

EMERGENCY ALTERNATIVE ARRANGEMENTS Under the NATIONAL ENVIRONMENTAL POLICY ACT

1. CEQ NEPA Regulations: 40 C.F.R. section 1506.11 Emergencies:
“Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.”
2. Is NEPA triggered? Federal action is required (e.g., City or State action does not).
 - a. If the proposed emergency response activity does not have “significant” environmental impacts, then the alternative arrangements at 40 C.F.R. §1506.11 do not apply (e.g., if your agency have a categorical exclusion that is appropriate to exclude further NEPA analysis)
 - b. If the proposed emergency response activity has “significant” environmental impacts, then are you covered by an existing NEPA analysis or applicable exemption? (e.g., implementing pre-existing plans to redeploy vessels and aircraft).
 - c. If there are “significant” environmental impacts and you are not already covered (e.g., unsorted disposal of debris at a specific site; permanent replacement of major facilities), then consult with CEQ (Horst Greczmiel, Associate Director, 202-395-0827, Horst_Greczmiel@ceq.eop.gov; Ted Boling, Deputy General Counsel, 202-395-3449, [Edward A. Boling@ceq.eop.gov](mailto:Edward_A.Boling@ceq.eop.gov); Dinah Bear, General Counsel, 202-395-7421, [Dinah Bear@ceq.eop.gov](mailto:Dinah_Bear@ceq.eop.gov)).
 - d. Statutorily exempt from NEPA (e.g., certain FEMA response actions under the Stafford Act see: <http://www.fema.gov/library/stafact.shtm>)?
3. **Do not delay** immediate actions necessary to secure lives and safety of citizens to consult, but **consult with CEQ as soon as feasible** – CEQ will contact your headquarters NEPA contacts in the event you are unable to reach them (see <http://ceq.eh.doe.gov/nepa/contacts.cfm>).
4. The “alternative arrangements” take the place of an Environmental Impact Statement and only apply to Federal actions with “significant environmental impacts.” Lesser actions may be subject to agency NEPA procedures. Agency NEPA personnel should be contacted regarding agency-specific definitions of “significant” actions and actions that are “categorically excluded.”
5. “Alternative arrangements” for compliance with NEPA may be subject to judicial review. “Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance.
6. Alternative arrangements are limited to “the actions necessary to control the immediate impacts of the emergency.” They will be developed, based upon your specific facts and circumstances, during the consultation with CEQ.
7. Courts afford CEQ substantial deference regarding its determination of emergency alternative arrangements. Alternative arrangements have been unsuccessfully challenged three

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

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