## bp



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Ms. Nancy Sutley Chair, Council on Environmental Quality 722 Jackson Place NW Washington DC 2050.

Re: Steps to Modernize and Reinvigorate NEPA;
Proposed Guidance: "Establishing, Applying and Revising Categorical Exclusions under the National Environmental Policy Act" (February 18, 2010)

Dear Ms Sutley:

BP America Inc. (BP) is submitting the following comments to the Council of Environmental Quality (CEQ) in response to the CEQ's Memorandum on February 18, 2010: "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act." While CEQ previously has sought public comments on this matter, this guidance provides additional clarifications, and therefore, the CEQ is seeking additional public comment for 45 days.

BP is a leading producer of natural gas in North America and a global producer and manufacturer of oil, natural gas, petroleum products and petrochemicals. In the United States, our exploration and production activities include operations in the South, Mid-Continent, Western Rockies, Alaska and the Gulf of Mexico. BP is working to expand the supply of energy available to the United States and is committed to continue reducing its environmental impact.

BP supports the CEQ's objective to provide clear, practical guidance to land management agencies for their use in determining actions that warrant categorical exclusion under the National Environmental Policy Act (NEPA). As CEQ's February 18, 2010, memorandum states, categorical exclusions should serve as an "integral part" of an agency's NEPA toolbox. It is important that CEQ's guidance continues to reinforce this and that CEQ manages all aspects of this guidance to avoid unnecessary paperwork and time delays.

The CEQ regulations establish a process where, after public notice and comment, each agency creates categories or a list of actions that normally do not require preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA. 40 C.F.R. §§ 1507.3(b) (2) ((ii) & 1508.4. Department of Interior's (DOI) current list of these administrative categorical exclusions are found in 43 C.F.R. § 46.210 as well as several other department and agency documents. Under section 1508.4 of the CEQ regulations, the agency establishing the categorical exclusion must provide for "extraordinary circumstances in which a normally excluded action may have a significant environmental effect." 40 C.F.R. § 1508.4. The Department of Interior regulations currently list extraordinary circumstances that could preclude the use of its categorical exclusions. *See* 43 C.F.R. § 46.215.

The CEQ Regulations for Implementing NEPA Section 1500.3 states "Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements...The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law." Given that the expectation is that these guidelines will be binding to agencies, the CEQ should consider submitting the guidance to the formal notice-and-comment rulemaking under the Administrative Procedure Act (APA).

Section C. Elements of a Categorical Exclusion, Subsection 2 on Extraordinary Circumstances includes a sentence that reads "....the presence and nature of a protected resource (e.g. threatened or endangered species or historic resource) and the proposed action's impacts on that resource, is an appropriate extraordinary circumstance for situations where the categorical exclusion would not be appropriate for a proposed action taking place in areas where protected resources may be present." BP believes this should depend on the nature of possible impacts, if any, to the protected resource and therefore recommends inserting clarifying language around a determination that a proposed action will have non-negligible or non-beneficial impacts on that resource.

In addition, BP believes that missing in this particular subsection is a reference to mitigation that could be used to eliminate or minimize impacts to an acceptable degree. If this was the case, a categorical exclusion would be appropriate. For example, specific historic resources are typically avoided when planning a project which could allow for the use of a categorical exclusion. With respect to listed species, additional mitigation measures could be utilized to eliminate potential impacts. Including a reference to mitigation is essential to ensuring this agency

takes this aspect into consideration when deciding if a categorical exclusion is appropriate even in areas where a protected resource may exist. When mitigation is used properly, "atypical situations" as described in this guidance can be rectified.

The use of a categorical exclusion is provided for in NEPA. Granting a categorical exclusion does not mean an agency ignores environmental aspects of a project; rather, this is a mechanism whereby an agency verifies that impacts associated with the proposed action are minimal or non-existent. If the exclusion criteria are met, no detailed analysis would be required. If the criteria are not met, the project would be taken to the next level of NEPA analysis – an Environmental Assessment as provided for in the CEQ regulations. This process would work well with the permitting process for federal actions since virtually all aspects of our exploration and production operations, including new land disturbances and offshore operations, require a permit. Integrating categorical exclusions into the permitting process does allow an expedited review of projects that are considered routine and have little or no environmental impact. There are any number of land use activities and approvals related to oil and gas that are subject to categorical exclusions provided that site conditions or resource concerns support exclusion, including:

- Issuance and modifications of regulations, orders, standards, notices to lessees and operators, and field rules, where the impacts are limited to administrative, economic or technological effects and the environmental impacts are minimal.
- Establishment of terms and conditions in Notices of Intent to conduct geophysical exploration of oil and gas pursuant to 43 CFR 3150 where road building and long term (greater than one year) surface damage is not expected.
- Approval of an Application for Permit To Drill (APD) in the following circumstances: (1) re-entry or modification of an existing well bore,
   (2) approval of a new well drilled from an existing well pad, and (3) approval of an in-field development well where multiple prior environmental assessments (EAs) have found no significant impacts and the well is within the scope of an existing Reasonable Development Scenario (RFD).
- Where an existing EIS has been prepared that analyzes specific project components and associated impacts to a degree that categorical exclusions can be used to approve individual project proposals.
- Approval of on-lease linear facilities (e.g., when placed in existing corridors or areas of prior disturbance).
- Exceptions to lease terms or conditions of approval that do not result in or involve significant new surface disturbance.

Overall, in finalizing the proposed guidance document, CEQ should recognize that categorical exclusions are to be favored under Sections 1500.4, 1500.5, 1507.3 and 1508.4 of CEQ's regulations when an activity can reasonably be shown not to have an effect, cumulatively or individually, on the environment. The proposed guidance

document should avoid language or creation of decision and review processes that suggest that categorical exclusions are unusual or exceptional agency actions under NEPA. Instead, consistent with existing CEQ regulations at 40 C.F.R. Sections 1500 et seq., CEQ guidance should reiterate that categorical exclusions are among the NEPA alternatives for an agency to use where appropriate in the course of sound and practical exercise of its NEPA responsibilities.

Should you have any questions regarding these comments, please feel free to contact me.

Sincerely,

Margaret D. Laney