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STATEMENT OF
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 BEFORE THE
 SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
 OF THE
 COMMITTEE ON MERCHANT MARINE AND FISHERIES-- H 2702
 HOUSE OF REPRESENTATIVES
 ON
 [IMPROVEMENTS NEEDED IN FEDERAL EFFORTS TO IMPLEMENT]
 [THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969]

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Mr. Chairman and Members of the Subcommittee:

We are pleased to appear today at the request of the Subcommittee to discuss our report on the improvements needed in Federal efforts to implement the National Environmental Policy Act of 1969. Mr. Chairman, your letter to me of May 18, 1971, requested the General Accounting Office to evaluate the implementation of section 102 of the National Environmental Policy Act, which requires Federal agencies to prepare environmental impact statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. You asked us to compare the procedures and practices of several Federal agencies to ascertain whether section 102 was being implemented uniformly and systematically. You asked also that we consider in our evaluation the roles of the Council on Environmental Quality and the Office of Management and Budget

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(OMB) and furnish to you our views on the adequacy of selected environmental impact statements.

The results of our reviews of agency procedures were presented to the Subcommittee in our May 1972 report. We are continuing to review the adequacy of selected impact statements, and we expect to report the results of this phase of our review to the Subcommittee at a later date. With your permission, Mr. Chairman, I would like at this time to submit a copy of the May report for the record. My statement this morning will summarize the report.

The Federal agencies and their programs selected for review and the objectives and scope of our audit were determined through consultation with the Subcommittee and the Congressional Research Service and through consideration of the report of the House Committee on Merchant Marine and Fisheries on the administration of the act (House Report 92-316, June 29, 1971).

The seven agencies selected for review were:

- 3 --The Department of the Army's Corps of Engineers (Civil Functions) 305
- 4 1/2 --The Department of Agriculture's Forest Service and Soil Conservation Service (SCS) 34 110
- 6 --The Department of Housing and Urban Development (HUD) 23
- 7 --The Department of the Interior's Bureau of Reclamation 76
- 8 --The Department of Transportation's Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA) 30 63

10 We also examined the role of the Environmental Protection Agency (EPA) because, in addition to the Council and OMB, it has certain responsibilities for implementing the act. 24

The scope of our audit was directed generally to the review and comparison of prescribed agency procedures and did not include the application of the procedures. The procedures we examined were primarily those established by the agencies for projects and programs proposed subsequent to the passage of the act.

The Council, in meeting its obligation to provide guidance and assistance to the agencies, issued guidelines requiring each agency to develop formal procedures for implementing section 102 of the act and to designate officials responsible for preparing environmental impact statements. Each of the agencies included in our review had defined the responsibilities of its organizational levels and had issued procedures for preparing and processing statements.

IMPROVEMENTS NEEDED IN AGENCY PROCEDURES

Although Federal agencies are beginning to include in their daily processes a careful consideration of environmental impacts which can be expected to result from their actions, the requirements of section 102 of the act are not being implemented in a uniform and systematic manner. Improvements are needed to ensure that:

- Environmental impact statements are available throughout the decisionmaking processes.
- There is a clear understanding of the actions requiring environmental impact statements and the range of impacts which need to be considered.
- Sufficient emphasis is given to public participation.
- Environmental expertise available in other agencies is identified and obtained.

Decisionmaking

The act requires that, when an environmental impact statement is prepared on a major Federal action, the statement along with related comments of Federal, State, and local agencies, be made available to the President, the Council, and the public, and "accompany the proposal through the existing agency review processes." The objective of this requirement is to build into the agency decisionmaking process an appropriate and careful consideration of the environmental aspects of proposed actions.

The seven agencies selected for review had prepared approximately 80 percent of the 2,700 environmental impact statements filed with the Council on Environmental Quality as of March 31, 1972. Procedures of most of the seven agencies did not require

- environmental impact statements to accompany proposals through all agency levels of review,
- statements to be prepared in early stages of decision-making, and
- reviews of the results of plans to protect the environment.

Most of the seven agencies require environmental impact statements to be prepared in a series of steps that occur as proposals move up the organizational levels and approach the final stage of review and decisionmaking. As a result, lower level decisionmakers do not have the benefit of information on all environmental aspects of a proposal prior to advancing it to the next organizational level.

For example, the Corps of Engineers' district and division offices develop and make proposals to the Chief of Engineers on water resource projects by preparing survey reports which are accompanied by preliminary draft environmental impact statements. These survey reports are the basic documents on which decisions must be made. The Board of Engineers for Rivers and Harbors, an impartial review group for the Chief of Engineers, reviews these proposals and the preliminary statements. Despite the responsibility at these organizational levels, each level bases its determination on an environmental statement that has neither been commented upon by headquarters levels of other Federal agencies nor been filed in final form with the Council.

