- Neumayr took her post at CEQ in March 2017. Before that, she held various senior roles working for Republicans on the House Energy and Commerce Committee for eight years, including most recently as deputy chief counsel for energy and environment

06/13/2018: Inside EPA, *Trump taps acting CEQ chair for permanent role*: https://insideepa.com/daily-feed/trump-taps-acting-ceq-chair-permanent-role

- Neumayr oversaw the withdrawal of the Obama administration's guidance for how to consider greenhouse gases in National Environmental Policy Act (NEPA) reviews, and is also conducting a broader rewrite of NEPA implementing rules. That effort is awaiting first-time public release as an advance notice of proposed rulemaking currently **under review** by the White House Office of Information & Regulatory Affairs.
- One industry lawyer who works on NEPA issues called Neumayr's nomination "very good news. She will definitely be confirmed, and she brings a great deal of background knowledge and experience in issues CEQ is dealing with now on NEPA and permit reform." The lawyer adds that she is "a careful and reasonable voice on these issues, and I think having someone like her at the helm will advance the cause of putting some of the reforms that the administration supports both into practice and codifying them with potential amendments to the regulations that are [soon to be] proposed." The lawyer stresses the difference between Neumayr and White as "night and day," with Neumayr being an "apolitical pro."
- A former CEQ official also offers praise for Neumayr's work ethic. "In her time as acting chair, Mary has built a track record of solid management of decisions and process and of treating staff well and empowering them to be effective."

06/13/2018: Politico Morning Energy: https://www.politico.com/newsletters/morning-energy/2018/06/13/pruitt-hits-the-road-again-249986

- **TRUMP TAPS NEUMAYR:** The White House announced that Trump plans to nominate Mary Neumayr to run his Council on Environmental Quality. Neumayr's appointment would make official her role at CEQ, where she has been the acting head since March 2017. One of her most important acts thus far at CEQ was the withdrawal of Obama-era CEQ guidance on incorporating greenhouse gas emissions into environmental reviews, Pro's Alex Guillén reports.
- **Prior to her time at CEQ,** Neumayr spent eight years at the House Energy and Commerce Committee as deputy chief counsel, and during the George W. Bush administration worked as deputy general counsel for environment and nuclear programs at the Energy Department and as a counsel to the assistant attorney general for the Justice Department's Energy and Natural Resources Division. She helped author a Supreme Court brief in 2011 for Republican lawmakers arguing that the courts should leave climate change policy to the legislative and executive branches. In that case, *AEP v. Connecticut* , the high court unanimously backed up EPA's authority under the Clean Air Act to regulate greenhouse gases.

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06/13/2018: New York Times, *Trump tires again to fill a top environmental job:* https://www.nytimes.com/2018/06/13/climate/could-earths-ice-sheets-collapse.html

- Brett Hartl, director of government affairs at the Center for Biological Diversity, an environmental group, criticized Ms. Neumayr as "instrumental" in Republican efforts to roll back clean air protections during her time on Capitol Hill. He called her appointment "very bad news for human health and the health of the environment."
- Representative Rob Bishop of Utah, the Republican chairman of the House Committee on Natural Resources, noted Ms. Neumayr's experience. He said it would be key in handling looming issues like overhauling the National Environmental Policy Act, which spells out the review process for major federal projects. He called Ms. Neumayr a "superb choice."

06/14/2018: The Washington Post, *Trump tries more middle-of-the-road pick for top White House environment post*: https://www.washingtonpost.com/news/energy-environment/wp/2018/06/13/trump-tries-a-more-middle-of-the-road-pick-for-top-white-house-environment-post/?utm_term=.5443f5d1d879

- Sen. John Barrasso (R-Wyo.) said in a statement Wednesday that Neumayr will "make a strong leader at the Council on Environmental Quality," given her experience at the White House and on Capitol Hill.
- Michael Catanzaro, who served as special assistant to the president for domestic energy and environmental policy before rejoining the D.C.-based consulting group CGCN this spring, said in an email Wednesday that "Neumayr is a consummate professional, who possesses outstanding legal skills and exceptional knowledge of environmental policy. She has been and will continue to be a tremendous asset to CEQ, the President, and the country."
- "The thing about Mary is that you can work with her and talk with her and have a cordial professional conversation," said one of the staffers.

06/14/2018: E&E News, *Even some greens like Trump's pick for CEQ*: https://www.eenews.net/climatewire/2018/06/14/stories/1060084471

- "She is a good selection for the administration to oversee CEQ and certainly a stark contrast with the conscious outlier and extreme figure that they initially selected," said John Walke, clean air director with the Natural Resources Defense Council. "She always made a point of coming down to the witness table after the hearing to thank me for my testimony, which doesn't always happen — especially for those whose bosses don't always take the same position of NRDC," Walke said. "I think she will do her job well. She is not a bomb thrower, and she is not someone who governs through sound bites and shrill press releases."
- "I think she combines the best of being a true believer — a good, solid pro-business Republican — with just being very, very knowledgeable about how the executive and

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legislative branches implement the laws and deal with the laws," said Jim Barnette, a partner at Steptoe & Johnson LLP who worked with Neumayr when he was Energy and Commerce Committee general counsel until 2012.

- "She's one of the most conscientious, hardworking and thoughtful energy policy staffers in D.C. with deep experience in a wide range of law and policy," said Maryam Brown, vice president of federal affairs with Sempra Energy. Brown and Neumayr worked together on the Energy and Commerce Committee before Brown moved onto then-House Speaker John Boehner's (R-Ohio) staff, where they kept in contact on energy and environment legislation.

06/14/2018: E&E News, *No 'alarm sirens' over second CEQ pick – Carper*: https://www.eenews.net/eedaily/2018/06/14/stories/1060084439

- Sen. Tom Carper (D-Del.), who urged the White House to abandon efforts to confirm Trump's first pick to lead CEQ, Kathleen Hartnett White, said yesterday he did not personally know Mary Neumayr but had been told by staff members who have worked with her that "alarm sirens don't go off". I look forward to meeting with her to learn her views on a range of issues," Carper told E&E News of Neumayr, who has been leading CEQ as its chief of staff since joining in March of 2017.
- Rep. John Shimkus (R-Ill.), a senior member of the Energy and Commerce panel, praised Neumayr yesterday. "In my dealings with her she was respectful, hardworking, diligent and I think would be a good choice," he told E&E News.

- Neumayr was also praised by Stephen Brown, a lobbyist with energy giant Andeavor, who called her "one of the most principled, hard-working and intelligent people I know in the energy/environmental space. Her work in particular on the Clear Air Act issues at the House E&C Committee was unparalleled and I have no doubt that her efforts to bring some sanity to [the National Environmental Policy Act] and related permitting topics will be top notch," Brown wrote in an email.

06/14/2018: Chemical and Engineering News, *White House picks environmental advisor*: https://cen.acs.org/environment/White-House-picks-environmental-adviser/96/i25

- Neumayr is a much less controversial pick to lead CEQ and likely to win Senate confirmation.

06/19/2018: E&E News, *Greens gird for fight as White House starts NEPA overhaul*: https://www.eenews.net/greenwire/stories/1060085087/search?keyword=Mary+neumayr

- There is also a wild card in the process that could help both the agency and industry groups hoping to get the rewrite done quickly: President Trump's nomination of veteran Capitol Hill staffer Mary Neumayr to lead CEQ. She appears to be a more popular nominee than Kathleen Hartnett White, Trump's last pick to lead the agency.

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- "I thought it was a very positive step for people who are interested in seeing this rulemaking come to fruition," Wagner said. "She is very well versed in these rules, very well versed in her background and knowledge of process."

06/25/2018: E&E News, Panel sets first permitting hearing since CEQ nomination: https://www.eenews.net/eedaily/stories/1060086257/search?keyword=Mary+neumayr

- First, President Trump last week nominated Mary Neumayr as chairwoman of the White House Council on Environmental Quality. The council, which oversees permitting regulations under the National Environmental Policy Act, has lacked a permanent director. Trump's original pick, Kathleen Hartnett White, withdrew her name from consideration after it became clear she would not pass the Senate.

07/03/2018: E&E News, *Trove of emails reveals constellation of climate aides*: https://www.eenews.net/climatewire/stories/1060087535/search?keyword=Mary+neumayr

- Two others at the meeting have been elevated to new roles, leaving their old slots empty. They are Francis Brooke, who left Pence's office to take Catanzaro's position, and Mary Neumayr, who has been nominated to lead the Council on Environmental Quality after serving as its de facto head.

Pre-Nomination News:

02/01/2018: E&E News, *Who's who in Trump's infrastructure initiative*: https://www.eenews.net/stories/1060072527

- CEQ chief of staff Neumayr is also being eyed as a pivotal player in Trump's bid to speed NEPA reviews.
- "If they're going to spend money on infrastructure, the only way they're going to be able to do it is if they streamline the NEPA permitting process," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute, who led the Trump transition at U.S. EPA. "Since CEQ is in charge of NEPA, that means Mary and her team will be important."
- Neumayr also brings deep Capitol Hill experience, having served as deputy chief counsel on energy and environment for the House Energy and Commerce Committee.
- Before that, Neumayr served in the George W. Bush administration as deputy general counsel for environment and nuclear programs at the Energy Department from 2006 to 2009, and as counsel to the assistant attorney general for the Justice Department's Environment and Natural Resources Division from 2003 to 2006.

02/05/2018: E&E News, *Skeptic's retreat sparks questions about alternative science*: https://www.eenews.net/stories/1060072867

- Another explanation is that CEQ's work has continued apace, even if its relatively slim staff is taxed. Many inside the administration believe the acting chief, Mary Neumayr, is capable of steering the council in the interim.

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02/21/2018: New York Times, *New Candidates Emerge for Trump's Top Environmental Advisor:* https://www.nytimes.com/2018/02/21/climate/trump-environment-adviser-candidates.html

- The short list also includes Mary Neumayr, who as the agency's chief of staff since March has been doing the job in an acting capacity for nearly a year, said Jeffrey Holmstead, a partner at the firm Bracewell and a former E.P.A. air chief.
- "She's been a steady hand at C.E.Q. since she got there and everyone thinks she's been doing a great job," Mr. Holmstead said. But, he added, "I'm not sure that she wants the attention that comes with being the chair and having to run the gantlet of the confirmation process."
- Ms. Neumayr's views on topics like climate change are far less well known than Mr. van der Vaart's.

[APG]

Re: Milestones report -- agency review and input needed by July 13

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

To: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted]

Cc: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 13 Jul 2018 23:09:10 -0400

Yes, thank you Viktoria, good catch. It's the same content, so I'll let them know to make the corresponding changes there too.

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted]

On Jul 13, 2018, at 4:35 PM, Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] wrote:

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Best,

Michael

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To: rnelson@achp.gov; mdefalco@arc.gov; timthomas@arc.gov; Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] bhenson@dra.gov; jperry@fs.fed.us; edenson@fs.fed.us; mmazel@fs.fed.us; chad.parker@wdc.usda.gov; Kubena, Kellie - RD, Washington, DC <Kellie.Kubena@wdc.usda.gov>; laurel.leverrier@wdc.usda.gov; Duane, Jennifer A. <JDuane@ntia.doc.gov>; Spurgeon, Andrew <ASpurgeon@ntia.doc.gov>; Moyer, Timothy <TMoyer@ntia.doc.gov>; brian.s.teeple2.civ@mail.mil; peter.j.potochney.civ@mail.mil; fredrick.d.moorefield.civ@mail.mil; james.p.campion2.civ@mail.mil; robert.a.coffman10.civ@mail.mil; Jason.Botel@ed.gov; Sara.Trettin@ed.gov; David.Cantrell@ed.gov; herbert.mcconnell@hq.doe.gov; pam.peckham@hq.doe.gov; max.everett@hq.doe.gov; Ronald.Hewitt@hq.dhs.gov; Darrell.Smith@hq.dhs.gov; Brandon.wales@hq.dhs.gov; Marcus.Ward@hq.dhs.gov; Sonja.Rodriguez@hq.dhs.gov; Melanie.Bakaysa@associates.hq.dhs.gov; Ralph.H.Gaines@hud.gov; John.Gibbs@hud.gov; Dina.Lehmann-Kim@hud.gov; Lisa.S.Abell@hud.gov; Stanley.Gimont@hud.gov; katharine_macgregor@ios.doi.gov; sfusilie@blm.gov; k15montg@blm.gov; jjirby@usbr.gov; ralcorn@usbr.gov; lee_dickinson@nps.gov; truda_stella@nps.gov; ken_fowler@fws.gov; noah_matson@fws.gov; sharlene.roundface@bia.gov; beth.wenstrom@bia.gov; thompson.kevin@dol.gov; ahlstrand.amanda@dol.gov; Zelden.Mark.A@DOL.gov; julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov; jodie.harris@treasury.gov; barry.wides@occ.treas.gov; karen.bellesi@occ.treas.gov; thomas.klobucar@va.gov; Deborah.Scher@va.gov; Blake-Coleman.Wendy@epa.gov; Mixon.edward@epa.gov; Erica.Rosenberg@fcc.gov; Kirk.burgee@fcc.gov; Michael.Janson@fcc.gov; Michele.Berlove@fcc.gov; Ryan.Palmer@fcc.gov; Deborah.Salons@fcc.gov; jessica.salmoiraghi@gsa.gov; aluanda.drain@gsa.gov; maryann.hillier@gsa.gov; wengland@hrsa.gov; nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov; hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov; tnandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov
Cc: Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas <DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J. EOP/OMB <(b) (6) [redacted] Premaza, Victoria S. EOP/OMB <(b) (6) [redacted] Stein, Nora H. EOP/OMB <(b) (6) [redacted] Slater, Abigail A. EOP/WHO <(b) (6) [redacted] Lira, Mathew L. EOP/WHO <(b) (6) [redacted]
Subject: Milestones report -- agency review and input needed by July 13

Dear Colleagues,

I have attached the current working draft of the Broadband Milestones report. Please review this document and send me your edits using track changes, copying Karen Hanson (khanson@ntia.doc.gov). **Please submit your edits by close of business this Friday (July 13).**

In particular, we are looking for the following information: 1) responses to White House / OMB questions noted in yellow highlight or red text; 2) Any corrections or clarifications to agency actions located in the body of the report and in Appendix C; 3) Suggestions for additional content, such as examples of impact or agency success stories.

We need clear, concrete deliverables that meaningfully improve broadband deployment by streamlining processes and fostering additional private sector investment.

We will host a call on **July 12 at 2:00pm** (b) (6) [redacted] to review the process, answer any questions you may have, and discuss top-line goals for agency deliverables.

Thank you for your continued hard work on this effort and we look forward to your feedback.

Sincerely,
Kelsey

Kelsey Guyselman
Executive Office of the President
Office of Science and Technology Policy
202-456-3824

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From: Guyselman, Kelsey J. EOP/OSTP
Sent: Monday, July 9, 2018 5:50 PM
To: rnelson@achp.gov; mdefalco@arc.gov; timthomas@arc.gov; Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] bhenson@dra.gov; jperry@fs.fed.us; edenson@fs.fed.us; mmazel@fs.fed.us; chad.parker@wdc.usda.gov; Kubena, Kellie - RD, Washington, DC <Kellie.Kubena@wdc.usda.gov>; laurel.leverrier@wdc.usda.gov; Duane, Jennifer A. <JDuane@ntia.doc.gov>; Spurgeon, Andrew <ASpurgeon@ntia.doc.gov>; Moyer, Timothy <TMoyer@ntia.doc.gov>; brian.s.teeple2.civ@mail.mil; peter.j.potochney.civ@mail.mil; fredrick.d.moorefield.civ@mail.mil; james.p.campion2.civ@mail.mil; robert.a.coffman10.civ@mail.mil; Jason.Botel@ed.gov; Sara.Trettin@ed.gov; David.Cantrell@ed.gov; herbert.mcconnell@hq.doe.gov; pam.peckham@hq.doe.gov; max.everett@hq.doe.gov; Ronald.Hewitt@hq.dhs.gov; Darrell.Smith@hq.dhs.gov; Brandon.wales@hq.dhs.gov; Marcus.Ward@hq.dhs.gov; Sonja.Rodriguez@hq.dhs.gov; Melanie.Bakaysa@associates.hq.dhs.gov; Ralph.H.Gaines@hud.gov; John.Gibbs@hud.gov; Dina.Lehmann-Kim@hud.gov; Lisa.S.Abell@hud.gov; Stanley.Gimont@hud.gov; katharine_macgregor@ios.doi.gov; sfusilie@blm.gov; k15montg@blm.gov; jjirby@usbr.gov; ralcorn@usbr.gov; lee_dickinson@nps.gov; truda_stella@nps.gov; ken_fowler@fws.gov; noah_matson@fws.gov; sharlene.roundface@bia.gov; beth.wenstrom@bia.gov; thompson.kevin@dol.gov; ahlstrand.amanda@dol.gov; Zelden.Mark.A@DOL.gov; julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov;

jodie.harris@treasury.gov; barry.wides@occ.treas.gov; karen.bellesi@occ.treas.gov; thomas.klobucar@va.gov; Deborah.Scher@va.gov; Blake-Coleman.Wendy@epa.gov; Mixon.edward@epa.gov; Erica.Rosenberg@fcc.gov; Kirk.burgee@fcc.gov; Michael.Janson@fcc.gov; Michele.Berlove@fcc.gov; Ryan.Palmer@fcc.gov; Deborah.Salons@fcc.gov; jessica.salmoiraghi@gsa.gov; aluanda.drain@gsa.gov; maryann.hillier@gsa.gov; wengland@hrsa.gov; nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov; hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov; tnandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov
Cc: Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas <DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J. EOP/OMB <(b) (6) [redacted] Premaza, Victoria S. EOP/OMB <(b) (6) [redacted] Stein, Nora H. EOP/OMB <(b) (6) [redacted] Slater, Abigail A. EOP/WHO <(b) (6) [redacted] Lira, Mathew L. EOP/WHO <(b) (6) [redacted]
Subject: Milestones report -- agency review and input needed by July 13

Dear Colleagues,

I have attached the current working draft of the Broadband Milestones report. Please review this document and send me your edits using track changes, copying Karen Hanson (khanson@ntia.doc.gov). **Please submit your edits by close of business this Friday (July 13).**

In particular, we are looking for the following information: 1) responses to White House / OMB questions noted in yellow highlight or red text; 2) Any corrections or clarifications to agency actions located in the body of the report and in Appendix C; 3) Suggestions for additional content, such as examples of impact or agency success stories.

We need clear, concrete deliverables that meaningfully improve broadband deployment by streamlining processes and fostering additional private sector investment.

We will host a call on **July 12 at 2:00pm** [(b) (6) [redacted] to review the process, answer any questions you may have, and discuss top-line goals for agency deliverables.

Thank you for your continued hard work on this effort and we look forward to your feedback.

Sincerely,
Kelsey

Kelsey Guyselman
Executive Office of the President
Office of Science and Technology Policy
202-456-3824

RE: Questions, please review

From: "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]

To: "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 16 Jul 2018 17:30:46 -0400

Attachments: Draft Questions.docx (23.17 kB)

From: Neumayr, Mary B. EOP/CEQ
Sent: Monday, July 16, 2018 5:22 PM
To: Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <[redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Questions, please review

Minor additional suggestions added to Dan and Viktoria's suggestions.

From: Seale, Viktoria Z. EOP/CEQ
Sent: Monday, July 16, 2018 5:16 PM
To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <[redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Questions, please review

Minor suggestions added to Dan's suggestions.

From: Schneider, Daniel J. EOP/CEQ
Sent: Monday, July 16, 2018 5:02 PM
To: Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <[redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Questions, please review

Minor suggestions.

From: Smith, Katherine R. EOP/CEQ
Sent: Monday, July 16, 2018 4:59 PM

To: Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <[redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Questions, please review

Adjusted spacing

From: Pettigrew, Theresa L. EOP/CEQ
Sent: Monday, July 16, 2018 4:52 PM
To: Neumayr, Mary B. EOP/CEQ <[redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted]
Subject: Questions, please review

Please review this document now, if possible. We need to get to Committee.
Thank you!
Theresa

Theresa L. Pettigrew
Associate Director for Legislative Affairs
Council on Environmental Quality
Executive Office of the President
[redacted] (office)
[redacted] (fax)
www.whitehouse.gov/ceq

(b) (5)

[redacted]

(b) (5)

[redacted]

[EXTERNAL] Re: Shipley Group - Podcast

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Cc: "Drummond, Michael R. EOP/CEQ" (b) (6) [redacted]
mrrhey@aol.com, Joe Carbone <jcarbone1993@aol.com>

Date: Tue, 17 Jul 2018 12:48:14 -0400

Ted,

Happy to hear you are interested. We would be interested in recording the episode in August. When would you be available?

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >www.shipleygroup.com<
SHORTEN ENVIRONMENTAL DOCUMENTS
COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION
IMPLEMENT YOUR MISSION

From: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]
Date: Tuesday, July 17, 2018 at 9:13 AM
To: "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>
Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]
Subject: RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.
Given the extension, do you have any interest in doing this podcast in August?

Best,
Ted

Edward A. Boling
Associate Director for the
National Environmental Policy Act

Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Monday, July 2, 2018 10:51 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >>www.shipleygroup.com<<

RE: Shipley Group - Podcast

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: Jeffrey Stewart <jeff.stewart@shipleygroup.com>

Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6)[redacted]

Date: Tue, 17 Jul 2018 11:13:58 -0400

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.
Given the extension, do you have any interest in doing this podcast in August?

Best,
Ted

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Monday, July 2, 2018 10:51 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to

assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

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Let us know if you are interested in participating.

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >www.shipleygroup.com<

RE: Comment log updates

From:	"Cook, Kearstyn N. EOP/CEQ (Intern)" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4473d4560f524c0b8bdb9d591ae56168-co">
To:	"Carlin, Erin A. EOP/CEQ (Intern)" <[redacted]
Date:	Thu, 02 Aug 2018 14:40:27 -0400
Attachments:	ANOPR Comment Log 2.xlsx (98.13 kB)

Here's my second section!

From: Carlin, Erin A. EOP/CEQ (Intern)
Sent: Thursday, August 2, 2018 10:55 AM
To: Cook, Kearstyn N. EOP/CEQ (Intern) <[redacted]
Subject: Comment log updates

(b) (5)

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Comment log updates

From: "Carlin, Erin A. EOP/CEQ (Intern)" <[redacted]

To: "Cook, Kearstyn N. EOP/CEQ (Intern)" <[redacted]

Date: Thu, 02 Aug 2018 10:54:34 -0400

Attachments: 02 ANOPR Comment Log 07-23 to Erin (updated 8218).xlsx (94.68 kB)

(b) (5)

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RE: Let's talk

From: "Carlin, Erin A. EOP/CEQ (Intern)" <[redacted]

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)[redacted]

Date: Mon, 06 Aug 2018 12:09:18 -0400

Attachments: 02 ANOPR Comment Log 07-23 to Erin (updated 8618).xlsx (97.48 kB)

From: Mansoor, Yardena M. EOP/CEQ
Sent: Monday, August 6, 2018 11:33 AM
To: Carlin, Erin A. EOP/CEQ (Intern) <[redacted]
Subject: RE: Let's talk

sure

From: Carlin, Erin A. EOP/CEQ (Intern)
Sent: Monday, August 6, 2018 11:32 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6)[redacted]
Subject: RE: Let's talk

Hello Yardena,

We are at front desk filling in until a meeting is over for Mary and Juschelle. The meeting should be over in a few minutes. Would we be able to come up when the meeting finishes? Thanks!

Best,

Erin Carlin

From: Mansoor, Yardena M. EOP/CEQ
Sent: Monday, August 6, 2018 11:29 AM
To: Carlin, Erin A. EOP/CEQ (Intern) <[redacted]
Subject: RE: Let's talk

Sorry, I didn't see this earlier. Sure, both of you come on over.

From: Carlin, Erin A. EOP/CEQ (Intern)
Sent: Monday, August 6, 2018 10:37 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Let's talk

Hello Yardena,

Would 10:45 be a good time to meet? Also, would you like me to invite Kearstyn to meet as well because she has been helping with the comments?

Best,

Erin Carlin

From: Mansoor, Yardena M. EOP/CEQ
Sent: Monday, August 6, 2018 10:26 AM
To: Carlin, Erin A. EOP/CEQ (Intern) <[redacted]
Subject: Let's talk

Erin,.

I was able to resave the comment spreadsheet. Want to stop by and figure out where we are and what can be done before you leave? I'm good with any time between now and noon.

Yardena

(b) (5)

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RE: Shipley Group - Podcast

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: Jeffrey Stewart <jeff.stewart@shipleygroup.com>

Date: Wed, 08 Aug 2018 18:50:59 -0400

I can try to fit it in – when were you planning to do it?

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Wednesday, August 8, 2018 4:10 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] Re: Shipley Group - Podcast

Ted,

I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >www.shipleygroup.com<
SHORTEN ENVIRONMENTAL DOCUMENTS
COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION
IMPLEMENT YOUR MISSION

From: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]
Date: Tuesday, July 17, 2018 at 9:13 AM
To: "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>
Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]
Subject: RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.
Given the extension, do you have any interest in doing this podcast in August?

Best,
Ted

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Monday, July 2, 2018 10:51 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

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Let us know if you are interested in participating.

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >>www.shipleygroup.com<<

[EXTERNAL] Re: Shipley Group - Podcast

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 08 Aug 2018 16:09:40 -0400

Ted,

I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >www.shipleygroup.com<
SHORTEN ENVIRONMENTAL DOCUMENTS
COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION
IMPLEMENT YOUR MISSION

From: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]
Date: Tuesday, July 17, 2018 at 9:13 AM
To: "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>
Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]
Subject: RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.
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Ted

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Monday, July 2, 2018 10:51 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Shipley Group - Podcast

Ted,

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Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >>www.shipleygroup.com<<

Fwd: Two rough drafts

From: (b) (6) [redacted] Edward Boling

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]
"Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 08 Aug 2018 14:39:35 -0400

Attachments: Preamble Skeleton - Proposed Rule - CEQ Regulation Amendment v3.docx (55.39 kB); Big items.docx (13.9 kB)

Sent from my iPhone

Begin forwarded message:

From: "Loyola, Mario A. EOP/CEQ" <[redacted]
Date: August 8, 2018 at 1:21:00 PM EDT
To: "Boling, Ted A. EOP/CEQ" <[redacted]
Subject: Two rough drafts

Looking forward to comments!

Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality
(o) [redacted] | (c) [redacted]

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Final Version of comment log

From: "Carlin, Erin A. EOP/CEQ (Intern)" <[redacted]

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)[redacted]

Date: Thu, 09 Aug 2018 11:30:42 -0400

Attachments: 02 ANOPR Comment Log 07-23 to Erin (updated 8918).xlsx (97.96 kB)

Hello Yardena,

Here is the final copy of the comment log! I highlighted some entries in green because I had questions about them. Kearstyn and I were wondering if you were free to meet today before you leave to discuss if we need to archive our draft files or if we should email them to you. Thank you!

Best,

Erin Carlin

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

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(b) (5)

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(b) (5)

[redacted]

(b) (5)

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(b) (5)

[redacted]

(b) (5)

[redacted]

FW: Shipley Group - Podcast

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 09 Aug 2018 13:44:09 -0400

Dan – I have a request to talk on a NEPA podcast for professionals that may contribute comments on the ANPRM.

(b) (5) [redacted]

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Thursday, August 9, 2018 1:31 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Cc: Joe Carbone <jcarbone1993@aol.com>
Subject: [EXTERNAL] Re: Shipley Group - Podcast

Ted,

Are you available August 13th or 14th?

What kind of format would you prefer? Would you like this to be a conversation with your talking points or would you like us to have a list of questions that we could get to you prior to recording?

Thanks,

Jeff Stewart
The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >www.shipleygroup.com<
SHORTEN ENVIRONMENTAL DOCUMENTS
COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION
IMPLEMENT YOUR MISSION

From: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]
Date: Wednesday, August 8, 2018 at 4:51 PM
To: "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>
Subject: RE: Shipley Group - Podcast

I can try to fit it in – when were you planning to do it?

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Wednesday, August 8, 2018 4:10 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] Re: Shipley Group - Podcast

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I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

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IMPLEMENT YOUR MISSION

From: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]
Date: Tuesday, July 17, 2018 at 9:13 AM
To: "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>
Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]
Subject: RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.
Given the extension, do you have any interest in doing this podcast in August?

Best,
Ted

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Jeffrey Stewart <jeff.stewart@shipleygroup.com>
Sent: Monday, July 2, 2018 10:51 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

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To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Cc: Joe Carbone <jcarbone1993@aol.com>

Date: Thu, 09 Aug 2018 13:30:37 -0400

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Thanks,

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The Shipley Group, Inc.
Phone: 888-270-2157
jeff.stewart@shipleygroup.com
Website: >>>www.shipleygroup.com<<<

RE: Regulations.gov update: another ~600 comments today

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Boling, Ted A. EOP/CEQ" (b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <[redacted]

Date: Fri, 10 Aug 2018 15:49:16 -0400

Here is the list of mail and email submittals received at CEQ.

I see 4 submittals definitely to be posted to regulations.gov docket. To proceed, I need to resolve questions in the notes column.

(b) (5) [redacted]

Then the question of whether I can have access to the portal docket should be resolved.

(b) (5) [redacted]

(b) (5)

[redacted]

From: Boling, Ted A. EOP/CEQ
Sent: Thursday, August 9, 2018 1:41 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <[redacted]
Subject: RE: Regulations.gov update: comment tally doubled

OK – I think we should post all the comments that have been mailed/emailed into CEQ.

Yardena – can you do that, or should we ask Aaron to administer it?

From: Mansoor, Yardena M. EOP/CEQ
Sent: Thursday, August 9, 2018 12:31 PM
To: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Regulations.gov update: comment tally doubled

Correct, Nick Yost's comments are not posted but an unrelated Yost posted weeks ago.

Many of the new comments are a campaign, stating:

> As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to implementing regulations for the procedural provisions of the National

Environmental Policy Act (NEPA).

NEPA is vital to ensuring federal actions receive the necessary review and public input before making decisions that impact national parks, the environment and human health.

I am concerned the current effort to "streamline" processes under NEPA will lead to less public participation, uninformed decision-making, and serious environmental consequences. This is not the right path for our national parks or our communities, which depend on thoughtful decisions to protect air, water, and lands now and in the future.

Rather than making unnecessary changes, federal agencies should instead focus on effectively implementing the current regulations. With sufficient staff, training and resources, agencies may better ensure projects move forward in a timely fashion that is good for the environment and our communities.

Thank you for considering my views.

From: Drummond, Michael R. EOP/CEQ
Sent: Thursday, August 9, 2018 12:03 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Regulations.gov update: comment tally doubled

No, but there are some comments from a Gaylord Yost.

From: Boling, Ted A. EOP/CEQ
Sent: Thursday, August 9, 2018 11:59 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Re: Regulations.gov update: comment tally doubled

Is Nick's up there?

Sent from my iPhone

On Aug 9, 2018, at 11:35 AM, Mansoor, Yardena M. EOP/CEQ <[redacted] wrote:

After no update Mon-Wed, today our comment tally on regulations.gov went from 1481 to 3182. This will be interesting.

