



March 10, 2020

Submitted Electronically

Council on Environmental Quality
730 Jackson Place NW
Washington, D.C. 20503
Attn: Docket No. CEQ-2019-0003

Re: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act – Docket ID No. CEQ-2019-0003

Dear Ms. Neumayr:

On behalf of the United States Conference of Catholic Bishops (USCCB), we submit the following comments on the proposed Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA). 85 Fed. Reg. 1684 (Jan. 10, 2020).

The established purpose of NEPA is 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.”¹ These principles are closely aligned with Catholic social teaching, wherein integral human development is “marked by solidarity and inter-generational justice, while taking into account a variety of contexts: ecological, juridical, economic, political and cultural.”² In many ways, NEPA gives concrete expression to principles of integral ecology and compels the federal government to care for the common good through environmental stewardship.

Since 1978, the Council on Environmental Quality (CEQ) regulations implementing NEPA have provided a framework for assessing the environmental and cultural costs of infrastructure development. These regulations foster engagement between federal agencies and local communities, encourage the pursuit of reasonable alternatives, and work to ensure the preservation of ecosystems. The proposed rule would make substantial, wide-ranging changes to the procedural implementation of NEPA. The primary justification given by the CEQ is that these amendments will accelerate the NEPA review process by simplifying language and minimizing burdensome legal delays. 85 Fed. Reg. at 1694-95. While timeliness and prudent use of federal resources merit consideration, we are concerned that the proposed revisions will invite legal challenges,

¹ 42 U.S.C. § 4331(a).

² Pope Benedict XVI, *Caritas in Veritate*, no. 48 (2009).

destabilize environmental regulations, and reduce federal agencies' abilities to protect the common good when evaluating the ecological impacts of proposed actions.

The regulatory update also proposes “a change in position to state that analysis of cumulative effects, as defined in the CEQ’s current regulations, is not required under NEPA.” 85 Fed. Reg. at 1708. This change in definitions and classification of terms will exclude climate change and other environmental problems caused by cumulative effects from NEPA’s consideration. We believe that “the climate is a common good, belonging to all and meant for all.”³ Intact and functioning ecosystems provide for the basic needs of human life. Identifying the potential cumulative impacts of federal actions serves to protect both human and environmental health, and the CEQ should preserve this NEPA requirement.

Finally, many projects which are subject to NEPA review can contribute to climate change by causing an increase in greenhouse gas (GHG) emissions. In 2019, the CEQ issued a draft guidance on how NEPA analysis should address these emissions. 84 Fed. Reg. 30097 (June 16, 2019). The CEQ has now invited comments “on whether it should codify any aspects of its proposed GHG guidance in the regulation, and if so, how the CEQ should address them in the regulations.” 85 Fed. Reg. at 1711. As explained further below, we are concerned that the draft guidance fails to sufficiently acknowledge the established connection between GHG emissions and climate change.

Given this background, our concerns with the proposed rule rest in three main areas: the ability of the proposed rule to maintain permanent environmental protection, the consideration of climate change during the environmental review process, and the codification of the draft GHG guidance within NEPA regulations.

Modernization of NEPA and Clarification of Key Terms

To establish the value of NEPA, and to support our concern about any proposal that could weaken this policy, it is helpful to first remember its original purpose.

NEPA was enacted in response to “the profound impact of man’s activity on the interrelations of all components of the natural environment.”⁴ NEPA requires agencies to analyze the environmental consequences of a proposed action. It does not prescribe mandated results or oblige agencies to elevate environmental concern over the needs of society. NEPA is a longstanding environmental regulation that reflects integral ecology, helping humanity to utilize natural resources without affecting disproportionate adverse impacts.

In recent years, the need to make NEPA procedures more efficient and effective has been demonstrated by numerous executive actions taken by the administrations of both parties. Congress has also proposed multiple technical improvements to accelerate environmental reviews and improve interagency transparency. These statutory developments and presidential directives have confirmed the common concern that NEPA has departed from its original purpose, serving

³ Pope Francis, *Laudato si'*, no. 23 (2015).

⁴ 42 U.S.C. § 4331(a).

to slow and impede the development of necessary infrastructure projects that would provide jobs and other benefits to society.

