

Robert S. Lynch & Associates
Attorneys at Law

Robert S. Lynch *
Paul M. Li

340 E. Palm Lane
Suite 140
Phoenix, Arizona 85004-4603
Office: (602) 254-5908
Facsimile: (602) 257-9542
Email: rslynch@rslynchaty.com

Government Relations Associate **
Hon. Joe Lane

* Admitted to practice in Arizona and
the District of Columbia

** not a member of the bar

E-MAILED ONLY

September 1, 2006

NEPA Modernization (EMS-NEPA)
Attn: Associate Director for NEPA Oversight
722 Jackson Place, NW
Washington, DC 20503

Re: Comments on Environmental Management Systems and the National Environmental Policy Act, 71 Fed.Reg. 40520, *et seq.* (July 17, 2006)

Dear Mr. Greczmiel:

I have reviewed the Federal Register notice, the proposed guide for Aligning Environmental Management Systems (EMS) with the National Environmental Policy Act (NEPA), and the referenced Executive Order No. 13,148 entitled "Greening the Government Through Leadership in Environmental Management", and have the following comments.

The Executive Order in question has nothing to do with NEPA, does not reference it as a source of authority for issuing the Executive Order, nor does the Executive Order even touch on subjects related to implementation of NEPA.

The interpretation of the Executive Order you are making in your proposed "guide" has no basis in law which I can discover. The central thesis of your "guide" appears to be that federal managers should apply NEPA to actions that would not otherwise require application of NEPA, most especially ongoing activities and programs. NEPA, as your "guide" acknowledges, is intended to provide advice to decision-makers in advance about proposed actions that may "significantly affect the quality of the human environment". As near as I can tell from your "guide", this is a blatant attempt to expand the action requirement found in Section 102(2)(C) of NEPA to ongoing programs and activities that NEPA does not require be examined in its processes.

While your "guide" purports not to order federal agencies to comply with this wholesale expansion of NEPA activity, it does emanate from the Council on Environmental Quality and the Executive Office of the President and thus carries with it a mantle of authority. Given that effect, this "guide", if finalized and distributed to federal agencies, will incite unlawful expansion of NEPA screening of ongoing agency programs and projects that NEPA itself does not require. Instead of moving toward streamlining NEPA activities to reduce costs and make NEPA requirements more efficient, this proposed "guide" pushes NEPA in exactly the opposite direction.

NEPA Modernization (EMS-NEPA)
September 1, 2006
Page 2

It would be my sincere hope that this process stop in its tracks now. The last thing we need is a whole new round of litigation over whether this “guide” provides authority for applying NEPA to ongoing activities of the federal government not currently subject to NEPA screening. The best thing that could happen at this point would be for you to withdraw this “guide” in its entirety and refocus your efforts on matters that can make the National Environmental Policy Act more user friendly.

Sincerely,
ROBERT S. LYNCH & ASSOCIATES

/s/

Robert S. Lynch

RSL:psr