Yardena

FW: Comments on CEQ ANPR

From:	"Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">
To:	"Drummond, Michael R. EOP/CEQ" (b) (6) [redacted] "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]
Date:	Fri, 10 Aug 2018 11:54:25 -0400
Attachments:	CEQ ANPR LLS Responses 8-10-2018.pdf (321.78 kB)

From: Lucinda Swartz <lls@lucindalowswartz.com>
Sent: Friday, August 10, 2018 11:50 AM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] Comments on CEQ ANPR

Hi Ted,

Attached are my comments on CEQ's Advance Notice of Proposed Rulemaking. I submitted them formally on Regulations.gov, but thought I'd send you your own copy.

Thanks,

Lucy

Lucinda Low Swartz, Esq.
4112 Franklin Street
Kensington, MD 20895
Telephone: 301/933-4668
Email: LLS@LucindaLowSwartz.com
Website: www.LucindaLowSwartz.com

LUCINDA LOW SWARTZ, Esq.
ENVIRONMENTAL CONSULTANT

4112 Franklin Street • Kensington, Maryland 20895
Telephone: 301/933-4668 • Email: LLS@LucindaLowSwartz.com
www.LucindaLowSwartz.com

August 10, 2018

Mary B. Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Dear Ms. Neumayr:

Re: CEQ-2018-0001, Update to Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

Based on my experience as a former Deputy General Counsel of the Council on Environmental Quality (CEQ) and a National Environmental Policy Act (NEPA) practitioner for over 35 years, I have prepared the following comments in response to CEQ's Advance Notice of Proposed Rulemaking (83 Fed. Reg. 28591 (June 20, 2018)). I have included the question numbers to which I am responding, although I am not providing comments on all questions.

For 40 years, the CEQ regulations have served to implement NEPA's goals as articulated by Congress, and they continue to do so. The answers to most of the questions posed in the Advance Notice of Proposed Rulemaking depend on better implementation of the existing CEQ regulations by federal agencies rather than on amending those regulations. Better implementation requires substantial increases in funding to federal agencies to allow them to meet their statutory obligations under the Act. Additional funding for NEPA implementation by federal agencies is the best way to increase efficiency and improve the effectiveness of the NEPA process to protect and enhance environmental quality.

On a more practical level, the CEQ regulations and the NEPA requirements they implement have been the subject of myriad court cases, CEQ guidance documents, and individual federal agency regulations and guidance documents for over 40 years. Amending the regulations *will* result in extensive and expensive delays as new regulations are interpreted by federal agencies and the courts. For that reason, the perceived benefits of amending the CEQ regulations to improve efficiency and effectiveness must be carefully weighed against the certain disruptive consequences of amending those regulations.

NEPA Process

The CEQ regulations currently provide many recommendations for reducing delay and increasing efficiency in the NEPA process (see, e.g., 40 CFR 1500.4, 1500.5, 1506.2, and 1506.3). Federal agencies fail to implement these available provisions. The answer is to improve implementation, not to revise the regulations. Many improvements can only be made with additional funding to the federal agencies for this purpose.

1. Multiple Agency Reviews

The CEQ regulations currently provide for a lead agency if more than one federal agency is involved (40 CFR 1501.5). Inefficiency is introduced in situations where no federal agency is willing to take on the responsibility of being the lead agency. Even when a lead agency is named, the other federal agencies involved do not always participate in the NEPA process to the extent required, resulting in delays over which the lead agency has no control.

In addition, federal agencies may not have sufficient resources to serve as a lead agency, federal agency decision points for the same proposal may not be aligned, and some federal agency permitting decisions may need more specific design or project data than is required for other types of federal decisions. A revision to the regulations cannot fix these problems.

2. Efficiency of the NEPA Process

The CEQ regulations currently provide for, and encourage, the use of environmental studies, analyses, and decisions conducted in prior environmental reviews (see, e.g., 40 CFR 1502.21). An agency seeking to use prior documentation must verify that the information is relevant and still accurate. Agencies' failures to use the existing incorporation by reference provision will not be cured by a revision to the regulations.

3. Interagency Coordination

As noted in response to Question 1, the CEQ regulations currently provide for interagency coordination of environmental reviews. Failure of agencies to engage in such coordination is not related to the wording of the CEQ regulations and will not be solved by revising the regulations.

Scope of NEPA Review

4. Format, Page Length, and Time Limits

Imposing a firm format, page length, or time limit for each NEPA proposal is counterproductive. Each federal action is different and thus requires a different approach. Blind obedience to format, page length, or time limit will likely result in litigation arguing that the resulting NEPA document is insufficient and that the process was arbitrary and capricious.

The CEQ regulations currently suggest a useful format for NEPA documents (40 CFR 1502.10) that most agencies do follow. In addition, the regulations suggest establishing appropriate time limits (40 CFR 1500.5(e) and 1501.8) and page limits (40 CFR 1502.7). Agencies rarely take advantage of the opportunity to establish time limits or to reduce the page count. Again, this is a failure of implementation, not a shortcoming of the CEQ regulations.

Another regulatory provision that federal agencies do not take advantage of is the ability to summarize an environmental impact statement (EIS) and circulating the summary instead of the entire document "if the latter is unusually long" (40 CFR 1500.4(h)). In current practice, almost all EISs are "unusually long" – well over 500 pages and up to thousands of pages including appendices. No one benefits from such documents: neither agency staff nor agency decision-makers nor members of the public read them in their entirety. These NEPA process participants rarely read more than the summary, which itself can be over 100 pages for complex documents.

Thus, a thoughtful addition to the CEQ regulations would be a requirement that agencies circulate what is now referred to as a summary as the EIS itself. Supporting material would not accompany the (summary) EIS but must be posted online the same day the EIS is made public and provided electronically or in hard copy upon request. In addition, to accommodate those who do not use or have access to electronic media, the supporting material must also be made immediately available in libraries and federal agency offices. Such supporting material would include background information (e.g., Federal Register notices, scoping summaries) and the environmental impact analyses prepared regarding the proposal and alternatives that are typically included in appendices (see 40 CFR 1502.18). As is currently encouraged, other material can simply be incorporated by reference (40 CFR 1502.21).

With respect to environmental assessments (EA), CEQ guidance advises federal agencies to keep the length of EAs to 10 – 15 pages (Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 Questions), 46 Fed. Reg. 18026 (1981), Question 36a). Moreover, this guidance states that agencies should avoid preparing lengthy EAs and, in most cases, a lengthy EA indicates that an EIS is needed (40 Questions, Question 36b). Thus, for EAs, CEQ could consider imposing a 10 – 15 page limit as a way to enforce the statutory requirement to prepare EISs for "major federal actions significantly affecting the quality of the human environment."

5. Focus on Significant Issues

The CEQ regulations currently instruct agencies to "focus on significant environmental issues and alternatives" (40 CFR 1502.1) and to discuss impacts "in proportion to their significance" (40 CFR 1502.2(a)). Agencies are failing to implement this requirement as written; revisions to the regulations are not necessary.

6. Public Involvement

This is an area in which improvements to the CEQ regulations can be made. However, any revisions will only be effective to the extent they are actually and enthusiastically embraced by the federal agencies.

Too often agencies avoid obtaining and responding to public input in a misguided effort to save time. This results in disgruntled stakeholders such as environmental groups who feel they must pursue litigation in order to be heard. Litigation then introduces lengthy time delays and great expense, adversely affecting the federal agencies and private companies that may be seeking permit approvals from the agencies.

However, meaningful public involvement allows the agency to understand stakeholder concerns and to address them in the NEPA process, avoiding the potential for future litigation. Public involvement activities that could be encouraged in the CEQ regulations include:

- Contacting interested parties as a proposal is being developed and throughout the NEPA process to seek guidance on potential impacts, alternatives, and available information rather than relying only on submitted comments;
- Requiring public meetings to be conducted by government officials, not contractors;
- Allowing questions to be posed and providing answers during public meetings and hearings;
- Employing non-confrontational methodologies;
- Using the www.regulations.gov platform to allow commenters and others to review all of the comments submitted; and
- Directing federal agencies to respond to voluminous public comments in a summary fashion (e.g., by topic) when rather than individually to avoid preparing lengthy and uninformative comment-response documents (see 40 CFR 1503.4(b)). Where a NEPA document receives a small number of comments, the federal agency should respond individually to the comments received.

11. Preparation of NEPA Documents by Contractors

As a contractor myself, I have seen first-hand how federal agencies essentially deputize a contractor to develop and prepare a NEPA document and engage in public involvement, with minimal input from federal agency staff. Contractors develop the confines of the proposed action, identify alternatives, determine which alternatives are reasonable and why, plan and execute public participation activities including running public meetings, prepare documents, accept comments and develop responses, and draft the agency decision.

Agency staff then simply review and comment on the contractor's efforts; agency decision-makers are involved even less. At one agency, Contractor A prepares a NEPA document and Contractor B reviews that document for NEPA sufficiency, with agency staff being merely a

conduit of comments between the two contractors. With minimal involvement by agency staff in the NEPA process, federal agencies have come to think of NEPA compliance as just another box to check.

There certainly is a role for contractors. Contractors, at an agency's direction, can collect data and prepare analyses of potential environmental impacts for agency staff to use in the preparation of the agency's NEPA document. Contractors can be responsible for the logistics of public meetings, developing website content, collecting and organizing public comments, and doing document distribution. Contractors can also be a valuable tool in the technical editing and proof-reading of NEPA documents prepared by agency staff.

Greater involvement by federal agency staff in the NEPA process will not necessarily require a revision to the CEQ regulations, but will require a substantial increase in funding to allow federal agencies to hire, train, and support the necessary federal staff, including experienced NEPA project managers. Revisions to the CEQ regulations could limit the type of services for which federal agencies may use contractors such as requiring federal agencies to develop the full description of the proposed action and reasonable alternatives.

12. Programmatic NEPA Documents

The CEQ regulations currently state that programmatic NEPA documents "may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs…and broad actions…."(40 CFR 1502.4). The regulations also address "tiering" of EISs, such as when a broad EIS for a program or policy has been prepared and a subsequent EIS or EA is prepared on an action included within the entire program or policy (40 CFR 1502.20 and 1508.28). CEQ has issued guidance regarding the preparation of programmatic NEPA documents, "Effective Use of Programmatic NEPA Reviews," December 18, 2014.

Despite the encouragement in the CEQ regulations and guidance, federal agencies have been reluctant to prepare programmatic EISs and EAs for a variety of reasons including perceptions of difficulty, risk to ongoing programs, and lack of funding. For this reason, CEQ should consider incorporating important provisions from the 2014 guidance as mandates in the regulations. These could include when to use a programmatic and tiered review, determining the scope of a programmatic NEPA document, collaboration with other environmental reviews (including new proposals) and the public, and the level of detail and analysis necessary. In addition, the regulations could clarify that programmatic reviews of existing programs can be conducted to inform the agency and the public of potential environmental impacts without putting the program on hold while the analysis is being prepared.

General

15. Use of Technology

Technology has changed substantially since the CEQ regulations were promulgated in 1978. Agencies have been reluctant to utilize technological advances, such as posting material online instead of providing it in hard copy, because the CEQ regulations are silent on that subject. Identifying how the use of the online resources should be used to improve public involvement in particular would be an important advancement in improving efficiency and effectiveness of the NEPA process.

17. Improving Efficiency and Effectiveness of Implementation

As noted in response to Question 4, the CEQ regulations could be revised to include a requirement that agencies circulate what is now referred to as a summary as the EIS itself, with the supporting material posted online or otherwise provided electronically upon request.

19. Suggestions for Reducing Burdens and Delays

NEPA requires that federal agencies consider "alternatives to the proposed action." 42 U.S.C. 4332(C)(iii). The CEQ regulations interpret this as a requirement to "[r]igorously explore and objectively evaluation all reasonable alternatives…" (40 CFR 1502.14(a)). In the case of an applicant seeking federal approval, however, the requirement to consider "all reasonable alternatives" can become unwieldy if misapplied.

For example, an applicant may seek approval to construct Widget Plant in State X. An objectively reasonable alternative might be to construct Doodad Plant in State Z. However, if the applicant has no desire, business (or governmental in the case of a local or tribal government applicant) reason, or authority to construct the alternative, then fully analyzing that alternative in a NEPA document may be a waste of resources.

Treating applicant proposals differently from federal agency-sponsored alternatives would violate NEPA Section 102(2)(C), which makes no such distinction. However, CEQ should consider issuing guidance that addresses the appropriate way to analyze alternatives when an applicant is the project proponent. This guidance should include case law that has indicated, among other things, that the applicant's purpose and need should be taken into account along with that of the federal agency.

Without such guidance, federal agencies are confused regarding the extent they need to consider "all reasonable alternatives" when an applicant is the project sponsor, with some agencies focusing only on the applicant's proposal and other agencies analyzing a much wider slate of alternatives than may be necessary. Further, CEQ guidance would aid members of the public in understanding that some alternatives may not be reasonable in a particular context involving an applicant-sponsored proposal.

The guidance should also make it clear that federal agencies have the authority to deny an application for federal approval if the environmental impacts of the proposal would be too severe. This clarification would encourage applicants to identify the least environmentally damaging way to meet their business or governmental purposes and needs and to maximize their mitigation efforts. The onus is thus placed on applicants, not federal agencies, to develop environmentally sound proposals. If delays occur because of the need to analyze less environmentally damaging alternatives than that proposed by an applicant, it would be as a result of an applicant's actions, not those of the federal agency.

20. Mitigation

The CEQ regulations refer to mitigation in the context of including such measures in alternatives (40 CFR 1502.14(f)) and in decisionmaking (40 CFR 1505.2 and 1505.3). These provisions, however, are somewhat vague. Courts have stated, in keeping with the admonition that NEPA does not require a particular outcome, that mitigation is not required.

To enhance environmental values, the CEQ regulations could be revised to incorporate other court rulings regarding federal agencies' responsibility to mitigate adverse environmental impacts. These include:

- Where an agency does rely on mitigation for its analysis of impacts, the agency must provide an explanation as to why the agency believes the mitigation will be effective.
- Perfunctory descriptions or mere lists of mitigation measures are insufficient.
- Mitigation need not be legally enforceable or funded in order for an agency to rely on it for impact reduction purposes.
- Use of "best management practices" are a component of the proposal, not mitigation to reduce or avoid environmental impacts.

Conclusion

In sum, the current CEQ regulations provide all the tools necessary to improve the efficiency and the effectiveness of the NEPA process. That includes lead agencies and interagency coordination, use of existing information, implementation of time and page limits, and focus on significant issues.

There are some NEPA compliance issues that could be ameliorated with revisions to the CEQ regulations such as public involvement, use of NEPA contractors, programmatic NEPA documents, use of technology, and mitigation. Finally, I recommend developing additional guidance regarding analysis of alternatives when an applicant is seeking a federal permit, approval, or funding.

Finally, the key to improving federal agency implementation of NEPA is a significant increase in funding to allow the agencies to hire, train, and support additional NEPA staff.

Thank you for the opportunity to present my views.

Sincerely,

Lucinda Low Swartz

Lucinda Low Swartz
Environmental Consultant

cc: Edward A. Boling, Associate Director for NEPA

[EXTERNAL] Comments on CEQ ANPR

From: Lucinda Swartz <lls@lucindalowswartz.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 10 Aug 2018 11:50:28 -0400

Attachments: CEQ ANPR LLS Responses 8-10-2018.pdf (321.78 kB)

Hi Ted,

Attached are my comments on CEQ's Advance Notice of Proposed Rulemaking. I submitted them formally on Regulations.gov, but thought I'd send you your own copy.

Thanks,

Lucy

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August 10, 2018

Mary B. Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Dear Ms. Neumayr:

Re: CEQ-2018-0001, Update to Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

Based on my experience as a former Deputy General Counsel of the Council on Environmental Quality (CEQ) and a National Environmental Policy Act (NEPA) practitioner for over 35 years, I have prepared the following comments in response to CEQ's Advance Notice of Proposed Rulemaking (83 Fed. Reg. 28591 (June 20, 2018)). I have included the question numbers to which I am responding, although I am not providing comments on all questions.

For 40 years, the CEQ regulations have served to implement NEPA's goals as articulated by Congress, and they continue to do so. The answers to most of the questions posed in the Advance Notice of Proposed Rulemaking depend on better implementation of the existing CEQ regulations by federal agencies rather than on amending those regulations. Better implementation requires substantial increases in funding to federal agencies to allow them to meet their statutory obligations under the Act. Additional funding for NEPA implementation by federal agencies is the best way to increase efficiency and improve the effectiveness of the NEPA process to protect and enhance environmental quality.

On a more practical level, the CEQ regulations and the NEPA requirements they implement have been the subject of myriad court cases, CEQ guidance documents, and individual federal agency regulations and guidance documents for over 40 years. Amending the regulations *will* result in extensive and expensive delays as new regulations are interpreted by federal agencies and the courts. For that reason, the perceived benefits of amending the CEQ regulations to improve efficiency and effectiveness must be carefully weighed against the certain disruptive consequences of amending those regulations.

NEPA Process

The CEQ regulations currently provide many recommendations for reducing delay and increasing efficiency in the NEPA process (see, e.g., 40 CFR 1500.4, 1500.5, 1506.2, and 1506.3). Federal agencies fail to implement these available provisions. The answer is to improve implementation, not to revise the regulations. Many improvements can only be made with additional funding to the federal agencies for this purpose.

1. Multiple Agency Reviews

The CEQ regulations currently provide for a lead agency if more than one federal agency is involved (40 CFR 1501.5). Inefficiency is introduced in situations where no federal agency is willing to take on the responsibility of being the lead agency. Even when a lead agency is named, the other federal agencies involved do not always participate in the NEPA process to the extent required, resulting in delays over which the lead agency has no control.

In addition, federal agencies may not have sufficient resources to serve as a lead agency, federal agency decision points for the same proposal may not be aligned, and some federal agency permitting decisions may need more specific design or project data than is required for other types of federal decisions. A revision to the regulations cannot fix these problems.

2. Efficiency of the NEPA Process

The CEQ regulations currently provide for, and encourage, the use of environmental studies, analyses, and decisions conducted in prior environmental reviews (see, e.g., 40 CFR 1502.21). An agency seeking to use prior documentation must verify that the information is relevant and still accurate. Agencies' failures to use the existing incorporation by reference provision will not be cured by a revision to the regulations.

3. Interagency Coordination

As noted in response to Question 1, the CEQ regulations currently provide for interagency coordination of environmental reviews. Failure of agencies to engage in such coordination is not related to the wording of the CEQ regulations and will not be solved by revising the regulations.

Scope of NEPA Review

4. Format, Page Length, and Time Limits

Imposing a firm format, page length, or time limit for each NEPA proposal is counterproductive. Each federal action is different and thus requires a different approach. Blind obedience to format, page length, or time limit will likely result in litigation arguing that the resulting NEPA document is insufficient and that the process was arbitrary and capricious.

The CEQ regulations currently suggest a useful format for NEPA documents (40 CFR 1502.10) that most agencies do follow. In addition, the regulations suggest establishing appropriate time limits (40 CFR 1500.5(e) and 1501.8) and page limits (40 CFR 1502.7). Agencies rarely take advantage of the opportunity to establish time limits or to reduce the page count. Again, this is a failure of implementation, not a shortcoming of the CEQ regulations.

Another regulatory provision that federal agencies do not take advantage of is the ability to summarize an environmental impact statement (EIS) and circulating the summary instead of the entire document "if the latter is unusually long" (40 CFR 1500.4(h)). In current practice, almost all EISs are "unusually long" – well over 500 pages and up to thousands of pages including appendices. No one benefits from such documents: neither agency staff nor agency decision-makers nor members of the public read them in their entirety. These NEPA process participants rarely read more than the summary, which itself can be over 100 pages for complex documents.

Thus, a thoughtful addition to the CEQ regulations would be a requirement that agencies circulate what is now referred to as a summary as the EIS itself. Supporting material would not accompany the (summary) EIS but must be posted online the same day the EIS is made public and provided electronically or in hard copy upon request. In addition, to accommodate those who do not use or have access to electronic media, the supporting material must also be made immediately available in libraries and federal agency offices. Such supporting material would include background information (e.g., Federal Register notices, scoping summaries) and the environmental impact analyses prepared regarding the proposal and alternatives that are typically included in appendices (see 40 CFR 1502.18). As is currently encouraged, other material can simply be incorporated by reference (40 CFR 1502.21).

With respect to environmental assessments (EA), CEQ guidance advises federal agencies to keep the length of EAs to 10 – 15 pages (Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 Questions), 46 Fed. Reg. 18026 (1981), Question 36a). Moreover, this guidance states that agencies should avoid preparing lengthy EAs and, in most cases, a lengthy EA indicates that an EIS is needed (40 Questions, Question 36b). Thus, for EAs, CEQ could consider imposing a 10 – 15 page limit as a way to enforce the statutory requirement to prepare EISs for "major federal actions significantly affecting the quality of the human environment."

5. Focus on Significant Issues

The CEQ regulations currently instruct agencies to "focus on significant environmental issues and alternatives" (40 CFR 1502.1) and to discuss impacts "in proportion to their significance" (40 CFR 1502.2(a)). Agencies are failing to implement this requirement as written; revisions to the regulations are not necessary.

6. Public Involvement

This is an area in which improvements to the CEQ regulations can be made. However, any revisions will only be effective to the extent they are actually and enthusiastically embraced by the federal agencies.

Too often agencies avoid obtaining and responding to public input in a misguided effort to save time. This results in disgruntled stakeholders such as environmental groups who feel they must pursue litigation in order to be heard. Litigation then introduces lengthy time delays and great expense, adversely affecting the federal agencies and private companies that may be seeking permit approvals from the agencies.

However, meaningful public involvement allows the agency to understand stakeholder concerns and to address them in the NEPA process, avoiding the potential for future litigation. Public involvement activities that could be encouraged in the CEQ regulations include:

- Contacting interested parties as a proposal is being developed and throughout the NEPA process to seek guidance on potential impacts, alternatives, and available information rather than relying only on submitted comments;
- Requiring public meetings to be conducted by government officials, not contractors;
- Allowing questions to be posed and providing answers during public meetings and hearings;
- Employing non-confrontational methodologies;
- Using the www.regulations.gov platform to allow commenters and others to review all of the comments submitted; and
- Directing federal agencies to respond to voluminous public comments in a summary fashion (e.g., by topic) when rather than individually to avoid preparing lengthy and uninformative comment-response documents (see 40 CFR 1503.4(b)). Where a NEPA document receives a small number of comments, the federal agency should respond individually to the comments received.

11. Preparation of NEPA Documents by Contractors

As a contractor myself, I have seen first-hand how federal agencies essentially deputize a contractor to develop and prepare a NEPA document and engage in public involvement, with minimal input from federal agency staff. Contractors develop the confines of the proposed action, identify alternatives, determine which alternatives are reasonable and why, plan and execute public participation activities including running public meetings, prepare documents, accept comments and develop responses, and draft the agency decision.

Agency staff then simply review and comment on the contractor's efforts; agency decision-makers are involved even less. At one agency, Contractor A prepares a NEPA document and Contractor B reviews that document for NEPA sufficiency, with agency staff being merely a

conduit of comments between the two contractors. With minimal involvement by agency staff in the NEPA process, federal agencies have come to think of NEPA compliance as just another box to check.

There certainly is a role for contractors. Contractors, at an agency's direction, can collect data and prepare analyses of potential environmental impacts for agency staff to use in the preparation of the agency's NEPA document. Contractors can be responsible for the logistics of public meetings, developing website content, collecting and organizing public comments, and doing document distribution. Contractors can also be a valuable tool in the technical editing and proof-reading of NEPA documents prepared by agency staff.

Greater involvement by federal agency staff in the NEPA process will not necessarily require a revision to the CEQ regulations, but will require a substantial increase in funding to allow federal agencies to hire, train, and support the necessary federal staff, including experienced NEPA project managers. Revisions to the CEQ regulations could limit the type of services for which federal agencies may use contractors such as requiring federal agencies to develop the full description of the proposed action and reasonable alternatives.

12. Programmatic NEPA Documents

The CEQ regulations currently state that programmatic NEPA documents "may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs…and broad actions…."(40 CFR 1502.4). The regulations also address "tiering" of EISs, such as when a broad EIS for a program or policy has been prepared and a subsequent EIS or EA is prepared on an action included within the entire program or policy (40 CFR 1502.20 and 1508.28). CEQ has issued guidance regarding the preparation of programmatic NEPA documents, "Effective Use of Programmatic NEPA Reviews," December 18, 2014.

Despite the encouragement in the CEQ regulations and guidance, federal agencies have been reluctant to prepare programmatic EISs and EAs for a variety of reasons including perceptions of difficulty, risk to ongoing programs, and lack of funding. For this reason, CEQ should consider incorporating important provisions from the 2014 guidance as mandates in the regulations. These could include when to use a programmatic and tiered review, determining the scope of a programmatic NEPA document, collaboration with other environmental reviews (including new proposals) and the public, and the level of detail and analysis necessary. In addition, the regulations could clarify that programmatic reviews of existing programs can be conducted to inform the agency and the public of potential environmental impacts without putting the program on hold while the analysis is being prepared.

General

15. Use of Technology

Technology has changed substantially since the CEQ regulations were promulgated in 1978. Agencies have been reluctant to utilize technological advances, such as posting material online instead of providing it in hard copy, because the CEQ regulations are silent on that subject. Identifying how the use of the online resources should be used to improve public involvement in particular would be an important advancement in improving efficiency and effectiveness of the NEPA process.

17. Improving Efficiency and Effectiveness of Implementation

As noted in response to Question 4, the CEQ regulations could be revised to include a requirement that agencies circulate what is now referred to as a summary as the EIS itself, with the supporting material posted online or otherwise provided electronically upon request.

19. Suggestions for Reducing Burdens and Delays

NEPA requires that federal agencies consider "alternatives to the proposed action." 42 U.S.C. 4332(C)(iii). The CEQ regulations interpret this as a requirement to "[r]igorously explore and objectively evaluation all reasonable alternatives…" (40 CFR 1502.14(a)). In the case of an applicant seeking federal approval, however, the requirement to consider "all reasonable alternatives" can become unwieldy if misapplied.

For example, an applicant may seek approval to construct Widget Plant in State X. An objectively reasonable alternative might be to construct Doodad Plant in State Z. However, if the applicant has no desire, business (or governmental in the case of a local or tribal government applicant) reason, or authority to construct the alternative, then fully analyzing that alternative in a NEPA document may be a waste of resources.

Treating applicant proposals differently from federal agency-sponsored alternatives would violate NEPA Section 102(2)(C), which makes no such distinction. However, CEQ should consider issuing guidance that addresses the appropriate way to analyze alternatives when an applicant is the project proponent. This guidance should include case law that has indicated, among other things, that the applicant's purpose and need should be taken into account along with that of the federal agency.

Without such guidance, federal agencies are confused regarding the extent they need to consider "all reasonable alternatives" when an applicant is the project sponsor, with some agencies focusing only on the applicant's proposal and other agencies analyzing a much wider slate of alternatives than may be necessary. Further, CEQ guidance would aid members of the public in understanding that some alternatives may not be reasonable in a particular context involving an applicant-sponsored proposal.

The guidance should also make it clear that federal agencies have the authority to deny an application for federal approval if the environmental impacts of the proposal would be too severe. This clarification would encourage applicants to identify the least environmentally damaging way to meet their business or governmental purposes and needs and to maximize their mitigation efforts. The onus is thus placed on applicants, not federal agencies, to develop environmentally sound proposals. If delays occur because of the need to analyze less environmentally damaging alternatives than that proposed by an applicant, it would be as a result of an applicant's actions, not those of the federal agency.

20. Mitigation

The CEQ regulations refer to mitigation in the context of including such measures in alternatives (40 CFR 1502.14(f)) and in decisionmaking (40 CFR 1505.2 and 1505.3). These provisions, however, are somewhat vague. Courts have stated, in keeping with the admonition that NEPA does not require a particular outcome, that mitigation is not required.

To enhance environmental values, the CEQ regulations could be revised to incorporate other court rulings regarding federal agencies' responsibility to mitigate adverse environmental impacts. These include:

- Where an agency does rely on mitigation for its analysis of impacts, the agency must provide an explanation as to why the agency believes the mitigation will be effective.
- Perfunctory descriptions or mere lists of mitigation measures are insufficient.
- Mitigation need not be legally enforceable or funded in order for an agency to rely on it for impact reduction purposes.
- Use of "best management practices" are a component of the proposal, not mitigation to reduce or avoid environmental impacts.

Conclusion

In sum, the current CEQ regulations provide all the tools necessary to improve the efficiency and the effectiveness of the NEPA process. That includes lead agencies and interagency coordination, use of existing information, implementation of time and page limits, and focus on significant issues.

There are some NEPA compliance issues that could be ameliorated with revisions to the CEQ regulations such as public involvement, use of NEPA contractors, programmatic NEPA documents, use of technology, and mitigation. Finally, I recommend developing additional guidance regarding analysis of alternatives when an applicant is seeking a federal permit, approval, or funding.

Finally, the key to improving federal agency implementation of NEPA is a significant increase in funding to allow the agencies to hire, train, and support additional NEPA staff.

Thank you for the opportunity to present my views.

Sincerely,

Lucinda Low Swartz

Lucinda Low Swartz
Environmental Consultant

cc: Edward A. Boling, Associate Director for NEPA

RE: NEPA Comments

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: Jonathan Shuffield <jshuffield@naco.org>

Date: Fri, 10 Aug 2018 11:35:08 -0400

Attachments: 2018-14821.pdf (212.33 kB)

Sorry, Jonathan. The deadline was extended to August 20, not September 5.
Please see the attached for filing information.

Best,

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Jonathan Shuffield <JShuffield@naco.org>
Sent: Friday, August 10, 2018 11:07 AM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] NEPA Comments

Hey, Ted. How are you doing?

I wanted to reach out to you regarding comments for CEQ-2018-0001. I heard that the deadline was extended to Sept. 5 for comment submission. Is that the case? I've been on vacation the past 10 days or so am somewhat out of the loop. Thanks!

Sincerely,

Jonathan Shuffield
Associate Legislative Director for Public Lands and the Western Interstate Region
National Association of Counties
Direct: 202.942.4207
Cell: (b) (6) [redacted]

This document is scheduled to be published in the
Federal Register on 07/11/2018 and available online at
https://federalregister.gov/d/2018-14821, and on FDsys.gov

[3225-F8-P]

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

[Docket No. CEQ-2018-0001]

RIN: 0331-AA03

Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Advance Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: On June 20, 2018, the Council on Environmental Quality (CEQ) published an advance notice of proposed rulemaking (ANPRM) titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

DATES: Comments should be submitted on or before August 20, 2018.

ADDRESSES: Submit your comments, identified by docket identification number CEQ-2018-0001 through the Federal eRulemaking portal at https://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from https://www.regulations.gov. CEQ may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503, Attn: Docket No. CEQ–2018–0001.

FOR FURTHER INFORMATION CONTACT: Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503. Telephone: (202) 395–5750.

SUPPLEMENTARY INFORMATION: On June 20, 2018, CEQ published an ANPRM titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" in the *Federal Register* (83 FR 28591). The original deadline to submit comments was July 20, 2018. This action extends the comment period for 31 days to ensure the public has sufficient time to review and comment on the ANPRM. Written comments should be submitted on or before August 20, 2018.

Mary B. Neumayr,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 2018-14821 Filed: 7/10/2018 8:45 am; Publication Date: 7/11/2018]

RE: Regulations.gov update: follow-up

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Boling, Ted A. EOP/CEQ" (b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <[redacted]

Date: Mon, 13 Aug 2018 15:25:36 -0400

This item should be done before Aaron goes on vacation. I've added proposed resolution of my 3 questions below. Please let me know if these approaches are acceptable.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Friday, August 10, 2018 3:49 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Regulations.gov update: another ~600 comments today

Here is the list of mail and email submittals received at CEQ.

