



Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

March 10, 2020

Re: Proposed Amendments to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (Docket ID: CEQ-2019-0003-0001)

To Whom It May Concern:

The Climate Science Legal Defense Fund (CSLDF) submits these comments in response to the Council on Environmental Quality (CEQ)'s proposal to amend the implementing regulations of the National Environmental Policy Act (NEPA). CSLDF is a non-profit organization whose mission is to protect the scientific endeavor, a mission we carry out in significant part by working directly with scientists.

The changes the CEQ is proposing to NEPA are deeply concerning. They would weaken or eliminate many of the provisions in the CEQ regulations that provide the fundamental framework for the "hard look" doctrine the Supreme Court has developed in its NEPA case law that requires agencies to carefully and thoroughly consider the environmental consequences of a proposed action, as well as reasonable alternatives and possible mitigation measures. While many commenters will surely address these issues, we at CSLDF wish to highlight the fact that the proposed changes will severely curtail the ability of agencies that are conducting environmental reviews pursuant to NEPA to receive and incorporate input from scientists about environmental impacts. In particular, many of the proposed changes may be used to dramatically limit the extent to which the NEPA process takes into account the most current science regarding climate change.

- 1) Eliminating consideration of cumulative and indirect effects would cut out crucial scientific input

The proposal would significantly change the kinds of environmental effects agencies are required to consider as part of their NEPA analysis. Until now, agencies have been required to evaluate not only direct effects, but also indirect effects—effects that are caused by the action but that occur later in time or that are farther in distance but are still reasonably foreseeable—as well as cumulative effects—effects that result from the "incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal

or non-federal) takes them.” The proposal would do away with the distinction between direct and indirect effects, and remove the requirement for agencies to evaluate cumulative effects completely. It would replace the old definition of “effects,” which recognized direct, indirect, and cumulative effects, with one that limits analysis to effects that are “reasonably foreseeable and have a reasonably close causal relationship” to the project under consideration. The proposed change to the regulations would make a “but for” causal relationship insufficient to require that indirect environmental effects be considered under NEPA. Finally, CEQ is soliciting comment on whether it should affirmatively state that consideration of indirect effects is not required under NEPA (much as the proposal already does with cumulative effects).

These changes would arbitrarily and unjustifiably eliminate crucial pieces of scientific input from environmental analyses conduct pursuant to NEPA. To take an example from the transportation sector, a new highway interchange may lead to new commercial development and increased car traffic. This will result in increased habitat destruction, impact on waterways, and air pollution, including greenhouse gas emissions. These environmental impacts are removed in time and causal relationship from the project under consideration, but are nonetheless very real and completely foreseeable. Decades of both agency procedure and jurisprudence affirm that they must be considered as part of the NEPA process. Curtailing input from scientists on these kinds of indirect environmental impacts would unequivocally do serious harm to Congress’s fundamental purpose in passing NEPA.

Moreover, this unreasonably restrictive view of the NEPA regulations seem especially intended to allow agencies to limit or eliminate consideration of climate impacts by arguing that the causal link is too attenuated. Restricting the consideration of indirect environmental impacts, or eliminating the requirement to consider them at all, would therefore have the particular effect of silencing the voices of climate scientists in the NEPA process. Climate scientists are developing increasingly sophisticated ways to understand how the extra carbon emissions associated with building a new power plant, runway, or highway can indirectly contribute to harmful environmental impacts as a result of climate change. As the climate crisis becomes ever more urgent, this is not information agencies can reasonably leave out of environmental analyses if they are to fulfill NEPA’s goal of being stewards of our natural resources for future generations.

To ignore cumulative environmental impacts is likewise to disregard crucial scientific information and will in particular seriously undercut agencies’ ability to take climate science and the environmental effects of climate change into account as they conduct environmental reviews. For example, in evaluating how a proposed natural gas pipeline will impact habitat for endangered species by causing forest fragmentation, it is absolutely essential to take into account whether another recent project has resulted in additional fragmentation nearby, or whether the proposed pipeline will predictably be accompanied by proposals for three additional pipelines that will cause additional fragmentation. Likewise, failing to consider, when deciding whether to approve the building of a new power plant that will burn fossil fuels whether that project will be accompanied by other projects that will emit greenhouse gas pollution (well pads, pumping stations, refineries, crackers or similar) and what the cumulative impacts in terms of environmental harm from climate change will be, would be to eliminate crucial scientific information from the NEPA process and to deeply undermine NEPA’s fundamental purpose.

- 2) The proposed redefinition of “major federal action” would also drastically curtail scientific input, particularly climate science

NEPA requires agencies to study the environmental effects of “major federal actions,” a term that courts have historically interpreted broadly. The proposal would change the definition of “major federal action” to exclude those actions where minimal federal funding or minimal federal involvement limits the agency’s control over the “outcome on the project.” This could eliminate NEPA review of a large number of hugely impactful projects, but one of the reasons it is particularly concerning is that it could relieve the federal government of responsibility to review the impacts of natural gas pipelines that cross state lines (and therefore require federal approval) but that are largely permitted and approved by state agencies. This is another way in which the proposal could lead to the exclusion of a huge amount of climate science.

