



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,

A handwritten signature in black ink, appearing to read "Steven Chu", written in a cursive style.

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]



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

March 20, 2009

The Honorable Steven Chu
Secretary, Department of Energy
1000 Independence Avenue, SW, Room 7A-257
Washington, D.C. 20590

Dear Secretary Chu:

I write in response to your letter of March 19, 2009, asking for the Council on Environmental Quality's (CEQ) views on the Department of Energy's (DOE) consideration of the use of categorical exclusions to address National Environmental Policy Act (NEPA) compliance requirements when addressing certain activities under the Advanced Technology Vehicles Manufacturing Incentive Program (Auto Loan Program) established under section 136 of the Energy Independence and Security Act of 2007, as amended.

The CEQ NEPA regulations provide for categorical exclusions as a means to comply with NEPA when an agency has identified a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing" the CEQ NEPA regulations, which include the requirement that the agency NEPA procedures "provide for extraordinary circumstances in which a normally excluded action may have a significant effect." 40 C.F.R. § 1508.4.

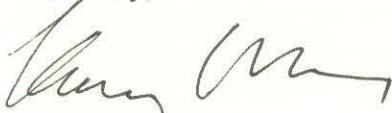
The categorical exclusions DOE is considering for acting on the Auto Loan Program applications were adopted in the DOE NEPA regulations at 10 CFR 1021 and provide for extraordinary circumstances. The DOE NEPA regulations at 10 CFR 1021 set forth categorical exclusions that describe the activities that would take place as a result of DOE loan approvals, and DOE experience has shown that such activities, when are undertaken directly by DOE, do not result in significant environmental impacts.

Applying the categorical exclusions under these circumstances is consistent with longstanding CEQ guidance that encourages agencies to focus on the underlying activities and criteria which characterize the types of activities and their effects. See "Guidance Regarding NEPA Implementation" (CEQ 1983). In this case, the focus of the analysis for determining whether a categorical exclusion applies is appropriately on the underlying activity that is funded in whole or in part by DOE – not on whether that activity is directly undertaken by DOE – and the determination of the incremental effect of the proposed federal action on the underlying non-federal activity (e.g., production of

advanced technology vehicles). When considering the appropriate application of the categorical exclusions set out in the DOE NEPA procedures, DOE must determine whether there are extraordinary circumstances. It is therefore appropriate and necessary for the environmental professionals at DOE to evaluate the information obtained to determine whether there are any extraordinary circumstances that indicate the need to conduct further environmental analysis. The process outlined by DOE for reviewing the loan applications with regard to the proposed activities, the environmental consequences of those activities, and the circumstances surrounding those activities to determine whether the proposed actions are categorically excluded from further NEPA analysis, comports with NEPA and the CEQ regulations.

We appreciate the opportunity to have reviewed this process with your staff and are available in the event you have further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nancy H. Sutley', with a stylized, flowing script.

Nancy H. Sutley

Chair

Council on Environmental Quality