I see 4 submittals definitely to be posted to regulations.gov docket. To proceed, I need to resolve questions in the notes column.

(b) (5) [redacted]

Then the question of whether I can have access to the portal docket should be resolved.

(b) (5) [redacted]

(b) (5)

[redacted]

From: Boling, Ted A. EOP/CEQ
Sent: Thursday, August 9, 2018 1:41 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <[redacted]
Subject: RE: Regulations.gov update: comment tally doubled

OK – I think we should post all the comments that have been mailed/emailed into CEQ.

Yardena – can you do that, or should we ask Aaron to administer it?

From: Mansoor, Yardena M. EOP/CEQ
Sent: Thursday, August 9, 2018 12:31 PM
To: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Regulations.gov update: comment tally doubled

Correct, Nick Yost's comments are not posted but an unrelated Yost posted weeks ago.

Many of the new comments are a campaign, stating:

> As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA).
>
> NEPA is vital to ensuring federal actions receive the necessary review and public input before making decisions that impact national parks, the environment and human health.
>
> I am concerned the current effort to "streamline" processes under NEPA will lead to less public participation, uninformed decision-making, and serious environmental consequences. This is not the right path for our national parks or our communities, which depend on thoughtful decisions to protect air, water, and lands now and in the future.
>
> Rather than making unnecessary changes, federal agencies should instead focus on effectively implementing the current regulations. With sufficient staff, training and resources, agencies may better ensure projects move forward in a timely fashion that is good for the environment and our communities.
>
> Thank you for considering my views.

From: Drummond, Michael R. EOP/CEQ
Sent: Thursday, August 9, 2018 12:03 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Regulations.gov update: comment tally doubled

No, but there are some comments from a Gaylord Yost.

From: Boling, Ted A. EOP/CEQ
Sent: Thursday, August 9, 2018 11:59 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Re: Regulations.gov update: comment tally doubled

Is Nick's up there?

Sent from my iPhone

On Aug 9, 2018, at 11:35 AM, Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
wrote:

> After no update Mon-Wed, today our comment tally on regulations.gov went from 1481 to 3182. This will be interesting.
>
> Yardena

Additions to the Regulations.gov docket

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Boling, Ted A. EOP/CEQ" (b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" (b) (6) [redacted]

Date: Tue, 14 Aug 2018 10:10:47 -0400

Attachments: E-0002.pdf (82.52 kB); E-0006 Nicholas Yost.pdf (137.08 kB); M-0003.pdf (187.08 kB); M-0007.pdf (2.4 MB)

Aaron,

Attached are 2 mail and 2 email documents that were sent to CEQ in response to the ANOPR but not also submitted through the portal. (We also received 4 by mail and 4 by email that duplicate portal submittals.) Please let me know the resulting docket ID numbers.

Let me know if I can be of further assistance.

Yardena

(b) (5) [redacted]

The Nature Conservancy

Kameran Onley
Director
U.S. Government Relations
The Nature Conservancy
4245 N. Fairfax Drive
Arlington, VA 22203-1606

Tel (703) 841-4229
Fax (703) 841-7400

konley@tnc.org
nature.org

June 26, 2018

Edward A. Boling
Associate Director for NEPA
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

RE: Request for Sixty-day Extension for Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (Docket No. CEQ-2018-0001).

Dear Mr. Boling:

I am writing to request a sixty-day extension to the comment period for CEQ's advanced notice of proposed rulemaking (ANPRM) to "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (Docket No. CEQ-2018-0001).

Our mission at The Nature Conservancy is to conserve the lands and waters on which all life depends. Today, we operate in all 50 U.S. states and contribute to conservation outcomes in 72 countries around the world. Environmental laws adopted over the last five decades in the United States have dramatically improved the quality of the nation's air and water, reduced the public's exposure to harmful chemicals, given the public a greater voice in government decisions, and conserved our fish, wildlife, and other natural resources. Generations of Americans have benefitted from this legacy of leadership in environmental protection.

Because of its broad application to federal actions, strong commitment to public engagement, and pathways for scientific input to inform and improve our decision making, the National Environmental Policy Act (NEPA), as implemented by CEQ regulations, is one of the most important bedrock environmental laws in the United States. Given the importance of NEPA and implementing regulations, and the complexity of the issues implicated by the questions posed in the ANPRM, I am requesting an extension of the public comment period.

An extension of the comment period is necessary to provide sufficient time to provide detailed responses to the questions in the ANPRM that will be most useful to the rule-making process, and to ensure that the general public has a sufficient opportunity to be made aware of this process and provide input. Accordingly, I respectfully request no less than a sixty-day extension of the comment period from the originally proposed end date for the ANPRM to Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

Sincerely,

Kameran L. Onley

Kameran L. Onley
Director, U.S. Government Relations
The Nature Conservancy

Response to Request for Comments
Docket ID No. CEQ-2018-0001
August 6, 2018

Nicholas Churchill Yost
Former General Counsel
Council on Environmental Quality

Nicholasc.yost@icloud.com

Introduction

As the former General Counsel of the Council on Environmental Quality and the principal draftsperson of the CEQ NEPA Regulations, 40 CFR Parts 1500-1508, let me start with some overall observations:

- CEQ is to be congratulated on the public nature with which this undertaking has commenced (and for responding affirmatively to the public's request for more time within which to comment). I trust that these congratulations can be repeated at the end of the process.

- Bear in mind that the existing regulations were the product of extensive public involvement and receptivity to the concerns of all involved segments of American society. When finalized (in 1978) they were greeted with praise from the range of stakeholders, from the U.S. Chamber of Commerce to the National Governors Association to the Natural Resources Defense Council and the Sierra Club (See: "Streamlining NEPA—an Environmental Success Story," 9 B.C. Envtl. Aff. L. Rev. 507 (1981-1982)). That inclusive process is in part responsible for the Regulations having existed for four decades and through the administrations of seven Presidents with only one substantive amendment to one section.

- The fact of 40 years experience, including judicial review, militates in favor of keeping changes to the Regulations to necessary minimums. There exists nationwide judicial experience with the law and the Regulations which substantive changes can only undo. New provisions can only lead to new and expanded litigation.

- Any changes should be stylistically consistent with the existing Regulations—taut and clear. (The existing Regulations, 40 CFR Parts 1500-1508, dealing with American's most pervasive environmental law, are a model of succinct direction, taking up only 18 pages of the Federal Register.)

- Any amendments would have to be adopted through the APA notice and comment provisions so as to preserve the "substantial deference" which the Supreme Court has accorded them. Andrus v. Sierra Club, 442 U.S. 347 (1979).

- While, as will be evident from my recommendations set out below, I believe there are measures that can and should be taken to streamline NEPA's application, there are also measures, fundamental to NEPA's application, which should not be taken—measures which would not cut the fat but the muscle.

  --Actions causing environmental impact should not be exempted from NEPA.

  --The requirement fully to examine alternatives should not be eliminated.

  --The public's input into the NEPA process should not be reduced.

  --Judicial review, responsible for NEPA's effectiveness, should not be curtailed.

- That said, I believe there are areas where—with the perspective of four decades—the Regulations could be amended and improved. I discuss those areas in detail in response to the matters on which the Council has invited comment. The two most pervasive recommendations relate to:

  --Reducing delay in the NEPA process (which will also result in reducing cost). Despite the Council's explicit direction with respect to time limits (40 CFR 1501.8, 1500.5) and reducing paperwork (length of an environmental document (40 CFR 1500.4, 1502.7), delay (and needlessly verbose documents) remains a real and legitimate concern.

  --Giving greater direction with respect to the preparation of Environmental Assessments (EAs). While the Regulations deal in detail with Environmental Impact Statements (EISs) they slight EAs, despite the fact that on average about 40,000 EAs are prepared each year as compared with 500 EISs.

- At earlier stages I set out in detail my recommendations both with respect to the Regulations and to NEPA itself. Those recommendations remain valid today.

--Memorandum from me to CEQ officials entitled "Suggestions re CEQ NEPA Regulations" dated Jan. 5, 2010.

--Testimony I submitted before the House of Representatives Task Force on Updating the National Environmental Policy Act (chaired by Rep. Cathy McMorris Rodgers), Committee on Resources, Nov. 17, 2005, in which I made proposals for streamlining NEPA while at the same time identifying matters which should not be adopted because they would undercut NEPA's basic mission—to look before you leap environmentally.

Responses to Requests for Comment

Many of CEQ's requests for comment identify areas meriting thoughtful consideration, but—except as otherwise specified—I do not see the need for the Regulations to be amended. Generally, as stated above, I think the Regulations should be amended only to respond to a specific demonstrated need, both by reason of public familiarity and to deter whole new rounds of litigation revisiting issues judicially settled over the past four decades.

Specific suggestions for regulatory language to address certain of my recommendations appear at the end of these comments. I follow CEQ's numbering system in these responses:

2. Reliance should be conditioned, on a NEPA-like public review, comment, and response process for the document sought to be relied upon.

4. I see no issue with format. The page limits provision is sound, but rarely enforced. CEQ needs to see to that enforcement. I discuss the exceedingly important time limits provision below (#19) in the context of measures to reduce delay.

6. I discuss the desirability of greater guidance with respect to Environmental Assessments under 19c. Along with that general direction, attention is needed to the role of public participation in EAs. CEQ never gave guidance on the extent to which EAs should be part of a public process (in part because of the conflicting tugs of not wanting to hide anything from the public while recognizing that public participation in all 40,000 EAs prepared each year would clutter up the system). The courts have, unsurprisingly, given the lack of direction, gone all over the map on this. Two cases seem to me to have got the balance right, and I urge mention of them in any preamble: Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F. Supp. 984 (E.D. Cal. 2005), which was in turn cited with

approval in Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers, 511 F.3d 1011, 1025-26 (9th Cir. 2008). (It is worth noting that the District Court case was decided by Chief Judge Levi, a Republican, son of President Ford's Attorney General, and Dean of Duke Law School until this year, while the 9th Circuit opinion was authored by Judge Gould, a Democrat and Clinton appointee. (Both judges were U.S. Supreme Court clerks.)) You will see that I lifted some of Judge Levi's language in 1506.6(a).

7. For the reasons stated above, none of these definitions should be amended.

8. Same as 7.

9. CEQ has provided insufficient guidance with respect to Environmental Assessments (EAs). Each year, according to CEQ's numbers, about 500 Environmental Impact Statements (EISs) are prepared (and since EISs are prepared in both drafts and finals, that represents statements on about 250 actions annually), while during the same year 40,000 EAs are prepared. Thus, the vast majority of actions analyzed under NEPA are the subject of EAs rather than EISs, but while an entire part of the CEQ NEPA Regulations (40 CFR Part 1502) is devoted to EISs, essentially no guidance beyond timing and the definition, is given for EAs (*see*: 40 CFR 1501.3, 1501.4, 1506.5(b), 1508.9, 1508.13). Neither users nor courts have much sense as to how to prepare, circulate, or make public an EA. There is no direction on drafts, final, and supplemental EAs (if such are to exist). Even the page limits which appear in the Regulations for an EISs (40 CFR 1502.7), appear only in CEQ's Forty Questions for EAs. There is no direction as to whether devices like tiering, adoption, incorporation by reference, or incomplete or unavailable information are to be applicable to EAs. I propose that CEQ make these streamlining measures, presently applicable to EISs, also apply to EAs.

9d. CEQ's early, informal guidance (CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026, 18038 (Mar. 23, 1981) for using Mitigated Findings of No Significant Impact (Mitigated FONSIs) was at variance with the unanimous consensus of the Courts of Appeal and was later withdrawn. It would be useful if the Regulations reflected that.

By way of background, despite the skepticism initially expressed in CEQ's Forty Questions, the courts upheld "mitigated FONSIs," taking the view that NEPA was intended to lead to environmentally better results, and if paperwork (i.e., an EIS) could be bypassed and the environmental goal attained, that was a good thing. *See, e.g.,* Cabinet

Mountains Wilderness v. Peterson, 685 F.2d 678 (D.C. Cir. 1982). I think it due time that CEQ catch up with the courts and the universal agency practice and formally amend the Regulations to recognize the validity of mitigated FONSIs. (CEQ has informally done so.) At the same time I suggest—responding to the concerns which underlay CEQ's original skepticism (that backroom deals between agencies and developers could bypass NEPA's public involvement)—provisions to ensure that potentially significant and highly controversial mitigated FONSIs go through a public process. Also see 9f. below.

9f. The Regulations have been insufficiently clear on the enforceability of the Records of Decision and Mitigated Findings of No Significant Impact and therefore I suggest reinforcing 1505.3 to that end. *See:* Tyler v. Cisneros, 136 R.3d 603 (9th Cir. 1998) (enforcing mitigated FONSI provisions). Appropriate language is attached.

10. The provisions relating to the timing of agency action should not be revised. Specifically the timing of the Record of Decision (ROD) to follow the Final Environmental Impact Statement by not less than 30 days (40 CFR 1506.10 (b)(2)) should be retained consistent with the limitations of 42 USC 4332a. Often the public comments on the Final EIS (with its more developed information than the Draft EIS). Elimination of the 30-day comment period before the ROD seriously diminishes the public's opportunity to comment.

14. When the Regulations were adopted, Climate Change was not perceived as the central environmental issue it is today. The CEQ Regulations therefore makes no specific mention of it. They should, recognizing that climate change is an environmental issue meriting discussion in NEPA documents in the same manner as other environmental impacts.

The courts regularly hold that NEPA encompasses climate change (*see, e.g.,* Center for Biological Diversity v. NHTSA, 538 F.3d 1172 (9th Cir. 2008). CEQ should not be lagging behind the courts (but can also take protection from the fact that CEQ would only be reflecting what the courts have said on the law). CEQ would not be "expanding" NEPA but rather following the courts in recognizing that climate change is an environmental impact within the meaning of NEPA.

CEQ earlier issued nonbinding guidance on how most efficiently agencies should analyze climate change in NEPA documents—and then withdrew it. Such guidance (of something similar to it) should be reissued.

Again, CEQ is not making climate change an issue. Rather, as the courts have held, it is an impact encompassed within the environment that Congress directed to be studied. But, how to study such an impact raises legitimate questions. CEQ, by issuing "how to" guidance performs a service to the agencies (that otherwise can take differing and unpredictable approaches) and to the public. The alternative is for diverse agencies to adopt inconsistent approaches or for the courts to make their own interpretations.

18. The Regulations presently provide for Tribal input with respect to impacts on reservation. This should be broadened to include off-reservation impacts which affect Tribal interests.

19. This is the most important provision responsive to the often legitimate complaints about the length of time the NEPA (and other environmental) process takes.

During the adoption of the CEQ NEPA Regulations the single issue of greatest concern to the business community (represented through the U.S. Chamber of Commerce) was that of delay—the time it took to go through the NEPA process. We at CEQ thought we were fully addressing that issue, both by an assembly of measures aimed at reducing delay (40 CFR 1500.5 and sections cross-referenced there) and by a specific section on time limits including a mandatory provision directing that agencies "shall set time limits" for the NEPA process whenever the applicant so requests. (40 CFR 1501.8).

That is as strong a directive as you can make it, but the provision is rarely invoked. Applicants do not request time limits (perhaps for fear of alienating the lead agency in whose hands the future of a project may lie). Clearly more is needed. All will benefit—the applicant because there will be time limits on its projects, but also, those concerned with the environment because successfully addressing the issue of excessive delay will diminish assaults on NEPA and enable a focus on the goal of better, more environmentally sustainable decisions.

There are multiple reasons for delays on the NEPA process, including:

- Lack of deadlines.

- Lack of determination to reduce delays on the part of those implementing the Act. Command direction is needed (and, when provided, can be highly successful).

- Lack of resources. Quite simply, if the agency personnel aren't there, they cannot do the job in a timely fashion.

- Fear of litigation which can lead to overcaution which in turn can lead to delay. This is more a perception than a reality. Only a small proportion of processes result in judicial challenges, and only a small proportion of such challenges results in injunctive relief. In one typical recent year 99.97% of NEPA actions were successfully completed without injunctive relief—hardly enough to cause a high level of concern. (At the same time the prospect of such relief if a project proponent attempts to shortcircuit NEPA and the Regulations encourages compliance—doing a good job in the first place.)

- Lack of cooperation by agencies which are supposed to be "cooperating agencies" under NEPA 40 CFR 1501.6, 1508.5.

- There can be complex substantive issues which legitimately take time to analyze and resolve (e.g., Clean Air Act conformity, wetlands determinations, Transportation Act sec. 4(f), indirect impacts, cumulative impacts, etc.).

- In adopting the Regulations, CEQ steered clear of adopting universal time limits because of the diversity of actions covered. One size does not fit all. The same time limit needed for a TransAlaska pipeline as for an Interstate highway interchange does not make sense.

  A potential solution could be for CEQ to adopt presumptive time limits, such that EISs are required to be completed in a discrete period of time absent special circumstances warranting lesser or greater time periods. CEQ could impost by Regulation a set of 3 or 4 presumptive time limits for the NEPA process (for EISs; same could be done for EAs). (Or CEQ could require each agency to prescribe such categories). Category A might involve 10 months for an EIS process (running from the Notice of Intent (NOI) through the Record of Decision (ROD)); Category B 15 months, and so on. At the outset of the process, perhaps as part of scoping, the lead agency would (in consultation with the applicant (if any) and with agencies with jurisdiction by law or special expertise, and in the case of actions with the

potential for controversy, the public), assign the action to one of the time limit categories. Some sort of flexibility for unforeseen circumstances or unusual situations would be needed, but as a general rule those affected by the NEPA process will have a predictable schedule for the completion of the process. The fact of having a time limit will drive the process. This is the single most important measure needed to reduce delay.

For other suggestions on reducing delay see my testimony before the House NEPA Task Force, cited above.

Specific Proposals for Regulatory Language to Implement Certain of the Above Recommendations

In drafting specific language, I have not tampered with existing section numbers so as not to cause confusion in the courts and elsewhere.

- New 1501.3.1 is added between 1501.3 and 1501.4:

1501.3.1 How to prepare an environmental assessment [or Preparation of an environmental assessment].

(a) Agencies shall prepare environmental assessments in compliance with Sec. 1508.9

(b) Mechanisms to reduce paperwork (Sec. 1500.4) and to reduce delay (Sec. 1500.5) may be used with environmental assessments. Specifically, those measures include but are not limited to scoping (Sec. 1501.7), time limits (Sec. 1501.8), incorporation by reference (Sec. 1502.21), adoption (Sec. 1506.3), and combining documents (Sec. 1506.4)

(c) Tiering (Secs. 1502.20, 1508.28) may be employed from an environmental impact statement to an environmental assessment and may be employed from an environmental assessment which has been subject to the provisions of subsection (d) below to another environmental assessment.

(d) Environmental assessments on actions which have a high potential to become the subject of environmental impact statements or are actions which are likely to be highly controversial shall be circulated to agencies and the public in draft and final form and may be supplemented in the same manner as environmental impact statements. (Sec. 1502.9).

- Sec. 1501.4 (e)(1) is amended to read as follows (the added portions being underlined):

1501.4 Whether to prepare an environmental impact statement.

(e)(1) The agency shall make the finding of no significant impact available to the public as specified in Secs. 1501.3.1 and 1506.6.

- Sec. 1505.3 is amended to read as follows (the added portions being underlined):

1505.3 Implementing and enforcing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c) and other conditions established in the environmental impact statement or during its review and committed as part of the record of decision (Sec. 1502.2) and comparable mitigation and other conditions in findings of no significant impact (Sec. 1508.13) at the conclusion of the environmental assessment process (Secs. 1501.3.1 and 1508.9) shall be implemented by the lead agency or other appropriate consenting agency. Records of decision and findings of no significant impact are intended to be enforceable documents to ensure that what was decided by the agency in its NEPA process is in fact implemented.

The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding and approvals of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

- Sec. 1506.6(a) is amended to read as follows (the added portions being underlined):

1506.6 Public involvement

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures. Agencies shall offer significant predecisional opportunities for informed public involvement in their NEPA processes.

- 1506.6 (b)(3)(ii) is amended to read as follows (the added portion being underlined):

(ii) Notice to Indian tribes when effects may occur on reservations or when the interests of the tribe are otherwise affected.

- Sec. 1506.6(f) is amended to read as follows (the added portion being underlined)

(e) Make environmental impact statements, environmental assessments, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other agencies, including the Council.

- 1506.7 is amended to read as follows, adding the added portion being underlined):

1506.7 Further Guidance.

(d) Issue guidance to agencies, the courts, and the public on how best to consider the environmental impacts of climate change in NEPA documents.

- 1508.8, last paragraph is amended to read as follows (the added portion being underlined):

1508.8 Effects

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources

and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, climate, health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

- 1508.13 is amended to read as follows (the added portions being underlined):

  1508.13 Finding of no significant impact.

  "Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussions in the assessment but may incorporate it by reference. Mitigated findings of no significant impact shall be prepared in accord with Sec. 1508.19.1.

- New 1508.19.1 is added between 40 CFR 1508.19 and 1508.20:

  1508.19.1 Mitigated finding of no significant impact.

  A "Mitigated Finding of No Significant Impact" means a finding of no significant impact when the lack of potential significance is achieved by the establishment of enforceable mitigation (Secs. 1505.3, 1508.20) which results in impacts falling below the level of significance (Sec. 1508.27). Such mitigated findings of no significant impact will be made available to the public as provided in Secs. 1501.3.1 and 1506.6.

Conclusion

I trust these recommendations are helpful to CEQ and to the public. If I can be of further assistance please do not hesitate to contact me at Nicholasc.yost@icloud.com

Nicholas C. Yost
Santa Rosa, California

INDIANA WILDLIFE FEDERATION

CONSERVATION.

EDUCATION.

ADVOCACY.

Edward Bolling
Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, DC 20503

Re: **Comment period extension request for Advanced Notice of Proposed Rulemaking**– Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy RIN: 0331–AA03

Dear Mr. Bolling,

The GROUP is writing to request an extension of the comment period to at least 90 days for Council on Environmental Quality's Advanced Notice of Proposed Rule Making (ANPRM) to update "Implementation of the Procedural Provisions" of National Environmental Policy Act (NEPA).

NEPA provides the public with an essential right of public participation and that is all the more vital in a process to revise the regulations that have guided public participation for decades. Given that CEQ's process could fundamentally change how every single agency in the federal government considers the health and environmental impacts of federal decisions as well as public input under NEPA, we believe that a minimum of 90 days is necessary to provide our group, and the public, the time to properly understand and meaningfully respond to the many questions outlined in the ANPRM.

Providing a nominal 30 days for comment is inadequate and will leave out important voices in shaping CEQ'S process. Thank you for your consideration of our request for at least 90 days to comment on this important ANPRM and issue.

Sincerely,

Emily Wood
Executive Director
Indiana Wildlife Federation
wood@indianawildlife.org
317-875-9453

July 10, 2018

Mr. Edward A. Boling
Associate Director for National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place, N.W.,
Washington, D.C. 20503

Dear Mr. Boling,

Enclosed are my personal comments regarding the Council on Environmental Quality's (CEQ's) Advanced Notice of Proposed Rulemaking, 40 CFR Parts 1500 through 1508, Docket No. CEQ-2018-0001, proposed update to regulations that implement the procedural provisions of the National Environmental Policy Act (NEPA).

I am concerned about this proposal as someone who has been involved with NEPA since 1977, and has reviewed, read, and or commented on 300 or more Environmental Impact Statements (EISs), Environmental Assessments (EAs), Findings of No Significant Impact (FONSIs), and Categorical Exclusions (CEs). It concerns me that President Trump has publicly stated that environmental regulations and reviews interfere with businesses. It is my experience that environmental regulations and reviews (like NEPA) help businesses save money and interact in the market place better. Companies that look at their environmental bottom line are economically stronger and better prepared to compete. I hope the CEQ will update the President on the reasons why NEPA was approved by the U.S. Congress, and signed into law by President Nixon, reasons which are still valid 48 years later.

I am concerned that this NEPA regulations/rules change proposal which may rewrite the NEPA procedure, is really an excuse to claim that inefficiencies and ineffectiveness of NEPA need to be resolved. I fear the momentum of talk that says we need to streamline (hurry up the process and give citizens less than a fair amount of time to respond), expedite reviews and approvals for high priority infrastructure projects (defined very broadly), tied to FAST-41 infrastructure permitting, involved with the Federal Permitting Improvement Steering Council, Executive Order 13604 – Improving Performance of Federal Permitting and Review of Infrastructure Projects, and Executive Order 13087 – Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects. This entire effort is directed so that NEPA will be emasculated. **I am opposed to any efforts that make NEPA less strict. NEPA must be stricter so the public has opportunities and time to really participate and is protected from agencies that do not want to listen or take cues from the public.**

The need to discuss, analyze, evaluate, and assess environmental impacts, positive and negative, under NEPA is critical. It is particularly critical since NEPA is the only nation-wide, federal, agency-wide, system-wide public participation process that allows the public to participate in decisions on how to spend citizen's tax dollars on projects that could harm the environment, Quality of Life, social well-being, and economic health of the people of the United States.

It is vital that the NEPA process not be shortened so citizens have less time to read, review, and comment on mammoth projects and proposals that have EISs, including appendices, that often run to 100's or 1,000's of pages. Most citizens are not going to read, review, and comment on such documents. The few citizens that do are the bulwarks of the NEPA process and need adequate time and availability of documents to do the good work they do. This is a public service that should not be reduced in any way. With regard to the questions that are asked, here are my responses:

1) **Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so how?**

The devil is in the details. There is always room for improvement. My experience in talking to people at the U.S. Forest Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Department of Transportation, Texas Parks and Wildlife Department, Texas Department of Transportation, and many others is that **the most important thing that can be done to allow the NEPA process to go as quickly as possible is to provide adequate funding, staffing, and training for those who do NEPA work.** This is not a "sexy" recommendation but is the foundation for making NEPA work and getting good decisions in a timely fashion.

Oftentimes a cooperating agency **(Section 1501.6)** will not have time to do its work because a lead agency has been late in getting the information it needs (if the information comes at all) to do the review and assessment work and get this back to the lead agency.

Provision of adequate funding, staffing, and training for NEPA is what is required to make the process work well and quickly. Without this the reports, decisions, etc. that the public gets will be inadequate representations of analysis of environmental impacts and mitigation for those impacts.

2) **Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State tribal or local environmental reviews or authorization decisions, and if so, how?**

The question assumes that there are environmental reviews that are not used. This is not the case. It is important to include a legal perspective for this because oftentimes one agency in one place with implement NEPA one way while the same agency in another place will implement in another way. **A document that states clearly what the courts have decided about what NEPA should be and do would assist all agencies in the decision on how to implement NEPA.**

3) **Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

It sounds as if CEQ does not know that different agencies have different missions. For instance, U.S. Fish and Wildlife Service is the expert when it comes to wildlife and ecosystems and must

use this expertise via the Fish and Wildlife Coordination Act. Often their advice and the science they use is overruled, for example, by the U.S. Army Corps of Engineers, which has much less experience and scientific credibility when dealing with wildlife. The problem is often lead agencies are advocates for projects and therefore do not want cooperating or other agencies to honestly tell them about the problems that their projects have. NEPA is often turned into a self-serving (selfish) process to justify what the lead agency wants **(Sections 1502.2(g) and 1502.5)** and not be neutral and state clearly what environmental impacts are and how they can be mitigated, if mitigation is possible.

Lead agencies must treat all NEPA decisions neutrally, give other agencies with special expertise recognition, listen, and follow what they say, and lead agencies must give other agencies enough time and the appropriate information so that input back (like planning aid reports) actually occurs and the best information needed for public decisions is used.

4) **Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**

The problem is "cookie cutter" requirements for page length and format are not applicable for the vast federal agency, bureau, commission, etc. network that exists. Better training is needed on how to meet voluntary page lengths. Remember, the appendices are often the longest part of the document and can be thousands of pages. There must be some way to put this into perspective so that citizens can read something that is not so voluminous and technical that they give up.

Better training should be required on how to meet the voluntary page lengths. Make the appendices directly related to the EIS or EA and not filler material.

5) **Should CEQ's NEPA regulations be revised to provide great clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?**

The key word is "significant". It is obvious that agencies often do not include "significant" issues in EISs and EAs. Better training is need about what significant means.

Conduct better training about what "significant" is and conduct this training not just for agencies but for the public.

6) **Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?**

I do not know what is meant by "efficient" for public involvement. Public involvement is inherently messy and must be long enough so that the public can find out about the project and get involved. See **Sections 1500.1(b), 1500.2(b), 1500.2(d), 1500.4(f), 1501.4(b), 1501.7(a)(1), 1501.7(b)(4), 1502.1, 1502.8, 1502.12, 1502.19(c), 1502.19(d), 1502.21, 1503.1(a)(4), 1503.4(a), 1504.3(f)(3), 1505.2, 1505.3(d), 1506.7(a), (b), (c), (d), (e), and (f), 1506.8(c), 1506.9, and 1506.10(b)(2),** which all deal with public involvement. Many times, people do not even know about a project until the last days or weeks of the public comment period. So better public involvement notification,

longer public comment periods, and ensuring the public does not have to pay for EISs and EAs. NEPA is supposed to encourage and facilitate public involvement (Section 1500.2(d))

I have had to pay $300 or more to get an EIS from the Texas Department of Transportation (U.S. DOT allowed this) because TxDOT required that I not get a xeroxed paper copy, which is what I wanted, but I had to get a printed color copy, just like the one that is distributed to U.S. Congress persons and other officials, and I was required to pay the full cost of printing the EIS. This drives up the cost of getting a paper copy. I like paper copies because I can write on them, high-light them, and I do not spend tens of hours staring at a computer screen which hurts my eyes.

An EIS or EA should cost the public nothing since the NEPA process is all about public participation and input. No matter what format the public wants the EIS or ES in, they should have one. It is the public's law, public regulations/rules, public process, public money, and should be the public's decision. Very few people want a hard copy but those that do should be able to get them without cost.

There are millions of people who do not have a computer at home and have no avenue other than a hard copy. A copy at the library is not sufficient in many cases because you cannot mark it up, you cannot take it home or read wherever you want, you cannot compare its contents with documents you have at home or in your office, and when you want to read it, others may want to read it at the same time that you do at the library.

Provide, at no cost to a member of the public, one copy of the EIS or EA in the format he/she wants (hard copy, CD, online, etc.). Change 1506.6(f) to require this by removal of "to the extent practicable" and just say make available to the public "without charge".

The CEQ should require that agencies keep a list of people who "may be interested" (Sections 1501.7(a)(1) and 1503.1(a)(4)) in each project and then notify them about scoping and draft EIS public participation and input opportunities. It is my experience that even when I have expressed interest in a project for years, when an agency finally begins the NEPA process I am not listed and must again express my interest.

7) **Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how? A. Major Federal Action, b. Effects, c. Cumulative Impact, d. Significantly, e. Scope, and f. Other NEPA terms.**

The definitions that are listed are good definitions. They should not be changed.

8) **Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms? A. Alternatives, b. Purpose and Need, c. Reasonably Foreseeable, d. Trivial Violation, and e. Other NEPA terms.**

There are no "trivial violations". Either an agency is in compliance, or it is not. Definitions for alternatives, purpose and need, and reasonably foreseeable are not needed.

