

Congress of the United States
Washington, DC 20515

July 9, 2020

The Honorable Donald J. Trump
President
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20500

Dear President Trump:

We write in strong opposition to the Council on Environmental Quality's (CEQ) final rule to fundamentally change the National Environmental Policy Act (NEPA) regulations. The effects of the proposed rule will exacerbate harmful environmental impacts on environmental justice (EJ) communities – communities of color, disadvantaged communities, and Tribal and indigenous communities – which are already disproportionately affected by environmental impacts.

As our nation reels from unprecedented health and economic crises and social unrest, your changes to the NEPA regulations would further endanger the very communities that have faced the greatest burdens of legacy environmental injustice and structural racism. And now these communities are also the hardest hit by the ongoing crises caused by COVID-19. Your unwarranted changes to the NEPA regulations represent an attack on these vulnerable communities when they are most in need of assistance.

For more than 50 years, NEPA has served not only as our nation's preeminent instrument for protection of the environment, but also as a critical tool for civil rights. NEPA and its regulations mandate government agencies to consider the environmental impacts of projects, including any potential costs and consequences for nearby communities, before those projects are executed. Subsequently, NEPA has protected EJ communities by ensuring that all adverse impacts of projects are fully examined, and that public input from impacted communities is considered.

EJ communities live near factories, powerplants, and roadways that regularly expose them to toxic pollution and cause outsized health risks, such as respiratory illness, heart disease, and cancer. Historically, EJ communities have been targeted for projects, and, in turn, continue to experience negative environmental and health impacts. Lauded as landmark environmental justice legislation, NEPA was created to give a voice to those who are often rendered voiceless and has successfully allowed impacted populations to challenge projects that negatively affect their water quality, air quality, economic prosperity, and overall health and safety.

In February 1994, President Clinton issued Executive Order (EO) 12898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” EO 12898 directs federal agencies to incorporate environmental justice principles into their

operations, and it includes the objective of improving opportunities for community input during the NEPA process.

CEQ's final revisions to NEPA halt this progress and careen in the opposite direction, threatening to undermine years of hard-fought progress.

For example, CEQ's change to NEPA's implementing regulations to remove the consideration of cumulative impacts and indirect effects would be especially harmful to EJ communities. Allowing federal agencies to disregard the cumulative impacts and indirect effects of a project will have a disastrous effect on EJ communities that have already had higher exposure to land, air, and water pollution, which often stem from multiple legacy or active sources of pollution. Thus, in those communities, comprehensive environmental analysis is essential to determining the long-term, wide-ranging consequences of any federally approved project in totality.

EJ communities already have limited access and ability to participate in federal policy decisions due to the numerous economic, physical, racial, and health barriers they face. They fight to be heard when industrial projects threaten their health and well-being. Under the new rules, companies will be permitted to conduct their own Environmental Impact Statement (EIS). This is an affront to EJ communities whose only recourse is often the public input afforded to them during NEPA's current approval process. Companies' interests lie largely with their profit margins, and often run counter to the interests of the communities directly affected by their actions. Allowing companies to write their own EISs is akin to offering a self-graded take-home exam. We simply cannot trust every company or businesses to do the right thing when, too often, history has shown us otherwise.

The short public comment period that CEQ allowed for this proposed rule was greatly disproportionate to the scope of its implications. This process was unfair to the millions of people whose neighborhoods and communities will be impacted by the new CEQ regulations, and it stands in stark contrast to the principle of citizen participation on which both NEPA and our democracy were built. These communities deserved the opportunity to be better informed of your changes to the NEPA process, and the lack of a real and meaningful opportunity to provide feedback perpetuates a generations-long series of harmful actions that both disempower and dismiss the needs of marginalized communities and worsen existing inequities.

Disturbingly, CEQ has provided no explanation or analysis to justify these radical changes. The potential for disproportionate impacts should have been considered in a NEPA analysis on the administration's proposal, but CEQ disregarded its own responsibility to comply with NEPA and prepare an EIS on the proposal. Furthermore, without providing the analysis CEQ says it prepared for review by the public at large and the affected environmental justice communities under EO 12898, CEQ bluntly concluded that the proposed rule "would not cause disproportionately high and adverse human health or environmental effects on minority

populations and low-income populations.”¹ CEQ’s EJ Guidance, which outlines environmental justice principles and considerations in the NEPA process, should be rescinded.

This administration’s changes to the NEPA regulations will undermine key aspects of the NEPA process and result in the comprehensive dismantling of core protections for EJ communities, with impacts that could potentially last for decades. NEPA is essential to protect frontline communities and ensure that their environment, health, and quality of life are preserved for generations to come, especially in EJ communities that have been historically excluded from major decisions that affect them.

Communities that have disproportionately suffered from environmental injustice – and are now hardest hit by the crises caused by COVID-19 – need the government to lift them up, not make them an afterthought in the decisions that will affect their neighborhoods and the health and well-being of their families.

We urge you to undo the changes to CEQ’s NEPA regulations immediately.

Sincerely,

A. Donald McEachin
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Pramila Jayapal
Member of Congress

Nanette Diaz Barragán
Member of Congress

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United States Senator

Tammy Duckworth
United States Senator

Cory A. Booker
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United States Senator

Kamala D. Harris
United States Senator

Martin Heinrich
United States Senator

¹ <https://www.federalregister.gov/documents/2020/01/10/2019-28106/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental?fbclid=IwAR0UN4lrwvGaUObyPH0rdWTej1uuZOvO-x94iRtnoXaQ8Gqcg8NvPZsXw>

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United States Senator

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