

**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 (Recovery Act).

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

(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. Accordingly, on March 11 and April 3, 2009, CEQ 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 the Recovery Act with respect to compliance with NEPA. (Attachment 1). The reporting requirement applies to "projects and activities funded by this Act" and, pursuant to Section 4 of the Recovery Act, therefore applies to projects and activities funded under "Division A – Appropriations Provisions" by federal "agencies" as that term is defined under the Administrative Procedures Act, 5 U.S.C. §551. Consequently, this report focuses on the status and progress of NEPA requirements and documentation for Executive Branch departments' and agencies' projects and activities funded

under Division A of the Recovery Act. As of April 24, 2009, the NEPA status of over 51,600 Recovery Act funded projects and activities were reported.

CEQ is working with all the Executive Branch departments and agencies receiving Recovery Act appropriations to assist them in NEPA implementation and compliance that demonstrates environmental stewardship and commitment to the sustainability goals embodied in many of the provisions of the Recovery Act. 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 reported indicates that NEPA analyses are informing decisions for expenditure of Recovery Act funds in an environmentally sound manner. No departments and agencies have reported instances of substantial delays related to NEPA reviews.

Below, CEQ summarizes the status of NEPA compliance for Recovery Act funded projects and activities reported as of April 24, 2009, for each Executive Branch department and agency receiving Recovery Act appropriations under Division A of the Recovery Act. 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 fifteen Executive Branch departments and nine agencies required to report on their current NEPA status is synopsized on the attached spreadsheet. (Attachment 2).

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 Recovery Act 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 April 24th, approximately 1600 projects and activities 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 three 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.

As of April 24, 2009, over 40,000 NEPA reviews were completed using Categorical Exclusions. 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 500 EAs for Recovery Act funded projects or activities with a FONSI. Also completed were over 150 projects or activities analyzed in an EIS where the NEPA review was completed with a ROD.

Those completed NEPA reviews support over \$57 billion in Recovery Act funds obligated as of April 24th. For up-to-date information regarding the status of agency obligations and payments under the Recovery Act, please see the Recovery Act website at www.recovery.gov.

In addition to the completed NEPA reviews, about 5000 NEPA reviews (23 environmental impact statements, 396 environmental assessments, and 4,566 reviews using categorical exclusions) were reported underway as of April 24th. 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.

Results by Department and Agency

The department and agency memos and spreadsheets reporting information to CEQ through April 24th are attached and summarized below (attachments 3-26). The projects and activities reported do not include all projects and activities that will ultimately receive Recovery Act funding. This is 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 the Recovery Act will be identified and reported in future reports.

- a. Department of Agriculture (USDA): Ten Department of Agriculture offices, agencies and services reported 29,709 projects and activities that were funded, partially or entirely, by the Recovery Act. As of April 24th, USDA reported that almost 27,000 NEPA reviews were completed. Another 24 NEPA reviews were underway of which 1 is an EIS, and 23 are EAs. The eight projects or activities that did not require NEPA review were one CERCLA clean-up project and seven non-discretionary grants. At this early stage of the Recovery Act implementation, the largest number of NEPA reviews was completed by Rural Development, with 26,695 decisions under categorical exclusions, for program level amounts of over \$3 billion that includes the total amount in direct loans, guaranteed loans and grants made available to rural America. In addition, the Forest Service completed 162 NEPA reviews for projects and activities that have been obligated over \$95 million in Recovery Act funds and the Natural Resources Conservation Service completed 60 NEPA reviews for projects and activities that were obligated over \$2 million for rehabilitation of flood control structures. While it is relying on existing Departmental and Service NEPA implementing procedures, the Natural Resources Conservation Service is working with CEQ to revise its procedures to ensure appropriate NEPA reviews can be completed expeditiously as future projects/activities are identified. (Attachment 3).
- b. Department of Commerce (DOC): Five agencies of the Department of Commerce reported 33 projects and activities that were funded by the Recovery Act. One component of the NOAA Operations, Research, and Facilities funding (the \$3 million for environmental consultations for other agencies' Recovery Act funded projects) did not require NEPA review. The remaining 32 projects and activities involve discretionary grant programs (i.e., habitat conservation, construction, and broadband) and the number of grants and specific NEPA reviews are being identified. Currently, eight NEPA reviews have been completed and 25 NEPA reviews are underway of which one is an EIS, 11 are EAs and 13 are CEs. In addition to relying on existing Departmental and Service NEPA implementing procedures, CEQ is working with the Department and the National Telecommunications and Information Administration to revise the procedures to ensure appropriate NEPA reviews can be expeditiously completed as future projects/activities are identified. (Attachment 4).
- c. Department of Defense (DOD): The Department of Defense and its components reported 4350 projects and activities funded by the Recovery Act. Thus far, over 3000 NEPA reviews have been completed and almost 1000 NEPA reviews are underway. In addition, DOD has determined that approximately 260 projects and activities do not require NEPA analysis because no DOD decisionmaking is involved (e.g., required payments for home relocations and preliminary studies). The over 3000 completed NEPA actions include 3003 reviews using categorical exclusions, 87 reviews relying on environmental assessments, and on three environmental impact statements, for obligations of over \$100 million in Recovery Act funds. Of the approximately 1000 reviews underway, one is an EIS, 47 are EAs and 950 are using CEs. The cover memo at Attachment 5A(1) lists the programs receiving Recovery Act funding and identifies the component with program and attendant NEPA responsibilities. (Attachment 5).