9) **Should the provisions in CEQ's NEPA regulations relating to any of the types of document listed below be revised, and if so, how? A. Notice of Intent, b. Categorical**

Exclusions Documentation, c. Environmental Assessments, d. Findings of No Significant Impact, e. Environmental Impact Statements, f. Records of Decision, and g. Supplements.

The only revision is to require that any agency that prepares an Environmental Assessment **(Sections 1501.3(a) and (b), 1506.5(b), and 1508.9)** circulate that document to the public for a 30-day comment period. Some agencies do this. But unfortunately, others, like the Corps of Engineers, do not. Under the Section 10/404 program the Corps prepares EAs that are not shown to the public, the public does not get to provide any input on them, if the public wants to see an EA it must wait until the permit is approved and then make a Freedom of Information Act request. Then the Corps takes a long time to process the information request and charges money for the EA.

This is supposed to be a public process where there is public input and participation. By requiring that all agencies publish and have a 30-day comment period for EAs it allows the public to find out about, read, review, and comment on proposed projects, proposals, and decisions that affect public permits, public dollars, public land use decisions, public air and water resources, etc.

10) **Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?**

The CEQ should require that instead of a 45-day comment period for an EIS **(Section 1506.10(c))** that the comment period be at least 60 or 90 days so there is enough time for the public to find out about, read, review, analyze, evaluate, assess, and comment on the project.

11) **Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?**

The CEQ should require that the agency make the EIS its own and not rely upon a contractor or applicant. Relying upon contractors and applicants means that the agency loses its ability to independently prepare, analyze, assess, and evaluate projects and their environmental impacts. The agency must prepare NEPA documents in-house so that the analysis is neutral and independent and is not biased on behalf of the permit, project, proposal, person, permittee, etc.

12) **Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?**

The one change that might make a difference is to state how long an EIS is sufficient until it needs to be updated or supplemented. Times change and so does technology, research, and understanding of environmental impacts and EISs should not be in effect forever. I recommend that a reasonable time period for an EIS to remain adequate and sufficient is 10 years.

13) **Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?**

Yes. There must be a requirement for more than one alternative other than no action. No action is almost never chosen or taken seriously, as it should be. Several alternatives are needed to compare different approaches to the implementation of a proposed project.

A minimum of five alternatives would be sufficient, but in some cases more alternatives than this would be appropriate. Allow there to be a minimum number of five alternatives but allow for more than this.

Too often agencies eliminate alternatives that are not in their jurisdiction but are reasonable alternatives. This should stop as required in **Section 1502.14(c).** Since many agencies attempt to justify an alternative, they eliminate those that compete with it, that they would not want to implement, or require another agency to implement. Sometimes you need to save the taxpayer money and not do a project.

14) **Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.**

The provision I want changed is the "emergencies" provision **(Section 1506.11).** In 1998 there was a windstorm blowdown on the National Forests and Grasslands in Texas. I attempted to interact with the U.S. Forest Service and CEQ and got what I considered to be a less than helpful responses.

There must be a stringent definition for what an "emergency" is. An "emergency" is where people are in imminent danger of harm (life-threatening). It does not include saving property or the value of property. It is not about making as much money as possible for the U.S. Forest Service by logging trees that have been blown down.

There should be a public comment period for all "emergencies" and a way to publicize the comment period in a broader way than the Federal Register. Right now, the public does not know when an agency files for an "emergency exemption", the agency does not tell you, and there is no formal way the public can provide input.

Conducting environmental analysis after an action has been done is like shutting the barn door after the horse has left. It robs NEPA of its very purpose and does not implement NEPA. NEPA is supposed to allow full environmental consideration **before** an action is done. **The specific conditions and instances that constitute an "emergency", and only those conditions and instances, should qualify an agency for a possible "emergency" exemption from NEPA. A list, like categorical exclusions, with permissible "emergencies" (but not a broad list that allows anything to be an "emergency") could be prepared by CEQ so that some "emergencies" are already known, can be planned for, can be readily announced, and public input requested quickly.** "Emergencies" should not be used as a cloak to get something accomplished that would not have been allowed without NEPA or would have normally required public input.

15) **Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?**

Efficiency should never trump the broadest, most inclusive, and comprehensive public participation and input. Several technologies should be used for NEPA including the submittal of comments via paper (mail), internet, CD, or similar ways that people feel most comfortable with and are able to express themselves. Agencies should bend to what people want and feel comfortable with and not use the excuse of efficiency to reduce public input and make submission of public comments a task or barrier instead of easy for a person. Many people still do not have computers and internet access or their internet access is limited.

16) **Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?**

No. The agencies have the ability right now to coordinate environmental review and authorization decisions. They must decide what is right for them.

17) **Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?**

Yes, require mitigation plans be implemented and the results reported to the public and CEQ.

18) **Are there ways in which the role of tribal governments in the NEPA process should be clarified in the CEQ's NEPA regulations, and if so, how?**

Require that tribal governments be full partners in the NEPA process and kept informed with all opportunities for participation and input. Honor tribal sovereignty.

19) **Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?**

No. Efficiency should never trump the broadest, most inclusive, and comprehensive public participation and input

20) **Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?**

CEQ should require agencies to submit reports that document that mitigation plans or measures have been implemented and the results of that implementation. Then we would know, for different kinds of projects, whether mitigation works, what mitigation works, and what the actual environmental impacts are due to mitigation.

Each agency should submit a report to CEQ yearly enumerating how many NEPA actions occurred or were started, what kind kinds of NEPA actions occurred or were started, and the results of the different kinds of NEPA decisions that were authorized and implemented including mitigation.

I appreciate this opportunity to comment. Please place me on your list to be notified when any proposal is released to change NEPA regulations/rules. Thank you.

Sincerely,

Brandt Warnecke
20023 Kings Clover Court
Humble, Texas 77346
832-007-3515
brandtwarnecke@gmail.com

075F 18150_00000910

RE: Follow-up re regulations.gov docket

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted]

Cc: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <[redacted]

Date: Wed, 15 Aug 2018 12:14:51 -0400

You are correct – there is a lag of at least a day (sometimes more) between submittal and posting.

The note on the number in the top right corner reads:

> *This count refers to the total comment/submissions received on this *docket*, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

From: Seale, Viktoria Z. EOP/CEQ
Sent: Wednesday, August 15, 2018 12:11 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Cc: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Follow-up re regulations.gov docket

Yardena,

Actually the discrepancy I was referring to is the number of comments received in the top-right hand corner of the page (currently 8,466) versus the number listed next to "Comments View All (8,341)". I suspect the difference may be that the number on the top-right hand of the page is a running count of the comments and the number below reflects the number actually posted and there is a bit of a lag in posting, but I'll check with Aaron.

Thanks,

Viktoria

From: Mansoor, Yardena M. EOP/CEQ
Sent: Wednesday, August 15, 2018 12:03 PM
To: Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted]
Cc: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Follow-up re regulations.gov docket

Victoria,

I followed up on your concern as to whether the ANOPR docket numbering is anomalous. Thanks for bringing this to our attention.

As of today, 8341 public submittals are posted. Sorting them by docket ID number, they range from 0006 to 8346. There are 2 primary documents (our FR notices) and 3 supporting documents (from the OMB 12866 review), so the numbering appears correct.

That said, there are certainly some odd submittals: one that just says "hello" and one (7209) that contains unintelligible text English and attaches a photo in two formats.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

RE: Follow-up re regulations.gov docket

From: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted]

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

Cc: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <[redacted]

Date: Wed, 15 Aug 2018 12:10:56 -0400

Yardena,

Actually the discrepancy I was referring to is the number of comments received in the top-right hand corner of the page (currently 8,466) versus the number listed next to "Comments View All (8,341)". I suspect the difference may be that the number on the top-right hand of the page is a running count of the comments and the number below reflects the number actually posted and there is a bit of a lag in posting, but I'll check with Aaron.

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Sent: Wednesday, August 15, 2018 12:03 PM
To: Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted]
Cc: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Follow-up re regulations.gov docket

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- [x] Public Submission

8,341 results

Results per page: 50

Comment from Audrey SmithRice, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Public Submission **Posted:** 08/14/2018 **ID:** CEQ-2018-0001-8346

Organization: N/A **Submitter Name:** Audrey SmithRice

Comment from Patricia Burton, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) / (b) (6)

Comment on CEs

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Boling, Ted A. EOP/CEQ" (b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" (b) (6) [redacted]

Date: Thu, 16 Aug 2018 11:43:01 -0400

Attachments: 0901 DOTs of ID, MT, ND, SD and WY.pdf (85.18 kB)

(b) (5) [redacted] this is the first one to propose (page 2) that the potential revision consider resolving the multiagency CE/EA category differences in the manner CEQ is supporting with Navy and others:

> A similar matter that CEQ should consider in fashioning new NEPA rules is the situation where, for the lead agency, the project or decision is a CE, but it is not of a type classed as a CE by one or more other agencies with a decision making role (such as permit authority). In such cases, under a new CEQ rule, the other agencies should be directed to proceed promptly, or be given authority on a case-by-case basis to agree to the CE status assigned to the project by the lead agency, even if such a project is not on the agency's own list of CE projects and decisions.

(b) (5) [redacted]

Y

Comments of the Transportation Departments of
Idaho, Montana, North Dakota, South Dakota, and Wyoming
to the
Council on Environmental Quality
in
Docket No CEQ-2018-0001
Advance Notice of Proposed Rulemaking
Update to the Regulations for Implementing the Procedural Provisions of
the National Environmental Policy Act
July 24, 2018

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming ("we" or "our") respectfully submit these brief joint comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) in this docket published by the Council on Environmental Quality CEQ) at 83 Federal Register 28591 (June 20, 2018). In that notice CEQ has invited comment on potential revisions that would update CEQ's regulations implementing procedural provisions of the National Environmental Policy Act (NEPA).

We support the effort to revise the NEPA procedural regulations to achieve more expeditious and better coordinated review of environmental issues pursuant to NEPA. This can be done consistent with environmental protection.

While we do not reply to all of the questions posed in the Federal Register notice in this docket, we offer the following.

To achieve an expedited but thorough review process, more deference must be accorded to the lead agency – e.g., for a transportation project process the transportation agency's views of the purpose and need for the project and relevant alternatives should be binding, though other agencies can consult and comment before those decisions are final. That will help ensure an organized and logical review process. At least as to projects requiring an EIS, all agencies with decisionmaking authority should be required to participate in a single, concurrent NEPA review process and be bound by the single EIS and ROD or other final NEPA document developed under that process, led by the lead agency. That single document should address the environmental issues relevant to all agencies with authority over the project.

As to projects warranting review at the Environmental Assessment or Categorical Exclusion level, it is possible that mandating a coordinated process involving all the agencies with authority could be more complex than having some separate reviews, but concurrently and within deadlines. So, we would be open to variations to the one decision process for EA and CE projects if the lead agency considers that the complexity of coordinating the process outweighs the benefits. But again, the EA and CE reviews by all relevant agencies should be subject to deadlines.

Similarly, as has been the case for highway projects, planning products developed by the lead agency should have a reasonable way to be adopted for purposes of NEPA review, so that the

substance of the planning process product(s) does not have to be revisited in the NEPA process. See Appendix A to 23 CFR 450.

Prompt deadlines are very important. We support prompt but reasonable deadlines for processing of EAs and categorical exclusions as well as for EISs. Rules could provide for extensions in certain circumstances or with the concurrence of the lead agency, but deadlines will help achieve prompter processing without prejudice to protection of the environment or the decisions to be made after completion of the environmental review.

A similar matter that CEQ should consider in fashioning new NEPA rules is the situation where, for the lead agency, the project or decision is a CE, but it is not of a type classed as a CE by one or more other agencies with a decision making role (such as permit authority). In such cases, under a new CEQ rule, the other agencies should be directed to proceed promptly, or be given authority on a case-by-case basis to agree to the CE status assigned to the project by the lead agency, even if such a project is not on the agency's own list of CE projects and decisions.

Conclusion

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming commend CEQ for working to improve and accelerate the NEPA review process by updating applicable regulations. This can be done in a way that saves time and money, does not weaken review and is consistent with environmental protection.

We thank CEQ for its consideration and ask that any further CEQ action with respect to the subject matter of this docket be in accord with these comments.

****

New docket item to post; 8/14 items not yet accessible

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Boling, Ted A. EOP/CEQ" (b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" (b) (6) [redacted]

Date: Thu, 16 Aug 2018 09:49:42 -0400

Attachments: E-0008 Charleston County, SC.pdf (371.06 kB)

Aaron,

Please post to the docket – today, per Ted's request – the attached comment document from Jim Armstrong, Deputy County Administrator, Transportation / Public Works, Charleston County, SC. It was transmitted 8/15 via email to Ted.

Also today, please check the status of the 4 comment documents sent for posting on 8/14, as they still don't appear in the docket.

Thanks,

Yardena

From: Mansoor, Yardena M. EOP/CEQ
Sent: Thursday, August 16, 2018 8:15 AM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: FYI: Additions to the Regulations.gov docket

FYI: As of this morning, these do not yet appear on the regulations.gov docket.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Tuesday, August 14, 2018 10:11 AM
To: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Cc: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Additions to the Regulations.gov docket

Aaron,

Attached are 2 mail and 2 email documents that were sent to CEQ in response to the ANOPR but not also submitted through the portal. (We also received 4 by mail and 4 by email that duplicate portal submittals.) Please let me know the resulting docket ID numbers.

Let me know if I can be of further assistance.

Yardena

(b) (5)

[redacted]

Jim Armstrong
Deputy County Administrator
Transportation/Public Works

CHARLESTON COUNTY
SOUTH CAROLINA

843.958.4011
Fax: 843.958.4507
jdarmstrong@charlestoncounty.org
Lonnie Hamilton III Public Services Building
4045 Bridge View Drive, Suite B252
North Charleston, SC 29405

August 14, 2018

Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, DC 20503

Dear Mr. Edward Boling,

Please see the attached responses in regards to the Advance Notice of Proposed Rulemaking. We appreciate the opportunity to provide input regarding the NEPA process. If there are any concerns, please do not hesitate to make contact with our office.

Sincerely,

Jim Armstrong
Deputy County Administrator
Transportation / Public Works

Cc: Steve Thigpen, Director of Transportation Development

Enclosed: NEPA Response

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
NEPA PROCESS	
1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?	• The amount of time it takes to complete NEPA reviews correctly depends on many factors and mandating a timeframe will not necessarily lead to correct or legally defensible documents and decisions. Mandating interagency agreements or requirements on timeframes for revisions would help facilitate efficiencies and timeliness. NEPA regulations should specify that cooperating agencies should engage in concurrent reviews of NEPA documents. Additionally, if invited to cooperate or comment on another agencies' NEPA document(s), schedules for reviews should be established and adhered to by cooperating agencies and/or tribes; after which time a lead agency can demonstrate that due diligence to solicit input was sufficiently completed. • All agencies should participate in earnest during NEPA process, not ignore NEPA and wait for 404 permitting to get actively involved. Expand cooperating agencies to include participation agencies (such as SCDNR) per SAFETEA-LU Section 6002.

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CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?	• The regulations currently specify that the NEPA process use the best available data; in the absence of data that sufficiently characterizes the environment to be impacted, gathering additional data may be justified (currently in 40 CFR 1502.22). Revisions could allow or encourage agencies to establish standardized or "master" impact discussion that can be cited and incorporated by reference. In a sense, encourage reuse of applicable, sufficient descriptions. Rather than each EIS author rewriting sections that essentially are the same or very similar in every EIS, the analysis could be cited by reference. As an example, it is not necessary for every FHWA noise document appended to every FHWA EIS to describe what constitutes an FHWA noise impact is, what classes of use fall into which category, how the human ear interprets noise, etc. The EIS can report the noise levels and refer the reader a web site or pdf document incorporated by reference that describes the interpretation of the impact. • There is no doubt that there are multiple, redundant studies that could be used as reference for an agency decision. However, I acknowledge the difficulties in using these studies as basis of a decision for various reasons, including but not limited to property owner rights, client privileges, and overall accuracy due to changing regulations, guidelines, and procedures. In my experience, the agency reviews have been trending to require more detailed and specific data for agency decisions. Some of this is a direct result in a change in regulations, but most is a result of increased counsel involvement in agency decisions. As a result, there is reluctance from individual managers and local branches to issue final decisions/actions. Use of both current project data a well as past studies and approvals could provide increased protection and documentation for these agency actions. This would ultimately result in more timely reviews and approvals. This will require to have a database of information that is user friendly and agency wide. The increased use of digital submissions and approvals further enhance the capabilities of developing a usable database.

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3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?	• Any revision to regulations regarding mandated federal agency participations should consider the realities of agency staffing/funding, and also that state agencies are involved and may not be subject to the same requirements as federal agencies. • The outcome of NEPA for any one particular project, regardless of how many agencies have decisions to be made, should be mandated to be one federal decision document. This would promote increased and proactive coordination by the agencies involved. In the event that the one federal document did not entirely meet a cooperating agency's review requirements or regulatory requirements of a subsequent permit, the cooperating agency should provide a supplement to the "one-federal EIS' focusing on only the area that was not addressed. • Revisions could include language similar to the SAFETEA-LU Q&A where, if an invited agency that does not have a decision subject to the NEPA review, declines or does not agree to participate at project initiation, then they lose their right to comment later in the process, or their comments do not have to be addressed. • Including a formal elevation process/conflict resolution process in the regulations that can be implemented at any time in the project development process could also prove helpful in promoting coordination and efficiency. • An integrated, multi-agency review and approval would expedite the federal actions by developing one, comprehensive document that allows multi agency approvals. However, in order to make this a manageable process, current regulations must be revised so the agencies have the flexibility and protection from litigation. • The effectiveness and benefits of multi-agency cooperation can be demonstrated through the recent findings from the Federal Permitting Improvement Steering Council (FPISC). The FPISC was created in 2015 to accelerate federal environmental approval process for major infrastructure by facilitating interagency coordination and reviews on major (>$200 million) infrastructure projects. To date, the FPISC has been most involved in utility and energy related projects. A recent report from the FPISC has documented significant cost and time savings associated on projects with FPISC. While the FPISC will sunset, they have established a baseline for streamlining agency cooperation, review, and ultimate approval.

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QUESTION	COMMENT
SCOPE OF NEPA REVIEW	
4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?	• Making documents shorter is a great goal, but the documentation still needs to stand up to legal challenges. Do not simply make documents and timeframes shorter if it leads to greater chance of legal risk. Imposing page lengths is often an arbitrary exercise and is not recommended as a streamlining tool, as it focuses more on the symptom (extraneous amounts of data to avoid litigation) than the underlying problem of increased litigation against the quality or range of data used. Requiring page limits in the regulations would not be helpful. • Revisions should consider requiring affected environment and environmental consequences to be combined into one section could effectively shorten NEPA documents without affecting content or quality. • Yes, to accommodate the additional legal reviews that are required such as wetland documentation, T&E requirements, SHPO requirements, EJ, noise, etc.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?	• Revisions should provide a clearer definition of "significant", including:
	  ○ A requirement for agencies to identify and briefly describe in the document the issues identified from scoping that are potentially "significant."
	  ○ An agency decision point for concurrence on what issues are significant.
	  ○ Clarification that issues that are not significant do not need be discussed in the NEPA document, or only discussed enough to demonstrate the impacts are not significant
	• Scoping should extend to EA's and the issues that result from the scoping should be the main focus of the NEPA document, unless changes to the project or study area occur after scoping.
	• Yes; obviously the spirit of NEPA is to have an all-encompassing review of potential impacts to the human and natural environment. However, most projects tend to have the potential to only impact a few resources. The cooperation of the consulting agencies would play a critical role in improving the focus of NEPA review. Again, this would be improved by integrated review, along with cooperating agency consultation.

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?	• Revisions should provide for more flexibility to truly engage and listen to the public in the NEPA process, including using updated communication and mass/social media tools, so that NEPA public involvement is less stilted and rigid and more efficient at identifying issues on which to focus NEPA analysis. • Yes, the PI process should be formalized to include at least one meeting prior to document completion and one Public Hearing. There should be a plan prepared for each project that has as it's goal an inclusive outreach for each particular project and location.
7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how? a. Major Federal Action; b. Effects; c. Cumulative Impact; d. Significantly; e. Scope; and f. Other NEPA terms.	• Revisions should include more specific description of what "categorical exclusion" means and what documentation is sufficient for categorically excluded actions. • No major concern with current terminology regarding the CEQ regulations.

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?
a. Alternatives;
b. Purpose and Need;
c. Reasonably Foreseeable;
d. Trivial Violation; and
e. Other NEPA terms.
	• Definitions for all terms should be included.
	• Clarify the difference between purpose and need. Need should be defined specifically and separately from Purpose. Revisions to regulations should include specific direction on how need for a proposed action should be defined.
	• Suggest that the following terms be added:
	  o Alternatives – definition should specify that alternatives should be reasonable and implementable;
	  o Connected Actions - the term Connected Action should be added and clarified so that the scope of upstream and downstream actions to be considered as connected is limited to those directly and immediately affected by the proposed activity.
	• "Substantive comment" on a draft EIS should be defined.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how? a. Notice of Intent; b. Categorical Exclusions Documentation; This should be simplified to demonstrate compliance with required laws (ESA, NHPA, etc) c. Environmental Assessments; d. Findings of No Significant Impact; e. Environmental Impact Statements; f. Records of Decision; and g. Supplements.	• Provide clarity on when a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement would be required. • Define what is required for reevaluation of NEPA documents. • Clarify what is needed for supplemental documents.

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CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?	• With introduction of formal Public involvement and changes to agency coordination requirements the comment period should be reduced to 30 days. • Administrative notice and review times can be revised to reduce the timing due to the increased digital submittal and today's technology.
11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?	• Revisions should clarify what constitutes a conflict of interest. • NEPA regulations should note that preparation of NEPA documents by contractors or project applicants is fully endorsed, but that it remains the responsibility of the lead agency to adopt the NEPA documentation and associated decision document within a specific time-frame (suggestion that requirement for review take place within 30 days of receipt of NEPA document). • Revisions should limit the realm of reasonable alternatives that are required to be analyzed by an applicant (or 3rd-Party consultant) to those alternatives that are both reasonable and implementable, consistent with the scope of the agency's authorities (see comments on 13 below). • All NEPA documents should clearly identify preparers and their affiliations. • Could be revised to provide more integration and cooperation between agencies on projects with multiple federal decisions.
12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?	• Current NEPA regulations provide the opportunity for tiering; however some agencies tend not to pursue tiered documents out of fear that subsequent documentation and approvals will be just as onerous as the original. Revisions should make tiering easier and reduce risk to agencies that pursue tiered NEPA reviews. No change in the regulation is needed.

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CEQ075FY18150_000009075

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?	• NEPA regulations should be revised to specify the realm of reasonable alternatives. There is confusion on how many alternatives should be examined. Clarify that if alternatives are not reasonable they need not be examined in detail and how reasonableness can be established. Provide clarification regarding the "range of alternatives" and "reasonable alternatives" and "reasonable range of alternatives." Suggest defining reasonable alternatives to be considered to include the following: o Be consistent with laws and regulations o Be technically feasible (i.e., available technology) o Be practicable (including economically practicable) o If the applicant is a non-governmental organization (e.g., private party, company or group), the range of alternatives would focus on means to avoid or minimize adverse effects of the proposed action. • Clarify how to use environmental data in the screening of alternatives. Explain how avoidance and minimization requirements of other laws (e.g. Clean Water Act, National Historic Preservation Act, etc.) can be used to determine that alternatives are not reasonable. Clarify how "economic feasibility" and cost data can be used to screen alternatives for reasonableness. • Regulations should clearly state that a NEPA document need only analyze one alternative in detail if there are no other reasonable alternatives.

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CEQ075FY18150_000009075

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
GENERAL	
14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.	• Section 1506.9 Filing requirements incorporates EPA's obsolete requirements pertaining to providing hardcopies and discs of EIS materials (including NOIs and NOAs). Regulations regarding the filing of EIS materials should be replaced with the option of electronically filing all such materials. • The discussions in NEPA documents of "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity" and "irreversible and irretrievable commitments of resources" seem to have evolved into a cut/paste of canned language, with little substantive content or understanding of what they are addressing on the part of agencies and the public. Consider updating in regulations to explain what is required. As long as all the effects of the action are being discussed and a cumulative impacts analysis is included in the EIS, these topics do not seem necessary.
15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?	• The regulations should state that use of websites and social media should be encouraged for posting documents and project information. This change could be "media commonly used for mass communication" to prevent having dated technologies codified into regulations. • Clarify that agencies only need to receive electronic documents. • Use of GIS and other remote sensing techniques for identifying impacts associated with alternatives can reduce cost and time for the analysis and provide as equivalent analysis to more detailed "boots on the ground" approach.

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CEQ075FY18150_000009075

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?	• NEPA is the umbrella for demonstrating compliance for a host of other laws, yet the CEQ regulations are silent on how to coordinate the reviews and document compliance with those other laws within a NEPA process. Update the regulations to integrate decision points and analysis requirements for such laws as NHPA Section 106, Clean Water Act, Endangered Species Act, etc. • Consider including a provision in the regulations allowing for combining of the FEIS and ROD. This would require identifying the Preferred Alternative in the DEIS. The comments received on the DEIS would also have to be evaluated to determine whether a combined FEIS/ROD is appropriate or whether a separate publishing of the FEIS and waiting 30 days to issue the ROD would be required.
17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?	• The regulations should clearly state when corresponding compliance actions should be implemented in coordination with the NEPA process (e.g., Section 106 of the National Historic Preservation Act [NHPA]), and mandate timeframes for required comments or responses so the NEPA process is not held up. This would, for example, complement and strengthen the 30-day response requirement in the NHPA (36 CFR 800), which is not always followed.
18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?	• NEPA regulations should specify the role and responsibilities of tribal governments so that due diligence in efforts to coordinate with tribes per Executive Order Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" can be documented within the NEPA process. Regulations should state the specific amount of time (suggestion 30 or 45 days) for tribes to respond to NEPA scoping or review requests and participate in NEPA processes that may impact tribal resources in a timely manner, so that tribal input can be incorporated and considered by the federal decision-maker.
19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?	• The regulations should revise Section 1507.3 to encourage uniformity in application of the CEQ's regulations and discourage major subunits or agencies within a federal department to adopt their own NEPA procedures. Each federal executive department should have one method for NEPA compliance.

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CEQ075FY18150_000009075

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS	
QUESTION	**COMMENT**
20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?	• The regulations should clearly state that mitigation measures in a NEPA document are going to be implemented (not just being considered), and establish the need for mitigation monitoring and reporting program to be included in the NEPA document and decision documents.

GENERAL STATEMENT
I think the entire regulation needs to be evaluated based on today's technologies, mainly in regards to digital submittals, reviews and approvals. This also includes the administrative record process to eliminate timely and inefficient hardcopy record keeping. Again, my opinion on overall efficiencies is in regard to the actual agency review's and approvals, which includes redundant studies, submittals, and review times.

FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

From:	"Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">
To:	"Loyola, Mario A. EOP/CEQ" <(b) (6) [redacted]
Cc:	"Mansoor, Yardena M. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=2712a19fd57447088e0b9da580c16e15-ma">, "Drummond, Michael R. EOP/CEQ" (b) (6) [redacted]
Date:	Fri, 17 Aug 2018 14:35:11 -0400
Attachments:	Association of Metropolitan Water Agencies Comment Letter CEQ-2018-0001.pdf (239.26 kB)

Mario – are these the comments that you were looking for?

From: McLaurin, Juschelle D. EOP/CEQ
Sent: Friday, August 17, 2018 1:58 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

FYI

From: Stephanie Hayes Schlea <schlea@amwa.net>
Sent: Friday, August 17, 2018 12:34 PM
To: McLaurin, Juschelle D. EOP/CEQ <[redacted]
Subject: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

On behalf of the Association of Metropolitan Water Agencies, please find attached the comment letter regarding CEQ's *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (CEQ-2018-0001).

Stephanie Hayes Schlea
Manager, Regulatory and Scientific Affairs
Association of Metropolitan Water Agencies
Office: 202.331.2820

1620 I Street NW Suite 500
Washington, DC 20006
>http://www.amwa.net/<

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METROPOLITAN
WATER AGENCIES

LEADERS IN WATER

1620 I Street, NW, Suite 500
Washington, DC 20006

P 202.331.2820 F 202.785.1845
amwa.net

August 17, 2018

Mr. Edward A. Boling
Associate Director for the National Environmental Policy Act
White House Council on Environmental Quality
730 Jackson Place, N.W.
Washington, DC 20503

Re: Docket No. CEQ-2018-0001, *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*

Dear Mr. Boling:

The Association of Metropolitan Water Agencies (AMWA) welcomes the opportunity to comment on the Council on Environmental Quality's (CEQ) advance notice of proposed rulemaking to update the regulations on implementing certain provisions of the National Environmental Policy Act (NEPA). AMWA represents the largest metropolitan, publicly owned drinking water systems in the nation and collectively our members serve more than 130 million people.

AMWA is supportive of NEPA as a cornerstone of our country's environmental protection laws. It is important to our members because it ensures that possible impacts to the environment and public input related to these considerations are taken into account during federal decision making, particularly as it relates to protecting our nation's water resources. Our members are affected by actions on federal lands that could have environmental impacts on the source of drinking water, such as projects on national forest lands, where many metropolitan cities' drinking water originates, or projects on federal reservoirs where our members have drinking water storage contracts. NEPA plays a vital role in protecting these water sources and the larger environment by requiring the development of environmental assessments and environmental impact assessments to identify potential impacts of federal actions. While AMWA supports improving the efficiency of the NEPA process, it is important for the integrity of NEPA to be maintained and the opportunity for public participation and comment remain intact.

Our members are often applicants for projects that require NEPA reviews, such as projects for water supply and delivery that will receive funding via drinking water or clean water State Revolving Fund loans or through the Water Infrastructure Financing and Innovation Act. Many of our members have had experiences where the NEPA process has lasted several years and

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William Stowe
Des Moines Water Works

Kathryn Sorensen
Phoenix Water Services

Jeffrey Szabo
Suffolk County Water Authority

Douglas Yoder
Miami-Dade Water and Sewer Department

CHIEF EXECUTIVE OFFICER
Diane VanDe Hei

therefore AMWA encourages CEQ to consider ways to optimize interagency coordination and streamline authorization decisions. AMWA supports improvements to NEPA regulations, particularly those that would improve the efficiency of environmental reviews and authorizations involving multiple agencies, provided that the decision process remains transparent to the applicant and the public's opportunity for input remains intact.

AMWA supports the administration's one federal decision goal of NEPA reviews being conducted in two years or less provided there is still sufficient opportunity for public input and recognition that some decisions may still take longer, whether due to the complexity of the project itself or the number of collaborating agencies participating. Timely, synchronized and concurrent reviews should be conducted, and to the extent possible, the lead federal agency should be responsible for ensuring this occurs.

Finally, in light of the impacts of climate change on our water resources, it's important that NEPA policies and guidelines facilitate adaptation approaches including projects developed to address future needs for resilience to extreme events and weather disasters, such as storms and droughts, which have been well documented in the United States over the past decade.

Therefore, as the White House takes steps to ensure that the federal "environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent," AMWA supports the efficiency of NEPA reviews and the Administration's one federal decision goal. As stated elsewhere in this letter, AMWA's support also assumes that the integrity of NEPA will be maintained and the opportunity for public participation and comment will remain intact. AMWA appreciates the opportunity to comment and looks forward to working with CEQ throughout this process.

Sincerely,

Diane VanDe Hei
Chief Executive Officer

Re: [EXTERNAL] RE: Comment from CEQ?

