



March 19, 2010

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Dear Dr. Spinelli & Ms. Boomgard

Thank you for the opportunity to comment on the Overseas Private Investment Corporation's (OPIC) draft Environmental and Social Policy Statement (ESPS). Pacific Environment works to protect the living environment of the Pacific Rim and beyond by promoting grassroots activism, strengthening communities and reforming international policies. Since 1996, we have been extensively involved in the evolution of OPIC's environmental policies and have actively engaged in the in monitoring policy implementation for several projects. Since OPIC is a public finance institution with a development mandate, the strengthening of the ESPS will result in an extremely important benchmark for similar institutions abroad.

Our comments follow the sequence of sections in the ESPS:

Section 1: Introduction

Human rights: ESPS Section 1 contains a footnote reference to separate worker and human rights requirements found in the Foreign Assistance Act. As you know, the recently enacted HR 3288 requires OPIC to issue a comprehensive set of internationally recognized and binding worker rights and human rights guidelines. We understand that a separate process will occur to achieve that mandate. However, OPIC's ESPS should include some strengthened provisions on the human rights implications of environmental and social impacts (as discussed later in this submission and input from other organizations).

Evolving Policy Context: The ESPS uses, among others, the International Finance Corporation's (IFC) Performance Standards as a benchmark. IFC is currently in the process of revising the Performance Standards and OPIC cannot guarantee that IFC's

revised Performance Standards will be satisfactory. ESPS should include reference to the HR 3288 requirement that “regulations shall be no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009, and the environmental and social policies of the World Bank Group.”

Section 2: Screening and Categorization

Application of standards to financial intermediaries: HR 3288 calls for a policy “that shall be consistently applied to all projects, funds and subprojects supported by the corporation.” Meanwhile, ESPS Section 2.10 describes environmental categories of projects including Category D, Financial Intermediaries. Section 2.10 also indicates that Category D Financial Intermediary projects make investments in sub-projects that may fall into project Categories A, B or C. This creates a confusing distinction that may not be necessary to include in the draft Policy. Section 2.10 also states that OPIC will screen, review and provide prior written consent to each of these sub-projects on the basis of potential environmental and social risks *at the time and in the manner described in the agreement with the financial intermediary*. This infers that the timing of the application of OPIC’s Environmental and Social Policy differs for Category D projects. If this interpretation is correct, this will create contradiction between policy provisions for Category D financial intermediary and sub-projects, in violation of HR 3288. A policy articulation which affirms the HR 3288 consistency mandate should be included. Alternatively, the ESPS could simply delete Category D altogether.

Section 3: Environmental and Social Management Systems

Public disclosure of environmental and social management: ESPS Section 3.1 outlines elements included in Environmental and Social Management Systems, including environmental and social action plans, monitoring and reporting performance results. The ESPS should include an explicit requirement that all these documents should be publicly disclosed.

Assessment of human rights impacts: ESPS Section 3.4 includes requirements for environmental and social impact assessment. These assessments only partially identify the human rights impacts potentially associated with projects. For example, some projects with human rights impacts might not be classified by OPIC in a category requiring an environmental and social impact assessment. OPIC should therefore also require a human rights impact assessment as a means to more fully evaluate potential sources of conflict within and between project-affected communities, governments and project sponsors which can result from or be accelerated by projects. Legal dimensions of human rights impacts, such as the presence or absence of recourse for harm caused can also be addressed in human rights assessments. We will elaborate on these issues further when OPIC commences its human rights policy development as required by HR 3288.

Continued application of standards to project expansions: ESPS Section 3.9 appropriately requires Environmental and Social Action Plans to be disclosed prior to project implementation. We assume that the term “project implementation” includes the

construction phase of projects. If so, the ESPS should also stipulate the required disclosure after construction as well, in the event that these documents are revised at a later date, and since OPIC financing may be sought for non-greenfield projects which are already past the construction phase.

Forestry Projects: We support the ESPS prohibitions against commercial forestry projects that involve the extraction of timber from critical forest areas or related critical natural habitats. We believe that this should be clarified to include, *inter alia*, all primary forests. We also support the ESPS requirements related to forestry certification, however in keeping with the recommended prohibition on commercial logging in all primary forests, this provision should be limited to second growth forests.

Also, the ESPS forest projects section should be amended to create a consistent prohibition on the clearing of critical forest areas, critical habitat and primary forests by non-forestry activities, such as projects in the extractive sector situated in or affecting these forest types.

Section 4: Environmental and Social Standards

Application of international standards: ESPS Section 4.1 and 4.2 states that OPIC will apply IFC's Performance Standards and Industry Sector Guidelines in most instances, and where gaps occur, OPIC may apply the standards of other international institutions. OPIC should also include US government standards, which is a consistent extension of OPIC's current practice of the identification of these standards in Host-Country Notifications. Also, OPIC should specify that the term "gaps" includes instances in which another international institution's or US government's standards are more stringent than IFC's Performance Standards and Industry Sector Guidelines.

Section 5: Public Consultation and Disclosure

The need for community engagement in all projects: The draft Policy requires formal consultation only on Category A projects. However, community impacts can occur and community and individual interests can be affected by Category B, C and D projects. OPIC should require an appropriate level of formal project consultations with affected communities regardless of the project classification.