Some of the agencies tried to cover project decisions in both the survey stage and the detailed stage with a single environmental impact statement which was completed in the latter stage. As a result, decisions were made by some of the agencies in the early stages--such as the need for a project--without the benefit of a completed environmental statement. These early decisions may have an impact on the environment equal to or greater than decisions made in the later stage.

We believe that the environmental impact statements will be more useful to Federal agencies if the completed statements are available at all levels of review of a proposal and at early stages of decisionmaking.

Each agency should develop a flow chart of its decision-making processes clearly designating the points at which

environmental statements should be completed and how they are to accompany proposals through the agency review process. The publication and use of such a flow chart could help other agencies, the Council, and the public to understand the decisionmaking process and the extent to which their comments on statements could enter into agency decisionmaking.

Little action had been taken by most agencies to establish procedures for ensuring that the environmental protection plans developed and incorporated into environmental impact statements were effectively implemented. For obtaining such assurances, most agencies seemed to rely mainly upon procedures already established, such as existing day-to-day administrative practices and inspections performed to oversee design, construction, and operation of activities. We believe that a postplanning review would provide assurances that plans to protect the environment are effective and actually materialize. Such a review would compare actual results with planned results and provide feedback to planners and decisionmakers.

Defining actions and impacts

The act directs Federal agencies to prepare environmental impact statements on all "major Federal actions significantly affecting the quality of the human environment." The Council's guidelines for implementing the act define those actions to include projects, policies, procedures, and legislation. The guidelines also state that it will often be necessary to apply statement preparation procedures "in the development of a national program and in the review of proposed projects within the national program."

Our review showed that all seven agencies had attempted to identify actions requiring impact statements. The approaches adopted, however, varied substantially and ranged from the Corps' listing of the types of projects and activities requiring statements to the Forest Service's delegating authority to the project approval officers to make the determination on a case-by-case basis. The agencies also had differing views as to whether environmental statements were needed for actions broader than individual projects, and three agencies (the Bureau of Reclamation, FAA, and FHWA) indicated that, for such actions, environmental statements would not be beneficial.

FHWA officials consider the lack of an adequate definition of those actions requiring statements to be one of the biggest problems in the environmental statement process. FHWA procedures define actions to include highway sections on new locations and major upgrading of an existing highway section that results in a functional characteristic change. Under a conservative approach FHWA's definition can be applied to almost any action taken by State highway agencies. As a result, although FHWA officials estimated that about 50 to 60 environmental impact statements would be received during an entire year, actually about 1,400 were received from State highway departments during the 7-month period April through October 1971.

In contrast to FHWA's approach, HUD had established criteria defining the project size or scope of activity that might require environmental impact statements. Under HUD's procedures, however, once the project or activity is deemed to meet the criteria, a further decision, which is

subjective in nature, is required as to the need for a statement. As a result, one HUD regional office we visited prepared an environmental statement for only one of 62 project actions that had met the criteria during the period October 1, 1970, through October 31, 1971.

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Little guidance had been provided to the agencies on the range of impacts to be considered in environmental impact statements. Although the Council's guidelines use the terms "primary" and "secondary" to indicate the range that should be considered, the guidelines do not define these terms. Similarly, none of the agencies had defined these terms in their procedures for preparing environmental impact statements.

For example, construction or operation of a multiple-purpose water resources project would seem to have primary impacts on the environment--such as flooding of land, impeding fish migration, destroying wildlife habitat, disturbing streamflow, and affecting water quality. On the other hand, the marketing of project services, such as electrical power and irrigation water, would seem to have secondary impacts at their point of delivery on population growth, urbanization, and industrial expansion.

In December 1971, EPA suggested that the Council's guidelines require each Federal agency to prepare conceptual frameworks for analysis of the major types of projects supported by each agency. These conceptual frameworks would include, among other things, the appropriate range of environmental impacts to be considered and the basic data required to evaluate these impacts. EPA has suggested also that, as

a start, the frameworks should be prepared for highways, airports, sewage treatment plants, power projects, watershed projects, and mineral extraction on public lands, because these six categories of projects reportedly account for 80 percent of all Federal actions for which draft or final environmental impact statements have been prepared.

We generally concur in EPA's suggestions and believe that agency procedures should specify the various kinds of actions requiring environmental statements and the circumstances which will necessitate statements for actions broader than projects. Agency procedures should also include definitions of, and make distinctions between, primary and secondary impacts and should describe the extent to which secondary impacts will be assessed and disclosed for various types of proposed actions.

Public Participation

The act requires that environmental impact statements, together with other agencies' comments, be made available to the public. All seven agencies had recognized the need for public participation, but their procedures were not uniform in the use of mailing lists, news media, and public hearings.