From: "Schneider, Daniel J. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">

To: Nick Sobczyk <nsobczyk@eenews.net>

Date: Mon, 20 Aug 2018 12:00:25 -0400

In regards to your questions,

CEQ will review the comments we have received before we determine next steps and any potential revisions.

Sent from my iPhone

On Aug 20, 2018, at 11:25 AM, Nick Sobczyk <nsobczyk@eenews.net> wrote:

Yeah just was able to pull that up as well. Thanks.

From: Schneider, Daniel J. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, August 20, 2018 11:25 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

FYI: I believe I found the letter/comments we discussed on the phone.

>https://www.regulations.gov/document?D=CEQ-2018-0001-10560<

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Monday, August 20, 2018 10:06 AM
To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

Hope all is well. I'm working on a brief update story this morning with the comment period ending today for CEQ's proposed NEPA regs re-write. Just wanted to reach out and see if you have a comment/statement.

What are the next steps and how long do you expect them to take?
Based on the comments that have come in, do you have any sense of what aspects of the NEPA regulations CEQ will seek to change?
Many of the comments, unsurprisingly, appear to be form letters written by environmental groups. How much weight will you give these?

Best,

Nick Sobczyk
E&E News reporter
nsobczyk@eenews.net
Office: 202-446-0437
Cell: (b) (6) [redacted]
@nick_sobczyk

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From: Schneider, Daniel J. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Tuesday, July 10, 2018 11:04 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

We received a number of requests to extend public comment.

>>https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=CEQ-2018-0001&refD=CEQ-2018-0001-0001<<

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, July 10, 2018 11:00 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

Thanks for the heads up. Does this come in direct response to the environmental groups that requested last month that it be extended to 90 days? Or did you get other input as well?

Best,
Nick

From: Schneider, Daniel J. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Tuesday, July 10, 2018 10:49 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick,

Just wanted to make sure you were aware. CEQ is extending the comment period on the Advanced Notice of Proposed Rulemaking, which was originally set to close on July 20, 2018. We've extended it through August 20, 2018. The notice is expected to be published in the Federal Register tomorrow, July 11, 2018. The pre-publication version is available at the link below.

>>>https://www.federalregister.gov/documents/2018/07/11/2018-14821/implementation-of-the-procedural-provisions-of-the--national-environmental-policy-act<<<;;

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, June 19, 2018 11:37 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Thanks, Dan. Appreciate you getting back to me. I'll let you know if I have any additional follow ups.

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Tuesday, June 19, 2018 11:35 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

On background, attributable to a CEQ spokesman.

In terms of the format of the ANPRM, it depends on agency preference and different groups choose different techniques. We feel this approach is the best way to increase public engagement. Given that we've had lots of interest over the years from stakeholders, we're hopeful we receive a number of substantive comments.

In regards to the 30 day comment period, if we receive requests for a longer than a 30 day comment period, we will consider it.

I'm happy to keep you informed as things progress.

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, June 19, 2018 11:18 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan – one additional question for you. An early criticism I'm hearing from environmentalists is that 30 days is a an exceedingly short comment period. Do you have a response to that? What was the rationale for that time frame?

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Tuesday, June 19, 2018 10:32 AM

To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick, what's your deadline?

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, June 19, 2018 9:52 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Good Morning Dan,

We're going to run a story on this in today's Greenwire, so I wanted to see if CEQ has any additional comment.

Is the series of 20 questions a typical format for an ANPRM? If not, what is the rationale?
Was CEQ waiting to advance this document until it got a nominee for director?
Does Ms. Neumayr's official nomination make things easier, or will it effectively be the same?
I suspect this will be a popular document. How many comments do you think you'll get?

Best,
Nick

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Monday, June 18, 2018 3:55 PM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick,

Just wanted to flag this for you given your interest in the subject matter. CEQ submitted an ANPRM to the Federal Register for publication on Friday, June 15, 2018 requesting public comment on potential revisions to update and clarify CEQ's NEPA regulations. Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations to the NEPA process and the scope of NEPA review. It should be published in the Federal Register in the next couple of days.

Fact Sheet: https://www.whitehouse.gov/wp-content/uploads/2017/11/FINAL-ANPRM-Fact-Sheet-20180615.pdf

Prepublication Text: https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-NEPA-ANPRM_WebVersion-20180615.pdf

Webpage: https://www.whitehouse.gov/ceq/initiatives/

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Monday, May 21, 2018 10:46 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Sure: 202-446-0437

From: Schneider, Daniel J. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, May 21, 2018 10:46 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

What's the best number to reach you at? Would like to discuss. Thanks.

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Monday, May 21, 2018 10:39 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan – any update on this? If you'd like to provide a statement from CEQ, I could work with that, too. I'm wondering:

How long will the process take?
Are there any specific areas of the NEPA regulations that are ripe for reform?
Do you think the FAST Act and MAP-21 provide a model for streamlining/change?
How will the current lack of Senate-confirmed political leadership affect how CEQ handles the potential regulatory changes?
How many public comments is CEQ expecting to get?

Best,
Nick

From: Schneider, Daniel J. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Friday, May 18, 2018 12:49 PM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick, still checking in on this.

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Friday, May 18, 2018 10:06 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan – any word yet on whether you'll be able to connect me with Mr. Boling?

Nick

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6)[redacted]
Sent: Thursday, May 17, 2018 11:58 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick,

What's your timing on this?

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Thursday, May 17, 2018 11:43 AM
To: Schneider, Daniel J. EOP/CEQ <[redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

I'm hoping to do a follow up to the below examining in more detail what the process will look like and what areas of CEQ's NEPA regulations would be ripe for change.

Would you be able to set up an interview with Ted Boling? Would be great to get some of his thoughts on the issue and have his voice in the story.

Best,
Nick

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6)[redacted]
Sent: Monday, May 07, 2018 3:16 PM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick,

On background, attributable to a CEQ Spokesman:

On May 3rd, the Council on Environmental Quality (CEQ) submitted a draft Advanced Notice of Proposed Rulemaking (ANPRM) entitled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" to the Office of Management and Budget for interagency review consistent with Executive Order 12866. After completion

of interagency review, CEQ anticipates will publish the ANPRM in the Federal Register for public comment.

This ANPRM is being developed in response to Executive Order 13807 issued by President Trump on August 15, 2017. While CEQ has issued memoranda and guidance documents over the years, it has only amended its regulations once. Therefore, CEQ believes it is appropriate at this time to solicit public comment and consider updating the implementation regulations.

Hope that helps,

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Monday, May 7, 2018 2:27 PM
To: Schneider, Daniel J. EOP/CEQ <(b) (6)
Subject: [EXTERNAL] Comment from CEQ?

Hi Dan,

Hope all is well and that you're enjoying your new gig at the White House! I saw CEQ submitted a prerule with OMB on May 3 to update its NEPA regulations. I'm looking for a comment from CEQ on the following questions. My deadline is 3:15 pm.

Does CEQ plan to follow this up with an advanced notice of proposed rulemaking? Or are there other options available?

What are the next steps and what is the timeline looking like?

What specific changes will CEQ make to its NEPA regs? How will they affect permitting processes at other agencies?

Thanks!

Nick Sobczyk
E&E News reporter
nsobczyk@eenews.net
Office: 202-446-0437
Cell: (b) (6)
@nick_sobczyk

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[EXTERNAL] RE: Comment from CEQ?

From: Nick Sobczyk <nsobczyk@eenews.net>

To: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 20 Aug 2018 11:25:26 -0400

Yeah just was able to pull that up as well. Thanks.

From: Schneider, Daniel J. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, August 20, 2018 11:25 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

FYI: I believe I found the letter/comments we discussed on the phone.

>https://www.regulations.gov/document?D=CEQ-2018-0001-10560<

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Monday, August 20, 2018 10:06 AM
To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

Hope all is well. I'm working on a brief update story this morning with the comment period ending today for CEQ's proposed NEPA regs re-write. Just wanted to reach out and see if you have a comment/statement.

What are the next steps and how long do you expect them to take?
Based on the comments that have come in, do you have any sense of what aspects of the NEPA regulations CEQ will seek to change?
Many of the comments, unsurprisingly, appear to be form letters written by environmental groups. How much weight will you give these?

Best,

Nick Sobczyk
E&E News reporter
nsobczyk@eenews.net
Office: 202-446-0437
Cell: (b) (6) [redacted]
@nick_sobczyk

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From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Tuesday, July 10, 2018 11:04 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

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>>https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=CEQ-2018-0001&refD=CEQ-2018-0001-0001<<

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, July 10, 2018 11:00 AM
To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

Thanks for the heads up. Does this come in direct response to the environmental groups that requested last month that it be extended to 90 days? Or did you get other input as well?

Best,
Nick

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Tuesday, July 10, 2018 10:49 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick,

Just wanted to make sure you were aware. CEQ is extending the comment period on the Advanced Notice of Proposed Rulemaking, which was originally set to close on July 20, 2018. We've extended it through August 20, 2018. The notice is expected to be published in the Federal Register tomorrow, July 11, 2018. The pre-publication version is available at the link below.

>>>https://www.federalregister.gov/documents/2018/07/11/2018-14821/implementation-of-the-procedural-provisions-of-the--national-environmental-policy-act<<<;;

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, June 19, 2018 11:37 AM
To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Thanks, Dan. Appreciate you getting back to me. I'll let you know if I have any additional follow ups.

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Tuesday, June 19, 2018 11:35 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

On background, attributable to a CEQ spokesman.

In terms of the format of the ANPRM, it depends on agency preference and different groups choose different techniques. We feel this approach is the best way to increase public engagement. Given that we've had lots of interest over the years from stakeholders, we're hopeful we receive a number of substantive comments.

In regards to the 30 day comment period, if we receive requests for a longer than a 30 day comment period, we will consider it.

I'm happy to keep you informed as things progress.

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, June 19, 2018 11:18 AM
To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Hey Dan – one additional question for you. An early criticism I'm hearing from environmentalists is that 30 days is a an exceedingly short comment period. Do you have a response to that? What was the rationale for that time frame?

From: Schneider, Daniel J. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Tuesday, June 19, 2018 10:32 AM
To: Nick Sobczyk <nsobczyk@eenews.net>
Subject: RE: Comment from CEQ?

Hey Nick, what's your deadline?

Dan

From: Nick Sobczyk <nsobczyk@eenews.net>
Sent: Tuesday, June 19, 2018 9:52 AM

To: Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: Comment from CEQ?

Good Morning Dan,

We're going to run a story on this in today's Greenwire, so I wanted to see if CEQ has any additional comment.

Is the series of 20 questions a typical format for an ANPRM? If not, what is the rationale?
Was CEQ waiting to advance this document until it got a nominee for director?
Does Ms. Neumayr's official nomination make things easier, or will it effectively be the same?
I suspect this will be a popular document. How many comments do you think you'll get?

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Nick

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From: "Schneider, Daniel J. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">

To: Nick Sobczyk <nsobczyk@eenews.net>

Date: Mon, 20 Aug 2018 11:24:57 -0400

FYI: I believe I found the letter/comments we discussed on the phone.

https://www.regulations.gov/document?D=CEQ-2018-0001-10560

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Office: 202-446-0437
Cell: (b) (6) [redacted]
@nick_sobczyk

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[EXTERNAL] Alliance Sends NEPA Comments to CEQ

From: "Dan Keppen, Executive Director" <dan@familyfarmalliance.org>

To: "Patella, Michael A. EOP/CEQ" <[redacted]

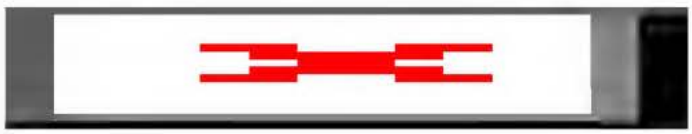
Date: Mon, 20 Aug 2018 18:17:39 -0400

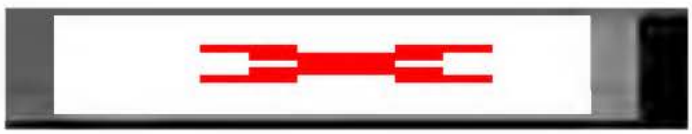
Can't See This Message? View in a browser

Posted: 20/08/2018

The Family Farm Alliance earlier today sent formal written comments to the White House Council on Environmental Quality (CEQ) in response to an advance notice of proposed rulemaking on a potentially sweeping update of its National Environmental Policy Act (NEPA) implementing rules.Continue reading to learn more and to download a PDF version of the Alliance response to CEQ.

Continue Reading





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Fwd: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

From:	"Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">
To:	"Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted] "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]
Cc:	"Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted]
Date:	Mon, 20 Aug 2018 17:22:11 -0400
Attachments:	page4image3681664 (114 bytes); page5image3682080 (10.32 kB); CEQ ANPRM CR Comments 8.19.18.pdf (38.33 kB)

Trouble at regulations.gov?

Sent from my iPhone

Begin forwarded message:

From: Charlotte Roe <charlotteeroe@yahoo.com>
Date: August 20, 2018 at 4:04:40 PM CDT
To: Mary Neumayr <[redacted]
Cc: "Boling, Ted A. EOP/CEQ" <[redacted]
Subject: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I'm submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality 730 Jackson Place NW Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations Implementing the National Environmental Policy Act
(83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.

2. Should the NEPA process be made more efficient by better facilitating agency use of

environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? **No.** Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency

cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.

4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,

5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of

NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the "intensity" factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public's ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public's role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? **No.** Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents noted be revise? No. Nonetheless, should this process continue, the following should be clarified and strengthened: **Supplements -**

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised? **No.** Section 1501.2 of CEQ regulations clearly spells out the why and how to "Apply

NEPA early in the process." To revise these regulations can only lead to confusion, delay and NEPA avoidance.

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13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised? **No.** The consideration of alternatives is at the heart of the NEPA process, and this is emphasized in CEQ regulations. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? **I do not recommend** revising CEQ regulations on the pretext that a few references are out-dated. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient? No. Nonetheless, without any change in regulations, CEQ could and should take the initiative to create a central collection of all NEPA documents including draft EISs, environmental assessments, preliminary EAs, finding of no significant impacts, categorical exclusions, and record of decisions along with appendices, comments and responses for any of the aforementioned documents.

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17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA ? **No.** NEPA regulations have not impeded the capacities of federal agencies in their application of this vital legislation. On the contrary, the types of changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

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artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, "when the effects may be on a reservation" it could best be replaced with the broader terms "if their interests may be affected," so that the section reads: "Indian tribes, if their interests may be affected; and."

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the Appropriate Use of Mitigated Findings of No Significant Impact," should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe
Science Advisor, The Cloud Foundation
Wild Horse and Burro Project Partner, In Defense of Animals 1621 So. County Rd. 13
Berthoud, CO 80513
charlotteeroe@yahoo.com

August 19, 2018

Mary Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM)
to Regulations Implementing the National Environmental Policy Act
(83 Fed Reg 28591-28592 June 20, 2018)

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Respectfully yours,

Charlotte Roe
Science Advisor, The Cloud Foundation
Wild Horse and Burro Project Partner, In Defense of Animals
1621 So. County Rd. 13
Berthoud, CO 80513
charlotteeroe@yahoo.com

RE: NEPA ANPRM Comment Letter

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

To: Stephen Schima <sschima@partnershipproject.org>, "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 20 Aug 2018 12:45:24 -0400

Thanks Stephen.

From: Stephen Schima <sschima@partnershipproject.org>
Sent: Monday, August 20, 2018 12:37 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] NEPA ANPRM Comment Letter

Ted and Michael,

We submitted our comment letter with attachments on Friday, but I thought I would send along a copy directly to you as well. Also, the attached version corrects two small typos that a shocking number of people flagged to me.

If you have any questions, please feel free to contact me.

Thanks and I hope all is well!
Stephen

RE: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Boling, Ted A. EOP/CEQ" (b) (6) [redacted] "Loyola, Mario A. EOP/CEQ" <(b) (6) [redacted]

Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 20 Aug 2018 09:19:16 -0400

AMWA also submitted their comments directly to the docket -- CEQ-2018-0001-9739.

From: Boling, Ted A. EOP/CEQ
Sent: Friday, August 17, 2018 2:35 PM
To: Loyola, Mario A. EOP/CEQ <(b) (6) [redacted]
Cc: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <[redacted]
Subject: FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

Mario – are these the comments that you were looking for?

From: McLaurin, Juschelle D. EOP/CEQ
Sent: Friday, August 17, 2018 1:58 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

FYI

From: Stephanie Hayes Schlea <schlea@amwa.net>
Sent: Friday, August 17, 2018 12:34 PM
To: McLaurin, Juschelle D. EOP/CEQ <[redacted]
Subject: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

On behalf of the Association of Metropolitan Water Agencies, please find attached the comment letter regarding CEQ's *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (CEQ-2018-0001).

Stephanie Hayes Schlea
Manager, Regulatory and Scientific Affairs
Association of Metropolitan Water Agencies
Office: 202.331.2820
1620 I Street NW Suite 500
Washington, DC 20006
>http://www.amwa.net/<

Re: ANPRM Comments

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Tue, 21 Aug 2018 16:56:17 -0400

Thanks!

Sent from my iPhone

> On Aug 21, 2018, at 3:54 PM, Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] wrote:
>
>
>
> Michael Drummond
> Deputy Associate Director for NEPA
> Council on Environmental Quality
> [redacted]
>
> <1418 Western Governors Association.pdf>
> <1036 Tripp, Environmental Defense Fund (with law review article on strea....pdf>
> <12056 Dinah Bear.pdf>
> <12161 Ray Clark.pdf>
> <12381 Horst Greczmiel.pdf>
> <11812 Multistate AG comments (76 pages).pdf>
> <8267 AASHTO.pdf>
> <9917 GW Regulatory Studies Center.pdf>
> <9917 GW Regulatory Studies Center.pdf>
> <11898 Nicholson (NAEP).pdf>

[EXTERNAL] Thank you & NEPA Comments

From: Nancy Sopko <nsopko@awea.org>

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Cc: Lauren Bachtel <lbachtel@awea.org>, Gene Grace <ggrace@awea.org>

Date: Tue, 21 Aug 2018 16:43:54 -0400

Attachments: AWEA Comments to CEQ on NEPA ANPR.pdf (124.91 kB)

Hi Ted,

I wanted to send a quick note thanking you for meeting with our members and us last week to talk about issues impacting the offshore wind industry. It was a great opportunity for our companies to discuss the One Federal Decision MOU, greater interagency coordination on offshore wind permitting, and fisheries issues. We will continue to keep you and your colleagues abreast of the progress we're making in the permitting process and areas where we could use your help.

I also wanted to make sure you saw the attached comments AWEA filed on CEQ's Update to the Regulations for Implementing the Procedural Provisions of NEPA. Please let us know if you have any questions or comments.

Thanks,

Nancy

Nancy Sopko
Director | Offshore Wind Policy & Siting
American Wind Energy Association
nsopko@awea.org
202.383.2554 direct
(b) (6) [redacted] cell

This electronic message and its contents are intended solely for the use of the addressee(s) and may be confidential or otherwise protected from disclosure. If you are not the intended recipient of the message, any dissemination, distribution, copying, or action taken in relation to this message and its contents is strictly prohibited and may be unlawful. If you have received this electronic message in error, please notify the sender immediately and destroy the original message and all copies.

August 20, 2018

Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Submitted electronically via www.regulations.gov
Docket ID: Docket ID CEQ-2018-0001

RE: AWEA Comments on the Council of Environmental Quality's Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

The American Wind Energy Association ("AWEA")[1] submits these comments in response to the Council on Environmental Quality's ("CEQ") June 20, 2018 Advance Notice of Proposed Rulemaking—Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act ("NEPA") (the "Notice").[2] AWEA appreciates that CEQ is considering an update to its NEPA implementing regulations and for the extension of time to allow for meaningful review and opportunity to provide comments on the proposed changes.[3]

[1] AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers, and their advocates.
[2] 83 Fed. Reg. 28,591 (Jun. 20, 2018).
[3] 83 Fed. Reg. 32,071 (July 11, 2018).

I. Background

NEPA requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. NEPA's statutory requirements are implemented through CEQ regulations, which are binding on all federal agencies. It is these regulations that are currently under review by CEQ and upon which these comments focus.

Among other things, the NEPA process is triggered for projects that occur on land that is owned or managed by the federal government and for projects subject to U.S. Fish and Wildlife Service control. As of March 2018 there were 35 Bureau of Land Management ("BLM") approved wind energy projects on public lands,[4] totaling one percent of the cumulative installed U.S. wind power capacity.[5] For each project, the BLM conducted a NEPA analysis, and any future wind energy development on federal land will require the same.

While wind energy development on public lands currently represents a somewhat small percentage of total wind energy development in the United States, the potential for offshore wind development is vast. Estimates show that ten gigawatts of offshore wind will be installed by 2027, with an expected total of 86 gigawatts installed by 2050.[6] Many of these

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[4] BLM, *Wind Energy Fact Sheet,* https://www.blm.gov/sites/blm.gov/files/energy_renewablewindfactsheet.pdf (March 2018).
[5] AWEA, 2017 Annual Market Report at 83.
[6] United States Department of Energy and United States Department of the Interior, *National Offshore Wind Strategy,* viii (Sept. 2016), *available at* https://www.energy.gov/sites/prod/files/2016/09/f33/National-Offshore-Wind-Strategy-report-09082016.pdf.

offshore wind farms will be sited in waters managed by the Bureau of Ocean Energy Management ("BOEM") and will undergo NEPA analysis prior to leasing and development. As wind development on federal land and in federal waters continues to grow, a coordinated, efficient, and legally sufficient NEPA process is critical to ensuring timely development in the coming years.

NEPA can also be triggered by applications for issuance of federal permits for wind energy projects on private lands, such as eagle take permits under the Bald and Golden Eagle Protection Act or incidental take permits under the Endangered Species Act. Since the overwhelming percentage of wind energy facilities are deployed on privately-owned lands,[7] NEPA related to issuance of federal permits for species and similar issues for wind projects on private lands projects is of particular importance to AWEA members.

II. Comments

AWEA supports CEQ revising its NEPA regulations to ensure that all environmental reviews and authorization decisions are conducted in a coordinated, consistent, timely, and legally sufficient manner. Due to the breadth of the subject matter, AWEA has focused its comments below on those questions posed by CEQ that may significantly affect the wind industry.

[7] AWEA, 2017 Annual Market Report at 83.

A. NEPA Process

- Notice Question #2 - *Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?*

AWEA supports CEQ revising its NEPA regulations to ensure that previously conducted environmental studies, analyses, and decision documents are incorporated at an early stage of the review process. During the scoping process, the Lead Agency should be required to reach out to all relevant Federal, state, or local governmental agencies to invite submissions of previously conducted environmental studies, analyses, and decision documents. The Lead Agencies should then be required to review such documents and data to determine whether they can be incorporated in the current analysis. By requiring the Lead Agency to both consider and incorporate, where appropriate, information from preexisting reviews early in the NEPA process, it will prevent duplicative processes.

The agencies should exercise all efforts to streamline the NEPA process in accordance with Executive Order 13807. At the same time, agencies' actions under NEPA should be transparent in that all science and studies used to inform decision-making be made available through appropriate government data portals (i.e. BOEM's Marine Cadastre and the FWS's Environmental Conservation Online System ("ECOS")). These changes will ensure that the agency preparing the ultimate NEPA document has a full and complete picture of the underlying purpose, need, setting, and context of the action, as well as access to relevant and

specific information gathered or obtained by Federal, state, and local agencies and tribes with particular expertise in the matter.

- Notice Question # 3 - *Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decision, and if so, how?*

AWEA supports revising the CEQ regulations to ensure optimal interagency coordination through the NEPA review process by making sure all of the necessary agencies are brought into the review early in the process. Section 102(C) of NEPA requires that, prior to conducting an environmental impact statement, the Lead Agency must "consult with and obtain the comments of any Federal agency with jurisdiction by law or special expertise regarding the environmental impacts involved."[8] However, at the expense of a fully informed and efficient review, agencies often do not seek special expertise if they perceive that expertise may challenge their in-house experts or policy goals. The CEQ regulations should be modified to emphasize that the Lead Agency is required to request the participation of each agency with jurisdiction by law or special expertise in the NEPA process. This will ensure that all of the necessary agencies are brought to the table.

The CEQ regulations also need to be modified to ensure that cooperating agencies are brought in prior to initiation of the scoping process. As written, CEQ regulation § 1501.6 requires, among other things, that the lead agency request participation of cooperating agencies "at the earliest possible time." The CEQ regulations should be modified to clarify

[8] 42 U.S.C. § 4332(C).

that this "earliest possible time" is prior to the initiation of the scoping process. This will ensure that the cooperating agencies can be involved in the scoping process and help shape the review from the very beginning, thereby reducing the chance for unforeseen delays and duplication of work in the review process.

In addition, there needs to be increased transparency and adherence to strict timelines. Cooperating agencies should expressly told the timeline allowed for the completion of each step of the review process. If a cooperating agency misses a deadline, the process shall continue without the input of that agency.

B. Scope of NEPA Review

- Notice Question # 4 - *Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?*

AWEA supports streamlining the NEPA process by, among other things, incorporating time and page limits for NEPA documents. Such limitations will force agencies to review their current process to eliminate duplicative actions and unnecessary delays, and will likely result in more concise and comprehendible NEPA documents. However, the page and time limits need to be reasonable and take into consideration the technical complexity of projects subject to NEPA review, as well as the legal sufficiency that is required for such analysis to withstand legal challenge.

AWEA recommends that CEQ require Federal agencies to adopt or amend their existing agency-specific NEPA procedures to provide for shorter, more readable documents. While such procedures should include both page and time limitations, there should be a clear

process within each agency for receiving variances where, for example, the complexity of a Federal action warrants a departure from the limitations that would otherwise apply. This will help ensure that strictly enforced time or page limits will not make certain NEPA documents more susceptible to Administrative Procedure Act challenges because an agency needs additional space or time to fully explore the range of alternatives, environmental consequences, or mitigation associated with a complex project or one that is likely to face strong public opposition.

In addition, in order to effectively streamline NEPA without causing delays for pending projects, CEQ should require that agencies grandfather all pending NEPA analyses that have been substantially completed. AWEA recommends that "substantially completed" include NEPA analyses that have been published as drafts. Otherwise, agencies may cause further delays trying to revise draft NEPA analyses to fit within the newly established page limitations.

- Notice Question # 7 - *Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?*

    a. *Categorical Exclusions Documentation*

Agencies are not fully utilizing Categorical Exclusions as a tool to satisfy NEPA obligations. To assist with the streamlining process, the CEQ regulations relating to Categorical Exclusions should be revised to ensure that agencies can properly and efficiently apply exclusions to all qualifying actions. Currently, the regulations define categorical exclusions as "a category of actions which do not individually or cumulatively have a

significant effect on the human environment... and for which, therefore, neither an environmental assessment nor an environmental impact statement is required."[9] Agencies, not CEQ, create a categorical exclusion for certain classes of activities. While CEQ encourages the use of categorical exclusions to reduce unnecessary paperwork and delays,[10] the regulations need to be modified to provide enough clarify as to what constitutes a "significant effect" to assist agencies in determining what falls under the exclusion.

There are multiple actions that occur during wind energy development that have limited effect on the human environment and thus should always be categorically excluded from NEPA. These include, among others: (1) deployment of floating instrument buoys, such as FLiDAR, for offshore wind development; and (2) placement of meteorological towers for land-based wind development. While AWEA will continue to engage with the necessary agencies for specific categorical exclusions, the CEQ regulations should be modified to provide for an efficient and streamlined approach for the development and use of categorical exclusions by all Federal agencies. CEQ should require that agencies maximize the use of Categorical Exclusions and make all Categorical Exclusions available in a publicly searchable database. This approach will reduce costs, promote infrastructure development, and satisfy NEPA requirements. Furthermore, the Categorical Exclusions relied on by one agency with jurisdiction shall be available to all agencies for similar actions.

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[9] 40 C.F.R § 1508.4.

[10] 75 Fed. Reg. 75632 (Dec. 6, 2010)("[a]ppropriate reliance on categorical exclusions provides a reasonable, proportionate, and effective analysis for many proposed actions, helping agencies reduce paperwork and delay.").

- Notice Question # 11 - *Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?*

Many NEPA project proponents end up paying twice for the necessary NEPA analysis for their project or action. While the Lead Agency often hires a private company and/or contractor to prepare the NEPA document for the agency at the expense of the proponent, the project proponent typically also hires outside help to assist with navigating the NEPA process. To correct this problem, AWEA recommends that CEQ provide or push for action agencies to get the necessary funding to effectively complete the NEPA analysis required for all projects and actions. In the alternative, the CEQ regulations should be revised to specifically allow the project proponent, or its contractor, to prepare the draft NEPA documents.

- Notice Question # 12 - *Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?*

CEQ should revise its regulations to specifically state that the Bureau of Land Management (BLM) is to permit tiering off of existing BLM Wind Energy Programmatic Environmental Impact Statements ("PEIS"). This would allow projects within the PEIS purview to utilize the PEIS and conduct site-specific NEPA analysis only as needed. CEQ should clarify what constitutes a new and significant issue that would trigger the need for additional analysis after the issuance of a PEIS. In addition, these modifications would allow wind energy projects to avail themselves of the incentives of locating in Designated Leasing Areas under BLM regulations.

- Notice Question # 13 - *Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?*

In many circumstances a Federal agency's involvement in an action that requires NEPA compliance stems from an application for Federal permitting, licensing, or other authorization of a project. For these matters the agency's role is limited to determining whether such application is consistent with the relevant statutory or regulatory framework. The agency has very little discretion to make material changes to the underlying activity. Accordingly, the CEQ regulations should be revised to account for these circumstances. It should not require the agency to spend time and resources providing an exhaustive list of alternative actions when such a course is an exercise in futility.

C. General

- Notice Question # 20 - *Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?*

Federal agencies are not obligated under NEPA to mitigate the potential adverse environmental impacts of a proposed action or to require an applicant to do so before the issuance of a permit or license. However, Federal agencies often propose mitigation as a means to reduce impacts associated with a proposed action in order to allow for a finding of no significant impact ("FONSI") for the project. These determinations are called "mitigated FONSIs." While the CEQ regulations define "mitigation,"[11] the regulations are currently

[11] *See* 40 C.F.R. 1508.20.

silent as to the use of such mitigated FONSIs. AWEA suggests that CEQ revise its regulations to direct the use and implementation of mitigated FONSIs.

III. Conclusion

AWEA appreciates the opportunity to comment on CEQ's update to its regulations implementing NEPA, and looks forward to engaging with CEQ throughout this process.

Sincerely,

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[EXTERNAL] Problem Uploading Public Comments to Docket No. CEQ-2018-0001 Yesterday

From: Jesse Marquez <jnm4ej@yahoo.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Cc: Jesse Marquez <jnm4ej@yahoo.com>

Date: Tue, 21 Aug 2018 12:43:13 -0400

Attachments: CFASE Final et al Public Comments 8-20-2018.docx (153.25 kB)

Dear Mr. Boling

Yesterday at approximately 5:15pm (PST) I tried to upload our non-profit organizations public comments to the Council on Environmental Quality

Docket No. CEQ-2018-0001

Yesterday was the deadline for submission.

When I went to the website I clicked on upload and it appeared that my document was uploading but after about 10-15 minutes it would

never say upload completed. I tried several times and it would not complete uploading.

My dpcument was only 15 pages with no photos or illustrations.