Scientists are learning ever more about the extent to which natural gas infrastructure (pipelines as well as associated wells, pumping stations, etc.) leaks methane, and about the specific climate impacts of that methane, which is known to be an extremely potent greenhouse gas. To allow these projects, which often cross multiple state lines and which also often come in pairs, threes or fours, to skirt NEPA review, would be to disregard huge amounts of important scientific information, including and perhaps especially climate science, and would deeply undermine the purpose of the statute.

- 3) Allowing sponsoring companies to review their own projects themselves would cut federal scientists out of the NEPA process

The proposal would allow applicant companies greater flexibility to conduct the review of the environmental impacts of their projects themselves. In addition to the blatantly obvious conflicts of interest this creates, it is also particularly concerning because it has the potential to dramatically undercut the input and participation of federal scientists in the NEPA process. It is part of the fundamental purpose and premise of NEPA that federal agencies should bring their scientific expertise to bear in impartially and objectively assessing the environmental impacts of a proposed action. To delegate this responsibility to the very companies that are sponsoring the projects and that stand to financially gain from their approval is a deeply disturbing silencing of federal scientists in favor of corporate interests.

- 4) The proposed changes would impose unreasonable space and time constraints

The proposal would impose restrictive limits on the time allowed for agencies to conduct the NEPA process, requiring (absent special approval from a senior official of the lead agency) that Environmental Assessments (EAs) be completed within one year and that Environmental Impact Statements (EISs) be completed within two years. When one considers that completing the EIS process currently takes an average of 4 ½ years, this would represent a dramatic curtailing of the time available to assess environmental impacts. The proposal would also “reinforce” a page limit on NEPA documents that already exists in the NEPA regulations, restricting EAs to 75 pages and EISs to 150 pages, or 300 pages for projects of unusual scope or complexity. It is unclear what

the purpose of this “reinforcement” would be since the existing regulations do already contain these guidelines; moreover, given that EIS documents average about 600 pages, imposing a 150 page limit would clearly exclude significant amounts of information, including scientific information, that agencies and the public currently have the opportunity to consider.

The major federal actions considered through the NEPA process regularly require consideration of large amounts of genuinely complex and detailed scientific information about a range of issues, such as modeling of air quality impacts that result from the emission of air pollutants during the construction and/or operation of a project; analysis of climate change impacts; analysis of how construction and operation of the project will affect water quality if stream crossing will be necessary during construction or if discharge of pollutants into waterways will occur during operation; impacts on fisheries and wildlife habitat, and particularly on any endangered species that may be affected, to name only a few examples.

Often, multiple agencies need to work together to get input from scientists with the appropriate expertise and to gather all the data and information necessary to fully assess the environmental impacts of a proposed action. This level of coordination takes considerable time to accomplish. Similarly, presenting and analyzing the amount of scientific data and information necessary to actually conduct a meaningful assessment of a proposed action’s environmental impacts often fills a large number of pages.

This is not unnecessary bureaucratic red tape. It is, on the contrary, what is needed to carry out Congress’s stated goal in passing NEPA of “fulfill[ing] the responsibilities of each generation as trustee of the environment for succeeding generations,” and assuring for all Americans safe and healthful surroundings. (42 U.S.C. 4331(b)). Imposing artificial and arbitrary time limits and space restrictions unreasonably curtails agency’s ability to get appropriate input from scientists and to incorporate that information into EAs or EISs. It will have the effect of silencing scientists’ voices where they are essential.

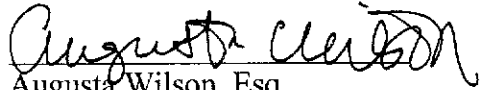
5) Conclusion

Congress’s fundamental policy aim in passing NEPA was to ensure that agencies would fully and transparently consider the best available scientific information about environmental impacts of a proposed action, and use that information to make informed decisions. The changes that the CEQ is proposing to make to NEPA’s implementing regulations would accomplish exactly the opposite. Scientists in a wide range of fields – but perhaps in some ways especially climate scientists – have huge amounts to tell us about how an action may have indirect but nonetheless concrete and important environmental impacts, and how multiple smaller actions may cumulatively have significant impacts or contribute significantly to climate change.

We are deeply concerned that the proposed changes will dramatically curtail the extent to which agencies receive this information from scientists and consider it during the NEPA review process, in favor of rapid streamlined approval of projects that may have significant climate and other environmental impacts. With the climate crisis growing ever more pressing, we cannot afford to ignore the voices of climate scientists in determining which projects to allow and which pose to great a threat to the environment we will pass down to future generations. To allow

agencies to limit the participation of scientists and the consideration of scientific information during the NEPA process as outlined above is irrational and dramatically undercuts NEPA's fundamental policy goals.

Sincerely,

A handwritten signature in black ink that reads "Augusta Wilson". The signature is written in a cursive style with a horizontal line drawn through the middle of the name.

Augusta Wilson, Esq.

Staff Attorney

Climate Science Legal Defense Fund

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