



**The Secretary of Energy**  
Washington, DC 20585

March 19, 2009

The Honorable Nancy Sutley  
Chair, Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503

Dear Ms. Sutley:

Following staff discussions with Ted Boling and Horst Greczmiel of your staff, I am writing to advise you of the approach that the Department of Energy (DOE) plans to take in meeting its National Environmental Policy Act (NEPA) obligations for certain activities under the Advanced Technology Vehicles Manufacturing Incentive Program (Auto Loan Program). Section 136 of the Energy Independence and Security Act of 2007, as amended, provides for loans to eligible automobile manufacturers and component suppliers for projects that reequip, expand, and establish manufacturing facilities in the United States to produce light-duty vehicles and components that provide meaningful improvement in fuel economy, and for engineering integration costs associated with such projects.

In its review of the applications received for the first round of funding, DOE determined that 26 applications are eligible for consideration, and of the approximate 175 projects proposed in the 26 applications, the majority (about 80%) involve reequipping or retooling of an existing facility or the associated engineering integration. Based on its review of the Environmental Reports for these proposals, DOE has found no potential for significant impact. As appropriate, DOE plans to apply four of the categorical exclusions in its NEPA regulations (10 CFR 1021), which are presented in the enclosure. Although these categorical exclusions were established before the Auto Loan Program was envisioned, the activities addressed by the categorical exclusions are similar to the activities anticipated under the Auto Loan Program. In future rounds of funding, other categorical exclusions may apply. In applying the categorical exclusions, DOE will consider the incremental impacts of a proposed project on the underlying non-Federal activity.

DOE intends to apply one of three categorical exclusions, B1.24, B1.31, and B2.5 (enclosure) to proposals for reequipping and retooling manufacturing facilities. A DOE loan could enable the acquisition of interests in an existing facility where environmental impacts after acquisition would generally be similar to those before acquisition (B1.24), relocate or install equipment in an existing facility consistent



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with the general use of the receiving structure (B1.31), and/or suspend operations while replacing or upgrading components (B2.5). In addition, DOE intends to apply its categorical exclusion for actions to conserve energy and promote energy efficiency, B5.1, to proposals for engineering integration. These engineering integration proposals may involve the purchase of materials and supplies for prototype development and tooling to incorporate qualifying components into the design of advanced technology vehicles and/or developing manufacturing processes for facilities that produce qualifying components or advanced technology vehicles.

The environmental professionals in DOE who are familiar with the proposals and the categorical exclusions expect the proposals to fit the categorical exclusions unless they determine, during evaluation of the environmental information that has been submitted, that extraordinary circumstances exist. To ensure that applicants have provided timely and accurate information regarding the environmental effects of their projects, there are a variety of means to verify the validity of application materials. For example, during the technical and financial due diligence review pursuant to loan underwriting, DOE will conduct a site visit and review application materials with the applicant.

I would appreciate your views on this approach.

Sincerely,



Steven Chu

Enclosure

## Enclosure

### Department of Energy Categorical Exclusions (10 CFR 1021, Appendix B) Potentially Applicable to the Advanced Technology Vehicles Manufacturing Incentive Program (Auto Loan Program)

Four categorical exclusions potentially applicable to the Auto Loan Program are listed below, followed by the four conditions that are integral elements of them.

#### Four Categorical Exclusions

B1.24 Transfer, lease, disposition or acquisition of interests in uncontaminated permanent or temporary structures, equipment therein, and only land that is necessary for use of the transferred structures and equipment, for residential, commercial, or industrial uses (including, but not limited to, office space, warehouses, equipment storage facilities) where, under reasonably foreseeable uses, there would not be any lessening in quality, or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents, and environmental impacts would generally be similar to those before the transfer, lease, disposition, or acquisition of interests.

Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.31 Relocation of machinery and equipment, such as analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, including minor construction necessary for removal and installation, where uses of the relocated items will be similar to their former uses and consistent with the general missions of the receiving structure.

B2.5 Safety and environmental improvements of a facility, including replacement and upgrade of facility components, that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements may include, but are not limited to: Replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping if there is no evidence of leakage, based on testing that meets performance requirements in 40 CFR part 280, subpart D (40 CFR part 280.40). This includes activities taken under RCRA, subtitle I; 40 CFR part 265, subpart J; 40 CFR part 280, subparts B, C, and D; and other applicable state, Federal and local requirements for underground storage tanks. These actions do not include rebuilding or modifying substantial portions of a facility, such as replacing a reactor vessel.

B5.1 Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that do not increase the indoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, designers), organizations (such as utilities), and state and local governments. Covered actions include, but are not limited to: programmed lowering of thermostat settings, placement of timers on hot water heaters, installation of solar hot water systems, installation of efficient lighting, improvements in generator efficiency and appliance efficiency ratings, development of energy-efficient manufacturing or industrial practices, and small-scale conservation and renewable energy research and development and pilot projects. The actions could involve building renovations or new structures in commercial, residential, agricultural, or industrial sectors. These actions do not include rulemakings, standard-settings, or proposed DOE legislation.

Conditions that are integral elements of each categorical exclusion in Appendix B.

To fit within the categorical exclusion a proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders.

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions.

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or

(4) Adversely affect environmentally sensitive resources. An action may be categorically excluded if, although sensitive resources are present on a site, the action would not adversely affect those resources (e.g., construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to....[seven examples are provided in the regulations]