

**THE SECOND REPORT ON  
THE NATIONAL ENVIRONMENTAL POLICY ACT  
STATUS AND PROGRESS FOR  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009  
ACTIVITIES AND PROJECTS**

**Introduction**

The Council on Environmental Quality (CEQ) respectfully submits this report to the Senate Environment and Public Works Committee and the House Natural Resources Committee on behalf of the President, in accordance with section 1609(c) of the American Recovery and Reinvestment Act of 2009 (ARRA).

Congress addressed the National Environmental Policy Act of 1969 (NEPA) in Section 1609 of ARRA:

(a) FINDINGS. –

- (1) The National Environmental Policy Act protects public health, safety and environmental quality: by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds;
- (2) When President Nixon signed the National Environmental Policy Act into law on January 1, 1970, he said that the Act provided the "direction" for the country to "regain a productive harmony between man and nature";
- (3) The National Environmental Policy Act helps to provide an orderly process for considering federal actions and funding decisions and prevents litigation and delay that would otherwise be inevitable and existed prior to the establishment of the National Environmental Policy Act.

(b) Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized.

(c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

On May 15, 2009, the President assigned his reporting responsibility under Subsection 1609(c) to the Chair of CEQ. CEQ has issued guidance and instructions to the Executive Branch departments and agencies on how to report the status and progress of projects and activities funded by ARRA with respect to compliance with NEPA (Attachment 1). After the first report to Congress on May 18, 2009, which reported activity through April 24, CEQ worked with the departments and agencies to expand on its guidance provided in order to expedite the reporting process (Attachment 1A).

Section 1609(c)'s reporting requirement applies to "projects and activities funded by this Act" and, pursuant to Section 4 of ARRA, therefore applies to projects and activities funded under "Division A – Appropriations Provisions" by federal "agencies" as that term is defined under the Administrative Procedure Act, 5 U.S.C. §551. Consequently, this report focuses on the status and progress of NEPA requirements and documentation for 15 Departments' and 9 Independent Agencies' projects and activities funded under Division A of ARRA. This report provides the status of NEPA compliance for all projects/activities receiving ARRA funds that the departments and agencies reported to OMB as of June 30, 2009 that appear on [www.recovery.gov](http://www.recovery.gov) as "funds available". The NEPA status of over 79,000 projects and activities receiving ARRA funds were reported.

CEQ is working with all the Executive Branch departments and agencies receiving ARRA appropriations to assist them in NEPA implementation and compliance which demonstrates environmental stewardship and commitment to the sustainability goals embodied in many of the provisions of ARRA. As the reports show, many agencies have "shovel ready" projects which have completed environmental analyses and are fully permitted, approved, and ready for implementation. For any projects and activities for which necessary environmental analyses and permits or approvals have not been completed, agencies are expeditiously addressing their compliance requirements. The majority of projects and activities reported have either had environmental reviews completed, or involve grant applications that describe the projects and activities which will be reviewed when the completed applications are received.

Overall, the progress that departments and agencies have reported indicates that NEPA analyses are informing decisions for expenditure of ARRA funds in an environmentally sound manner. No departments and agencies have reported instances of substantial delays related to NEPA reviews. CEQ is continuing to monitor progress on the NEPA actions that have not been completed.

Below, CEQ summarizes the status of NEPA compliance for ARRA funded projects and activities reported for each Executive Branch department and agency receiving ARRA appropriations under Division A of ARRA. This initial report shows the agencies have and will continue to meet their NEPA obligations in a timely manner. A more detailed accounting of the 15 Executive Branch departments and 9 agencies required to report on their current NEPA status is synopsized on the attached spreadsheet (Attachment 2) and the department and agency spreadsheets and explanatory notes are also attached (Attachments 3-26).

