



Moving Stimulus Forward: Opportunities and Challenges for Energy and the Environment

April 15, 2009

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Agenda

- Funding available under the American Recovery and Reinvestment Act of 2009 (“ARRA”) for key environmental programs
- Funding available under ARRA for key energy programs and highlights of application process
- Addressing requirements under the National Environmental Policy Act (“NEPA”)
- Learning from experience to date

Major USEPA funding in ARRA

- Funding for government entities and not-for profits
 - \$300 million: Reductions in emissions from diesel engines
 - \$100 million: Brownfields cleanups
 - \$600 million: Superfund sites
 - \$200 million: Leaking underground storage tanks
 - \$6.0 billion: Water quality, wastewater infrastructure and drinking water infrastructure

Major DOE funding in ARRA

- \$16.8 billion – Energy efficiency and renewable energy
- \$4.5 billion – Electricity delivery and energy reliability
- \$3.4 billion – Fossil energy research & development
- \$1.6 billion – Science
- \$6.0 billion – Environmental cleanup

Energy Efficiency and Renewable Energy (EERE) Funding

\$16.8 billion total

- \$11.3 billion for State energy programs, block grant programs, weatherization
- \$5.5 billion
 - \$2 billion for grants to advanced battery manufacturers
 - \$3.5 billion not allocated by ARRA

but.....

Report accompanying ARRA calls for EERE funding to be spent as follows:

- \$800 million for “projects related to biomass”
- \$400 million for geothermal activities and projects
- \$300 million for an Alternative Fuel Vehicle pilot grant program
- \$400 million for transportation electrification
- \$300 million for an energy efficient appliance rebate program and the Energy Star program

Electricity

- Approximately \$4.3 billion available for “electricity and energy reliability activities to modernize the electric grid”
- Wide range of activities potentially eligible for funding
- Likely most funding will go to Smart Grid eligible technologies and projects under Title XIII of the Energy Independence and Security Act of 2007

Fossil Energy

- \$3.4 billion for fossil energy R&D
- Report calls for funding to be spent on certain things, including R&D programs (\$1 billion), Clean Coal Power Initiative (CCPI) Round 3 (\$800 million), and industrial carbon capture and efficiency projects (\$1.52 billion)

Anticipated Process

- Release of Funding Opportunity Announcements (FOAs)
- Each FOA likely will set forth scoring criteria and application processes
- No standard criteria or application for all ARRA funding
- But, there likely will be some criteria that will be important to most or all applications for ARRA funding

Current Status

- EERE grant programs
 - Transportation Electrification (FOA 3/19/09 – closes 5/13/09)
 - Electric-Drive Vehicle Batteries and Components (FOA 3/19/09 – closes 5/19/09)
- Fossil energy programs
- Electricity grant programs

Other significant DOE funding provided by ARRA

- \$6 billion for the credit subsidy cost of loan guarantees under Title XVII for certain projects: renewable energy systems, electric power transmission, “leading edge biofuel projects”
- \$3.25 billion – new Western Area Power Administration borrowing authority
- \$3.25 billion – additional Bonneville Power Administration borrowing authority

National Environmental Policy Act (“NEPA”) Compliance – Guidance

- The ARRA explicitly requires compliance with NEPA, but directs that NEPA reviews be completed “on an expeditious basis and that the shortest existing applicable process under [NEPA] shall be utilized.”
- The White House Office of Management and Budget issued initial implementing guidance for the ARRA. For each program that is specifically named in the legislation, Federal agencies must submit to OMB a program-specific plan by May 1.
- The Council for Environmental Quality (CEQ) also issued guidance on satisfying ARRA Section 1609(c) reporting requirements, which require Executive Branch departments and agencies to report to CEQ the status and progress of NEPA compliance on all ARRA-funded projects and activities. The first report was due April 9; the second report will be due April 30.

National Environmental Policy Act ("NEPA") Compliance – General

- Agency decision (funding) triggers it
- Agency Options
 - Categorical Exclusion (CatEx)
 - Environmental Assessment (EA)
 - Environmental Impact Statement (EIS)
- Alternatives
- NEPA required before decision

USDOE NEPA Compliance – Example Funding for Automakers in Fall 2008

- In November 2008, the Department of Energy issued an Interim Final Rule that implements the Advanced Technology Vehicles Manufacturing program by authorizing up to \$25 billion in loans to eligible automobile manufacturers and component suppliers.
- Section 136 of the Energy Independence and Security Act of 2007, as amended, provides for loans for projects that reequip, expand, and establish manufacturing facilities in the U.S. to produce light-duty vehicles and components that provide meaningful improvement in fuel economy, and for engineering integration costs associated with such projects.
- DOE requested CEQ's views on its plan to apply CatExes to comply with NEPA for certain activities under the auto loan program. CEQ responded that the approach outlined by DOE comports with NEPA and the CEQ regulations.

USDOE NEPA Compliance -- Examples

- Biofuels Program Guidance
- Ethanol Pipeline
- National Energy Technology Laboratory (NETL) Checklist (Grants)
- Staffing
- Interaction

Solutions for Timely NEPA Compliance

- 4/3/2009 CEQ Memo
- Determine Likely NEPA Pathway
- Submit information in EA format and content
 - Greenhouse Gas Emissions
 - Environmental Justice
 - Cumulative
 - Risks/Spills/Terrorism
 - Consultation/Public Involvement
- Application turns into NEPA document faster

NEPA Challenges May Delay Projects

- Two North Carolina-based environmental non-governmental organizations recently sued the Departments of Treasury and Energy alleging that the Internal Revenue Service's allocation of clean energy tax credits under the Energy Policy Act of 2005 violated NEPA and the Endangered Species Act.
- In November 2008, the district court held that the plaintiffs lacked standing and dismissed the lawsuit. See *Appalachian Voices v. Bodman*, 587 F. Supp. 2d 79 (D.D.C. 2008).
- The plaintiffs now are seeking reconsideration and to amend their complaint.

Tips for Successful Applications

- Demonstrate that the project can begin quickly
- Identify what materials and information the agency wants
- Identify the regulatory/administrative/legal approvals needed for your project, and determine whether you have them
- Honestly and candidly assess how your project will be evaluated under the agency's scoring criteria
- Identify non-federal funding sources and commitments (e.g., to satisfy cost share requirements)
- Prepare for legal challenge

Websites to Check for Developments

- EPA: <http://www.epa.gov/recovery/>
- DOE: <http://www.energy.gov/recovery/>