Also, OPIC's proposed standards for public consultation can be more robust to ensure that communities actually have a voice in project decision-making. This is especially important given OPIC's development mandate and the need to foster community consultations as part of the larger development process. We have seen many instances in which project sponsors seek to demonstrate compliance with public consultation requirements through one-way informational briefings after decisions on project design and financing have already been made. The ESPS should be strengthened to ensure that consultations occur before key decisions are made, and to demonstrate to project affected communities how it responded to their concerns.

The ESPS should require that projects not be approved unless project sponsors can demonstrate that the right to free, prior and informed consent has been provided in a culturally appropriate manner.

Section 5.12 states that *the [third party] auditor certification and a publically releasable summary of audit findings are disclosed on the OPIC web site but are not subject to a designated comment period.* We believe that OPIC previously committed to disclosing the audit, not just a summary.

Section 6: Conditions and Compliance

Reporting on project performance: ESPS Section 6.3 requires clients to prepare and submit to OPIC an annual report summarizing the environmental and social performance of the project over the preceding year to demonstrate compliance with OPIC agreement conditions. Apparently omitted from this requirement is a provision in OPIC's current policy which states:

Category A projects will be required to conduct further certified independent audits if the investor fails to submit contractually required annual self-monitoring reports in a timely manner or if monitoring trips or other information indicates a need for further independent audits.

This omission violates HR 3288 which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009" (OPIC's current policy).

OPIC Compliance: ESPS Section 6 discusses project sponsor compliance, non-compliance, remediation and termination, but not OPIC's compliance with its own policies. And while OPIC commits to follow the IFC Performance Standards (which principally apply to clients), the ESPS should further define OPIC's own compliance responsibilities and requirements.

Binding Regulation: The ESPS should incorporate the provisions of HR 3288 to require that the policy take the form of a regulation "with requirements binding on the Corporation and its investors that shall be consistently applied to all projects, funds and sub-projects supported by the Corporation."

Section 7: Monitoring

OPIC's current environmental policy states that *it endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project.* OPIC's draft Policy is more vague, stating that *OPIC conducts on-site monitoring of projects for environmental and social performance. Projects selected for monitoring in a given year are prioritized based on environmental and social risk.* While we support more monitoring of riskier projects, the lack of a specified minimum schedule for on-site

monitoring of all Category A projects creates a contradiction between Section 7 and HR 3288 which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009." Instead, the ESPS should more on-site monitoring at routine programmed intervals. Meanwhile, we strongly support the additional provision in the ESPS for random on-site monitoring.

Also, OPIC should commit to conducting on-site monitoring of all Category A and B projects by staff or independent consultants during the project construction phase, when negative environmental and social impacts can be at their highest, and which may be complete prior to the three year window for monitoring in OPIC's current policy.

In addition to increased project monitoring, the ESPS should require that all monitoring documents be publicly disclosed.

Section 8: Climate Change and Renewable Energy

Greenhouse Gas Emissions Threshold: OPIC currently sets a schedule for reductions in greenhouse gas emissions in its active portfolio for those projects that emit more than 100,000 tons of CO₂-eq. per year. OPIC should adopt a best practice threshold, as determined by the U.S. Environmental Protection Agency, of 25,000 tons of CO₂-eq. per year (see www.epa.gov/climatechange/emissions/ghgrulemaking.html).

OPIC's draft policy includes accounting for project direct emissions. However, OPIC should adopt best practices and expand greenhouse gas emissions accounting to include indirect emissions, such downstream or lifecycle emissions, which for fossil fuel extraction, refining and transportation projects will include the emissions that result from the ultimate combustion of the fossil fuel made possible by OPIC support. This can help OPIC make decisions on whether or not to approve projects based on total lifecycle emissions, which in some instances (e.g., liquid natural gas schemes) are far greater than direct project emissions may imply.

Section 8.5 states:

Projects involving renewable energy or "clean energy technology" are assigned a greenhouse gas emission level of zero for the purpose of this policy. "Clean energy technology" is defined as an energy supply or end use technology which, compared to a similar technology already in widespread commercial use in a host country, will reduce emissions of greenhouse gases or decrease the intensity of energy usage.

It is our understanding that this provision is intended to preclude projects from being assigned negative emissions if a project's emissions are lower, or intensity of a project's energy use is less than that which is already in widespread commercial use in a host country. However, this provision implies some greenhouse gas emitting projects could be assigned an emissions level of zero, and thus not count toward OPIC's total portfolio

emissions cap and reductions levels, which effectively allows for a net increase in total portfolio emissions levels. This interpretation would demonstrate a violation of HR 3288, which does not provide for such an exemption. We urge that this paragraph be re-written to clarify that it is not OPIC's intention to assign negative or zero emissions to projects for the purposes of measuring project emissions toward cap and reduction levels, rather that all project emissions otherwise meeting OPIC climate change policy thresholds be counted towards the total portfolio emissions cap and reduction schedules.

The ESPS defines renewable energy as including hydropower, however large hydropower projects are increasingly understood to not be sustainable, thus not renewable. Meanwhile, the ESPS defines renewable energy to include various forms of biomass, however some biomass energy emits significant amounts of greenhouse gasses and therefore should be excluded from this definition.

The ESPS encourages clients to utilize renewable and energy efficiency technologies. OPIC seeks to develop financial incentives for small and medium sized enterprises. We support this, and encourage more creative engagement and partnerships with other agencies and partners.

Thank you for the opportunity to comment on OPIC's draft Environmental and Social Policy Statement.