Except for FAA, FHWA, and HUD, the agencies included in our review have developed mailing lists of interested public groups or individuals to whom statements should be sent. In addition, all the agencies except HUD used the news media along with other means to notify the general public of the availability of draft statements.

The widest variation existed with respect to public hearings and meetings. The Corps and SCS, for example, have taken very active roles in initiating public forums. Both require a number of public meetings during preauthorization project planning stages.

FAA, on the other hand, places primary responsibility on project sponsors for holding hearings and has had only limited involvement in public hearings. FAA's reasoning for its limited involvement is that it desires to retain independence and objectivity in evaluating public comments.

As a further contrast, HUD regions require public hearings for some programs but regional officials are not required to attend. If hearings are held, they are held by the project sponsor prior to the approval of the project by the HUD region.

Two of the seven agencies are considering certain innovative concepts as means for improving communication with the public on environmental impacts. The Seattle District of the Corps is developing what is termed its "fishbowl" planning technique. This technique involves workshops where the public can meet with Corps officials to discuss issues. It makes use of a public brochure which describes the issues, alternatives, and pro's and con's of a project.

Forest Service personnel described a technique to schedule and publicize a meeting place where representatives of the public could make individual appointments to speak to Forest Service officials about a specific project or environmental statement. Persons could either bring written statements or present views orally and have a clerk record

the general content of their views. Forest Service personnel believe that this technique has the advantage of freeing persons to present their own opinions without being influenced by others.

Active Federal roles in public hearings or meetings, such as those of the Corps and SCS, appear to be needed to gain adequate public participation. One way of using environmental impact statements to gain public participation would be to make them available to the public in advance of public meetings, discuss them at the meetings, and invite further input after the meetings, as four of the agencies presently attempt to do. By applying the type of innovation or experimentation described by Corps and Forest Service personnel, agencies could achieve more public participation.

Obtaining Agency Views

The act requires that Federal agencies preparing environmental impact statements obtain views of other Federal, State, and local agencies having jurisdiction or special expertise with respect to any environmental impacts involved. The Council's guidelines identify those Federal agencies to be consulted in connection with the preparation of environmental impact statements.

All the agencies included in our review had established procedures for obtaining views and comments from other Federal, State, and local agencies on proposed actions. Most agencies' procedures, however, were inadequate for ensuring the full and effective use of the special environmental expertise available in other agencies.

As a first step in enlisting such special expertise, an agency should determine the environmental elements of

its activities for which expertise outside the agency must be sought. For the next step, the agency should select the Federal, State, or local agency that could best furnish the expertise and make arrangements for acquiring it. Finally, an agency should develop procedures to ensure that agencies selected review and comment on environmental impact statements.

IMPROVEMENTS NEEDED IN EXECUTIVE OFFICE GUIDANCE AND TECHNICAL ASSISTANCE

The Council on Environmental Quality and the Office of Management and Budget--agencies in the Executive Office of the President--have certain direct or implied responsibilities for implementing the act. The Environmental Protection Agency--an independent Federal agency responsible for various pollution control programs--also has certain responsibilities for implementing the act.

The role of the Council on Environmental Quality

The Council has relied primarily on its review of individual environmental impact statements for measuring the effectiveness of Federal agencies' procedures designed to implement section 102 of the act. The Council has generally adopted an advisory approach whereby it informally communicates its views on the agencies' environmental statements and procedures and relies upon the agencies to resolve any issues raised. We believe that the Council's approach is not the most effective way to ensure a uniform and systematic implementation of the act.

On April 23, 1971, the Council issued guidelines to Federal agencies on the preparation of environmental impact statements and requested that agency procedures be revised in accordance with the guidelines and be submitted to the Council prior to July 1, 1971.

Officials of the Council advised us that much of the advice provided to agencies was done by telephone; however, review sessions were held with representatives of some agencies. Letters were sent to other agencies concerning their procedures. Although minutes of the review sessions were not prepared by the Council, we examined the letters which were sent. In general the Council's comments were editorial in nature, suggesting either word changes in agency procedures or the need for the agency to refer to paragraphs already contained in the Council's guidelines. In only one instance did the Council request an agency to make a substantive change to its procedures.

On July 23, 1971, the United States Court of Appeals for the District of Columbia Circuit handed down a far-reaching decision on the Calvert Cliffs Nuclear Project. Although this decision was addressed to the Atomic Energy Commission (AEC), it had implications for all Federal agencies regarding the manner in which they were preparing environmental impact statements.

Although the Council recognized the significance of the decision and notified the agencies of the major issues to be considered, it provided no specific guidance to the agencies (with the exception of AEC) concerning the manner in which they should revise their procedures. In general the agencies included in our review had taken the position that their procedures complied with the decision.