- d. Department of Education: The Department of Education reported 736 projects and activities for which no NEPA review was required. The vast majority of the Department's Recovery Act funds are for formula grants to States for programs, many of which are primarily related to teaching. As of April 24th, over \$17.4 billion in Recovery Act funds have been obligated. Future projects and activities will be identified, such as discretionary grant programs, for which NEPA reviews will be conducted. The Department is working with CEQ to develop NEPA implementing procedures that will provide for appropriate expeditious NEPA reviews when reviewing discretionary grant applications. (Attachment 6)
- e. Department of Energy (DOE): The Department of Energy reported 52 projects and activities that were funded by Recovery Act, of which nine involve Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions for which NEPA reviews are not required. As of April 24th, NEPA reviews had been completed for 28 projects and activities (including the Weatherization Assistance Program and most of the DOE projects and activities to accelerate environmental cleanup) for obligations totaling over \$3 billion under the Recovery Act. Another 32 NEPA reviews are underway, including 2 EISs, 3 EAs, and 27 reviews using CEs. Several major programs' project plans have yet to be approved, such as the Bonneville Power and Western Area Power Administrations' programs; consequently, additional Recovery Act funded projects and activities will be identified and reported in the future. (Attachment 7)
- f. Department of Health and Human Services (HHS): Six Department of Health and Human Services administrations, agencies, and centers reported 1729 projects and activities that were funded by the Recovery Act. NEPA reviews have been completed for 16 projects and activities. Using programmatic analyses to expedite NEPA review, these projects and activities include several nutrition services in the Aging Services Program that were reviewed and found to not have significant environmental effects in advance of individual disbursements of the \$100 million obligated as of April 24th. There are currently over 100 NEPA reviews pending underway, 2 are EISs, 89 are EAs and 12 are CEs. The Office of the Secretary and the Indian Health Service are awaiting project plan approvals. HHS expects to report additional projects and activities and NEPA reviews in the next report. (Attachment 8)
- g. Department of Homeland Security (DHS): The Department of Homeland Security reported 50 projects and activities that were funded by the Recovery Act. NEPA reviews have been completed for 24 projects and activities and 39 NEPA reviews are underway. Of those underway, one is an EIS, 34 are EAs and 4 reviews are using CEs. One DHS project did not require NEPA review because the actions is ministerial and involves no discretionary decisionmaking. An example of the expeditious and efficient application of NEPA is the DHS pending programmatic EA to fund tactical communications and radios. Several DHS programs involve grants and the number of projects and activities and 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. (Attachment 9)