## **Reporting Results**

NEPA and the CEQ regulations which implement NEPA (40 C.F.R. parts 1500-1508), require Executive Branch departments and agencies to consider the environmental impacts of proposed agency decisions and actions. The NEPA provisions requiring environmental review must be completed before Executive Branch departments and agencies decide to undertake and fund actions that use ARRA funds. In cases where the departments and agencies act in a ministerial capacity to distribute funds and have no control over the use of the funds, or are acting under statutes for which their actions are exempted from NEPA review, the reports

indicate that NEPA is not applicable. As of June 30, approximately 2,000 projects and activities, an increase of about 350 since the last report, were reported as "NEPA not applicable."

When NEPA is applicable, the reports identify the level of NEPA analysis that has been or is being applied. There are 3 levels of NEPA review: Categorical Exclusions; Environmental Assessments; and Environmental Impact Statements.

- **Categorical Exclusion (CE):** A CE is a category of actions established in the department or agency procedures for implementing NEPA, or established in legislation, that are expected to not have individually or cumulatively significant environmental impacts. Typically, a CE is concluded with the determination that a proposed action is included in the category of actions and there are no extraordinary circumstances that indicate environmental concerns merit further environmental review.
- **Environmental Assessment (EA):** When a CE is not appropriate and the agency has not determined whether the proposed action will cause significant environmental effects, then an environmental assessment is prepared. If, as a result of the EA, a finding of no significant impact (FONSI) is appropriate, then the NEPA review process is completed with the FONSI, otherwise an EIS is prepared.
- **Environmental Impact Statements (EIS):** The most intensive level of analysis is the environmental impact statement which is typically reserved for the analysis of proposed actions that are expected to result in significant environmental impacts. When an EIS is prepared, the NEPA review process is concluded when a record of decision (ROD) is issued.

Several agencies are using programmatic NEPA reviews to address similar projects and activities, to facilitate implementation of individual projects and activities either by providing full NEPA compliance or programmatically addressing common environmental issues, thereby eliminating the need to replicate the review of those issues.

As of June 30, over 70,000 NEPA reviews were completed using CEs, an increase of over 30,000 since the last report. The CEs were used when the departments and agencies found the project or activity did not have significant individual or cumulative effects on the human environment. These departments and agencies reported completing over 1,600 EAs for projects or activities receiving ARRA funds with a FONSI, an increase of over 1,180 since April 24. Over 840 projects or activities were analyzed in an EIS where the NEPA review was completed with a ROD, an increase of over 650 since the last report.

Those completed NEPA reviews support over \$97 billion in ARRA funds obligated. For up-to-date information regarding the status of agency obligations and payments under ARRA, please see the ARRA website at [www.recovery.gov](http://www.recovery.gov).

In addition to the completed NEPA reviews, over 10,000 NEPA reviews (over 90 environmental impact statements, almost 3,500 environmental assessments, and over 6,800 reviews using categorical exclusions) were reported underway.

## **Results by Department and Agency**

The department and agency memos and spreadsheets reporting information to CEQ are attached and summarized below (attachments 3-26). The projects and activities reported do not include all projects and activities that will ultimately receive ARRA funding. This continues to be the case primarily for two reasons: not all grant programs have advanced to the point where the number and types of projects and activities are known, and several programs are still awaiting approved project plans. Consequently, more projects and activities that will be funded under ARRA will be identified and reported in future reports.