I was referred to you by Earthjustice and recommended that I forward our comments to you.

I also drove to the LAX US Post Office to mail a copy, which was normally open until 10:00pm but they now changed their office hours

and close at 6:00pm.

Respectfully Requested,

Jesse N Marquez

Executive Director

Coalition For A Safe Environment

310-590-0177

August 20, 2018

Ms. Mary Neumayr
Chief of Staff
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503
https://www.regulations.gov/comment?D=CEQ-2018-0001-0001
https://www.regulations.gov/docket?D=CEQ-2018-0001

RE: Docket No. CEQ-2018-0001
SU: Advance Notice of Proposed Rulemaking Public Comments

Dear Ms. Naumayr:

The Coalition For A Safe Environment and undersigned organizations submit the following public comments on behalf of our Environmental Justice Communities and the public's best interest. Communities throughout the United States have participated in the NEPA process and trust the foundation of principles it is based upon.

We Request No Changes To Remove Any Existing Requirements.

Our Public Comments

Our joint submitted public comments will focus on our NEPA experience with the Ports and Goods Movement Industries at the Port of Los Angeles, Port of Long Beach and with the U.S. Army Corp of Engineers.

NEPA Should Be Protected

Environmental Justice Communities have supported NEPA Law and the Council on Environmental Quality Regulations. EJ Community Organizations have been active in the NEPA Public Participation process by reading, assessing, researching, analyzing, preparing written comments and attending public hearings on major Port Infrastructure Project EIS's.

Environmental Justice Communities have been the most negatively impacted by project direct and indirect environmental impacts such as increased: air pollution, climate change impacts, public health impacts, safety risks from projects and natural disasters, water contamination, land contamination, biological degradation, wildlife habitat destruction, truck & train traffic congestion, truck & train accidents, cargo handling accidents, public infrastructure damage, blight, degradation of community aesthetics and loss of land for public use, community gardens, housing, parks and recreation.

Environmental Justice Must Be Protected

Environmental Justice Communities have been the most negatively impacted by major infrastructure project proposals and poor federal agency decision making. We request that no decision or recommendation violate or conflict with any existing federal law, executive order, memorandum, regulation, program, guidance document or any established federal agency regulation, program or guidance document.

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring that agencies staff are trained, agencies have adequate budgets and are aware of Environmental Justice requirements and information resources. The following documents adequately address the subject of Environmental Justice:

A. Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
   Executive Order 12898
   February 11, 1994
   https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf

B. Memorandum For The Heads Of All Departments And Agencies
   The White House
   February 11, 1994
   https://www.epa.gov/sites/production/files/2015-02/documents/clinton_memo_12898.pdf

C. Environmental Justice Guidance Under the NEPA - CEQ
   December 10, 1997
   https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf

NEPA Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Congressional Declaration of National Environmental Policy

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Responses To Request For Comment On The Questions Outlined In The Advance Notice of Proposed Rulemaking

NEPA Process:

1. **Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**

   We Recommend No Changes To Remove Any Existing Requirements.

   NEPA Law and CEQ Regulations already require EIS's to be processed in a concurrent, synchronized, timely and efficient manner. This can easily be accomplished with appropriate budget funding and staff resources. Our experience has shown that more NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies comply with NEPA requirements. In NATURAL RESOURCES DEFENSE COUNCIL, INC., et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, et al., Defendants and Respondents. 126 Cal.Rptr.2d 615 (2002), 103 Cal.App.4th 268. The City of Los Angeles and Port of Los Angeles failed to prepare an EIS/EIR for the new China Shipping Terminal. They claimed it was not necessary because all future projects were covered by two previous EIS/EIRs. (West Basin Transportation Improvements Program EIR 1997 and Port of Los Angeles Channel Deepening EIS/EIR 2000). They were found guilty of violating NEPA/CEQA because the two previous EIS'EIRs never mentioned the China Shipping Terminal Project. The U.S. Army Corps of Engineers only rubber stamped the Port of Los Angeles project approval with no adequate overview. More comprehensive CEQ Regulations Descriptions, Enforcement, Oversight and Periodic Compliance Audits would have prevented the three year project completion delay and extra multimillion dollar project costs.

2. **Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?**

   We Recommend No Changes To Remove Any Existing Requirements.

   NEPA Law and CEQ Regulations are already efficient and outline what must be included in an EIS and the review process. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies complete all required Direct and Indirect Environmental Analysis's, Environmental Studies and previous Decisions. Our experience has shown that Agencies failed to require that all Off-Port Tidelands Port Projects Support Sites Indirect Impacts were analyzed and included in the Draft and

Final EIS. This can easily be accomplished with appropriate budget funding and staff resources. Projects traditionally fail to include as a minimum:

a. Container Storage Yards Environmental Impact Analysis
b. Chassis Storage Yards Environmental Impact Analysis
c. TRU Genset Storage Yards Environmental Impact Analysis
d. Container Transloading Facility Environmental Impact Analysis
e. Container Fumigation Facilities Environmental Impact Analysis
f. Public Health Impact Analysis
g. Public Socio-Economic Support Services Cost Impact Analysis
h. Environmental Justice Impact Analysis
i. Migratory Bird Nesting Season Analysis
j. Zero Emissions Technology Availability Mitigation Analysis
k. Emissions Capture & Treatment Technology Availability Mitigation Analysis
l. Best Available Control Technologies (BACT) Availability Mitigation Analysis
m. Potential Detour Routes through community vs Alternative Truck Routes Analysis
n. Off-Port Tidelands Project Support Sites Increased Public Safety-Accident Risk Analysis
o. Off-Port Tidelands Project Support Sites increased Risk Insurance Needs Analysis
p. Truck and Train idling emissions on Lift Bridges and from supporting diesel power support generators Analysis

3. **Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already require optimal interagency coordination, efficient and outline what must be included in an EIS and the review process. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies meet all statutory deadlines. This can easily be accomplished with appropriate budget funding and staff resources. Agencies have the legal authority to request additional funding in their budget requests and NEPA requires agencies to notify CEQ of their inability to cooperate and participate in the NEPA Process.

Scope of NEPA Review:

4. **Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that the format is adequate, time limits are adequate and page lengths are adequate and must be flexible for various project sizes and complexity. As an Environmental Justice Organization, we have never objected to the size of an EIS or its addendums. Agencies must however, be reasonable and accommodating to public requests for extension of public comment periods when they have identified that an EIS is so large that it require more time for public review and comment. Port of Los Angeles EIS's regularly exceed 5,000 pages. It is near impossible for the public to read, assess, research, analyze and prepare written comments when they have to read 166 technical and legal pages per day in a 30 day public comment period.

5. **Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to**

decisionmakers and the public, and if so, how?

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already require the identification, assessment and mitigation of significant project environmental impacts. As Environmental Justice Organizations we review EIR's and their Addendums to assure that all significant environmental impacts have been identified, assessed and mitigated. In our public comments we identify numerous inadequacies in the EIS and Addendums and request that the Port and US Army Corp of Engineers include all missing information and analysis's and correct misrepresentations. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies meet all NEPA requirements during the Draft EIS and Final EIS.

6. **Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already mandate public participation throughout the NEPA process. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies provide adequate public notice, allow adequate public comment time to read, assess, research, analyze and prepare written comments. Information must be translated into languages based on the community that is being impacted by the project and translators be made available at all public hearings and meetings. Agencies must also utilize all local community public media and social media to advise the public of all NEPA actions. Agencies must not rely solely on their in-house mail lists. Agencies should require staff to attend community organization based public meetings and events to advertise NEPA projects.

7. **Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?**

   A. **Major Federal Action;**

   B. **Effects;**

   C. **Cumulative Impact;**

   D. **Significantly;**

   E. **Scope; and**

   F. **Other NEPA terms.**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies staff are trained and aware of cumulative impacts information resources. The following documents adequately address the subject of Cumulative Impacts:

A. Consideration Of Cumulative Impacts In EPA Review of NEPA Documents
U.S. Environmental Protection Agency, Office of Federal Activities (2252A) EPA 315-R-99-002/May 1999
https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf

B. Considering Cumulative Effects Under the National Environmental Policy Act
Council on Environmental Quality
January 1997
https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf

C. Questions and Answers Regarding the Consideration of Indirect and Cumulative Impacts in the NEPA Process
U.S. DOT federal Highway Administration
https://www.environment.fhwa.dot.gov/nepa/QAimpact.aspx

D. Guidance on the Consideration of Past Actions in Cumulative Effects Analysis
CEQ Memorandum
June 24, 2005
https://www.fs.fed.us/rmrs/sites/default/files/documents/CEQ%20%282005%29-Cumulative%20effects.pdf

E. Recent NEPA Cases 2005
In 2005, federal courts issued 20 substantive decisions involving implementation of the National Environmental Policy Act (NEPA) by federal agencies
https://ceq.doe.gov/docs/laws-regulations/NEPA_Cases_2005_NAEP_paper.pdf

F. NEPA and CEQA: Integrating Federal and State Environmental Reviews
CEQ NEPA CEQA Handbook
February 2014
https://ceq.doe.gov/docs/ceq-publications/NEPA_CEQA_Handbook_Feb_2014.pdf

G. Assessing Indirect Effects And Cumulative Impacts Under NEPA
Center for Environmental Excellence by AASHTO (American Association of State Highway and Transportation Officials)
August 2016
https://environment.transportation.org/pdf/programs/ph12-2.pdf

H. Indirect And Cumulative Impact Analysis
American Association of State Highway and Transportation Officials
Standing Committee on the Environment
January 2006
http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/25-25(11)_FR.pdf

I. Writing Impact Analysis Sections for EAs and EISs
National Park Service
September2015
https://www.nps.gov/subjects/nepa/upload/SupplementalGuidance_Impact-Analysis_Final_9-2015_accessible.pdf

J. CEQA Guidelines foe Cumulative and Indirect Impacts
California DOT
January 19, 2005
http://www.dot.ca.gov/ser/cumulative_guidance/downloads/CEQA_Guidelines_for_Cumulative_and_Indirect_Impacts.pdf

K. Cumulative Effects Evaluation Process for Nationwide Permits
U.S. Army Corps of Engineers – Seattle District
February 2, 2016
http://www.nws.usace.army.mil/Portals/27/docs/regulatory/NewsUpdates/Cumulative%20Effects%20PowerPoint%202%20Feb%202016.pdf

L. Cumulative Effects Evaluation Quick Guide

Florida Department of Transportation
December 2012
http://www.fdot.gov/environment/pubs/cee/cee-quickguide-2012-1218.pdf

M. Guidance on Preparing Cumulative Impact Analyses
Washington State Department of Transportation
February 2008
https://www.wsdot.wa.gov/sites/default/files/2017/11/09/ENV-NSEPA_YellowCumEffGuid.pdf

N. Cumulative Impacts Analysis Guidelines
Texas Department of Transportation
July 2016
https://ftp.dot.state.tx.us/pub/txdot-info/env/toolkit/720-03-gui.pdf

O. Cumulative Impact Violation Complaint Against U.S. Army Corps of Engineers
The Coalition To Protect Puget Sound Habitat
June 22, 2016
http://coalitiontoprotectpugetsoundhabitat.org/wp-content/uploads/2016/06/complaint-22jun2016.pdf

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

A. Alternatives;

B. Purpose and Need;

C. Reasonably Foreseeable;

D. Trivial Violation; and

E. Other NEPA terms.

We Recommend No Changes To Remove Any Existing Definitions.

We do recommend the following:

A. Health and Healthful needs to be included and defined.
B. Health Analysis needs to be included and defined. We request that all projects include a Public Health Baseline and a Health Impact Assessment in order to determine if adopted Mitigation has in fact improved public health.

As an Example: The Ports of Los Angeles, Long Beach and Oakland in California claim 70%-80% Reductions in PM which is true based on a 10.0 and 25 PM standards, but have shown no evidence and studies of an equivalent improvement in public health. We believe that a new 1.0 PM standard needs to be adopted to accurately reflect that Ultrafine PM is now a significant respiratory public health impact from projects. There are now hundreds of Ultrafine PM scientific-medical studies that validate this.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

A. Notice of Intent;

B. Categorical Exclusions Documentation;

C. **Environmental Assessments;**

D. **Findings of No Significant Impact;**

E. **Environmental Impact Statements;**

F. **Records of Decision; and**

G. **Supplements.**

We Recommend No Changes To Remove Any Existing Requirements.

10. **Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

11. **Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies comply with all NEPA requirements during the NOI, Draft EIS and Final EIS as lead agency. Agencies cannot delegate any of its legal responsibilities to a subcontractor.

12. **Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies comply with all NEPA requirements and regulations.

13. **Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies comply with all NEPA requirements and regulations. We believe that CEQ Guideline should provide more direction in the following:

A. All public non-industry recommended alternatives must be included and equally assessed and equally funded. Agency and project sponsors abuse NEPA by providing limited public non-industry recommended alternatives information and always claim budget constraints. But always have adequate funds for their alternatives.
B. All public non-industry recommended alternatives assessments must be initiated

at the same time as agency and sponsor alternatives.

C. Agency, applicant and industry recommended alternatives should be limited to a maximum of 3 alternatives. Agency and project sponsors abuse NEPA by including numerous alternatives which have little to no significance but include them to show that many alternatives were considered. This only causes more delays and additional costs with no benefits.

General:

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

No comment.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies comply with all NEPA requirements and regulations. We believe that CEQ Guideline should provide more direction in the following:

A. All NEPA Project and EIS information and documentation must be provided on the Agency and Project Sponsor website and on a CD/DVD/USB Memory Drive in a timely manner without any requirement to file a FOIA request.
B. Website must provide easy access to find the NEPA project information. We have discovered that many website search engines have not been updated to allow public access and participation.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

We Recommend No Changes To Remove Any Existing Requirements.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies comply with all NEPA requirements, regulations and EIS requirements. We believe that CEQ Guideline should provide more direction in the following:

A. The agency and project sponsor must include an analysis on all public non-industry identified Indirect Impacts during the NOI and Draft EIS. Agencies and project sponsors delay efficient and rapid processing of project EIS's by failing to assess them upfront.
B. The agency and sponsor should include an Analysis of all workforce manpower, truck driver, truck and chassis availability based on project development projections. As an example: The Port of Los Angeles and Port of Long Beach

failed to conduct this Analysis, monitor milestone timelines and ships were waiting off-shore for days before container ships could be unloaded. The air pollution emissions were also never mitigated.

C. Public NEPA lawsuits can be avoided if the agency and project sponsors identify and include Analysis's of Indirect Impacts in the Draft EIS.
D. CEQ can create Standard Industry Checklists of Indirect Impacts that would facilitate efficient and rapid preparation of EIS's and Analysis's and eliminate future NEPA lawsuits and project delays.

   a. Chapter 1 Introduction to Cumulative Effects Analysis Table 1-1 provides a good general example.
      Considering Cumulative Effects Under the National Environmental Policy Act
      Council on Environmental Quality
      January 1997
      https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf

   b. See our example Attachment A.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

Yes. We recommend the following:

A. As Sovereign Nations they should be accorded the same rights as a lead agency.
B. Sovereign Nations can also impose additional environmental protection and enforcement requirements beyond NEPA.

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

We Recommend No Changes To Remove Any Existing Requirements.

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversite should be placed on ensuring agencies staff are trained, aware of mitigation information resources and monitor Mitigation compliance. As an example: It was discovered in 2015 that the Port of Los Angeles failed to implement 11 out of 52 mitigation measures contained in the 2008 China Shipping Terminal Project Final EIS/EIR. We request that an Independent 3rd Party be contracted for administrating Mitigation Monitoring and Reporting Programs.

The following documents adequately address the subject of Mitigation:

A. Promising Practices for EJ Methodologies in NEPA Reviews
   Report of the Federal Interagency Working Group on Environmental Justice & NEPA Committee
   March 2016
   https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

B. Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact
CEQ Memorandum for Heads of federal Departments and Agencies
January 14, 2011
https://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1188.pdf
https://www.federalregister.gov/documents/2011/01/21/2011-1188/final-guidance-for-federal-departments-and-agencies-on-the-appropriate-use-of-mitigation-and

C. Environmental Justice Guidance Under the NEPA - CEQ
December 10, 1997
https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf

D. Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
Executive Order 12898
February 11, 1994
https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf

E. Memorandum For The Heads Of All Departments And Agencies
The White House
February 11, 1994
https://www.epa.gov/sites/production/files/2015-02/documents/clinton_memo_12898.pdf

F. Mitigation And Monitoring Guidelines Philadelphia District Regulatory Program U.S. ARMY CORPS OF ENGINEERS
November 2004
http://www.nap.usace.army.mil/Portals/39/docs/regulatory/Mitigation/mitig_monitor_guide.pdf

G. Documentation of Mitigation Commitments
August 2016
DOT FTA Office of Planning and Environment (TPE)
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/SOP%2012.pdf

H. A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior
April 2014
https://www.doi.gov/sites/doi.gov/files/migrated/news/upload/Mitigation-Report-to-the-Secretary_FINAL_04_08_14.pdf

I. Interim Guidance for Implementing the Endangered Species Act Compensatory Mitigation Policy
January 2017
U.S. Fish & Wildlife Service
https://www.fws.gov/endangered/improving_esa/pdf/Interim_Guidance_for_Implementing_the_Endangered%20Species%20Act%20Jan%202017.pdf

The principal contact for these submitted public comments is Jesse N. Marquez. All inquiries should be directed to him first for timely response.

Respectfully Submitted,

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Attachment A

Example

Port Container Terminal Projects (New & Expansion) Checklist

A. Will project Truck and Train Rail infrastructure, operations and support services impacts expand off-port tidelands site?

   a. Identify all public transportation infrastructure that will be impacted by project within 25 miles, 50 miles and 100 miles.
   b. Analyze traffic congestion by project within 25 miles, 50 miles and 100 miles.
   c. Analyze public safety accident increases by project within 25 miles, 50 miles and 100 miles.
   d. Analyze accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs.
   e. Will potential Detours be through the community or designated alterative freight routes.

B. Will project require off-port tidelands site Container Storage Yards/Locations?

   a. Identify all Container Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
   b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
   c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
   d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
   e. Was an Analyze of public safety-accident risk increases at site conducted?
   f. Was an Analysis of noise and vibration at site conducted?

C. Will project require off-port site Chassis Storage Yards/Locations?

   a. Identify all Container Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
   b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
   c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
   d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
   f. Was Analyze of public safety-accident risk increases at site conducted?
   g. Was an Analysis of noise and vibration at site conducted?

D. Will project require off-port site TRU Genset Storage Yards/Locations?

   a. Identify all TRU Genset Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
   b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
   c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
   d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure

damage, increased, maintenance, repair, replacement and costs conducted?

e. Was an Analyze of public safety-accident risk increases at site conducted?
f. Was an Analysis of noise and vibration at site conducted?

E. Will project require off-port site Truck Storage Yards/Locations?

a. Identify all Truck Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
e. Was an Analyze of public safety-accident risk increases at site conducted?
f. Was an Analysis of noise and vibration at site conducted?

F. Will project require off-port site Truck staging areas?

a. Identify all Truck Staging Areas, Yards, Locations within 25 miles, 50 miles and 100 miles.
b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
e. Was an Analyze of public safety-accident risk increases at site conducted?
f. Was an Analysis of noise and vibration at site conducted?

G. Will project require off-port site Container Fumigation?

a. Identify all Container Fumigation Facilities within 25 miles, 50 miles and 100 miles.
b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
e. Was an Analyze of public safety-accident risk increases at site conducted?
f. Was an Analysis of noise and vibration at site conducted?

RE: Thank you & NEPA Comments

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: Nancy Sopko <nsopko@awea.org>

Cc: Lauren Bachtel <lbachtel@awea.org>, Gene Grace <ggrace@awea.org>

Date: Wed, 22 Aug 2018 17:12:25 -0400

Nancy – thanks for organizing a great meeting and following up with specific comments on the ANPRM. I'm looking forward to a follow-up meeting with Mary Neumayr, which is being organized for September 13.

Best,
Ted

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Nancy Sopko <NSopko@awea.org>
Sent: Tuesday, August 21, 2018 4:44 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Cc: Lauren Bachtel <LBachtel@awea.org>; Gene Grace <GGrace@awea.org>
Subject: [EXTERNAL] Thank you & NEPA Comments

Hi Ted,

I wanted to send a quick note thanking you for meeting with our members and us last week to talk about issues impacting the offshore wind industry. It was a great opportunity for our companies to discuss the One Federal Decision MOU, greater interagency coordination on offshore wind permitting, and fisheries issues. We will continue to keep you and your colleagues abreast of the progress we're making in the permitting process and areas where we could use your help.

I also wanted to make sure you saw the attached comments AWEA filed on CEQ's Update to the Regulations for Implementing the Procedural Provisions of NEPA. Please let us know if you have any questions or comments.

Thanks,

Nancy

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[EXTERNAL] Women's Mining Coalition's Comments on ANPR for CEQ's Rules Implementing NEPA

From: Debra Struhsacker <debra@struhsacker.com>

To: "Prandoni, Christopher D. EOP/CEQ" <[redacted]

Cc: Liz Arnold <ejbarnold@gmail.com>

Date: Wed, 22 Aug 2018 21:11:03 -0400

Attachments: Women's_Mining_Coalition_CEQ_ANPR_NEPA_Comments_081418.pdf (487.31 kB)

Hello Christopher:

As promised in my voice mail message earlier this month, I am sending the comments that the Women's Mining Coalition submitted last week to the regulations.gov website in response to CEQ's APNR requesting comments on the 40 CFR Parts 1500 – 1508 regulations implementing NEPA.

As emphasized in our comments, there are many elements of the existing regulations that do not require much – if any – modification. This is especially true of the sections on reducing paperwork (40 CFR § 1500.4), reducing delay (40 CFR § 1500.5), time limits (40 CFR § 1501.8), and page limits (40 CFR § 1502.7).

A rulemaking should not be required to <u>enforce</u> these provisions in the existing rule. Because these sections of the regulations are appropriate, and better compliance with these sections would expedite the preparation of NEPA documents, we recommend that CEQ evaluate ways to compel federal agencies to comply with these existing provisions in the immediate future rather than waiting for a rulemaking process

to be completed. At the same time, CEQ could initiate rulemaking to amend those sections of the regulations that need to be modified or updated.

Better compliance with the paperwork reduction directives in 40 CFR § 1500.4 would greatly improve NEPA documents for several reasons. First compliance with this section would reduce the length and complexity of the documents which would make them easier for the public to understand. More importantly, it would make NEPA documents more focused on aspects of the environment related to the specific decision to be made, which would make them more useful to the decisionmaker. It would also likely reduce the time it takes to prepare the document resulting in more timely decisions, which would benefit the public, regulatory agencies, and the regulated community. Finally, we believe that stricter compliance with the paperwork reduction section would help reduce litigation by producing more focused documents that would in turn limit the issues that could be litigated.

The Women's Mining Coalition appreciates the opportunity to provide these comments to CEQ, the presentation that you gave to our group in April, and taking the time to meet with me and Liz Arnold.

Please don't hesitate to contact me if you have any questions about our comments.

Regards,

Debbie

Debra W. Struhsacker

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sent via electronic mail:
https://www.regulations.gov

August 14, 2018

Mr. Edward A. Boiling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Docket ID. Number CEQ-2018-0001
https://www.regulations.gov

Dear Mr. Boling:

Introduction

The Women's Mining Coalition (WMC) applauds the Council on Environmental Quality's (CEQ's) initiative to evaluate its 40 CFR Parts 1500 – 1508 regulations for implementing the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq*. This letter provides WMC's suggestions in response to the Advance Notice of Proposed Rulemaking (ANPR), Federal Register Vol. 83, Number 119, Pages 28591 – 28592 seeking comments to update NEPA implementation procedures.

WMC's comments and suggestions are based on our members' extensive NEPA experience starting in the 1980s in conjunction with mineral exploration and development projects on public lands administered by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). Based on this experience, WMC members have firsthand knowledge of the costs, complexities, delays, and uncertainties associated with the NEPA process. WMC has filed numerous comments in response to NEPA documents that BLM and USFS have prepared to evaluate specific projects and various land management plans and plan amendments, including land use plans for the Greater Sage-Grouse.

CEQ's proposed rulemaking is long overdue from an historical perspective. As one of the nation's first federal environmental laws, NEPA provided an important and at the time, unique opportunity for the public to review and comment upon projects that had the potential to affect the environment. In the nearly forty years since NEPA's enactment, Congress and state legislatures have passed and amended numerous environmental protection statutes. CEQ's NEPA regulations date back to 1978 and need to be updated to reflect that today's environmental protection statutes fill the environmental review and protection gap that NEPA sought to fill in 1969. CEQ's proposed rulemaking is an important opportunity to update the NEPA regulations in light of the many post-NEPA federal and state environmental protection and environmental review statues, and to integrate the NEPA process with other federal and state environmental permitting procedures.

Over the course of our experience with the NEPA process, WMC members have seen NEPA documents balloon in size and complexity, take much more time to complete, and cost much more to prepare. This is the exact opposite of the trend that should be expected given the enactment of numerous federal and state environmental protection and review statutes since 1970.

From the perspective of a project applicant, the NEPA process is fraught with uncertainties and is a source of intolerable delays that chill investment in U.S. projects. The main driver for the delays and uncertainty is the prospect of litigation challenging the sufficiency of an agency's NEPA document. As such, anti-project interests have effectively weaponized the NEPA process, turning it into a significant obstacle that must be overcome before a project can proceed. The overarching purpose of CEQ's rulemaking to update its NEPA regulations should be to reduce the uncertainties and delays by expediting the NEPA process and making NEPA documents less vulnerable to appeal and litigation.

In the ANPR, CEQ asks whether many of the procedural provisions should be changed or updated. As discussed in detail below, WMC believes that some of the existing NEPA procedures are sound and do not require much – if any – modification. This is especially true of the sections on reducing paperwork (40 CFR § 1500.4), reducing delay (40 CFR § 1500.5), time limits (40 CFR § 1501.8), and page limits (40 CFR § 1502.7).

Although a rulemaking would be required to make some of the updates and changes discussed below, it should not be necessary to enforce the existing rule. In fact, a new rule would not necessarily ensure better compliance with the page and time limits and other provisions in the rule. Because the above-noted sections of the 40 CFR Parts 1500 – 1508 regulations are sound, WMC strongly recommends that CEQ evaluate ways to compel federal agencies to comply with these existing provisions in the immediate future rather than to wait for a rulemaking process to be completed. At the same time, CEQ could initiate rulemaking to amend those sections of the regulations that need to be modified or updated.

Better compliance with the paperwork reduction directives in 40 CFR § 1500.4 would greatly improve NEPA documents for several reasons. First compliance with this section would reduce the length and complexity of the documents which would make them easier for the public to understand. More importantly, it would make NEPA documents more focused on aspects of the environment related to the specific decision to be made, which would make the documents more useful to the decisionmaker. It would also likely reduce the time it takes to prepare NEPA documents resulting in more timely decisions, which would benefit the public, regulatory agencies, and the regulated community. Finally, we believe that stricter compliance with the paperwork reduction section would help reduce litigation by producing more focused documents that would in turn limit the issues that could be litigated.

Based on our experience we find that the federal agencies have developed procedures that deviate significantly from many of the directives in the CEQ regulations. Instead of writing concise and timely NEPA documents as the CEQ regulations require, the procedures the agencies have developed over the years produce lengthy and complex documents that take years to complete. These massive tomes are so long and complicated that they do not fulfill NEPA's fundamental purposes and are vulnerable to NEPA challenges and litigation. As established in 40 CFR § 1500.2(b) federal agencies shall to the fullest extent possible:

> "Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact

> statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses."

Voluminous NEPA documents produced during a protracted NEPA process typically frustrate NEPA's basic purpose to inform the public and decisionmakers and to assist in decisionmaking:

> "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken…Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 CFR § 1500.1(b)

> "Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 CFR 1500.1(c)

As discussed in more detail below, WMC members find that one of the main reasons that NEPA documents are lengthy and overly complex is due to an improper and inflated scope that examines all aspects of the environment in detail when the potential impacts from the Proposed Action only affect specific environmental resources. Lengthy and complicated NEPA documents are similarly inappropriate for actions where the decisionmaker's authority is narrow and limited to a specific permit decision. We believe the overly broad scope is largely due to agencies' attempts to make NEPA documents bulletproof as a safeguard against appeal and litigation. We recommend clarifying that the scope of the decisionmaker's authority – the "decision space" – should define the focus of the NEPA document being prepared to assist the decisionmaker in making the decision.

Because the agencies significantly deviate from many of the CEQ's directives, WMC suggests modifying and clarifying specific NEPA terminology in 40 CFR § 1508 to be more consistent with the overarching purpose of NEPA, to assist agencies comply with the CEQ regulations, and to reduce NEPA litigation.

About WMC

WMC is a grassroots organization with over 200 members nationwide. Our members work in all sectors of the mining industry including hardrock, industrial minerals, and coal; energy generation and mining-related distribution, manufacturing, transportation, and service industries. We hold annual Washington, DC Fly-Ins to meet with members of Congress and their staff, and federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

For many years, WMC has been concerned about the protracted NEPA process for mineral projects on public lands. The delays associated with the NEPA process are a major factor in contributing to the country's steadily increasing reliance on foreign minerals. During the last several Fly-In's we have presented the charts shown in Exhibit I from the 1996[1] and 2017[2] USGS' Mineral Commodity

[1] U.S. Geological Survey, 1996, Mineral commodity summaries 1995: U.S. Geological Survey, https://minerals.usgs.gov/minerals/pubs/mcs/1996/nir.gif.

[2] U.S. Geological Survey, 2017, Mineral commodity summaries 2017: U.S. Geological Survey, 202 p., https://doi.org/10.3133/70180197

Summaries. These charts document a shocking increase in the net mineral import reliance in the 21-year period from 1995 to 2016. Given our focus on this important issue, we fully support CEQ's initiative to update its regulations for implementing NEPA.

Our Nation's increasing reliance on imported minerals is not due to a lack of domestic mineral targets warranting exploration and potential development. Rather, WMC believes that the rapid growth in the nation's foreign mineral reliance is due in large part to unfavorable federal policies including the protracted NEPA process that impedes mineral exploration and development.

In December 2017, President Trump issued Executive Order ("EO") No. 13817, "Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals." This Critical Minerals EO establishes:

> "It shall be the policy of the Federal Government to reduce the Nation's vulnerability to disruptions in the supply of critical minerals, which constitutes a strategic vulnerability for the security and prosperity of the United States. The United States will further this policy for the benefit of the American people and in a safe and environmentally responsible manner, by…(d) streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals."

CEQ's NEPA rulemaking will be an important step in fulfilling the permit streamlining directive in President Trump's Critical Minerals EO. The remainder of this comment letter responds to the specific questions raised in the ANPR.

NEPA Process

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

Response: The CEQ regulations already include several provisions that direct how agencies must work together to develop coordinated and synchronized documents. For example, NEPA policy at 40 CFR § 1500.2(c)already establishes that:

> "Federal agencies shall to the fullest extent possible…[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively."

The CEQ regulations at 40 CFR § 1506 also require federal agencies to coordinate the NEPA review process with state and local agencies to eliminate duplication with state and local procedures. Section 1506.2(b) specifically directs federal agencies to "…cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements."