In addition to reviewing agency procedures, the Council requires Federal agencies to file copies of all draft and final environmental impact statements with the Council. Officials of the Council advised us that they try to review in varying depths all draft and final statements forwarded to them. The purposes of the review are to bring to the Council's attention environmental policy issues which are confronting the agencies, to check the effectiveness of agencies' procedures for preparing environmental impact statements, and to provide a means of identifying the environmental impacts of Federal programs.

The Council had no written guidelines for determining the extent of reviews of environmental statements or the subject areas to be considered but relied primarily on the judgment of its staff and data submitted by others for making these determinations.

The Council generally commented informally on environmental impact statements either through telephone conversations or meetings with agency officials. On some occasions the Council provided written comments to the agencies on their draft environmental statements, but these comments were not made public or included as a part of the final statement.

Council officials have advised us that they expect eventually to place greater emphasis on a review of agency procedures but that this can be done only when the overall quality of individual environmental statements has improved. We believe that increased emphasis on reviews of procedures would be a more appropriate approach to improving the overall

quality of environmental statements because most of the Council's comments on agencies' impact statements indicate inadequacies in agency procedures.

The Council's practice of providing assistance to Federal agencies on an informal and general basis and relying on the agencies to resolve specific issues will not result in the most uniform and systematic implementation of the act. Therefore the Council should adopt a more vigorous role in providing specific advice and formal guidance to ensure that problems noted in agency procedures are resolved adequately and timely.

The role of EPA

Our review showed that EPA had not met its legislative responsibilities under section 309 of Public Law 91-604 in a timely manner with regard to making public its comments on agency environmental impact statements and reviewing and commenting in writing on proposed Federal agency procedures for preparing the statements. Although EPA had raised questions concerning the adequacy of environmental statements prepared by individual agencies, it had not issued instructions to the agencies--except AEC--setting forth the type of information needed to adequately assess environmental impacts.

Although EPA had been reviewing agency environmental impact statements, its first listing of comments was published in the Federal Register on January 18, 1972, approximately 1 year after enactment of Public Law 91-604. As of December 11, 1971, 42 agencies had published procedures for

preparing environmental impact statements in accordance with the Council's April 23, 1971, guidelines. EPA officials advised us, however, that as of January 18, 1972, they had reviewed and commented in writing on the procedures of only one agency.

We believe that the Council would be in a better position to direct its efforts toward the overall procedural and policy matters confronting the agencies in their efforts to implement the act, if EPA were to carry out its responsibilities promptly. Also, EPA should instruct Federal agencies as to the type of information required to adequately assess environmental impacts--similar to the instruction that has been furnished to AEC on nuclear power plants.

The role of the Office of Management and Budget

Section 102 of the act requires Federal agencies to include environmental impact statements in every recommendation or report on proposals for legislation that significantly affect the environment. Our review showed that a limited number of statements had been so prepared and that OMB had not required the Federal agencies to furnish environmental impact statements as a prerequisite for its legislative clearance, except for water resources projects. We believe that OMB's legislative clearance process is an appropriate mechanism for ensuring Federal agency compliance with this requirement of the act.

OMB's initial instruction--Bulletin 71-3--required agencies to submit environmental impact statements along with legislative proposals when the legislation was submitted for

clearance. However, on September 14, 1971, OMB issued Bulletin 72-6 which stated that, where an environmental impact statement was determined to be required, the responsible agency should make every effort to have information copies of such a statement available to accompany the proposal through OMB's legislative clearance process.

Water resources projects are the only actions listed in Bulletin 72-6 for which agencies are now required to submit a completed environmental impact statement prior to OMB's review.

Officials of OMB's Legislative Reference Division have advised us that OMB does reserve the right to ask for an environmental impact statement if it believes it to be necessary. These officials state that environmental statements are used for information purposes and for helping to resolve any questions that may arise concerning proposed legislation.

OMB did instruct agencies proposing legislation to include environmental considerations in their analysis and to consult with other agencies so that all points of view might be considered and accommodated. The environmental impact statement is a good instrument for not only expressing environmental considerations but considering and accommodating the views of other Federal agencies. Although OMB uses environmental impact statements for information purposes only, its value to the sponsoring agency should not be overlooked.

We believe that OMB, as a matter of general practice, should not give final clearance to legislative proposals before it has received an environmental impact statement with, at least, the related comments from all appropriate Federal

agencies. This approach will help to ensure that the sponsoring agencies have considered all environmental issues, including the views of appropriate Federal agencies, in formulating the legislation and that this information will be available to the Congress and to the public in support of the proposed legislation.

CONCLUSION

Mr. Chairman, our report to your Subcommittee contains a number of recommendations which, when implemented, should assist the various Federal agencies in fully meeting their responsibilities under the National Environmental Policy Act of 1969. We hope that the information which we have provided will assist your Subcommittee in its current deliberations.

This concludes my statement; we will be happy to respond to any questions you may have.