- h. Department of Housing and Urban Development (HUD): The Department of Housing and Urban Development reported 4847 grants which were funded by the Recovery Act. NEPA reviews have been completed for all the reported grants and they will receive additional environmental review as over \$1.3 billion in Recovery Act funds are obligated for specific projects under the Project-Based Rental Assistance Program. Additional grants will receive NEPA review as needed as over \$1.3 billion of Recovery Act funds remaining are obligated. (Attachment 10)
- i. Department of the Interior (DOI): Four Department of the Interior offices, bureaus and services (Central Utah Project Office, Bureau of Reclamation, Fish and Wildlife Service, and National Park Service) reported 2327 projects and activities that were funded by the Recovery Act. NEPA reviews have been completed for almost 300 projects and activities, such as water treatment projects and maintenance of Park trails. In addition, over 2000 NEPA reviews are pending of which 5 are EISs, 125 are EAs and 1871 are reviews using CEs. As of April 24th, no Recovery Act funds had been obligated. Based upon the NEPA reviews that have been completed and are underway, DOI is well positioned to continue implementing Recovery Act funded projects and activities in a timely manner and that will be reported in the future. In addition to relying on existing Departmental and Service NEPA implementing procedures, the National Park Service is working with CEQ to revise its procedures to ensure appropriate NEPA reviews can be completed expeditiously as future projects and activities are identified. (Attachment 11)
- j. Department of Justice (DOJ): The Department of Justice reported 109 projects and activities that were funded by the Recovery Act. As of April 24th, NEPA reviews for all 109 projects and activities have been completed, and \$95 million in Recovery Act funds have been obligated under the Victim's Assistance Program. As future discretionary grants are identified, DOJ expects to conduct and report additional NEPA reviews and Recovery Act obligations. (Attachment 12)
- k. Department of Labor (DOL): The Department of Labor reported 505 projects and activities that were funded by the Recovery Act, of which 499 were formula grants that do not require NEPA review. Four NEPA reviews (three categorical exclusions and one environmental assessment) have been completed for four Job Corps construction projects and activities and two NEPA reviews (environmental assessments) are underway. One environmental assessment is being prepared for renewable energy projects. This is an example of a programmatic NEPA review that will expedite implementation of individual projects and activities. (Attachment 13)
- l. Department of State: The Department of State reported 16 projects and activities that were funded by the Recovery Act. NEPA reviews have been completed for ten projects and activities, and one NEPA review (an environmental assessment) is underway. The completed actions include categorical exclusions and environmental

assessments for levee repairs and an environmental impact statement for a training center. As of April 24th, the Department of State has obligated over \$7 million of Recovery Act funds for projects that have completed NEPA review. (Attachment 14)

- m. Department of Transportation (DOT): Four Department of Transportation modal administrations reported 5496 projects and activities that were funded by the Recovery Act. NEPA reviews have been completed for over 4000 projects and activities and about 1500 NEPA reviews are underway. Of the 1473 NEPA reviews pending, seven are EISs, 14 are EAs and 1452 are using CEs. As of April 24th, over \$9 billion in Recovery Act funds have been obligated. A notice to solicit applications from State and local governments for discretionary grant funds for capital investments in surface transportation infrastructure will be published in the Federal Register on May 18th. The Maritime Administration (MARAD) has received and is reviewing 451 applications under the Small Shipyard Grant program. DOT expects to initiate NEPA reviews on several identified projects, add additional projects and activities, and complete additional NEPA reviews in the next report. (Attachment 15)
- n. Department of Treasury: The Department of Treasury has completed three NEPA reviews, using CEs, for implementing the Community Development Financial Institutions Program and Health Insurance Tax Credit Program and has obligated \$20 million in Recovery Act funding. (Attachment 16)
- o. Department of Veterans Affairs (VA): The Department of Veterans Affairs reported 1380 projects and activities that were funded by the Recovery Act, including 52 that do not require NEPA review because they involve no decisionmaking (e.g., feasibility studies and nondiscretionary grants). NEPA reviews have been completed for about 1300 projects and activities. As of April 24th, NEPA was completed and over \$1.3 million in Recovery Act funding was obligated for non-recurring maintenance at a medical facility. NEPA review is also complete for the future obligation of \$50 million of the Recovery Act funds for Veterans Benefits. About 40 additional NEPA reviews are underway to provide NEPA reviews for future Recovery Act funded project and activity implementation. Of those, 36 are EAs and one is using a CE. (Attachment 17)
- p. Corporation for National and Community Service (CNCS): The Corporation for National and Community Service reported three projects and activities which were funded by the Recovery Act. CNCS is working with CEQ to publish its NEPA procedures to ensure appropriate expeditious NEPA reviews can be conducted as projects and activities are identified. (Attachment 18)
- q. Environmental Protection Agency (EPA): The Environmental Protection Agency reported 93 projects and activities that were funded by the Recovery Act. Forty-three projects and activities did not require NEPA review, and over \$1.7 billion of Recovery Act funds were obligated for Clean Water State Revolving Fund Grants, Drinking Water State Revolving Funds and Superfund clean-up projects. Also as of