WMC recommends that the CEQ refine these requirements to direct federal agencies to use state and local permit decisions where a state or local agency has primacy for a federal permit program (herein called "a primacy permit") including but not limited to the Clean Air Act or the Clean Water Act. Similarly, other federal or state environmental protection permit programs should reduce the scope, length and complexity of the NEPA analysis. If a state or local agency determines that a proposed action meets all relevant regulatory requirements to protect the environment and is therefore entitled to a permit,

federal agencies should deem that aspect of the project as having an insignificant impact. In such cases, an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI), a Determination of NEPA Adequacy (DNA), or a Categorical Exclusion should be sufficient to satisfy NEPA requirements. An Environmental Impact Statement (EIS) should not be required unless there are other aspects of the federal agency's decision space that require analysis in an EIS.

The recently signed "Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807" is consistent with the directives in the CEQ regulations mandating coordination. WMC suggests that it may be appropriate for CEQ to incorporate some or all of the procedures and policies established in this Memorandum of Understanding in a proposed rulemaking. Although the two-year timeframe for completing the NEPA process for a major infrastructure project may be appropriate for complex projects involving numerous federal agencies, it should not be adopted as a universal timeframe to prepare an EIS. Two years is longer than the NEPA process should take for simpler, site-specific third-party proposed actions. We suggest that the Department of the Interior's (DOI's) one-year time frame in its NEPA Streamlining Secretarial Order No. 3355 is more appropriate for applicant-submitted project proposals.

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions and if so, how?

Response: Clearly the use of current and applicable environmental analyses is mandatory when an agency is required to make an authorization decision under the NEPA. There are several sections of the current CEQ regulations that already speak to making the NEPA process more efficient such as by incorporating by reference (40 CFR § 1502.21 and § 1500.4(j)), combining environmental documents with other documents (40 CFR § 1506.4 and § 1500.4), and tiering (40 CFR § 1502.20). WMC suggest that CEQ provide further emphasis upon and clarification of these requirements. As noted above, WMC recommends that CEQ evaluate ways to require compliance with the existing provisions on page and time limits rather than pursuing a lengthy rulemaking in an attempt to force better compliance with the current regulations.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Response: Please see response to Number 1 above.

Scope of NEPA Review

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

Response: The CEQ regulations already provide the following regulations on page limits: 40 CFR §§1500.4(a), 1501.7(b)(1), 1502.7 and 1502.2(c). For example, 40 CFR § 1502.2(c) states:

> "Environmental impact statements shall be kept concise and *shall* be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should

vary first with potential environmental problems and then with project size." (italics emphasis added)

Regrettably, federal agencies largely ignore the page limits and document length directives to write concise documents that are explicitly stated in the existing regulations. (A notable exception is DOI's recent Secretarial Order 3355 on NEPA streamlining). As emphasized above, rather than revising these regulations, CEQ should evaluate ways to enforce the page limits in the existing regulations.

Similarly, the CEQ regulations already include directives on time limits including: 40 CFR §§ 1500.5(e), 1501.1(e), 1501.7(b)(2), and 1501.8 that the agencies widely disregard. The time limits in the existing regulations do not need to be changed, they just need to be enforced. Again, we support the one-year time limit for EIS preparation specified in DOI Secretarial Order 3355.

WMC recommends retaining the EIS format regulation at 40 CFR § 1502.10 because the public is accustomed to reviewing documents with this format. However, this section should be clarified to underscore that for some projects, elements of the standard format should be as concise as possible through the use of appropriate tiering and incorporating by reference to avoid repetition. As discussed above, there may be no need to devote many pages in an EIS discussing aspects of the affected environment that are outside of the decisionmaker's decision space. Similarly, for some projects with land ownership, spatial, topographic, or geologic constraints where there are few if any viable alternatives that would lessen environmental impacts or create environmental benefits, the Alternatives section may be restricted to the No Action Alternative and the Proposed Alternative. (See Section 7a. below).

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?

Response: The CEQ regulations explicitly require NEPA documents to focus on significant issues:

> "…NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 CFR § 1500.1(b);
>
> "Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses." 40 CFR § 1502.1.
>
> "Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues." 40 CFR §1502.2(b);
>
> "Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size." 40 CFR §1502.2(c)

These are examples of the clear directives in the CEQ regulations that agencies frequently violate and reviewing courts ignore. CEQ should amend the regulations to force agencies and courts to focus on significant issues. Specifically, the regulations should be amended to add a section that identifies "significant" and "not significant" issues in every NEPA document. Any issue that is "not significant" need not be addressed in the NEPA document.

Issues that are "not significant," by rule should include the following categories:

1) Issues covered by substantive environmental standards and/or permits by other agencies under federal environmental laws, delegated state programs, or state environmental laws should be defined by rule as being "not significant". Thus, for example a NEPA document evaluating a proposed action that requires an air quality permit from EPA and/or a state air quality authority (e.g., a primacy permit) should not include a detailed discussion of potential impacts to air quality. In this case under the amended regulations, air quality would be a "not significant" issue and would require no more than a reference to the substantive permitting process; and

2) Issues that are not relevant to the agency's decision on the proposed action and/or are outside the scope of the agency's decision space would be a "not significant" issue.

The regulations should also define where the agency has the discretion to determine that issues are "not significant" based on scoping, prior experience with the environment associated with a proposed action, or the range of alternatives. If the potential impacts to a particular resource are not relevant to an agency's choice among alternatives, then impacts to that resource should be "not significant" and need not be discussed in the NEPA document.

The discussion in the NEPA document might be analogous to current discussion of alternatives considered but "eliminated from detailed study" (40 CFR § 1502.14(a)). The document would identify the "significant" issues, which may be no more than two or three for a particular project, and then explain why other issues are "not significant" and will not be addressed further in the NEPA document. Forcing agencies and courts to focus on those resources and issues that are important to the agency's decision is the most effective way to make NEPA useful to agencies and the public. Documents that focus on issues that are "not significant" are unnecessarily long and complex, which detracts from the key issues associated with a project, and make it harder for the public and the decisionmaker to get to the meat of the issue.

CEQ should evaluate more timely mechanisms than a rulemaking to enforce the provisions in the existing regulations that already require NEPA documents to focus on significant issues. Documents that fail to adhere to this requirement do a disservice to the public by obscuring the key issues associated with a proposed project. They also make it harder for the decisionmaker to get to the "meat' of the issue.

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Response: For site-specific project proposals, the public involvement provisions should be modified to give more weight to local stakeholders who live near a proposed project and who may directly experience impacts from the proposed action compared to stakeholders who live elsewhere participating through national interest groups. We believe that according more importance to comments from local stakeholders would improve the quality of public participation in the NEPA process.

This is especially true for those who live in rural resource-dependent communities that are surrounded by federal public land and depend on mining, oil and gas production, ranching and logging activities on public lands to provide jobs, tax revenue, and infrastructure support. Local communities generally understand the impacts of nearby projects and are in a better position than outside interest groups including Non-Governmental Organizations (NGOs) to provide substantive comments based on local knowledge that will improve the project, reduce environmental impacts, and increase environmental

benefits. This approach would give federal agencies better tools to expend more resources in responding to local concerns and comments and a more effective way to respond to cookie-cutter, anti-project comments typically received from NGO-sponsored letter writing campaigns.

CEQ should consider updating the public involvement provisions in the CEQ regulations by broadening the outreach efforts to include agency websites, email, and various social media outlets as discussed in Section 8a. below.

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action

CEQ needs to clarify the two-pronged aspect of the definition of "Major Federal Action" at 40 CFR § 1508.18: "Major federal action" includes actions with effects that may be major and which are potentially subject to federal control and responsibility." In order for a project to constitute a Major Federal Action it must: 1) be associated with effects that may be major; and 2) the project must be subject to federal control and responsibility that would be exercised through a decision made by a federal decisionmaker. Federal agencies typically overlook the second prong of this definition. Consequently, the scope of NEPA documents frequently exceeds the extent of the agency's regulatory authority and the range of the decisions the agency is authorized to make.

For example, the BLM and the USFS regulate mineral exploration and development on public lands open to operation of the U.S. Mining Law (30 U.S.C §§ 21a *et seq*) under their surface management regulations.[3] Neither BLM nor USFS have specific or direct regulatory jurisdiction over air quality, water quality, water quantity, or plant and wildlife species that are not endangered or threatened species under the Federal Endangered Species Act (16 U.S.C. § 1531 *et seq*). Most states have primacy for the federal Clean Air Act and Clean Water Act federal regulatory programs and are thus responsible for issuing primacy permits pertaining to air quality and water quality. All states have jurisdiction over water quantity (e.g., water rights) and non-listed wildlife species. Despite BLM's and USFS's limited decisionmaking authority with regard to these issues, their NEPA documents typically contain extensive information about air quality, water quality, water quantity, and wildlife.

Because neither BLM nor the USFS have regulatory jurisdiction over these resources, there are no decisions for BLM or the USFS to make. Consequently, there is no BLM or USFS Major Federal Action related to air quality, water quality, water quantity, or wildlife. The Major Federal Action should be congruent with and limited to the scope of the agencies' regulatory authorities pursuant to BLM's or USFS's surface management regulations. In the context of the BLM's decision, these resources are "not significant" and should be dismissed from further consideration as explained above.

Additionally, issuance of a state air quality or water quality permit or a water right means the project complies with all applicable requirements. Therefore, there is no significant environmental impact associated with these aspects of a project.

Making the scope of NEPA analyses correspond to the decisionmaker's authority would greatly simplify and shorten some NEPA documents. It could also lead to the preparation of more EAs,

[3] The BLM regulates mineral activities under the 43 CFR Subpart 3809 regulations. The U.S. Forest Service regulates the under 36 CFR Part 228A.

DNAs, or Categorical Exclusions and fewer EIS documents, which would conserve federal resources and respond to the permit streamlining directives in Executive Order 13807. CEQ should thus provide clear guidance to implement the second prong of the Major Federal Action definition and direct federal agencies to focus the NEPA analysis on the decisions to be made.

b. Effects

The effects analysis should be consistent with the scope of the Major Federal Action as discussed above.

c. Cumulative Impact

The cumulative effects analysis should be consistent with the scope of the Major Federal Action (see Section 7a. above). As discussed in Section 8c. below, the cumulative effects analysis must be confined to realistically defined Reasonably Foreseeable Future Actions (RFFAs) that do not involve conjecture or speculation about the future. Additionally, it is important to define a reasonable scope for the Cumulative Effects Study Area (CESA). The geographic scope of a CESA should not be so large that it requires an analysis of numerous completely unrelated projects, some of which may have no federal component. Such analyses add little value to a NEPA document but typically add considerable length and complexity.

The CEQ regulations are currently silent on how the CESA is to be defined. CEQ may wish to evaluate whether the updated CEQ regulations should include specific directives pertaining to the size and scope of the CESA analysis.

d. Significantly

The definition of significantly should be tied to the scope of the Major Federal Action for the federal agency preparing the NEPA document. Decisions that are outside the federal agency's purview should be handled as insignificant issues that do not need to be considered in detail. The concept of significantly should be directly tied to compliance with the requirements for federal or state permits. If a proposed project can meet the requirements for a permit, it should be categorically classified as having an insignificant impact for the environmental resource or resources governed by the permit. As discussed in Section 7a, if a state agency issues a permit, there can be no significant impact associated with that aspect of the proposed action. The CEQ regulations should be modified to define proposed actions that meet federal and state permit requirements as having insignificant environmental impacts.

e. Scope

The definition of scope should be clarified to specify that the scope of a NEPA document must be coincident with the scope of the Major Federal Action. The "range of actions" currently included in the definition of Scope at § 1508.25 should clearly mean the federal agency's range of actions as defined and limited by its regulatory authority. Actions like issuance of permits that are outside of the federal agency's authority are not part of the federal agency's decision or within the "range of action" and should not be analyzed in detail.

f. Other NEPA terms

No comments.

8. Should any new definitions of key NEPA terms, such as those noted below be added, and if so, which terms?

a. Alternatives

Many sections of the CEQ regulations discuss alternatives but 40 CFR § 1508 does not include a definition of alternatives. It would be useful to define this term to emphasize that the alternatives analysis must only evaluate technically and economically feasible alternatives that may have significant environmental differences. This definition should also acknowledge that the range and number of feasible alternatives may be quite limited for some kinds of projects and much broader for others.

For example, natural resource development projects to exploit a resource with a fixed location determined by geology, like a mineral deposit or a geothermal resource, can only be developed where these resources have been discovered. Because these resources cannot be moved, there are no alternative locations for the mineral deposit or the geothermal heat source. Although there may be viable alternatives for certain ancillary features and infrastructure components that merit detailed analysis, this will be dictated by site-specific conditions including topography, land ownership, and project economics.

The NEPA statutory directive concerning alternatives at U.S.C. § 4332(E) that requires federal agencies to "…study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of resources" should be the dominant focus of the alternatives evaluation. Project proposals about which there are no "unresolved conflicts concerning alternative uses of resources" should not require a detailed alternatives analysis. In such cases, most project alternatives should be eliminated from detailed consideration.

b. Purpose and Need

The definition of Purpose and Need at 40 CFR § 1502.13 should be expanded to clarify that the Purpose and Need for the NEPA document must dovetail with the scope of the Major Federal Action as described in Section 7a. above. Because the Purpose and Need establish the scope of the NEPA document, it is important to articulate the range of the federal agency's action and decision space.

Some NEPA documents for third-party proposed actions specify a Purpose and Need for the federal agency and a second Purpose and Need for the project proponent. This is a useful distinction. The federal agency's Purpose and Need should describe the scope of the regulatory decisions to be made for the proposed project.

c. Reasonably Foreseeable

Agencies should not be required to have a crystal ball when determining what is a RFFA. The RFFA analysis must be limited to proposed actions for which there is enough detail to make a reasoned evaluation of how future development of the RFFA and the Proposed Action would result in cumulative impacts. Third-party actions that are anticipated to occur but for which a project proposal has not yet been submitted should not be considered a RFFA. Similarly, proposed federal actions that are likely but that have not yet been initiated should not be considered a RFFA because there is not enough information about the future action to make an informed analysis. As discussed in Section 7c, CESA boundaries should be based on practical and available RFFA information.

d. Trivial Violation

The CEQ regulations do not currently define "trivial violation." The directive at 40 CFR § 1500.3: "…it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action" needs more direction and amplification because trivial violations have become fertile grounds for successful NEPA litigation.

Complaints alleging failure to evaluate insignificant impacts have resulted in court orders remanding NEPA documents. This is one of the principal reasons that agencies prepare encyclopedic NEPA documents that examine all environmental resources in detail rather than focusing on significant issues as NEPA directs. (See, for example 40 CFR §§ 1500.4(g) and 1501.1(d)).

Just as the CEQ regulations clearly direct federal agencies to prepare NEPA documents that focus on significant issues, the legal basis for challenging the scope of an agency's NEPA document should be limited to the analysis of the significant issues and the range of the federal agency's action and decision space as defined by the Major Federal Action. With this in mind, CEQ should consider defining the term "trivial action."

e. Other NEPA terms

No comments.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent

In 1970, publication in the Federal Register may have been the best way to notify a broad sector of the public about a proposed project and to initiate the public scoping process to obtain public comments on the proposal. However, given the range and ease of today's electronic communication options, CEQ should evaluate whether publishing a Notice of Intent (NOI) in the Federal Register is the best or even an appropriate mechanism for notifying the public and conducting public scoping. Modern and more broadly read and more efficient substitutes for Federal Register notices would use the Internet to support email distribution of the NOI to an agency's mailing list, press releases on agency websites announcing preparation of an EIS and requesting public comments, and social media outlets. Far more people receive email, electronic press releases, and follow social media than receive and read the Federal Register.

Additionally, as discussed in Section 5, the public scoping effort for site-specific project proposals should focus on obtaining comments from local stakeholders who may be affected by a proposed project. With this in mind, publishing the NOI in the Federal Register is not the most efficient or appropriate way to engage local communities.

It is interesting to note that 40 CFR § 1501.7, the section of the regulations pertaining to public scoping, specifically mentions publishing the NOI in the Federal Register. However, the definition of NOI at 40 CFR § 1508.22 does not include a requirement to publish the NOI in the Federal Register. The NOI announcement that an agency has decided to prepare an EIS is not the decision on the Major Federal Action and should not require publishing in the Federal Register. The publication protocols for NOIs should focus on the best way to inform the public that the agency is seeking public comments on a proposed project that involves a Major Federal Action.

It should be noted that some federal agencies, particularly DOI, have NOI publication protocols that have in the past contributed many months of delay to the NEPA process.[4] CEQ should encourage federal agencies to publish NOI announcements in a timely fashion in order to start the NEPA process as soon as possible.

b. Categorical Exclusions Documentation

The last sentence of the definition of categorical exclusion at 40 CFR § 1508.4 is confusing and needs to be clarified.

c. Environmental Assessments

Most EAs are not concise and brief documents as defined by at 40 CFR § 1508.9, rather they have become encyclopedic just like EIS documents. Agencies should be encouraged to comply with the description of an EA at 40 CFR § 1508.9. Implementing the recommendations described herein for Major Federal Action (see Section 7a), Significantly (see Section 7d), and Scope (see Section 7e) would likely lead to the preparation of more EAs and fewer EIS documents (see Section 7e).

WMC recommends federal agencies issue departmental guidance on EAs similar to the DOI Deputy Secretary's August 6, 2018 memorandum entitled "Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments". This memorandum establishes a 75-page limit and a 180-day timeframe for EAs.

d. Findings of No Significant Impact;

The FONSI should be aligned with the scope of the Major Federal Action, the range of federal actions, and the responsible officials' decision space. Aspects of a project over which a state agency has regulatory jurisdiction pursuant to a federal-state primacy agreement should automatically trigger preparation of a Categorical Exclusion, a DNA, or an EA/FONSI. By definition, issuance of a permit means that project component meets all relevant regulatory requirements. Projects that qualify for permits should be categorically characterized as having no significant impact for the resource(s) that are the subject of the permit(s).

e. Environmental Impact Statements

Response: The EIS definition at 40 CFR § 1508.11 is too abbreviated. It should be expanded to incorporate or cross reference the time limits and page limits in other sections of the regulations. The scope of EIS documents should focus on potentially significant environmental impacts and Major Federal Actions congruent with the agency's regulatory authority and decision space. Given these limitations, agencies should prepare fewer EIS documents and more EAs/FONSIs, DNAs and Categorical Exclusions. An EIS should no longer be considered the "gold standard" of NEPA analyses – especially for projects authorized by federal and state permits and that have no significant environmental impacts. For many projects, an EA should be the appropriate NEPA document.

f. Records of Decision

[4] DOI has recently revised its NOI review protocols with the objective of streamlining the NOI publication process.

The term "Records of Decision" is not included in CEQ's NEPA implementation regulations. It should be defined and added to the list of Environmental Documents in 40 CFR § 1508.10.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

Response: The CEQ regulations already include several provisions that direct federal agencies to set time limits on the NEPA process. Regrettably, agencies largely ignore these directives. Although in 40 CFR § 1508 the CEQ determined that setting specific, one-size-fits-all, rigid time limits was inappropriate, the regulations should be revised to establish timeframe objectives for completing the NEPA process for various types of projects (e.g., third-party projects, land use management decisions, etc.). Agencies that do not meet these objectives should be required to explain the reasons for the delay. WMC supports the one-year timeframe objective in the DOI Secretarial Order 3355 and the two-year timeframe in the One Federal Decision MOU for complex infrastructure projects.

As mentioned above, WMC requests that CEQ evaluate ways to enforce the existing provisions in the CEQ regulations pertaining to time limits. A rulemaking should not be required to achieve compliance with the existing regulations.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Response: The CEQ regulations should be revised to explicitly authorize project applicants to prepare draft environmental analyses for an agency's review that the agency can use as the technical basis for both EAs and EISs. The existing regulations at 40 CFR § 1506.5(b) already specifically authorize an applicant to prepare an EA:

> (b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

This provision should be revised to be clearly applicable to both EAs and EISs. There is no rationale for allowing applicant-prepared EAs and not allowing applicant-prepared EISs.

Some federal agencies encourage or even require applicant participation in the NEPA process whereas others do not allow project applicants to participate directly in the NEPA process. Agencies that prohibit the project applicant from directly participating in the NEPA document preparation are violating 40 CFR § 1506.5(c) which clearly authorizes *any person* to provide information during preparation of an EIS:

> "Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency."

Because the project applicant has valuable expertise and is the most knowledgeable entity regarding its proposed project, the applicant must be allowed to contribute its expertise at all phases of preparing the NEPA document. Excluding project applicants from the process is unlawful pursuant to 40 CFR § 1506.5(c).

Encouraging project applicants to prepare a preliminary environmental analysis will be an important step in streamlining the NEPA process and a more effective use of federal agencies' time and resources. For most projects the project applicant is already responsible for developing the baseline studies that are the underpinnings of the NEPA analysis. The applicant should be allowed and encouraged to use the baseline study findings to prepare the Affected Environment, Environmental Consequences, and Cumulative Impacts chapters of the NEPA document. Federal agencies should work with project applicants to provide any necessary guidance to ensure that the baseline studies and impact analyses follow agency protocols and meet agency requirements.

Section 1506.5(c) directs that if the NEPA document is prepared by a third-party contractor, federal agencies must "...furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents." If the project applicant chooses to pay for a third-party contractor to prepare the NEPA document for the federal agency, the applicant must be allowed to communicate directly and frequently with the agency and the third-party NEPA contractor while the NEPA document is being prepared and those communications should be included in the administrative record. Some federal agencies forbid direct interaction between the project applicant and the third-party NEPA contractor. This is impractical and inappropriate because the project applicant is the principal expert on the proposed project. Excluding the proponent from the dialogue diminishes the technical accuracy of the NEPA document and wastes private-sector and public-sector time and money. It may also result in technically faulty or incomplete NEPA analyses.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

Response: The existing regulations on tiering are appropriate but need to be enforced more uniformly. As directed in 40 CFR § 1500.4(i), federal agencies are supposed to use tiering to eliminate repetitive discussions. They are also directed at 40 CFR § 1502.4(d) to use tiering to "...relate broad and narrow actions and to avoid duplication and delay." The encyclopedic NEPA documents that are the norm rather than the exception are another example of an aspect of the CEQ regulations that requires better implementation and enforcement.

The CEQ regulations should clearly authorize and require the use of programmatic NEPA documents for similar actions that have known and well understood impacts. For example, it would be appropriate for BLM and the USFS to develop regional programmatic NEPA documents for locatable mineral exploration projects that evaluate the types of impacts typically associated with these projects, the required mitigation (e.g., reclamation), and the use of best management practices. Proposed projects that commit to reclamation and best management practices should then be evaluated with a Categorical Exclusion or a DNA.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Response: Please see 8a. The CEQ regulations should clarify that for some projects there may not be any alternatives other than the No Action Alternative and the Proposed Action that merit detailed analysis and only a few that even warrant initial consideration and elimination from detailed analysis. Analyzing alternatives in detail adds considerably to the length and complexity of a NEPA document. Consequently, the analysis should include only those alternatives that would result in fewer adverse impacts or more beneficial impacts. This must be a project- and site-specific evaluation. Consequently, there should not be a one-size-fits all approach to the number or types of alternatives.

General

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

Response: Yes, the requirement to publish the NOI in the Federal Register is obsolete. Please see Section 9a. above.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

Response: The use of the Federal Register to publish NOIs and Notices of Availability should be modernized to capitalize upon the widespread use of electronic communications (e.g., email, agency websites, social media, etc.) Please see Section 9a. above.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

Response: Yes. The CEQ regulations should be revised to include the concept of "functional equivalency" that recognizes state permit decisions that may also satisfy NEPA requirements. The CEQ regulations should specify that state permit decisions, including but not limited to primacy permits, can stand as the "functional equivalent" of a NEPA analysis. Therefore, these decisions would be outside the scope of the Major Federal Action and the range of actions to be analyzed in the NEPA document and would only require a brief discussion in the NEPA document. (Please see Sections 7a and 7e). In many circumstances, recognizing the functional equivalency of other permits would eliminate the need to prepare an EIS, and would make an EA/FONSI, DNA, or Categorical Exclusion the appropriate NEPA document.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

Response: It is not uncommon for staff-level agency resource specialists to contribute substantially to NEPA delays and uncertainties by conducting protracted reviews of NEPA chapters and sections and failing to meet project deadlines. Some resource specialists continually demand additional baseline data or other studies that become pet research projects and are the source of "paralysis by analysis," which substantially delays the NEPA process. Such delays violate 40 CFR § 1502.2(b), which stipulates: "...there should be only

enough discussion to show why more study is not warranted," and are not consistent with the time limit objectives in CEQ's NEPA regulations or in Executive Order 13807. The revised NEPA implementation regulations should emphasize the need for timely review of all NEPA materials at all stages of the NEPA process to comply with the timing objectives in the regulations and to meet the permit streamlining objectives in Executive Order 13807.

Additionally, the level of required baseline information should be commensurate with the potential risks associated with a proposed project. Projects that pose little risk to the environment should not require exhaustive acquisition of environmental data. The level of required information should be evaluated from a business perspective – how much data is needed to make a sound decision? The private sector approaches business decisions in this manner, requiring more information for costlier, riskier, or bigger projects. The NEPA process should approach data gathering and decision making in a similar way.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

Response: Based on WMC's experience, BLM and USFS already go to significant lengths to consult with tribal governments, which WMC feels is appropriate. However, it is not uncommon for tribal governments to not respond to the federal land management agencies' consultation efforts. In the proposed rulemaking, it would be appropriate to add some timelines and sideboards to the consultation procedures in order to encourage timely responses and to establish an end date for the consultation process.

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

Response: The delays and uncertainties associated with the NEPA process could be alleviated if the agencies would give project applicants more responsibilities for developing the technical aspects of a NEPA document. Applicant-prepared environmental baseline studies and preliminary environmental reviews create incentives for private-sector applicants to develop technically sound documents that can withstand agency review and legal scrutiny with the ultimate objective of expediting the NEPA process and minimizing litigation vulnerabilities by providing high-quality, technically unassailable information and analyses.

This approach is consistent with the agency responsibility directives in 40 CFR § 1506.5, which allow for the applicant to provide information, prepare the EA, and require the agency to verify the information. The scope of the information that can be provided by the applicant should include but not be limited to the proposed action, project alternatives, the affected environment, environmental consequences, and cumulative effects. As noted in Section 11 above, the 40 CFR § 1506(b) should be expanded to clearly authorize applicant-prepared EAs and EISs.

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

Response: The definition of mitigation at 40 CFR § 1508.20 should be revised to acknowledge that compensatory mitigation must be consistent with the policies, regulations, and statutes governing the proposed action. It must also be consistent with the Administration's compensatory mitigation policy. For example, projects developed pursuant to the General Mining Law and the Federal Land Policy and Management Act cannot require compensatory mitigation. The standard applied to these projects is that they must prevent unnecessary or undue degradation (43 U.S.C. § 1732(b)). Compensatory mitigation cannot apply to necessary or due degradation (e.g., impacts that are unavoidable in order for a mine to be developed such as excavating an open pit to extract ore).

It may also be appropriate to clarify the mitigation definition in light of the U.S. Fish and Wildlife Service's recent decision to withdraw the previous administration's Mitigation Policy (See 83 Fed. Reg. Vol 83, 36469, July 31, 2018 and 83 Fed. Reg., 36472, July 30, 2018.). Both of these withdrawal decisions explain that compensatory mitigation interferes with private property rights pursuant to the Takings Clause of the Fifth Amendment of the United States Constitution, which "limits the ability of government to require monetary exactions as a condition of permitting private activities, particularly on private property." (83 Fed. Reg, at 36469 and 83 Fed. Reg. at: 36472). This finding is especially relevant to activities conducted on unpatented mining claims pursuant to the U.S. Mining Law and FLPMA in light of claimants' property rights to the minerals on their unpatented mining claims.

Conclusions

WMC strongly supports CEQ's proposed rulemaking to update its regulations for implementing the procedural provisions of the NEPA. We also stress the expediency of enforcing the existing requirements on NEPA document page limits and timelines. A rulemaking is not the right mechanism to compel federal agencies to comply with the sections on reducing paperwork (40 CFR § 1500.4), reducing delay (40 CFR § 1500.5), time limits (40 CFR § 1501.8), and page limits (40 CFR § 1502.7).

Improving and streamlining the NEPA process is an important element of the Trump administration's regulatory reform agenda as mandated in EO 13807. It is also an essential component of responding to the permit streamlining directive in President Trump's Critical Minerals EO 13817. As currently implemented, the NEPA process chills investment in the U.S. mineral sector and creates a serious barrier to exploration and development of the Nation's domestic mineral resources. This Administration's efforts to eliminate the permitting delays that stand in the way of responsible and timely development of domestic mineral deposits is essential to America's economy, technology, infrastructure, and defense.

We very much appreciate CEQ's outreach efforts to obtain public comments in this ANPR and look forward to working with CEQ throughout the rulemaking process. Please do not hesitate to contact us if you have any questions about these comments.

