

Public Comment Submittal on the Proposed Change by the Council on Environmental Quality (CEQ) to Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket Number CEQ-2019-0003

Comment submittal by Tami Thatcher, March 7, 2020

Comments submitted via Federal eRulemaking Portal <https://www.regulations.gov>

I oppose the proposed changes to the National Environmental Policy Act (NEPA) regulations because the changes will gut the NEPA process. The Council of Environmental Quality (CEQ) is proposing changes to make it far easier for polluting federal agencies to devastate our health and environment while pretending otherwise. The NEPA regulations were intended to require federal agencies to consider the consequences of large projects, evaluate alternatives, and provide detailed information about the consequences of the alternatives. Instead, CEQ proposes that the agencies determine whether or not to apply NEPA, that they ignore cumulative impacts, and that they just can claim that they are going to do what they consider “practicable.” On top of that, the CEQ proposes that more burden be placed on commenters on a NEPA action than on the agency conducting the NEPA action.

While CEQ should focus on the intent of the NEPA process which is to 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.” 42 U.S.C. 4331(a), CEQ instead has focused on how it can gut the NEPA process.

Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major Federal actions significantly affecting the quality of the human environment by requiring Federal agencies to prepare a detailed statement on: (1) The environmental impact of the proposed action; (2) any adverse effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C).

In one example, the CEQ, proposes to change the word “possible” to the word “practicable” which then allows agencies complete unfettered discretion to pollute and harm the environment as much as they wish. It’s as much of a joke as the Department of Energy’s “As Low As Reasonably Achievable” (ALARA) radiation policy – it is utterly meaningless while sanctifying complete discretion over radiation protection, or lack thereof, of the public and workers.

What the CEQ proposes will weaken the NEPA process, despite some assertions otherwise.

In no way does CEQ propose changes to strengthen the technical adequacy of the analyses upon which the NEPA study of an action is based. In no way is the cumulative effect of harm of each individual NEPA action addressed. The inconvenience of having to study the harm imposed by the proposed actions appears to be the ONLY thing the CEQ considers in its proposed regulation change.

CEQ demonstrates that it does not understand that there are differences between a basic highway project and projects that will contaminate the planet virtually forever. CEQ should simply issue a guide to help with understanding the current regulations. In no way should CEQ's proposed regulation changes be adopted.

CEQ is actually proposing to impose more requirements on the commenters of a NEPA action than on the agencies who are pushing for the NEPA action. Unbelievable!

No, really, here is what the proposed regulation change states: "CEQ also proposes that comments should explain why the issue raised is significant to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the environment. *See Vt. Yankee*, 435 U.S. at 553 ("[Comments] must be significant enough to step over a threshold requirement of materiality before any lack of agency response or consideration becomes a concern. The comment cannot merely state that a particular mistake was made . . . ; it must show why the mistake was of possible significance in the results" (quoting *Portland Cement Assn. v. Ruckelshaus*, 486 F.2d 375, 394 (1973), cert. denied *sub nom. Portland Cement Corp. v. Administrator, EPA*, 417 U.S. 921 (1974))). CEQ also proposes a new § 1503.3(b) to emphasize that comments on the submitted alternatives, information and analyses section should identify any additional alternatives, information or analyses not included in the draft EIS, and should be as specific as possible."

In CEQ's proposed changes to Part 1500, "CEQ proposes to revise this paragraph to reflect that the regulations include direction to Federal agencies to determine what actions are subject to NEPA's procedural requirements and the level of NEPA review, where applicable." CEQ wants to allow the agencies to decide that they simply don't need to conduct a NEPA review.

In CEQ's proposed changes to Part 1508, "CEQ proposes to strike the definition of cumulative impacts and strike the terms "direct" and "indirect" in order to focus agency time and resources on considering whether an effect is caused by the proposed action rather than on categorizing the type of effect. CEQ's proposed revisions to simplify the definition are intended to focus agencies on consideration of effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. In practice, substantial resources have been devoted to categorizing effects as direct, indirect, and cumulative, which, as noted above, are not terms referenced in the NEPA statute...In addition, CEQ proposes a change in position to state that analysis of cumulative effects, as defined in CEQ's current regulations, is not required under NEPA."

This attack on the NEPA process is morally reprehensible and CEQ should be ashamed of its efforts to undermine the NEPA process. CEQ must not be allowed to gut the NEPA process. CEQ is failing every citizen and every living thing in the United States.