

March 10, 2020

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

Re: Council on Environmental Quality, *Notice of Proposed Rulemaking: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 1684 (Jan. 10, 2020), Docket No. CEQ-2019-0003

Dear Ms. Neumayr:

Thank you for the opportunity to submit comments on the Council on Environmental Quality's (CEQ's) proposal to revise the regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). This letter is submitted on behalf of the co-authors of the Equitable & Just National Climate Platform.¹

The Equitable & Just National Climate Platform was developed by a group of environmental justice (EJ) and national environmental group advocates who participate in the Climate Forum, which was launched in October 2018. Through the forum process, environmental justice and national group participants are working toward aligning around a bold national climate policy agenda that advances the goals of economic, racial, climate and environmental justice to improve the public health and well-being of all communities.

The Equitable & Just National Climate Platform identifies our desired outcomes and priorities for a national climate policy agenda, including to improve the public health and well-being of all communities while tackling the climate crisis and environmental racism head-on. This historic, bold platform lays the foundation for our organizations to vastly improve the way we work together to achieve our shared vision and goals. In addition to signing on to the platform, Climate Forum participants have committed to work together as strategic partners and allies as we shape national climate policies together. The Climate Forum is also committed to involving, valuing and lifting up the voices and positions of environmental justice and front-line communities in policy design and advocacy.

NEPA and its implementing regulations require federal agencies to consider the potential impacts – including environmental, climate, public health, and economic effects – of major federal projects on the communities in which they are located.² The law and regulations also require agencies to provide meaningful opportunities for public participation.³ Executive Order 12898 and its accompanying Presidential Memorandum specifically identify the NEPA review process as a critical avenue for addressing environmental justice concerns by identifying potential disproportionate environmental and public health effects of federal actions, requiring steps to mitigate those impacts, and providing opportunities for community input.⁴

¹ The text of the Platform and more information are available at <https://ajustclimate.org>.

² National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; 40 C.F.R. §§ 1502, 1508.

³ 40 C.F.R. §§ 1500.1, 1503, 1517.

⁴ Exec. Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 16, 1994); Memorandum for the Heads of All Departments and

The proposed revisions to the NEPA implementing regulations would hinder the Climate Forum's joint goals and efforts in at least two key ways: the proposal would eliminate the requirement to conduct a cumulative impacts analysis of a major federal project, and would severely curtail opportunities for the public to provide input on the environmental review process.

Cumulative Impacts

CEQ's proposal would eliminate the NEPA regulations' current requirement that federal agencies must evaluate the cumulative effects of a project, defined as: "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. . . . Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."⁵ This cumulative impact analysis is critical to understanding the actual effects of a particular project on an environmental justice community, as these communities are often already facing the burden of multiple polluting facilities and decades of legacy pollution.

The Equitable & Just National Climate Platform states that:

All communities have a right to live free from exposure to dangerous toxic pollution in their soil as well as in the air they breathe, the food they eat, and the water they drink. Yet persistent racial and economic inequalities—and the forces that cause them—embedded throughout our society have concentrated toxic polluters near and within communities of color, tribal communities, and low-income communities. These underlying social forces, including persistent and systematic racial discrimination and economic inequality, have created disproportionately high environmental and public health risks in these areas relative to wealthier white neighborhoods. The national climate policy agenda must address this environmental injustice head-on by prioritizing climate solutions and other policies that also reduce pollution in these legacy communities at the scale needed to significantly improve their public health and quality of life.

History shows that environmental regulation does not necessarily mean healthy environments for all communities. Many communities suffer from the cumulative effects of multiple pollution sources. A national climate policy agenda that addresses climate pollution must not abandon or diminish the important goal of reducing toxic pollution in all its forms. Climate solutions must be part of a comprehensive approach to reducing legacy environmental and economic impacts on communities and be designed intentionally to ensure that they do not impose further risks. Strategies to address climate change must not disproportionately benefit some communities while imposing costs on others. In fact, the national climate policy agenda should be used to reduce the disproportionate amount of pollution that is often found in EJ communities and that is associated with cumulative impacts, public health risks, and other persistent challenges.

This proposal would dismantle one of the only existing mechanisms that requires analysis of the pollution a new project would add to the existing pollution burden a community is already facing. We urge CEQ not to finalize this harmful revision of the NEPA regulations.

Agencies, Re: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 11, 1994), available at https://www.epa.gov/sites/production/files/2015-02/documents/clinton_memo_12898.pdf.

⁵ 40 C.F.R. § 1508.7; 85 Fed. Reg. at 1728-29.

Community Participation

Community engagement is a central part of NEPA, and the existing implementing regulations provide several opportunities for the public to be involved in the NEPA process.⁶ CEQ's proposal would curtail public engagement by imposing time limits on environmental review processes and page limits on document, drastically restricting the breadth and depth of both agency analysis and community input.⁷ The proposal would also narrow NEPA's applicability, entirely excluding some categories of projects from the NEPA process and depriving those communities of any public participation.⁸

To achieve the Climate Forum's joint goals, the Platform states that we must:

advance solutions in ways that meaningfully involve and value the voices and positions of EJ frontline and fenceline communities. To do this, bold new leadership must develop inclusive strategies that acknowledge and repair the legacy of environmental harms on communities inflicted by fossil fuel and other industrial pollution. Our vision is that all people and all communities have the right to breathe clean air, live free of dangerous levels of toxic pollution, access healthy food, and enjoy the benefits of a prosperous and vibrant clean economy.

Critical to achieving this vision of pollution-free communities is the participation of those communities in decisionmaking that affects them. The proposed restrictions of public engagement in the NEPA process would harm all communities, but would be especially detrimental to environmental justice communities facing disproportionately high environmental risks. CEQ must not finalize these revisions that would silence the voices of communities around the country.

Conclusion

If finalized, the proposed changes to the NEPA regulations would disproportionately harm the very communities who are already suffering from the worst effects of polluting facilities and are the most vulnerable to the impacts of climate change. We urge the Council on Environmental Quality to withdraw this destructive proposal, and instead work with environmental justice communities to implement – and strengthen – the existing NEPA regulations.

Sincerely,

Environmental Justice Groups: The Center for Earth, Energy and Democracy, Deep South Center for Environmental Justice, Environmental Justice Health Alliance for Chemical Policy Reform, Little Village Environmental Justice Organization, Los Jardines Institute, Michigan Environmental Justice Coalition, Midwest Environmental Justice Network, ReGenesis Project, The Harambee House, The Tishman Environmental & Design Center at the New School, and WE ACT for Environmental Justice.

National Environmental Groups: Center for American Progress, Earthjustice, League of Conservation Voters, Natural Resources Defense Council, Sierra Club, and the Union of Concerned Scientists.

⁶ See, e.g., 40 C.F.R. §§ 1500.1, 1503, 1517.

⁷ 85 Fed. Reg. at 1714-15, 1717, 1719.

⁸ *Id.* at 1713-15.