

CEQ's RUSH TO REVIEW MMS¹ COMPLIANCE WITH NEPA: INADEQUATE TIME AND INADEQUATE OPPORTUNITY FOR PUBLIC PARTICIPATION

I. Introduction

In response to the oil spill that occurred at the British Petroleum's (BP) Deepwater Horizon oil rig, the Council on Environmental Quality (CEQ) announced a 30-day review of the National Environmental Policy Act (NEPA) procedures applied by the Department of the Interior's Mineral Management Service (MMS). On May 28, 2010, CEQ provided notice and requested public comments on MMS's policies for the development of oil and natural gas in the Outer Continental Shelf (OCS). 75 Fed. Reg. 29996.² After approximately three weeks of receiving input from the public, CEQ concluded its 30-day review of MMS's NEPA procedures on June 17, 2010. Only two months after announcing their intention to review MMS's NEPA practices, CEQ released its final report on August 16, 2010.

The public comment period was much too short for meaningful, constructive input from the public. While several commenting parties, such as Anadarko (<http://www.whitehouse.gov/sites/default/files/webform/Untitled.pdf>), requested a longer period for public participation, CEQ rushed to finish its review to meet an arbitrary deadline. Although it is clear that CEQ is under enormous pressure to address the perception that MMS failed to satisfy its NEPA obligations, CEQ should take the time that it has been afforded to continue to receive public input in the ongoing review of MMS's NEPA procedures.

II. MMS Current Procedures Are Adequate and Comply with NEPA

CEQ must avoid trying to modify MMS's NEPA procedures. CEQ does not have the authority to change MMS's practices; therefore, CEQ must work with MMS and the public to simply recommend guidance to strengthen MMS's NEPA procedures. Interestingly, CEQ found, "MMS conducted numerous levels of extensive environmental reviews, relying upon the "tiering" process—

¹ Pursuant to Secretarial Order 3299, Secretary Salazar divided MMS into three distinct bureaus. For referencing purposes, MMS will be used to refer to the responsibilities incorporated into all three bureaus, but previously assumed by MMS.

² <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=nv5NfP/1/2/0&WAISaction=retrieve>

a process generally sanctioned in the governing regulations for NEPA.”³ MMS’s tiered analysis provides sufficient opportunity for public participation and environmental analysis. A comprehensive review, supported by ample public participation, would result in the same finding.

While it is clear that a thorough investigation of the tragic oil spill is necessary for the future health and safety of the environment, what is less clear is why CEQ rushed to conclude its review.

III. No Justification for the Urgency of its Review

A methodical and exhaustive review is necessary to ensure that preventative policies are implemented to avoid any future tragedies, yet CEQ hurried to issue its final review of MMS procedures in two months. Furthermore, the public comment period was only open for three weeks providing a limited pool of knowledge and expertise for CEQ to draw from. As noted by commenting parties, the comment period was much too limited for meaningful public participation. <http://www.whitehouse.gov/sites/default/files/webform/Untitled.pdf>. Importantly, the cause of the oil spill has yet to be determined, yet CEQ has already issued its findings.

CEQ has failed to explain the urgency to complete its review. This is particularly unsettling given the ample time provided by the current six month moratorium on oil and gas drilling and development activities on the OCS. Moreover, Secretary Salazar announced that the Department of Interior (DOI) would restrict the use of categorical exclusions for OCS development activities while it undertook a comprehensive review of MMS’s NEPA procedure.⁴ Thus, CEQ has unnecessarily limited the opportunity for informed public input for a thorough review despite having sufficient time for a meaningful review.

CEQ’s attempts to explain the 3-week narrow window for public comment by rationalizing that it still received comments submitted after the June 17 close of the comment period.⁵ Nonetheless, there was little incentive for constructive comments to be submitted after

³ *Report Regarding the Minerals Management Service’s National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development*, August 16, 2010, page 37.

⁴ <https://www.mms.gov/homepg/whatsnew/newsreal/2010/100816.pdf>

⁵ *Report Regarding the Minerals Management Service’s National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development*, August 16, 2010, page 37.

the closing of the public comment period. It is illogical to assume the public and experts would continue to expend resources to research and draft comments after the comment period when the comments may not be accepted or considered.

Therefore, CEQ should have provided additional time for review and input from the public. This can still be achieved through the interactive public docket (IPD).

IV. IDP: The Forum to Tap Into the Collective Wisdom of Industry, Academia, Local Governments, and the Private Sector

CEQ should continue to receive public comments regarding NEPA procedures for development of oil and gas resources on the OCS. As the cause of the oil spill becomes better understood, it is essential that CEQ remains open to public comment. CEQ acknowledges in its notice, “Public participation in this review process allows CEQ to similarly tap into the collective wisdom of industry, academia, state, local, and tribal governments, and the rest of the private sector.” 75 Fed. Reg. 29996⁶ CEQ must remain faithful to this commitment and continue to accept meaningful public participation in its review process and coordination with MMS.

The IPD provides an invaluable resource of analysis and comment for the CEQ to continue to draw from as developments in the OCS occur. The IPD will provide the regulated community with the opportunity to question CEQ, present views, and provide relevant analysis on a continuous basis. The IPD will be a particularly useful tool, because there are a substantial number of parties, across government and private sector lines, which actively participate in the oil and gas development on the OCS. The IPD will function to keep all parties apprised of the developments, while also providing a collective resource of information to make well-informed decisions for the safe, environmentally healthy, and efficient extraction of oil and gas from the OCS.

(The above article written by an environmental attorney)

⁶ <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=nv5NfP/1/2/0&WAISaction=retrieve>