- a. Department of Agriculture (USDA) (Attachment 3): The Department of Agriculture report includes the 10 offices, agencies and services that received ARRA funds. Almost 42,000 projects and activities that were funded, partially or entirely, by ARRA were reported, reflecting an increase of over 12,000 from the May 18, 2009, report. As of June 30, USDA reported that over 39,000 NEPA reviews were completed, an increase of over 12,500 since the last report. Another 163 NEPA reviews were underway of which 6 are EISs, and 85 are EAs. The 143 projects or activities that did not require USDA to conduct NEPA reviews are 140 projects for which there is no NEPA requirement (e.g., non-discretionary grants and CERLCA clean-up) and 3 projects for which FHWA is preparing the NEPA review. At this stage of ARRA implementation, the largest number of NEPA reviews was completed by Rural Development, with over 38,000 decisions based on categorical exclusions, for obligations of over \$426 million ARRA funds. The Forest Service completed over 850 NEPA reviews for projects and activities (an increase over the 160 previously reported) and the Natural Resources Conservation Service completed over 360 NEPA reviews for projects and activities (an increase of over 300 since the previous report). The Natural Resources Conservation Service worked with CEQ to revise its procedures to ensure appropriate NEPA reviews can be completed expeditiously and those procedures were pending publication at the end of this reporting period (they were published July 13, 2009). NRCS has withdrawn 1 project since the last report because further review of the proposed project/activity disclosed that the proposed dam removal project is not eligible for ARRA funding.
- b. Department of Commerce (DOC) (Attachment 4): Department of Commerce reported on 5 agencies with over 130 projects and activities that were funded by ARRA as of June 30, an increase of over 100 since the last report. NOAA Operations, Research, and Facilities funding included 1 component that did not require NEPA review. The remaining projects and activities requiring NEPA reviews show over 70 completed NEPA reviews, compared to 8 in the last report. Since the last report, the number of NEPA reviews underway increased from 25 to 66 (4 are EISs, 47 are EAs and 15 are CEs). CEQ worked with the Department and the National Telecommunications and Information Administration (NTIA) to revise the NTIA NEPA procedures to align NEPA process for the broadband program activities with other agency's broadband programs to ensure appropriate NEPA reviews can be expeditiously completed as applicants' broadband projects/activities are identified. The NTIA NEPA will be finalized and available prior to action to fund those projects and activities. In addition, the need for Department-wide

CE's was identified and those revised procedures were published for comment on May 26, 2009.

- c. Department of Defense (DOD) (Attachment 5): As of June 30, the Department of Defense reported over 5,000 projects and activities funded by ARRA, an increase of almost 16% as the Army Corps of Engineers has begun implementing ARRA. Thus far, almost 5,000 NEPA reviews have been completed, an increase of over 1,900 since the last report. Over 1,000 NEPA reviews are underway, of which 815 are CE's, 230 are EAs, and 20 are EISs. In addition, DOD has determined that approximately 150 projects and activities do not require NEPA analysis because no DOD decisionmaking is involved (e.g., preliminary studies necessary to develop proposed projects/activities to the point that they can be meaningfully evaluated). The almost 5,000 completed NEPA actions include over 4,400 reviews using CE's, over 300 reviews relying on EAs, and over 250 EISs, for obligations of over \$1.6 billion in ARRA funds (compared to over \$109 million previously reported). Of the approximately 1,000 reviews underway, 20 are EISs, 230 are EAs and over 800 are using CE's.
- d. Department of Education (Attachment 6): The Department of Education reported 765 projects and activities for which no NEPA review was required. The ARRA funds available for expenditure are primarily for formula grants to States for programs, many of which are primarily related to teaching. As of June 30, over \$45 billion in ARRA funds have been obligated. Future projects and activities will be identified, such as discretionary grant programs, and the Department is continuing to work with CEQ to develop NEPA implementing procedures that will provide for appropriate expeditious NEPA reviews when reviewing discretionary grant applications.
- e. Department of Energy (DOE) (Attachment 7): The Department of Energy reported 156 projects and activities that were funded by ARRA (compared to 52 in the previous report). Of those, 8 do not require NEPA review because they involve Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions. As of June 30, over 170 NEPA reviews had been completed, an increase of over 100 since the May 18 report. Projects and activities include the Weatherization Assistance Program, most of the DOE projects and activities to accelerate environmental cleanup, and many science projects for obligations totaling over \$6.6 billion under ARRA. Another 45 NEPA reviews are underway as of June 30, including 7 EISs, 22 EAs, and 16 CE's. DOE is reviewing additional applications received in response to funding opportunity announcements related to the ARRA and new projects receiving ARRA funds are expected to be identified for the Bonneville Power and Western Area Power Administrations, and other DOE programs. This will result in a substantial increase in the number of DOE projects receiving ARRA funding and the corresponding NEPA actions in future reports.
- f. Department of Health and Human Services (HHS) (Attachment 8): The 8 Department of Health and Human Services administrations, agencies, and centers receiving Division A ARRA funds reported. As of June 30, over 7,000 projects and activities that received ARRA funding, an increase of over 5,400 since the previous report. NEPA reviews have

