ADMIN-S&E

From: Mark Graham
Sent: Wednesday, July 14, 2004 4:42 PM
To: ADMIN-S&E
Subject: public comments in DHS proposed directive (see below)

July 14, 2004

Mr. David Reese
Office of Safety and Environment
Department of Homeland Security

Dear Mr. Reese,

Please accept my comments on the above matter and include them in the public docket. Please reply by email that you received this email message from me. Thank you!

Sincerely,

Mark E. Graham

http://www.dhs.gov/dhspublic/interweb/assetlibrary/MD5100-106-01-04.pdf
DEPARTMENT OF HOMELAND SECURITY
Environmental Planning Program
AGENCY: Department of the Homeland Security
ACTION: Notice of proposed directive; request for comments.
SUMMARY: The purpose of this notice is to provide an opportunity for public comment on the Department of Homeland Security draft directive containing policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, Executive Order 11514, as amended, Executive Order 12114, and Council on Environmental
Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). Pursuant to CEQ regulations, the DHS is soliciting comments on its proposed internal management directive from members of the interested public.
Comments:

1) General comment on the directive

Generally speaking, and this applies to the federal government of the United States in particular, whatever the government wants to do that is good for the people, that is good public policy, that would be generally accepted by a majority of the American people and their representatives, the government does out in the open, with full disclosure and opportunity for public comment and review and input. That is the basis of American democracy. That is what this country was built on. That is how Americans have freedom. We know what is going on.

On the other hand, generally speaking the things that the government wants to do that are evil, immoral, stupid, short sighted, careless, destructive, illegal, unconstitutional, would not stand up to public scrutiny, would not be accepted and agreed upon by a majority of Americans and their representatives, the government does in secret. Secrecy is anathema to American democracy. Secrecy erodes our constitutional democracy, respect for the rule of law, and respect for the government itself. Secrecy conceals these counterproductive programs and policies and hides them from the American people.

Once the American people find out about them, if we ever do, it is generally too late. Too late because the decisions have already been made and the actions have already been taken. Too late because the damage is already done. Too late because undoing a mistake that has already been made is much harder and less practical than preventing the mistake or not making it in the first place.

The entire directive is a power grab by the DHS and its aim is not open and visible government, as the United States was built on. Its aim is secrecy, plain and simple. By exempting the DHS from the NEPA and other laws mentioned in the federal register notice, DHS seeks to do things under cover of darkness that would not stand up to public scrutiny, are evil, immoral, stupid, counterproductive and so on. This power grab should have never been proposed in the first place. DHS should cancel this proposed directive immediately. You should go back to American History 101 and study American history. You are clearly out of touch with the values of the American people. You think you should be exempt from the laws we have for protecting the environment, and in particular the full public disclosure that allows Americans to do so. You should not. Where do you get these ideas in the first place. Get a clue! Secrecy is a tool of dictators. Democracy and in particular American democracy relies on full disclosure. That's the reason the NEPA and other laws mentioned have full disclosure written into them.

The Bush Administration ever since 911 has considered itself exempt from the Constitution, the Bill of Rights, the Congress, the balance of powers, and even the American people. The entire war was built on bad information from the CIA and lies told to exaggerate the threat. The 911 commission is now revealing this. The Bush Administration was committed to going to war and the facts did not matter. DHS was created in a knee jerk reaction to 911. The so called USA Patriot Act was unnecessary, another knee jerk reaction that is unconstitutional and unnecessary. The government did not want to give prisoners held in prisons in U.S. territories the right to see and attorney and other legal rights. Federal courts have now reversed that decision. Everything in the war on terrorism is done with the Administration's view that whatever laws are in place, democratic institutions and mechanisms are just obstacles to be overcome. You need to get a grip. You are wrong, totally wrong.

2) The directive should be cancelled, rescinded, revoked, terminated, nullified, voided, (collectively, "stopped") because only Congress can give DHS an exemption from NEPA and the other laws mentioned. The directive should be stopped because it is unconstitutional. It violates the Constutution of the United States of America. Only Congress can give DHS an exemption from NEPA and the other laws mentioned.

3) There is no real or imminent or even pending threat to national security that would justify or justifies

the measures in this directive. Nothing is that pressing. There is plenty of time for DHS to do a full environmental review with full public disclosure and still deal with whatever you do.

