

## **Referral of inter-agency disagreements to CEQ under the National Environmental Policy Act**

One of the duties and functions of CEQ is to "review and appraise the various programs and activities of the Federal Government in light of the policy set forth in title I of [the National Environmental Policy Act (NEPA)] for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto." NEPA Section 204(3), 42 U.S.C. § 4344(3). The CEQ referral process permits federal agencies to bring to CEQ interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. Under CEQ regulations, 40 CFR Part 1504, any federal department or agency may refer a proposed major federal action to CEQ no less than 25 days after the final Environmental Impact Statement (EIS) has been made available to the public, commenting agencies, and the Environmental Protection Agency. The Administrator of the Environmental Protection Agency has broader authority, under section 309 of the Clean Air Act, to refer to CEQ any proposed legislation, action, or regulation that he or she deems unsatisfactory from the standpoint of public health or welfare or environmental quality.

A federal agency that intends to refer a proposal to CEQ must first notify the lead agency of its intentions at the earliest possible time. If the issues are not resolved between the agencies after publication of the final EIS, and the agency wishes to refer the proposal to CEQ, the referring agency must send a letter and a statement to CEQ and the lead agency and request that no action be taken to implement the proposal until CEQ acts upon the referral. The statement accompanying the referral letter must: (1) identify the material facts in the controversy; (2) identify environmental policies or requirements that would be violated by the proposal; (3) present the reasons why the referring agency believes the proposal is environmentally unsatisfactory; (4) contain a finding that the issue raised is of national importance; (5) review the steps taken by the referring agency to resolve the matter with the lead agency prior to referral; and (6) offer the referring agency's recommendations in regard to the proposed action.

The lead agency for the proposal then has 25 days to respond to the referring agency's letter and statement. Interested parties, both in and outside of government, may deliver written views regarding the referral to CEQ. Within 25 days of the last agency action regarding the referral, CEQ may take one of seven actions:

- (1) Conclude that the process of referral and response has successfully resolved the problem.
- (2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
- (3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issues should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

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

(7) When appropriate, submit the referral and response together with the Council's recommendation to the President for action.

40 CFR 1504.3(f).

Initiation of mediation, public hearings or meetings, or a determination of further negotiation must be completed by the Council within 60 days of the Council's action under 40 CFR 1504.3(f).

**Past Referrals of Interagency Disagreements to CEQ:**

| <b>Project</b>  | <b>Lead Agency</b> | <b>Referring Agency</b> | <b>Date of Referral</b> |
|---|--------------------|-------------------------|-------------------------|
| 1. Shearon Harris Nuclear Power Plants Units 1-4, Wake & Chatham Counties, North Carolina | AEC                | EPA                     | 1/10/74                 |
| 2. Phosphate Leasing on Osceola National Forest, North Central Florida                    | BLM                | EPA                     | 12/31/74                |
| 3. Oil & Gas Lease Sale No. 39, Northern Gulf of Alaska, Outer Continental Shelf          | BLM                | EPA                     | 12/18/75                |
| 4. Permit Application by Deltona Corporation, Marco Island, Collier County, Florida       | COE                | EPA                     | 3/15/76                 |
| 5. Kaiparowits Power Plant, Kaiparowits, Plateau, Utah                                    | BLM                | EPA                     | 6/8/76                  |
| 6. Westside Highway Project, New York City, New York                                      | FHW                | EPA                     | 2/14/77                 |
| 7. Lake Alma Project, construction of water reservoir, Alma, Bacon County, Georgia        | HUD                | EPA                     | 3/24/77                 |

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| 8. Wando & Cooper Rivers, Permit, Dredge, Fill, Construction-Marine Terminal, Charleston County, South Carolina        | COE | EPA       | 4/20/77  |
| 9. County Trunk Highway "Q", Kenosha County, Wisconsin   | FHW | EPA       | 12/9/77  |
| 10. Barge Terminal Expansion, Packer River Terminal, Dakota County, Minnesota  | COE | EPA       | 1/11/78  |
| 11. Proposed Foothills Project, Colorado   | BLM | EPA       | 1/17/78  |
| 12. Fire Island to Montauk Point, beach erosion control & hurricane protection project, New York                       | COE | DOI       | 3/7/78   |
| 13. Central and Southern Florida Flood Control Project, Hendry County, Florida   | COE | DOI       | 3/9/79   |
| 14. I-84 & I-86, East Hartford-Manchester, Hartford County, Connecticut & Rhode Island                                 | FHW | EPA       | 12/13/79 |
| 15. I 476, Mid-County Expressway, Delaware & Montgomery Counties, Pennsylvania   | DOT | DOI       | 11/10/80 |
| 16. Jackson Hole Airport, airport dispute, aviation noise, Jackson Hole, Wyoming                                       | DOT | DOI & EPA | 1/9/81   |
| 17. Elk Creek Dam, resulting in the prolonged period of increased turbidity in the Rogue River, Elk Creek Lake, Oregon | COE | DOI       | 1/19/81  |
| 18. Dickey-Lincoln Schools Lake Project, proposed dam of St. John River, Maine   | COE | DOI       | 9/28/81  |

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| 19. Palmdale International Airport, Los Angeles County, Palmdale, California       | FAA          | DOD  | 8/31/82  |
| 20. Presidential Parkway, Fulton & DeKalb Counties, Atlanta, Georgia               | FHWA         | ACHP | 6/25/84  |
| 21. Tennessee-Tombigbee Wildlife Mitigation Plan, Alabama and Mississippi          | COE          | DOI  | 12/28/84 |
| 22. Corps of Engineers NEPA Procedures   | COE          | EPA  | 2/15/85  |
| 23. Cherry I and Core Military Operating Areas, Cape Lookout National Seashore, NC | Marine Corps | DOI  | 12/4/87  |
| 24. Central Valley Project contracts, California                                   | Bur. Rec.    | EPA  | 12/3/89  |
| 25. Long Beach Freeway (710), California   | FHWA         | ACHP | 1/15/93  |
| 26. FERC Order #888  | FERC         | EPA  | 5/13/96  |
| 27. Manteo (Shallowbag) Bay, North Carolina, Project (Oregon Inlet Project)        | COE          | NOAA | 10/15/01 |