been completed for over 1,400 projects and activities reflecting a dramatic increase over the 16 completed NEPA reviews reported on May 18. Using programmatic analyses to expedite NEPA review, these projects and activities include several nutrition services in the Aging Services Program, a program that has completed obligating all appropriated ARRA funds. As of June 30, there are over 3,000 NEPA reviews underway: none are EISs, over 2,300 are EAs and over 1,500 are CEs. For Health Resources & Services Administration, there are a number of pending CEs and EAs as grant reviews are still in process and HRSA expects the NEPA review to accompany the grant review. The Administration for Children and Families has 800 pending NEPA reviews because the total projects include 978 grants projected based on the response to the funding opportunity announcement that closed shortly before June 30.

- g. Department of Homeland Security (DHS) (Attachment 9): The Department of Homeland Security reported over 70 projects and activities that received ARRA funding. As of June 30, NEPA reviews have been completed for 31 projects and activities and 39 NEPA reviews are underway. Of those underway, 1 is an EIS, 33 are EAs and 5 reviews are using CEs. DHS has 1 project that does not require NEPA review because the action is ministerial and involves no discretionary decisionmaking. Several DHS programs involve grants and the number of projects and activities and the number of associated NEPA reviews will increase as those applications are processed and the projects and activities are fully identified to ensure the commensurate level of NEPA review.
- h. Department of Housing and Urban Development (HUD) (Attachment 10): As of June 30, the Department of Housing and Urban Development reported 6,598 projects/activities receiving ARRA funding, the majority of which are grants. This reflects an increase of 1,751 since April 24. NEPA reviews have been completed for all the reported grants and they will receive additional environmental review as over \$1.6 billion in ARRA funds are now obligated for specific projects under the Project-Based Rental Assistance Program. Additional grants will receive NEPA review as needed as additional information is provided by applicants for ARRA funded grants.
- i. Department of the Interior (DOI) (Attachment 11): Department of the Interior offices, bureaus, and services reported over 4,400 projects and activities that are receiving ARRA funds, an increase of over 2,000 since April 24. As of June 30, NEPA reviews have been completed for over 850 projects and activities reflecting an increase of over 580. In addition, over 3,800 NEPA reviews are pending including 6 EISs, over 450 EAs, and over 3,300 CEs. There are several reasons for the number of ARRA projects/activities that have NEPA reviews pending. For example, where a categorical exclusion is pending the proposals are being developed to the point where the review can determine whether or not there are any extraordinary circumstances that raise environmental concerns and require further review. Currently, the NEPA reviews for those projects/activities are being concluded. Similar planning development is occurring and the environmental reviews have begun for projects/activities requiring EAs. Further, most of the BIA's projects require Tribal input, including allowing Tribes, where appropriate, for NEPA compliance and BIA is working with the Tribes to move these projects forward

expeditiously. Many of the currently pending projects/activities are expected to be completed during the next reporting period.

