regulations state that the text of final EISs should normally be less than 150 pages and for proposals of unusual scope or complexity, should normally be less than 300 pages. 40 CFR 1502.7.

CEQ finds the Army's proposed regulation to be premature in that the Army has not presented any evidence demonstrating that there has been a conscious effort to abide by the CEQ page limit recommendations. CEQ recommends that the Army attempt concerted compliance with the CEQ regulation before proposing a reduced page limit length.

Dated: June 8, 1987.

A. Alan Hill,

Chairman,

William L. Mills,

Member,

Jacqueline E. Schafer,

Member.

##### Footnotes

1. Under the CEQ referral regulations, if the lead agency requests more time and gives assurances that the matter will not go forward in the interim, the Council may grant an extension. 40 CFR 1504.3(d). Under this provision CEQ granted the Army nine extensions of time, in the period from February 25, 1985, to April 18, 1986.

2. The CEQ referral regulations provide that the Council may, (among other options), "[d]etermine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies reports to the Council that the agencies' disagreements are irreconcilable." 40 CFR 1504.3(f)(5). The referral was returned to EPA and the Army under this provision.

3. CEQ received 57 written comments during this period.

4. In 1980, the Army Corps of Engineers filed a total of 95 EISs on regulatory actions. In 1981, that number dropped to 18. Subsequent filings for regulatory EISs are 1982—27; 1983—13; 1984—20; 1985—15; 1986—20.

5. In *Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425 (C.D. Cal. 1985), the district court did discuss, and express disagreement with, the decision in *Save the Bay, Inc. v. Corps of Engineers* and *Winnebago Tribe of Nebraska v. Ray*, to the extent that it perceived that those decisions distinguished between "major federal action" and "significantly" as separate triggers under NEPA. The CEQ regulations, however, state that "[m]ajor reinforces but does not have a meaning independent of significantly", 40 CFR 1508.18. Neither *Save the Bay* nor *Winnebago* discussed this rule, and the Army does not challenge this rule.

In any event, the court in *Colorado River Indian Tribes* did find that an EIS was required prior to issuance of an Army permit for placement of riprap for stabilization of shore banks on the site of a proposed residential and commercial development. The court rested its holding on an agency's responsibility under NEPA to assess the direct, indirect and cumulative effects of a proposed action. In that case, the court determined that the Army had improperly limited its analysis to the direct effects of the Army permit.

The scope of analysis issue addresses the extent to which the proposed action is identified as a federal action for purposes of compliance with NEPA. Modification of the regulation addressing scope of analysis does not affect the requirement to evaluate impacts. Once the scope of analysis is determined, the agency must then assess the direct, indirect and cumulative effects of the proposed federal action. See 40 CFR 1502.16, 1508.7, and 1508.8.

6. *Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir.), cert. denied, 449 U.S. 836 (1980).

7. To the extent that this factor rests on the holding in *Save the Bay v. Corps of Engineers*, it should be noted that the Court of Appeals did not hold that the subject federal action must be a condition precedent to private action in order for preparation of an EIS to be required. Rather, the court found that the overall federal involvement in the proposed action was insufficient to "federalize" the entire project.

8. See 40 CFR 1508.18 (definition of "major federal action").

[FR Doc. 87-13403 Filed 5-11-87; 8:45 am]

BILLING CODE 3125-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Strategic Defense Initiative Advisory Committee; Meeting

**ACTION:** Notice of advisory Committee meetings.

**SUMMARY:** The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in Washington, DC, on June 22-24, 1987.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on June 22-24, 1987 the subcommittee will discuss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C., App II; (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,  
OSD Federal Register Liaison Officer,  
Department of Defense.

June 8, 1987.

[FR Doc. 87-13437 Filed 5-11-87; 8:45 am]

BILLING CODE 3210-01-M

#### Membership of the DoD Inspector General (IG) Performance Review Board

**AGENCY:** Department of Defense Inspector General (IG).

**ACTION:** Notice of membership of the DoD IG Performance Review Board.

**SUMMARY:** This notice announces the appointment of the members of the Performance Review Board (PRB) of the Inspector General. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Inspector General.

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gerald R. Sandaker, Chief, Employee Management Relations and Development Branch, Personnel & Security Division, Inspector General, 400 Army Navy Drive, Arlington, VA, (202) 693-0257.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the enclosed are names of executives who have been appointed to serve as members of the Performance Review Board. They will serve a one year renewable term effective on July 1, 1987.

Linda M. Lawson,  
Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 8, 1987.

Terry L. Brendlinger  
Charles L. Cipolla  
James H. Curry  
Michael C. Eberhardt  
John W. Fawcett  
Daniel R. Foley  
William K. Keesee  
Richard D. Lieberman  
Robert J. Lieberman  
Jack L. Montgomery  
Donald E. Reed  
Richard T. Russ  
William F. Thomas  
Richard W. Townley  
Stephen A. Trodden  
Bertrand G. Truxell

[FR Doc. 87-13438 Filed 5-11-87; 8:45 am]

BILLING CODE 3210-01-M

## Department of the Navy

### Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet June 30-1 July 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.