In light of the established need for reform, it is important to note that regulatory policies depend upon continuity for success. Stability in environmental regulations is essential for protecting against “the mindset of short-term gain and results which dominates present day economics and politics.”⁵ A departure from this continuity gives rise to worry that the revised NEPA regulations will be ineffective in protecting ecological resources during infrastructure development.

The comprehensive revision which the CEQ has proposed aims to streamline the NEPA review process. This would be achieved by “simplifying regulatory requirements, codifying certain guidance and case law relevant to these proposed regulations, revising the regulations to reflect current technologies and agency practices, eliminating obsolete provisions, and improving the format and readability of the regulations.” 85 Fed. Reg. at 1685. The goal of these comprehensive revisions is “to ensure a timely and predictable process, and avoidance of litigation.” 85 Fed. Reg. at 1695.

Projects that qualify for NEPA review have numerous stakeholders, such as the applicant company, contractors, federal and state agencies, tribes, local communities, public interest groups, and individual members of the public. Each of these stakeholders can raise legal objections to the intended project that result in significant delays. Previous administrative and congressional proposals have established the need for a more expeditious NEPA process. The proposed rule seeks to create efficiency by simplifying the definitions of several key terms. These revisions invite considerable legal scrutiny, potentially weakening the goal of creating a timelier process.

The current NEPA definitions and procedural requirements have remained unchanged for more than 40 years. This has allowed for extensive judicial interpretation regarding the procedural implementation of NEPA. Any significant revision of the regulations, such as those found in the proposed rule, will serve to unsettle relevant case law.

The proposed revisions also modify or remove a number of definitions, resulting in the generalization of the meaning of several key terms. For example, NEPA currently requires evaluation of the direct, indirect, and cumulative effects of proposed actions. Direct effects “are caused by the action and occur at the same time and place.” Indirect effects are defined as “caused by the action and later in time or farther removed in distance.”⁶ Finally, cumulative effects refer to “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁷ The CEQ has proposed to consolidate these definitions into a single category, “striking the specific references to direct, indirect, and cumulative effects.” 85 Fed. Reg. at 1708. These categorical eliminations exclude a wide range of important environmental problems from NEPA review and will be discussed in detail further below.

⁵ *Laudato si'*, no. 181.

⁶ 40 C.F.R. § 1508.8.

⁷ 40 C.F.R. § 1508.7.

The CEQ also seeks to reduce paperwork and delays by including presumptive time limits for the review process, as well as page limits for environmental assessments (EAs) and environmental impact statements (EISs). However, as the CEQ acknowledges, the current regulations already include “recommended page limits” which most agencies fail to meet. 85 Fed. Reg. at 1688. Due to the lack of the CEQ regulatory enforcement authority, these attempts to streamline the process, though warranted, will neglect to hold agencies accountable. The success of these statutory boundaries will ultimately be contingent on the motivation of agency leaders.

Support for Inclusion of Cumulative Effects Analyses

The CEQ has formerly written that “evidence is increasing that the most devastating environmental effects may result not from the direct effects of a particular action, but from the combination of individually minor effects of multiple actions over time.”⁸ Existing NEPA regulations seek to mitigate such gradual environmental degradation by calling for an analysis of cumulative effects. In a significant deregulatory step, the proposed rule removes this requirement, effectively eliminating concern for climate change and other environmental problems that result in incremental impacts. This directly contradicts the original purpose of NEPA, “to protect and enhance the quality of the human environment.” 43 Fed. Reg. 55978 (Nov. 29, 1978). We urge the CEQ to preserve this fundamental NEPA requirement.

The direct impact of GHG emissions on climate change is perhaps the most prominent example of a cumulative effect. According to the Environmental Protection Agency (EPA), GHG levels in the atmosphere are increasing, which “causes warming and is affecting various aspects of climate, including surface air and ocean temperatures, precipitation, and sea levels. Human health, agriculture, water resources, forests, wildlife, and coastal areas are all vulnerable to climate change.”⁹ The purpose of requiring cumulative effects analyses in NEPA procedures is to prevent adverse impacts such as these. The removal of these analyses establishes a review process that ignores the above aspects of climate change, all of which threaten “the natural and physical environment and the relationship of people with that environment.”¹⁰

Some projects which qualify for NEPA review, such as those related to energy and transportation, emit large quantities of fossil fuel pollution over time. Cumulative effects analyses study the projected emissions of individual projects through the use of GHG accounting tools, thus providing context for pragmatic decision-making that addresses the needs of society. This procedural requirement plays a key role in addressing the growing concentration of fossil fuel pollution in the atmosphere.

