

July 29, 2021

**VIA ELECTRONIC FILING**

Amy B. Coyle  
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Counsel on Environmental Quality  
730 Jackson Place NW  
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**RE: Deadline for Agencies to Propose Updates to National Environmental Policy Act (NEPA) Procedures, 86 Fed. Reg. 34154, June 29, 2021, [Docket No. CEQ-2021-0001]**

Dear Ms. Coyle:

The undersigned organizations appreciate the opportunity to comment on the Council on Environmental Quality's (CEQ) June 29, 2021, interim final rule, "Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures," (the "Delay Rule").<sup>1</sup> We support the environmental stewardship goals of NEPA and are concerned that the Delay Rule will create confusion and uncertainty and ultimately lead to further delays in agency decision-making, associated infrastructure construction, and economic development for the Nation and communities that need it most.

By delaying by two years the date by which agencies will be required to propose updates to their NEPA implementing procedures, CEQ is adding considerable uncertainty and delay to federal agency decision-making and private sector investment. The 2020 Rule<sup>2</sup> is the current law that agencies are legally required to follow, but CEQ's statements in the Delay Rule — including the statement that the agency "has substantial concerns about the legality of the 2020 Rule," "the process that produced the rule," and "the severity of CEQ's concerns, and the likelihood that CEQ will propose significant amendments to the 2020 Rule" — all create ambiguity in what is now required for NEPA review.

The uncertainty created by CEQ's statements is not trivial and is compounded by other agency policies and actions, such as the Interior Secretarial Order No. 3399<sup>3</sup>, which states that "[b]ureaus/offices will not apply the 2020 Rule in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect..." While CEQ's Delay Rule makes sweeping statements about upcoming regulatory changes it does little to provide any helpful level of specificity about the regulatory policy

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<sup>1</sup> Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures Interim Final Rule, 86 Fed. Reg. 34154 (June 29, 2021).

<sup>2</sup> Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43304 (July 16, 2020).

<sup>3</sup> Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process (April 16, 2021).

changes that the agency might pursue to the NEPA implementing procedures over the coming years.

Delaying the implementation of the 2020 Rule without providing any information about the upcoming changes could have far reaching impacts on public and private investments of all kinds. For projects whose NEPA reviews are currently underway or will start during the period when the 2020 Rule remains in force, such a delay may require agencies to redo their NEPA analyses for some or all projects.

It will likely take several years between now and the date when agencies could be in a position to finalize their implementing procedures to be consistent with any changes that CEQ might make to the 2020 Rule, which CEQ has yet to propose. More than 80 agencies currently have NEPA implementing procedures demonstrating the breadth of potential agency decisions that may need updating to be consistent with forthcoming changes by CEQ. While agencies await on CEQ for any updates, project sponsors are facing uncertainty concerning the procedural steps they will have to follow; are anticipating absorbing the costs of delays in agency decision-making; and are concerned about increased litigation risks.

We respectfully submit that it would have been appropriate for CEQ to take comment on these issues and other topics prior to issuing the Delay Rule, so as to minimize disruption for agencies and the private sector. Timely, transparent NEPA processes are of significant importance to project sponsors, investors, employees and contractors whose jobs and livelihoods are tied to projects subject to NEPA reviews. The potential harm that project sponsors may experience could be losses from delays and changes to project specifications, mitigation, or design. Pre-construction delays for projects, whether they be for utility scale solar or other energy infrastructure, municipal water or wastewater treatment facilities, or mass transit projects, typically add costs and impact project delivery.

Delays and associated cost increases may result in projects being canceled altogether. But, even more distressing is the potential decrease in investment that is needed to continue sustaining and growing our economy. In the world economy that we live in today, where there is a high level of competition for the world's investment, increasing uncertainty and delays in the federal permitting process will only serve to drive investments elsewhere. The Nation needs these investments to remain competitive and to support long term economic growth as well as elevate the quality of life for communities that most acutely need these investments.

As members of Congress work to pass potentially historic bipartisan infrastructure legislation, we emphasize that stable and efficient NEPA permitting regulations are essential for major projects enabled by government and private-sector funding. A clear and transparent NEPA review process is needed now more than ever to rebuild our crumbling bridges, and other infrastructure, and to facilitate necessary investments. An efficient federal permitting system will allow for timely investment to address the digital divide in rural and large urban areas, to facilitate construction of public transit to connect communities to job centers, and to build out the energy infrastructure essential to our economic recovery and progress on the climate challenge. Creating increased ambiguity and confusion in the NEPA decision-making process for several

years, will reduce the ability of our Nation to move the people, energy, information, and goods needed to address today's challenges.

Thank you for considering our comments.

Sincerely,

Agricultural Retailers Association  
American Coke and Coal Chemicals Institute  
American Council for Capital Formation  
American Council of Engineering Companies  
American Exploration & Production Council  
American Farm Bureau Federation  
American Gas Association  
American Highway Users Alliance  
American Petroleum Institute  
American Pipeline Contractors Association  
American Public Gas Association  
American Road & Transportation Builders Association  
Associated Builders and Contractors  
Associated General Contractors of American  
Association of Equipment Manufacturers  
Association of Oil Pipe Lines  
Distribution Contractors Association  
Energy Equipment & Infrastructure Alliance  
The Fertilizer Institute  
GPA Midstream Association  
The Hardwood Federation  
Independent Petroleum Association of America  
LNG Allies, The US LNG Association  
National Association of Home Builders  
National Lime Association  
National Mining Association  
National Ocean Industries Association  
National Rural Electric Cooperative Association  
National Stone, Sand & Gravel Association  
National Utility Contractors Association  
Plastics Pipe Institute  
Power & Communication Contractors Association  
U.S. Chamber of Commerce