- j. Department of Justice (DOJ) (Attachment 12): As of June 30, the Department of Justice reported over 1,500 projects and activities that were identified as receiving ARRA funds, a large increase over the 109 identified in the previous reporting period. NEPA reviews for all ARRA funded projects and activities have been completed, and over \$1.8 billion in ARRA funds have been obligated.
- k. Department of Labor (DOL) (Attachment 13): The Department of Labor reported 508 projects and activities (an increase of 3) that were funded by ARRA as of June 30. Of those, 502 are formula grants that do not require NEPA review. NEPA reviews (3 CEs and 2 EAs) have been completed for Job Corps construction projects and activities and 1 EA for renewable energy projects is underway.
- l. Department of State (Attachment 14): The Department of State again reported 16 projects and activities that were funded by ARRA. As of June 30, NEPA reviews have been completed for 11 projects and activities, 1 more than in the previous reporting period. NEPA reviews underway are 1 EA and 1 CE. The completed actions include CEs and EAs for levee repairs and an environmental impact statement for a training center. The Department of State has obligated over \$36.6 million of ARRA funds for projects that have completed NEPA review, an increase over the \$7.4 million previously obligated.
- m. Department of Transportation (DOT) (Attachment 15): As of June 30, 4 Department of Transportation modal administrations reported over 7300 projects and activities that were funded by ARRA. Over 9,200 NEPA reviews have been completed and approximately 600 are underway. Of the pending NEPA reviews, DOT reported 50 are EISs, 58 are EAs and 479 are using CEs. Over \$20 billion in ARRA funds have been obligated. The Maritime Administration has received and is reviewing 454 applications under the Small Shipyard Grant program to determine whether they adequately describe the proposed project/activity; consequently the appropriate NEPA reviews were not identified as of June 30.
- n. Department of Treasury (Attachment 16): As of June 30, the Department of Treasury has completed 3 NEPA reviews, using CEs, for implementing the Community Development Financial Institutions Program and Health Insurance Tax Credit Program and has obligated over \$22.3 million in ARRA funding.
- o. Department of Veterans Affairs (VA) (Attachment 17): The Department of Veterans Affairs reported over 1,300 projects and activities that were funded by ARRA as of June 30. The decrease in the number of projects and activities receiving ARRA funds is due to the fact that 48 projects previously reported were funded under FY 2009 funding, not ARRA. There are 52 projects/activities receiving ARRA funds that do not require NEPA review because they involve no decisionmaking (e.g., feasibility studies and nondiscretionary grants). As of June 30, over 1,200 NEPA reviews have been completed.

About 40 additional NEPA reviews are underway to provide NEPA reviews for future projects/activities receiving ARRA funding. Of those, 36 are EAs and 1 is a CE. The number of VA's pending NEPA actions did not decrease in this reporting cycle because most of these actions hinge upon site and system designs that are not yet complete. VA anticipates completing several of the site-specific NEPA actions for the next report.

- p. Corporation for National and Community Service (CNCS) (Attachment 18): The Corporation for National and Community Service reported 237 projects and activities which were funded by ARRA, an increase of 234 projects from the last report. All reported projects have completed CE's and over \$97 million in ARRA funds have been obligated. CNCS in coordination with CEQ established CEs covering CNCS projects and activities funded under ARRA (74 FR 34309).
- q. Environmental Protection Agency (EPA) (Attachment 19): The Environmental Protection Agency reported over 220 projects and activities that received ARRA funds as of June 30. Of those, over 140 did not require NEPA review, and over \$4 billion of ARRA funds were obligated for Clean Water State Revolving Fund Grants, Drinking Water State Revolving Funds and Superfund clean-up projects. EPA has completed 1 programmatic NEPA review, an EA, which allowed the approval of 71 grants (an increase of 21 grants) for which over \$114 million ARRA funds (an increase of over \$28 million) were obligated for National Clean Diesel Campaign Program Grants.
- r. General Services Administration (GSA) (Attachment 20): As of June 30, the General Services Administration reported over 250 projects and activities that received ARRA funds, 1 of which involved GSA's ministerial actions in purchasing fuel efficient vehicles. Those ministerial actions did not require NEPA review and resulted in obligations of over \$287 million (an increase of over \$210 million). An additional \$134 million in ARRA funds were obligated for work on green buildings based on completed NEPA reviews. GSA reported over 200 NEPA reviews are underway as of June 30, 2 are EISs, 11 are EAs and 203 are using CEs. Many of GSA's projects are still undergoing scope clarifications and in some cases feasibility studies are underway. In some regions the majority of projects are on historic buildings, and GSA continues to work on 106 consultations. GSA anticipates that many "pending" projects will be completed by the next report.
- s. National Aeronautics and Space Administration (NASA) (Attachment 21): The National Aeronautics and Space Administration reported the hurricane repairs at the Johnson Space Center as projects under the Cross Agency Support Program and obligated \$8 million of the \$50 million appropriated by ARRA for construction. As of June 30, all 9 of the previously reported CEs (6 completed and 3 underway) had been completed for those construction activities at the Johnson Space Center. NASA had not obligated funds under Science, Exploration, or Aeronautics programs as of June 30.
- t. National Endowment for the Arts (NEA) (Attachment 22): As of June 30, the National Endowment for the Arts reported 63 projects and activities that received ARRA funds, no projects were reported as of April 24. 63 CEs have been completed for grants that focus