The health effects of climate change are significant, and safeguarding human life is of utmost importance. The Catholic Church promotes an environmental stewardship that considers “both the cry of the earth and the cry of the poor.”¹¹ Human health, especially that of the most

⁸ The Council on Environmental Quality. 1997. Considering Cumulative Effects Under the National Environmental Policy Act, pg. 1. Washington, D.C. <https://ceq.doe.gov/docs/ceq-publications/ccenepa/sec1.pdf>

⁹ See <https://www.epa.gov/report-environment/greenhouse-gases#note1>.

¹⁰ 40 C.F.R. § 1508.14.

¹¹ *Laudato si'*, no. 49.

vulnerable, deteriorates alongside the environment. This is why “a true ecological approach always becomes a social approach.”¹² The government has a responsibility to consider the needs of the poor and of future generations when evaluating the environmental and climatic impacts of proposed actions. In the NEPA process, analyses of cumulative effects help federal agencies to fulfill this obligation, which is necessary to ensure lasting and comprehensive environmental protection.

The proposed rule defends the removal of cumulative effects analyses by arguing that decision makers should focus on other “meaningful issues” that do not “include information that is irrelevant or inconsequential to the decision-making process.” 85 Fed. Reg. at 1708. At a fundamental level, this justification is indicative of a larger failure to properly understand and value human and environmental health. As Pope Francis has explained, “climate change is a global problem with grave implications: environmental, social, economic, political, and for the distribution of goods.”¹³ Failing to consider any of these implications will result in harmful consequences that effect human life and dignity.

Comments on the Proposed GHG Guidance

The Notice of Proposed Rulemaking states that the “CEQ received comments requesting that the regulations address analysis of greenhouse gas emissions and climate change impacts.” 85 Fed. Reg. at 1710. As stated above, the CEQ has proposed guidance titled “Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions.” 84 Fed. Reg. at 30097.

We are concerned that the proposed guidance attempts to relegate the relationship between GHG emissions and adverse environmental effects to mere speculation. In the draft statutes, the CEQ states that agencies should “analyze reasonably foreseeable environmental consequences of major federal actions, but should not consider those that are remote or speculative.” The draft also provides agencies with the option to conclude that “a proposed action’s projected reasonably foreseeable GHG emissions” are “overly speculative.” 84 Fed. Reg. at 30098. This differs from the previous rule, which “recommends that agencies quantify direct and indirect GHG emissions, taking into account available data and GHG quantification tools that are suitable for the proposed agency action.” 81 Fed. Reg. 51866 (Aug. 5, 2016). Of these two practices, we recommend adhering to the preceding rule, which allows for the quantification of GHG emissions during the NEPA review process.

Conclusion

The stated goals of the Update to the Regulations Implementing the Procedural Provisions of NEPA are to “modernize and clarify the CEQ regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies.” 85 Fed. Reg. at 1684. While modernization, efficiency and timeliness are laudable goals, they should be implemented in a manner that still

¹² *Laudato si'*, no. 49.

¹³ *Laudato si'*, no. 25.

advances, and does not undermine, NEPA’s mission “of restoring and maintaining environmental quality.”¹⁴ The rule fails to demonstrate how the proposed updates will advance that mission.

For the reasons stated here, we ask the CEQ to reverse its determination to remove cumulative effects analyses and to maintain an approach to environmental protection which includes reasonable consideration of climate change. The CEQ must also give appropriate consideration to the role of continuity in maintaining environmental policies that foster a prudent use of natural resources. Therefore, we urge the CEQ to withdraw its Update to the Regulations Implementing the Procedural Provisions of NEPA.

Respectfully submitted,

A handwritten signature in blue ink, reading "Anthony R. Picarello, Jr." in a cursive script.

Anthony R. Picarello, Jr.
Associate General Secretary and General Counsel
United States Conference of Catholic Bishops

¹⁴ 42 U.S.C. § 4331(a).