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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

APR 23 1971

MEMORANDUM TO THE HEADS OF AGENCIES

RE: Revised CEQ Guidelines on Environmental Impact Statements Prepared under Section 102(2)(C) of the National Environmental Policy Act

Attached are the Council's Revised Guidelines on environmental impact statements prepared under Section 102(2)(C) of the National Environmental Policy Act as published in the Federal Register. Also included (see section 8) are the Environmental Protection Agency's interim procedures under Section 309 of the Clean Air Act which requires review and public comment by EPA on certain proposed legislation and agency actions and regulations affecting EPA's areas of responsibility (air quality, water quality, solid waste, pesticides, radiation standards, noise).

The revisions in CEQ's guidelines apply to proposed agency actions for which draft environmental statements are circulated after June 30, 1971. Agencies are requested to update their procedures for handling environmental statements to take account of the revised CEQ guidelines prior to July 1. These updated agency procedures should be made available to the Council for consultation prior to formal issuance (Attention: General Counsel). The Council will invite the participation of OMB and EPA in this consultation.

In updating your Agency's procedures, your attention is directed in particular to the following:

(Section 3)
Agency procedures should provide guidance in identifying:

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-- those types of agency actions requiring environmental statements

-- the appropriate time prior to decision for the interagency consultations required by Sec. 102(2)(C)

-- the agency "review process" for which the final environmental statement and comments are to be available.

Agency procedures should assure that advance comment from the Environmental Protection Agency is requested on proposed legislation, regulations, new construction projects and major actions significantly affecting the environment in the areas of EPA's jurisdiction (i.e. air and water quality, solid waste, pesticides, radiation standards, noise) (See section 8).

(Section 6)

(i) Environmental statements must include an adequate description of the proposed action to permit a careful assessment by commenting agencies.

(ii) The comment of EPA on water quality aspects should be requested in addition to any State or interstate certification on this aspect under Section 21(b) of the Federal Water Pollution Control Act.

(Section 8)

Agency procedures will need to take account of requirements for obtaining EPA comment under Section 309 of the Clean Air Act, as amended. Where an agency is filing an environmental statement which will be referred to EPA for comment, no change is required. In the case of proposed legislation or regulations where the matter affects the areas of EPA's jurisdiction and no environmental statement is going to be filed, such matters now must be referred to EPA for comment.

(Section 10)

Agency procedures must assure that, to the maximum extent practicable, the minimum 90 day and 30 day periods

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of public availability for draft and final environmental statements on administrative actions are observed. As noted, these periods may overlap. Agency procedures should also respond to the requirement that they "insure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties." These procedures should include, where appropriate, provision for public hearings and availability of draft environmental impact statements in advance of such hearings. Updated agency procedures must also facilitate public access to draft and final environmental statements and the comments received.

Recent lower court decisions involving the National Environmental Policy Act (e.g. EDF v. Corps of Engineers, D. Ark., LR-70-C-203, 1971; EDF v. Hardin, D., D.C., CA 2319-70, 1971) indicate courts will require an adequate compliance with Section 102(2)(C) and that this process envisions

> ...that program formulation will be directed by research results rather than that research programs will be designed to substantiate programs already decided upon... The [environmental] statement must be sufficiently detailed to allow a responsible executive to arrive at a reasonably accurate decision regarding the environmental benefits and detriments to be expected from program implementation. The statement should contain adequate discussion of alternative proposals to allow for program modification during agency review so that results to be achieved will be in accordance with national environmental goals.

Although the Supreme Court has not yet construed the Act, there is ample evidence in its treatment of Section 4(f) of the Department of Transportation Act in the Overton Park* case that it also will enforce compliance with the necessary procedural requirements.

* Citizens to Preserve Overton Park v. Volpe, 1 ELR 20110 (March 2, 1971)

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We invite the earliest possible adjustment of your agency's environmental statement procedures to reflect the new requirements in the Council's guidelines and the rigor expected by Congress, the courts and the public in our implementation of the National Environmental Policy Act.

Russell E. Train
Chairman

Attachment

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