4) It would set a bad precedent. DHS cannot write its own exemption. If every federal agency could write themselves an exemption from these laws, what effect would they have? They would all do it. The result would be a law that applied to nobody, or nobody that didn't want it to apply it to them. We must protect the environment. That's why we have these laws. DHS must comply with them like everybody else.

5) Bypassing the Congress is bypassing the American people, and DHS should not do it. If Congress had wanted to give DHS an exemption, they would have done so. Sorry but they didn't.

6) Who was on your so called "panel of experts in environmental policy and law"? Probably the Administration's cronies in the oil companies, the same folks who wrote the infamous national energy policy which is an ongoing failure. Probably the folks at Haliburton who are ripping off the American taxpayer for billions of dollars in this fabricated war. DHS did not disclose who was on this panel, or who was going to be on this panel, did not give actual legitimate experts on environmental policy and law, as well as experts in openness in American government, an opportunity to be on this panel. This directive should be stopped (see definition in #2 above) while DHS starts over with a new panel of actual experts and does the whole process over. Include people who have proven their commitment to protecting the environment, and people who have proven their commitment to openness in American government. Do NOT include anybody with a direct or indirect financial interest in DHS or the war on Iraq.

7) page 2, 3, and elsewhere, please define the term "element".

8) Do not create another federal bureacracy, including the proposed DHS environmental planning program. It will eventually balloon out of control. If it is already created, abolish it.

9) page 7, 8 and elsewhere. You are giving lip service to the importance of environmental planning and protection.

10) page 11 and elsewhere. Please define the term "proponent".

11) DHS should fully comply with NEPA and all of the other referenced laws.

12) under G Policy D 3. DHS has no statutory authority to "balance environmental concerns with mission requirements. . . " That requires an act of Congress. If you want this, speak to one of the Congressmen or Senators. Maybe they will introduce a bill for you (DHS).

13) page 16, under G Policy E. DHS is very misinformed if you believe your own statement here, namely, "The objective of NEPA . . . is quality analysis to support DHS decisions." Where did you get that idea? That is completely wrong. You have no idea what you are talking about. NEPA was created many years before DHS even existed. Congress did not and could not have envisioned the existence of DHS at the time they wrote, and the President signed, NEPA. The goals of NEPA have nothing to do with DHS or supporting DHS decisions. Please go back and read the legislative history of NEPA and the statement of NEPA's purpose in the introduction to the law. You are horribly misinformed. The directive should be stopped because of your (DHS's) fundamental misunderstanding of NEPA and the other laws you are trying to avoid complying with.

14) page 16, where you say, "NEPA compliance is required unless . . . " Wrong again. It's required,

unless there are circumstances or measures taken THAT ARE SPECIFICALLY STATED IN NEPA ITSELF. Other than that, there are no exemptions or exceptions. DHS is making a sneaky attempt to fool the American people into giving you more power that you don't need, you won't use well, and you are not entitled to.

15) The Directive fails to mention why you need an exemption or exception to NEPA or any of the other laws mentioned. Therefore the American public is once again not being told the truth by the Administration (sound familiar?!) about why they want what they want. The directive should be stopped and the Administration should make a complete and honest disclosure of why DHS wants this directive and the measures in it, including examples, even if they are hypothetical, of what circumstances might arise in which you would like to have these powers / exceptions / exemptions, what other avenues you could take to accomplish your goals other than having them, and the relative costs and benefits and expected time lines of each. Make that full and honest disclosure to the American people, and then have at least a 90 day public comment period, so that we can really study it.

16) page 17, under 7 Procedures A. DHS is wrong. Regardless of DHS' motives, you must comply with NEPA, and the other laws mentioned. Your reading of priorities is wrong.

17) page 22, under 1.2 C ongoing administration, on limiting the analysis of issues. The reason we have full disclosure is that government agencies and corporations, if they are given the opportunity to exclude certain issues from the analysis on the grounds that they are "not important", will probably abuse that power, and exclude actually important issues from the analysis. Please remove this paragraph from the directive. Just because DHS has a thirst for power, does not make that good policy or does not mean you should just take it.

18) page 22, under 1.2 adopted EIAs. DHS purposes are irrelevant to a past environmental assessment or environmental impact report. DHS should accept all past assessments etc. in full with no changes unless you can prove that the facts have changed, the environmental facts such as the state of the current habitat or wildlife, or the expected impact to them.