Respectfully submitted:

Barbara Coppola
WMC President
Barbara.Coppola@duke-energy.com

Debra W. Struhsacker
WMC Co-Founder and Director
debra@struhsacker.com

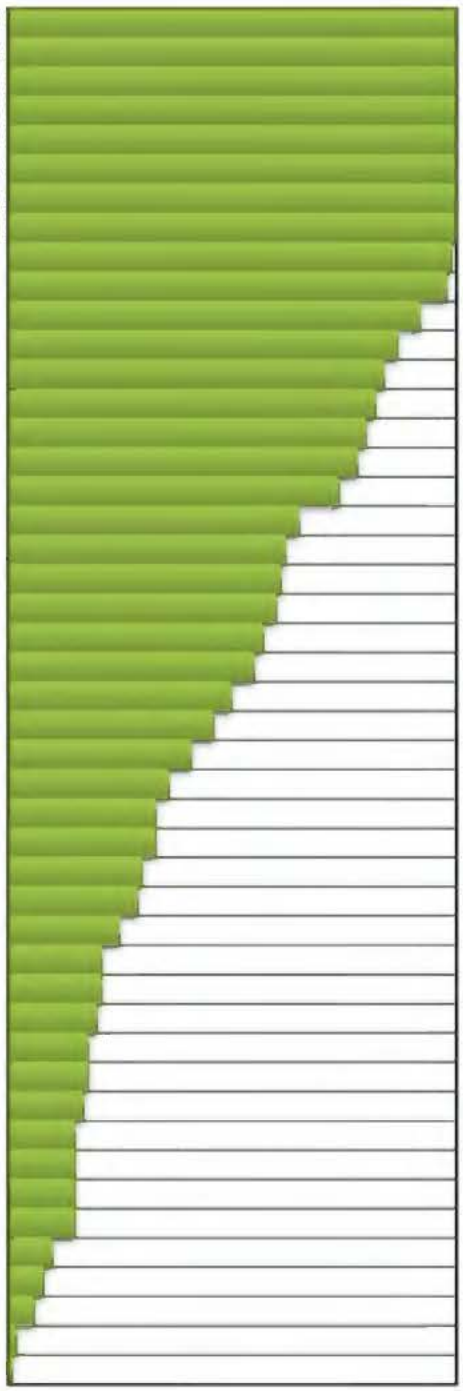
Attachment: Exhibit I – 1995 and 2016 USGS Net Mineral Import Reliance Charts

EXHIBIT 1

1995 and 2016 U.S. Net Import Reliance Charts

Sources: 1996 and 2017 USGS Mineral Commodity Surveys

1995 U.S. NET IMPORT RELIANCE FOR SELECTED NONFUEL MINERAL MATERIALS



ARSENIC	100	China, Chile, Mexico
COLUMBIUM (niobium)	100	Brazil, Canada, Germany
GRAPHITE	100	Mexico, Canada, China, Madagascar
MANGANESE	100	South Africa, gabon, France, Brazil
MICA, sheet (natural)	100	India, Brazil, Finland, China
STRONTIUM (celestite)	100	Mexico, Germany
THALLIUM	100	Belgium, Canada, United Kingdom
YTTRIUM	100	China, United Kingdom, Hong Kong, Japan, France
BAUXITE & ALUMINA	99	Australia, Jamaica, Guinea, Brazil
GEMSTONES	98	Israel, India, Belgium, United Kingdom
FLUORSPAR	92	China, South Africa, Mexico
TUNGSTEN	87	China, Germany, Bolivia, Peru
TIN	84	Brazil, Bolivia, Indonesia, China
COBALT	82	Zambia, Norway, Canada, Zaire, Finland
TANTALUM	80	Australia, Germany, Canada, Thailand
CHROMIUM	78	South Africa, Turkey, Zimbabwe, Russia, Finland
POTASH	74	Canada, Belarus, Germany, Israel, Russia
BARITE	65	China, India, Mexico
IODINE	62	Japan, Chile
NICKEL	61	Canada, Norway, Australia, Dominican Republic
ANTIMONY	60	China, Mexico, South Africa, Hong Kong
STONE (dimension)	57	Italy, Spain, India, Canada
PEAT	55	Canada
MAGNESIUM COMPOUNDS	50	China, Canada, Mexico, Greece, Austria
ASBESTOS	46	Canada
ZINC	41	Canada, Mexico, Peru, Spain
DIAMOND (dust, grit & powder)	36	Ireland, China, Russia
SELENIUM	33	Canada, Philippines, Japan, Belgium, United Kingdom
SILICON	33	Norway, Brazil, Canada, Russia
GYPSUM	30	Canada, Mexico, Spain
PUMICE	29	Greece, Zaire, Turkey, Ecuador
ALUMINUM	25	Canada, Russia, Venezuela, Brazil
CADMIUM	21	Canada, Mexico, Belgium, Germany
IRON & STEEL	21	European Union, Canada, Japan, Brazil, South Korea
NITROGEN (fixed), AMMONIA	20	Trinidad & Tobago, Canada, Former Soviet Union, Mexico
IRON ORE	18	Canada, Brazil, Venezuela, Australia, Mauritania
SULFUR	18	Canada, Mexico
CEMENT	17	Canada, Spain, Greece, Venezuela, Mexico
LEAD	15	Canada, Mexico, Peru, Australia
SALT	15	Canada, Mexico, Bahamas, Chile
SODIUM SULFATE	15	Canada, Mexico
VERMICULITE	15	South Africa
MICA, scrap & flake (natural)	10	Canada, India
PERLITE	8	Greece
COPPER	6	Canada, Chile, Mexico
RARE EARTHS	2	Australia
LIME	1	Canada, Mexico

Additional commodities for which there is some import dependency include:

Bismuth	Mexico, Belgium, China, Peru
Gallium	France, Germany, Russia, United Kingdom, Hungary
Ilmenite	South Africa, Australia, Canada
Indium	Canada, France, Italy, Belgium, Russia
Iron & steel slag	Canada, Japan
Kyanite	South Africa, France
Mercury	Canada, Russia, Germany
Platinum	South Africa, United Kingdom, Belgium, Germany
Rhenium	Chile, Germany, United Kingdom, Russia, Kazakstan
Rutile	Australia, Sierra Leone, South Africa
Silver	Mexico, Canada, Peru, Chile
Thorium	Australia
Titanium (sponge)	Russia, Japan, China
Vanadium	Russia, South Africa, Canada, Mexico
Zirconium	Australia, South Africa

Data from U.S. Geological Survey, 1996, Mineral commodity summaries 1995: https://minerals.usgs.gov/minerals/pubs/mcs/1996/nir.gif

2017 U.S. NET IMPORT RELIANCE[1]

Commodity	Percent	Major import sources (2013-16)[2]
ARSENIC	100	Morocco, China, Belgium
ASBESTOS	100	Brazil, Russia
CESIUM	100	Canada
FLUORSPAR	100	Mexico, China, South Africa, Vietnam
GALLIUM	100	China, Germany, United Kingdom, Ukraine
GRAPHITE (natural)	100	China, Mexico, Canada, Brazil
INDIUM	100	Canada, China, France, Republic of Korea
MANGANESE	100	South Africa, Gabon, Australia, Georgia
MICA sheet (natural)	100	China, Brazil, Belgium, Austria
NEPHELINE SYENITE	100	Canada
NIOBIUM (columbium)	100	Brazil, Canada, Russia
QUARTZ CRYSTAL (industrial)	100	China, Japan, Romania, United Kingdom
RARE EARTHS	100	China, Estonia, France, Japan
RUBIDIUM	100	Canada
SCANDIUM	100	China
STRONTIUM	100	Mexico, Germany, China
TANTALUM	100	Brazil, Rwanda, Australia, Canada
THALLIUM	100	Russia, Germany
THORIUM	100	India, United Kingdom
VANADIUM	100	Czechia, Austria, Canada, Republic of Korea
YTTRIUM	100	China, Estonia, Japan, Germany
GEMSTONES	99	Israel, India, Belgium, South Africa
BISMUTH	96	China, Belgium, Peru
POTASH	92	Canada, Russia, Israel, Chile
TITANIUM MINERAL CONCENTRATES	91	South Africa, Australia, Canada, Mozambique
ANTIMONY (oxide)	85	China, Belgium, Bolivia
ZINC	85	Canada, Mexico, Peru, Australia
STONE dimension	83	China, Brazil, Italy, Turkey
RHENIUM	80	Chile, Belgium, Germany, Poland
ABRASIVES, fused aluminum oxide (crude)	>75	China, Canada, France
ABRASIVES, silicon carbide (crude)	>75	China, Netherlands, South Africa, Romania
BARITE	>75	China, India, Mexico, Morocco
BAUXITE	>75	Jamaica, Brazil, Guinea, Guyana
TELLURIUM	>75	Canada, China, Belgium, Philippines
TIN	75	Peru, Indonesia, Malaysia, Bolivia
COBALT	72	Norway, China, Japan, Finland
PEAT	71	Canada
DIAMOND (dusts, grit & powder)	70	China, Ireland, Russia, Romania
CHROMIUM	69	South Africa, Kazakhstan, Russia
PLATINUM	68	South Africa, Germany, United Kingdom, Russia
SILVER	62	Mexico, Canada, Peru, Poland
ALUMINUM	61	Canada, Russia, United Arab Emirates, China
NICKEL	59	Canada, Norway, Australia, Russia
TITANIUM (sponge)	53	Japan, China, Kazakhstan, Ukraine
GERMANIUM	>50	China, Belgium, Russia, Germany
IODINE	>50	Chile, Japan
IRON OXIDE PIGMENTS (natural)	>50	Cyprus, Spain, France, Austria
IRON OXIDE PIGMENTS (synthetic)	>50	China, Germany, Canada, Brazil
LITHIUM	>50	Chile, Argentina, China
TUNGSTEN	>50	China, Canada, Bolivia, Germany
BROMINE	<50	Israel, China, Jordan
ZIRCONIUM MINERAL CONCENTRATES	<50	South Africa, Australia, Senegal
ZIRCONIUM	<50	China, Germany, Japan
MAGNESIUM COMPOUNDS	47	China, Canada, Australia, Brazil
GARNET (industrial)	46	Australia, India, South Africa, China
PALLADIUM	45	South Africa, Russia, Italy, United Kingdom
MICA, scrap & flake (natural)	42	Canada, China, India, Finland
LEAD	40	Canada, Republic of Korea, Mexico, India
ALUMINA	37	Australia, Suriname, Brazil, Jamaica
SILICON	35	Russia, Brazil, Canada, China
COPPER	33	Chile, Canada, Mexico
VERMICULITE	30	Brazil, South Africa, China, Zimbabwe
PUMICE	27	Greece, Iceland, Mexico
FELDSPAR	26	Turkey, Mexico, Spain

[1]Not all mineral commodities covered in this publication are listed here. Those not shown include mineral commodities for which the United States is a net exporter (abrasives, metallic; boron; clays; diatomite; gold; helium; iron and steel scrap; iron ore; kyanite; molybdenum; sand and gravel, industrial; selenium; soda ash; titanium dioxide pigment, wollastonite; and zeolites) or less than 25% import reliant (beryllium; cadmium; cement; diamond, industrial stones; gemstones; gypsum; iron and steel; iron and steel slag; lime; magnesium metal; nitrogen (fixed)-ammonia; perlite; phosphate rock; sand and gravel, construction; salt; stone, crushed; sulfur, and talc). For some mineral commodities (hafnium, and mercury), not enough information is available to calculate the exact percentage of import reliance.

[2]In descending order of import share.

Data from U.S. Geological Survey, 2017, Mineral commodity summaries 2016: U.S. Geologial Survey, 202 p., https://doi.org/10.3133/70180197, Page 6.

RE: [EXTERNAL] Comments on ANPRM

From: "Weiland, Paul S." <pweiland@nossaman.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6)[redacted]

Date: Thu, 23 Aug 2018 13:30:52 -0400

Your staff was insistent that we use the fax, and, fortunately, we still own one. Thanks Ted.

Paul

Paul S. Weiland
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From: Boling, Ted A. EOP/CEQ [mailto(b) (6)[redacted]
Sent: Thursday, August 23, 2018 10:01 AM
To: Weiland, Paul S.
Subject: Re: [EXTERNAL] Comments on ANPRM

Paul, you're use of our fax machine successfully drew my attention. Thus, notwithstanding the deadline, I can tell you that CEQ is considering your comments. I appreciate the work that went into them.

Best,
Ted

Sent from my iPhone

On Aug 23, 2018, at 12:50 PM, Weiland, Paul S. <pweiland@nossaman.com> wrote:

Ted,

I hope you are well. I wanted to draw your attention to comments we recently submitted on the ANPRM with respect to the CEQ NEPA regulations. Unfortunately, these comments were submitted

the day after the deadline established by CEQ. This lapse is ultimately my responsibility. That said, I wanted to let you know that these modest comments were the result of direction from the client to put forth recommendations that would improve implementation of NEPA and are based on thought and deliberation among a group of practitioners with collectively over 100 years of experience working with the Act. I hope that the Council will consider and draw on them if it is your collective view that the concepts have merit, as we believe is the case. If you have any questions, please do not hesitate to contact me.

Paul Weiland

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<2018-08-21 Comments re the Council on Environmental Quality's June 20, 2018 NEPA Update.pdf>

Re: [EXTERNAL] Comments on ANPRM

From:	"Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">
To:	"Weiland, Paul S." <pweiland@nossaman.com>
Date:	Thu, 23 Aug 2018 13:01:03 -0400
Attachments:	image001.png (2.74 kB)

Paul, you're use of our fax machine successfully drew my attention. Thus, notwithstanding the deadline, I can tell you that CEQ is considering your comments. I appreciate the work that went into them.

Best,
Ted

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<2018-08-21 Comments re the Council on Environmental Quality's June 20, 2018 NEPA Update.pdf>

[EXTERNAL] Comments on ANPRM

From: "Weiland, Paul S." <pweiland@nossaman.com>

To: "Boling, Ted A. EOP/CEQ" <(b) (6)[redacted]

Date: Thu, 23 Aug 2018 12:49:46 -0400

Attachments: 2018-08-21 Comments re the Council on Environmental Quality's June 20, 2018 NEPA Update.pdf (574.47 kB)

Ted,

I hope you are well. I wanted to draw your attention to comments we recently submitted on the ANPRM with respect to the CEQ NEPA regulations. Unfortunately, these comments were submitted the day after the deadline established by CEQ. This lapse is ultimately my responsibility. That said, I wanted to let you know that these modest comments were the result of direction from the client to put forth recommendations that would improve implementation of NEPA and are based on thought and deliberation among a group of practitioners with collectively over 100 years of experience working with the Act. I hope that the Council will consider and draw on them if it is your collective view that the concepts have merit, as we believe is the case. If you have any questions, please do not hesitate to contact me.

Paul Weiland

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Coalition for a Sustainable Delta

August 21, 2018

Via Fax (202) 456-6546 and U.S. Mail

Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Comments regarding the Council on Environmental Quality's June 20, 2018 Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

Submitted by: The Coalition for a Sustainable Delta

Dear Mr. Boling:

The Coalition for a Sustainable Delta ("Coalition") provides the following comments in response to the Council on Environmental Quality's ("CEQ") advance notice of proposed rulemaking concerning updates to CEQ's National Environmental Policy Act ("NEPA") regulations, which was published in the Federal Register on June 20, 2018 (the "Update"). The Coalition appreciates the chance to comment on this important regulatory proposal, which has the potential to substantially impact all federal agencies and innumerable projects across the nation. We believe that CEQ has a unique opportunity to revise its regulations in a manner that would strengthen the NEPA process while reducing both inefficiencies and the potential for litigation. The Coalition supports CEQ in this attempt to modernize a framework "calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." *See* 42 U.S.C. § 4331(a).

I. BACKGROUND

The Coalition is a California nonprofit corporation composed of agricultural, municipal, and industrial water users, as well as individuals in the San Joaquin Valley. The Coalition and its members depend on water from the Sacramento-San Joaquin Delta ("Delta") for their continued livelihoods. Individual Coalition members use the Delta for environmental, aesthetic, and recreational purposes – making their economic and non-economic interests, and the interests of the Coalition, dependent on a healthy and sustainable Delta ecosystem. Because

changes to the environmental review process under NEPA have the potential to affect those interests, the Coalition offers the following comments regarding the Update.

II. COMMENTS

Pursuant to CEQ's request that commenters reference specific question numbers from the Update when providing responses, the Coalition has reproduced the relevant text from the Update verbatim in bold before its comments. In addition, where the Coalition is proposing specific modifications to the text of CEQ's NEPA regulations, the Coalition has used *italicized* text to indicate additions and ~~strikethrough~~ text to indicate deletions.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives;
b. Purpose and Need;
c. Reasonably Foreseeable;
d. Trivial Violation; and
e. Other NEPA terms.

The Coalition believes that CEQ should strongly consider adding definitions of the terms "Purpose" and "Need" to its NEPA regulations. These terms influence the scope of NEPA analysis and the content of NEPA documents that are both informative to the public and useful to the relevant agencies. The current lack of clarity surrounding the exact definitions of these terms contributes to NEPA analyses that are ambiguous, unfocused, and unnecessarily complex or lengthy. Introducing new definitions for these terms that clearly identify the requirements of each will help agencies and project proponents craft clear and effective NEPA documents.

A good Purpose and Need statement helps set the scope of the subsequent NEPA analysis. It also helps introduce the public to the subject under consideration – identifying *why* the agency is acting and laying out *how* the agency proposes to act. A thoughtful Purpose and Need statement can also set the stage for compliance with other laws besides NEPA, like the Clean Water Act ("CWA") and Endangered Species Act ("ESA"). Effective NEPA documents will refer back to the Purpose and Need statement throughout their analysis, linking the needs and objectives with the action alternatives, the alternatives not carried forward for further analysis, and the final agency decision.

The Coalition recommends that CEQ develop separate definitions for "purpose" and "need", as each refers to a different component of a related whole. The definition of "need" should reflect that the "need" for an action is the problem or opportunity to which the agency is responding. That may be a set of resource conditions that are undesirable and need fixing, or it could be an external request, like an application for a permit or a petition for a right-of-way. At times there may be parallel needs, including a legal responsibility on the part of the lead agency

to act, as in the case of a permit request. Highlighting the nature of *why* the government is acting helps guide an agency's decision while also making it clear to the public the reasoning for the action.

Similarly, CEQ should explain that "purpose" refers to the proposed solution to the opportunity or problem that has spurred the government to act. When stated briefly and unambiguously, without being unreasonably narrow, the "purpose" of the action should identify the fundamental reasons why the action is proposed, expressed as a desired outcome. Achieving the "purpose" – e.g., improving the problematic resource condition or providing a response to the external request – will address the need.

With these thoughts in mind, the Coalition suggests CEQ add the following language to the existing section describing the purpose and need statement:

> **§ 1502.13 Purpose and need.**
>
> The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.
>
> *"Need" means the problem or opportunity to which the agency is responding. This may be a societal need or resource condition the agency believes requires attention, or a request made to the agency for which it is legally required to respond, such as an application for a permit or a request for a right-of-way.*
>
> *"Purpose" means the objective of the agency's action – the solution to the identified problem or opportunity. This objective should show how the agency proposes to address the stated problem, condition, or request.*
>
> *This statement should be clear, objective, and easily understandable to the general public.*

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA review and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

The Coalition believes that agencies and the general public would benefit from more guidance from CEQ that delineates the proper range of alternatives agencies should consider when developing their NEPA analyses. For one, CEQ should clarify that, in this context, "alternatives" refers only to those options available to <u>the agency conducting the NEPA analysis</u>, not alternatives available to different agencies or to a project proponent. The Coalition has seen

too many NEPA processes get bogged down by the process of selecting alternatives. The appropriate range of alternatives that an agency reviews in the course of its NEPA analysis should logically only include those alternatives that it has the authority to implement.

Inherent in this guidance would also be a recognition that the range of alternatives will likely differ for different types of actions. For example, if the need for an action is an agency's legal responsibility to respond to a permit application, the range of alternatives likely will be small – the agency can either deny the permit or grant the permit. Contrast that situation with an agency action to remedy an undesirable resource condition. For example, suppose a bridge across a river near a popular U.S. Forest Service campground is washed out during a flood. As the relevant agencies consider how to respond to the need to restore access to the campground, there could be a suite of potential courses of action to consider, from replacing the bridge, to moving the campground, to changing the main entry point to the campground by building a new access road. Each of these general courses of action could be accomplished in multiple ways, yielding a much larger number of alternatives.

Through its Update, CEQ should also take the opportunity to reinforce how the appropriate range of alternatives for NEPA review is tethered to the purpose and need for an action. The broader an agency's purpose and need, the broader the range of alternatives that will need to be analyzed. In addition, an alternative that does not respond to the identified purpose and need for an action should not be considered to be reasonable, and therefore, does not need to be evaluated. *See* 40 C.F.R. § 1502.14.

Therefore, the Coalition suggests that CEQ make the following edits to its regulations:

> **§ 1500.2 Policy.**
>
> ...
> (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment *while addressing the identified purpose and need for the action*.
> ...
>
> **§ 1502.1 Purpose.**
>
> The primary purpose of an environmental impact statement is to serve as an action-forcing device to ~~insure~~ *ensure* that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which *address the identified purpose and need for an*

action and would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the *Purpose and Need (§1502.13),* Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate ~~all~~ *an appropriate range of* reasonable alternatives *available to the agency—taking into account the size, time frame, cost, and anticipated effects of alternatives*—and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

~~(c) Include reasonable alternatives not within the jurisdiction of the lead agency.~~

(c)~~(d)~~ Include the alternative of no action.

(d)~~(e)~~ Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(e)~~(f)~~ Include appropriate mitigation measures not already included in the proposed action or alternatives.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

The Coalition suggests that CEQ consider two additional topics in order to improve the efficiency and effectiveness of NEPA implementation: (1) the scope and use of modeling when assessing potential impacts, and (2) the adoption of environmental analyses prepared by other federal agencies.

Scope and Use of Modeling

The Coalition encourages CEQ to consider adding guidance to its NEPA regulations concerning the scope and use of the modeling of impacts. In particular, (1) how far out in time to model, and (2) when modeling is inappropriate due to the size of the associated rates of error. As CEQ has already noted in its regulations, high quality information and accurate scientific analysis are intrinsic to the NEPA process. *See* 40 CFR § 1500.1. EISs that include models of impacts going out decades with increasingly larger error rates do not help agencies act according to the letter and spirit of NEPA. Studies consistently show the rate of error associated with forecasting increases over time. When agencies model impacts, they should identify the type of model being used and provide the public with information to assess the relative rigor of that model. To encourage this behavior, the Coalition suggests CEQ add the following language to § 1502.24:

> **§ 1502.24 Methodology and scientific accuracy.**
>
> Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.
>
> *When either the lead agency or an agency providing comments on a NEPA document uses models upon which it bases its conclusions or comments, the agency shall identify the model being used and the predicted rate of error both for when the project or action is planned to become operational and in reasonable increments over the projected life of the proposed action.*

The Coalition encourages CEQ to consider whether there are regulatory revisions it can make or guidance documents it can issue that would address this issue.

Adopting Other Federal Agencies' Environmental Analyses

Another way to improve the efficiency and effectiveness of NEPA implementation would be to remove some of the procedural roadblocks erected in front of agencies that want to adopt the environmental analyses of other federal agencies. For example, requiring an agency to recirculate another agency's published EIS as a final statement before issuing a ROD, when that EIS covers the same material as would an EIS for the proposed action, unnecessarily prolongs the NEPA process. Where another federal agency has invested the time and energy into developing a pertinent EIS that has been reviewed by the public, and where the agency wanting to adopt that analysis has done a thorough review to ensure the EIS is both applicable and up-to-date, the adopting agency should be able to simply issue a ROD for public review and comment.

In light of these ideas, the Coalition suggests that CEQ make the following edits to § 1506:

> **§ 1506.3 Adoption.**
>
> ...
> (b) *In the case of final environmental impact statements,* ~~If~~ *if* the actions covered by the original environmental impact statement and the proposed action are substantially the same, *and the adopting agency has determined that the analysis in the original environmental impact statement is still current,* the agency adopting another agency's statement ~~is not required to recirculate it except as a final statement~~ *may issue its own Record of Decision based on the original environmental impact statement, making sure to allow the public an opportunity to comment on that Record of Decision*. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The Coalition supports the provisions in CEQ's NEPA regulations at §§ 1501.8 and 1502.7 that encourage Federal agencies to set time limits appropriate to individual actions and suggest that the text of EISs normally be less than 150 pages. The Coalition worries that an attempt to set government-wide hard limitations on either the time to complete the entire NEPA process or the length of EISs and EAs, without exceptions, could hamstring agencies and project proponents in certain situations. However, the Coalition would support efforts by individual agencies to set time and length limits for NEPA analyses of certain types of projects. The individual agencies are likely best-situated to craft guidance at the level of detail that would make this workable.

In addition, the Coalition would support specific efforts to curtail how long it can take to move from one iteration of an EIS to the next. Timelines that encourage agencies to promptly review and address public comments and keep the NEPA process moving forward should be encouraged. Long delays frustrate everyone involved in a project and risk both the site conditions and the analysis of environmental effects turning stale.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Given the Coalition's previously stated preference for guidance and regulations that keep the NEPA process moving forward, we support agency use of contractors to complete EISs where such use positively affects the cost or length of the review process. The Coalition would support efforts by CEQ to allow for greater flexibility in this arena. For example, the Coalition believes that a lead agency should be free to use any contractor it believes will do the best and most efficient job, regardless of whether that contractor has an interest in the outcome of a project, so long as the lead agency exercises proper oversight and retains responsibility for the objectivity of the analysis.

Certain statutes, like those pertaining federal highway construction, have modified this requirement in the past. CEQ should consider revising § 1506.5 as follows to remove restrictions on an agency's use of contractors and provide greater flexibility for the NEPA process:

> **§ 1506.5 Agency responsibility.**
>
> ...
> (c) Environmental impact statements. Except as provided in §§1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under §1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. ~~Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project.~~ If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to

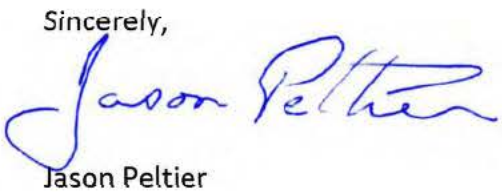
> submit information to it or to prohibit any person from submitting information to any agency.

Here again, the issuance of additional guidance from CEQ, or from individual agencies themselves, on the efficient use of contractors in crafting documents to support an agency's NEPA analysis might also be effective in fostering greater NEPA efficiency.

III. CONCLUSION

Thank you again for the opportunity to comment on the Update. The Coalition appreciates the change to share its views as CEQ considers how to make the NEPA process more meaningful, more reliable, and more efficient. Should you have any questions about our comments, please feel free to contact Paul Weiland at (949)-477-7644 or pweiland@nossaman.com.

Sincerely,



Jason Peltier
Executive Director

56584826

RE: [EXTERNAL] Re: Ted Boling's email

From: "Tomiak, Robert" <tomiak.robert@epa.gov>

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 27 Aug 2018 10:58:42 -0400

This is being coordinated by Jane's office.

Rob

From: Boling, Ted A. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, August 27, 2018 10:57 AM
To: Tomiak, Robert <tomiak.robert@epa.gov>
Subject: Fwd: [EXTERNAL] Re: Ted Boling's email

Rob - do you still have an international portfolio, or is this meeting request best handled by Jane Nishida's office?

Sent from my iPhone

Begin forwarded message:

> **From:** Elliot Sucari <elliot@sucari.com>
> **Date:** August 27, 2018 at 10:52:11 AM EDT
> **To:** "Boling, Ted A. EOP/CEQ" <[redacted]
> **Cc:** "Sucari, Elliot" <ESucari@oas.org>, Manuel Frávega <fravega.manuel@gmail.com>, "Hill-Macon, Cam" <Hill-Macon.Cam@epa.gov>, CDeWindt@oas.org
> **Subject: [EXTERNAL] Re: Ted Boling's email**
>
> Mr. Boling,
>
> Thanks for your e-mail, and again sorry for the last minute requests.
>
> He is meeting with officials at the Environmental Appeals Board and the EPA, on Tuesday afternoon and Wednesday at noon.
>
> Ms. Cam Hill-Macon is managing that agenda. We would be happy to include an additional meeting with your colleagues at the EPA
>
> All best,
> Elliot
>
> On Aug 27, 2018, at 10:19 AM, Boling, Ted A. EOP/CEQ <[redacted] wrote:

Mr. Sucari – I'm afraid that Mr. Fravega's availability this week does not match mine.
Is he meeting with officials at the Environmental Protection Agency? I might suggest that he include a meeting with my colleagues there.

Regards,

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place
Washington, DC 20503

From: Sucari, Elliot <ESucari@oas.org>
Sent: Monday, August 27, 2018 9:35 AM
To: Boling, Ted A. EOP/CEQ <[redacted]
Cc: 'elliot@sucari.com' <elliot@sucari.com>; 'Manuel Frávega' <fravega.manuel@gmail.com>; 'Hill-Macon, Cam' <Hill-Macon.Cam@epa.gov>
Subject: [EXTERNAL] FW: Ted Boling's email

Dear Mr. Boling,

My name is Elliot Sucari and I work at the Department of Sustainable Development at the Organization American States and I am contacting you through Ms. Cam Hill-Macon Senior Advisor at the EPA. This week **Manuel Fravega**, the undersecretary of Environmental Control and Compliance Assessment of the Province of Buenos Aires (Argentina) will be on an official visit here in Washington DC.

We think it would be a great opportunity (if possible) to schedule a meeting with you or your team, in order to explore possible synergies regarding Environmental Assessment and compliance.

He would be free to meet Tuesday after 5 pm or Wednesday as from 2 pm onwards.
My apologies in advance for the last minute request.

Best regards,
Elliot Sucari

From: Hill-Macon, Cam [mailto:Hill-Macon.Cam@epa.gov]
Sent: Friday, August 24, 2018 6:21 PM
To: Sucari, Elliot
Subject: [EXT] FW: Ted Boling's email

Hi Elliot,

Here is the email address for Ted Boling, the person at the Council on Environmental Quality (CEQ) who has been working across the U.S. Government to streamline the environmental impact assessment process: [redacted] I've also included information below from CEQ's website on their infrastructure permitting initiatives (https://www.whitehouse.gov/ceq/initiatives/). It should provide Mr. Fravega with addition information related to his interest in the U.S. environmental impact assessment process.

Thanks,

Cam

(Ms.) Cam Hill-Macon • Senior Advisor
Middle East, Latin America, Africa, and Caribbean Programs
EPA • Office of International and Tribal Affairs
+ (202) 564-6408 | **hill-macon.cam@epa.gov** | >>>www.epa.gov/international<<;<

Council on Environmental Quality

Initiatives

- **SHARE:**
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- Initiatives
- FOIA
- Resources
- Contact

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Council on Environmental Quality

Infrastructure & Executive Order 13807

On September 14, 2017, CEQ published a notice in the Federal Register announcing an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process for infrastructure projects.

To comply with Section 5(d) of Executive Order 13807, CEQ will refer various requests for designation of State projects pursuant to Executive Order 13766 to the Federal Permitting Improvement Steering Council, Department of Transportation and U.S. Army Corps of Engineers as appropriate. CEQ will, as appropriate in response to any additional requests from States, refer projects that *qualify for designation as high priority* projects in accordance with Section 5(d) of Executive Order 13807. The Federal Infrastructure Permitting

Dashboard tracks the Federal government's environmental review and authorization processes for covered major infrastructure projects.

To comply with Section 5(b) of Executive Order 13807, on March 20, 2018, the Office of Management and Budget (OMB) and CEQ signed a Memorandum titled "One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807." Pursuant to that Memorandum, federal agencies signed a One Federal Decision Memorandum of Understanding (MOU) which was announced on April 9, 2018. Signatories to the MOU include the Departments of the Interior, Agriculture, Commerce, Housing and Urban Development, Transportation, Energy, and Homeland Security, Environmental Protection Agency, U.S. Army Corps of Engineers, Federal Energy Regulatory Commission, Advisory Council on Historic Preservation, and Federal Permitting Improvement Steering Council. Links to the executive order and related materials are provided below:

- Executive Order 13807 (August 15, 2017)
- CEQ Initial List of Actions & Fact Sheet (September 14, 2017)
- Executive Order 13766 Requests & CEQ Responses (Updated March 27, 2018):
    - California: Request • Interim Response • Response
    - Florida: Request • Interim Response • Response
    - Louisiana: Request • Interim Response • Response
    - Nebraska: Request • Interim Response • Response
    - Texas: Request • Response
    - Utah: Request • Interim Response • Response
    - U.S. Virgin Islands: Request • Response
- Executive Order 13807 and Implementation of One Federal Decision:
    - Framework Memorandum (March 20, 2018)
    - Memorandum of Understanding, Press Release and Fact Sheet (April 9, 2018)
    - Press Release titled "What They Are Saying: Support For President Donald J. Trump's Action To Improve Federal Infrastructure Permitting" (April 10, 2018)
- Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act & Fact Sheet (June 20, 2018)
    - Advance notice of proposed rulemaking; extension of comment period (July 11, 2018)

Fwd: [EXTERNAL] Re: Ted Boling's email

From: "Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

To: Rob Tomiak <tomiak.robert@epa.gov>

Date: Mon, 27 Aug 2018 10:56:47 -0400

Rob - do you still have an international portfolio, or is this meeting request best handled by Jane Nishida's office?

Sent from my iPhone

Begin forwarded message:

From: Elliot Sucari <elliot@sucari.com>
Date: August 27, 2018 at 10:52:11 AM EDT
To: "Boling, Ted A. EOP/CEQ" <[redacted]
Cc: "Sucari, Elliot" <ESucari@oas.org>, Manuel Frávega <fravega.manuel@gmail.com>, "Hill-Macon, Cam" <Hill-Macon.Cam@epa.gov>, CDeWindt@oas.org
Subject: [EXTERNAL] Re: Ted Boling's email

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Elliot

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Regards,

Edward A. Boling
Associate Director for the
National Environmental Policy Act
Council on Environmental Quality