on the preservation of jobs in the arts. Over \$19 million in ARRA funding has been obligated. NEA worked with CEQ to develop NEA NEPA procedures that were used to provide NEPA reviews for final decisions on grant applications and expedited the NEPA reviews conducted during this reporting period.

- u. National Science Foundation (NSF) (Attachment 23): The National Science Foundation reported 1,300 projects and activities that received ARRA funds as of June 30 (297 more than previously reported). Categorical exclusions have been completed for 1298 NSF general research awards that support individual scientific research and, as such, under NSF's regulations implementing NEPA, they are categorically excluded. For the reporting period NSF also reports 1 EA was completed, and 1 EIS is underway. Over \$628 million in ARRA funding has been obligated for research & related activities, research equipment & facilities construction, and education & human resources.
- v. Small Business Administration (SBA) (Attachment 24): The Small Business Administration reported 16 projects and activities which received ARRA funds. Of those, 11 CEs were completed for projects/activities that accounted for almost \$3 million in ARRA funding that has been obligated as of June 30. A total of 4 projects did not require NEPA review. Those 4 projects and activities accounted for over \$118 million in ARRA funding that has been obligated for the business loan program as of June 30, an increase of \$60 million over the prior report.
- w. Social Security Administration (SSA) (Attachment 25): The Social Security Administration reported 3 projects or activities that received ARRA funds. NEPA reviews have been completed for 2 of those. As of June 30, SSA reported obligating over \$36 million in ARRA funds for administering the One-Time \$250 payments to Social Security and Supplemental Security Income beneficiaries, an increase of \$13 million since the last report. The second completed NEPA review was for hiring additional employees to address disability and retirement workload processing, resulting in obligating over \$27 million in ARRA funds during this reporting period. A third NEPA review, using a CE, is underway for the construction of a new data center.
- x. United States Agency for International Development (USAID) (Attachment 26): The United States Agency for International Development reported 1 project that received ARRA funding. A CE is pending for development and rollout of the Global Acquisition and Assistance System (GLAAS). USAID is working with CEQ to develop a NEPA procedure applicable to the project to provide for expeditious NEPA review to facilitate the payment of over \$33 million ARRA funds. The \$5 million ARRA funds expended to date have been for development of the preliminary design and site selection criteria.

CEQ intends to submit the next report on November 2, 2009, and subsequent reports will be submitted every 90 days thereafter. The final report covering NEPA compliance for

August 3, 2009

projects and activities receiving ARRA funding through September 2011 will be provided on November 1, 2011.

Attachments:

- (1) CEQ Memorandum, Environmental Compliance and Guidance for Reporting NEPA Status and Progress for Recovery Act Activities and Projects, dated April 3, 2009
- (2) Overview Spreadsheet of Department and Agency NEPA 1609 Report
- (3) – (26) Department and agency NEPA Section 1609 (c) Reports

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