19) page 22, under 1.2 J. Please do not try to insult the American people with your words. Either a document is available for public review or it is not. Full disclosure, as I said in my 1) comment above, is the American way. It is the only HONEST way. DHS is very dishonest with this request for avoid full disclosure, and also dishonest with the way you are packaging your request. You say that a document will be "reasonably available for public review". That is nonsense, and I predict that you are planning to make documents unavailable for public review. You can't be a little bit pregnant, you know.

20) page 24, under 2.0 intergovernmental collaboration and public involvement. Where you say, "The purpose of this policy is to build trust between the DHS and the communities it serves." You need to wake up and smell the coffee. Secrecy is going to erode trust among the communities you serve, as well as the American people, not to mention foreign countries, including our allies around the world. The only way for you to build trust is through honest open government with full discloser, and compliance with the laws, the checks and balances in Congress, and the Constitution.

21) page 26 under 2.3 coordination with other governmental agencies, states and tribes. You appear to be exempting all "DHS proponents" from section 309 of the Clean Air Act, as amended. Do not do this! This is bad policy, it is illegal, unconstitutional, and it is an attempt to make public policy in secret. Please remove the line that says, "At a minimum the DHS proponents must ensure that their EIS's are appropriately co-ordinated with the EPA." Please replace it with the following line, "All DHS proponents must comply fully with the Clean Air Act as amended."

22) page 27 under 2.6 public involvement. You ae paving the way for secrecy, which will undermine DHS and the federal government and the trust of the American people as well as people all over the world. You should say, "Open communication with the American public is the DHS policy." You should not have the qualifying phrase in there, "consistent with other federal requirements". Sorry. Other federal requirements come second, not first. Your policy should be open communication, period.

23) DHS doesn't need this directive, you will not use it wisely, and you will abuse it. There will be nobody to keep you accountable. You will be able to run amok even more than you are now. You will not have to answer to anybody, and any time Congress asks you about your activities, programs, etc. you will just tell them you don't have to answer to them. Well I got news for you. Answering to Congress is answering to the American public. We are not ready to give that up.

Thank you.

Sincerely,

Mark E. Graham

ADMIN-S&E

From: Mark Graham
Sent: Wednesday, July 14, 2004 4:54 PM
To: ADMIN-S&E
Subject: public comments on dhs directive, part 2

July 14, 2004

Mr. David Reese
Office of Safety and Environment
Department of Homeland Security

Dear Mr. Reese,

Please accept part 2 of my comments on the above matter and include them in the public docket. Please reply by email that you received this email message from me. Thank you!

Sincerely,

Mark E. Graham
****

http://www.dhs.gov/dhspublic/interweb/assetlibrary/MD5100-106-01-04.pdf
DEPARTMENT OF HOMELAND SECURITY
Environmental Planning Program
AGENCY: Department of the Homeland Security
ACTION: Notice of proposed directive; request for comments.
SUMMARY: The purpose of this notice is to provide an opportunity for public comment on the Department of Homeland Security draft directive containing policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, Executive Order 11514, as amended, Executive Order 12114, and Council on Environmental
Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). Pursuant to CEQ regulations, the DHS is soliciting comments on its proposed internal management directive from members of the interested public.
24) page 27 and elsewhere, under A Environmental Assessments, and B Environmental Impact Statements, also 3.0 Categorical exclusions

Please remove all of these categorical exclusions from this directive. The American people have a right to know what DHS is up to. Environmental protection is a cherished value of the American people, even though the Bush Administration doesn't care about it. This is part of our laws and our history for the past 34 years or so. You can't just undo it with the stroke of a pen. It will remain an American value. The only apparent reason DHS wrote this directive is to circumvent the wishes of Congress and the American people for environmental protection. And also for an open,visible government that makes its decisions out in the open with full opportunity for public review, input and comment. That is important. Keep it.

DHS is probably worried that once the media finds out about its plans, which would happen if you had an honest and open government, they would inform the American people who in turn would throw a fit. The result would be DHS and your plans would be thwarted by Congress and the American people. That's the way it should be. That is a democracy. If you can't live with that, go and live in a dictatorship somewhere. There are plenty of them.