April 24th, EPA has completed one programmatic NEPA review, an environmental assessment, which allowed the approval of 50 grants for which \$86 million of Recovery Act funds were obligated for National Clean Diesel Campaign Program Grants. (Attachment 19)

- r. General Services Administration (GSA): The General Services Administration reported 259 projects and activities that were funded by the Recovery Act, one 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 \$77 million. As of April 24th, an additional \$64 million in Recovery Act funds were obligated for work on green buildings based on completed NEPA reviews. Over 240 NEPA reviews are underway, 2 are EISs, 11 are EAs and 231 are using CEs. Future reports will indicate the completion of those reviews and further obligations. (Attachment 20)
- s. National Aeronautics and Space Administration (NASA): The National Aeronautics and Space Administration reported the hurricane repairs at the Johnson Space Center as one project and expects to use a portion of the \$50 million appropriated by the Recovery Act for construction once the NASA plans are approved. Currently, six NEPA reviews have been completed and three NEPA reviews, all using CEs, are underway for making decisions on individual projects at the Johnson Space Center and the corresponding Recovery Act funding obligations. (Attachment 21)
- t. National Endowment for the Arts (NEA): The National Endowment for the Arts reported no projects or activities and it is in the process of identifying projects and activities that will be provided Recovery Act funds. NEA worked with CEQ to develop NEA NEPA procedures that have been published for public review and comment (74 Federal Register 21011 (May 6, 2009)) and will be used to expeditiously provide NEPA reviews for final decisions on grant applications. Future reports will indicate when the grants are approved and the Recovery Act funds are obligated. (Attachment 22)
- u. National Science Foundation (NSF): The National Science Foundation reported three projects and activities that were appropriated Recovery Act funds. NEPA reviews have been completed for two of the NSF projects and activities and one NEPA review, an EIS, is underway. NSF will therefore be well positioned to meet its NEPA obligations for the three projects and activities which are expected to receive a portion of the \$400 million Recovery Act funds appropriated to NSF for major research equipment and facilities construction. Future reports will indicate when the project plans are approved and the funds obligated. (Attachment 23)
- v. Small Business Administration (SBA): The Small Business Administration reported 16 projects and activities which were funded by the Recovery Act funds. Four of those did not require NEPA review. Those four projects and activities involved the only Recovery Act funds obligated as of April 24th, totaling \$58 million dollars obligated for the business loan program. NEPA reviews have been completed for an

additional 12 projects and activities and those obligations will be included in future reports. (Attachment 24)

- w. Social Security Administration (SSA): The Social Security Administration reported three projects or activities that were funded by the Recovery Act. As of April 24th, NEPA reviews have been completed for two. SSA obligated over \$23 million in Recovery Act funds for administering the One-Time \$250 payments to Social Security and Supplemental Security Income beneficiaries. The second completed NEPA review was for hiring additional employees to address disability and retirement workload processing. A third NEPA review, using a CE, is underway for the construction of a new data center. (Attachment 25)

- x. United States Agency for International Development (USAID): The United States Agency for International Development reported one project that was funded by the Recovery Act. 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 \$2.7 million of Recovery Act funds. (Attachment 26)

CEQ intends to submit the next report on August 3, 2009, and subsequent reports will be submitted every 90 days thereafter. The final report covering NEPA compliance for Recovery Act funded projects and activities 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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