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COMMENTS ON THE PROPOSED CHANGES TO NEPA

Connecticut's Council on Environmental Quality (Council) was created in 1973. Among its responsibilities is to provide public notice regarding State actions that could have an environmental impact as defined by the Connecticut Environmental Policy Act (CEPA). In cases where an activity would require a review under the National Environmental Policy Act (NEPA), CEPA regulations allow that an analysis done to comply with NEPA may substitute if it meets the requirements of CEPA.

After review of the proposed revisions to the NEPA Regulations (Draft Regulations), it is the determination of the Council that the Draft Regulations are contrary to the original intent of NEPA and would result in measurable deterioration of Connecticut's environment. If implemented, many of the proposed changes that are presented as efficiencies would, in fact, result in unnecessary delays and expense. The Council's specific concerns follow below.

THE ARBITRARY LIMITS ON PAGE NUMBERS AND ON THE TIME ALLOWED FOR AN ANALYSIS ARE UNWORKABLE AND DETRIMENTAL TO ADEQUATE SCIENTIFIC ANALYSIS.

1. The page limits are arbitrary and unrealistic.
The limits proposed on the number of pages (Section 1502.8) in Environmental Assessments and Environmental Impact Statements is a concern of the Council. Any fixed page limit risks an inadequate analysis of projects that are unusually complex or extend over large geographic expanses. If page limits are determinative of what would be included in an analysis, the analysis could be inadequate in its scope. Inadequacy could lead to the approval of imperfect projects that could have been better designed with additional analysis. It could also result in project delays from litigation based on the inadequacy of the analysis. Though the Draft Regulations allow for an extension by the agency administrator, such an extension would be unlikely from an administrator who is facing political pressure or who sees an extension as a hindrance to career advancement.

2. The time limits are arbitrary.
The time limits proposed in the Draft Regulations are arbitrary and unworkable. Section 1501.10 would require that agencies shall complete "*Environmental impact statements within 2 years unless a senior agency official of the lead agency approves a longer period…*" Environmental Impact Statements can require study of locations and habitats over many seasons to adequately characterize their ecology in order to recommend appropriate adjustments or accommodations to a proposed action. In those cases, the time limit proposed would not allow for first identifying possibly effected habitats and then sufficient study to determine the actual presence of species of concern.

THE DRAFT REGULATIONS ARE CONTRARY TO CONGRESSIONAL INTENT.

1. The Draft Regulations lack specificity regarding what actions require a NEPA review.
The addition of the word "may" to the definition of "Major Federal Action" is concerning. Section 1508.1(q)(1), states "*Major Federal Actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures*". The addition of "may" interjects a degree of ambiguity that would frustrate a legal challenge and allow a degree of administrative discretion that is worrisome. The Council is concerned that the specific language in Section 1508.1(q)(1) could exclude Federal loans to a large project that is administered by a local government or private entity. Specificity regarding that possibility would be preferable to the imprecise use of "may" to describe what constitutes a Major Federal Action.

2. The policy statements in the Draft Regulations indicate an alarming shift away from the original purpose of NEPA.
The arbitrary language regarding which actions are to be subject to a NEPA review reflects an attitudinal change in the executive branch. Deleted from the "purpose and policy" section of the Draft Regulations is the following strong statement in the existing NEPA regulations that their purpose is to understand the environmental consequences of a proposed action and to assess reasonable consequences.
"The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment... "(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. (f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."

The Draft Regulations substitutes scant reference to the environment and adds non-environmental factors, "*intended to ensure Federal agencies consider the*

environmental impacts of their actions in the decision making process. Section 101 of NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, 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."

The Draft Regulations also fail with regard to transparency and public involvement. Where the existing NEPA Regulations state "*NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken*." The Draft Regulations substitute "*The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information and the public has been informed regarding the decision making process".* The implication is that the Draft Regulations make it possible to avoid or minimize public participation before federal decisions are made.

3. The Draft Regulations improperly limit the scope of environmental reviews. In the Draft Regulations, consideration of the indirect effects of proposed actions is not required. Section 1508 (g) (2), states "effects" are "*not to be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain*."

There are many examples of remote impacts which, if not considered, would defeat the legitimacy of the analysis. A sewer line or highway proposed adjacent to a sparsely populated farming area must consider the environmental consequences of the stimulus to development it creates. Analysis must not be limited to only the area being dug or paved, but must also consider secondary impacts of a proposed action.

Barring consideration of consequences, geographic or temporal, would have a negative ecological result. Though Connecticut still suffers from Ozone transport from states to its West and Southwest, air quality has improved as a consequence of pollution controls imposed on emitters in those states. This reduction could be causal with regard to reductions in rates of asthma in the State and has been shown to be responsible for the diminishing of acid precipitation that was damaging Eastern forests. Under the guidelines proposed by the Draft Regulations, remote consequences like those would no longer need to be considered.

THE DRAFT REGULATIONS WOULD IMPOSE UNNECESSARY ECONOMIC COSTS

The irony is inescapable that some of the measures advanced in the Draft Regulations may actually weaken the economy or cause environmental damage if implemented.

It is clear from Title I of NEPA (Sec. 101 [42 USC Sec. 4331]) that it was the Congressional intent that environmental considerations be added to the, already

existing, economic and technical considerations that were driving decision making at the time. In the Draft Regulations, economic considerations are added to what was conceived of as a mechanism to analyze and accommodate environmental considerations.

Section 1502.16(a)(10) of the Draft Regulations proposes that "*where applicable, economic and technical considerations, including the economic benefits of the proposed action*" will be discussed. In Section 1502.16 (b), the Draft Regulations continue, "*when it determines that economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss and give appropriate consideration to all of these effects on the human environment*".

The problem with Section 1502.16(a)(10) is that there are many potential projects that would have great economic consequences and would also have disastrous ecological ones. It was the intent of NEPA that environmental consequences of economic development be given voice. This change in the Draft Regulations is contrary to that intent since it establishes an equivalency or possible outweighing of economy over environment.

As mentioned previously, in Section 1508 (g) (2), "*effects*" are "*not to be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain*". There are many examples of remote impacts that would have negative consequences for Connecticut's economy. Greenhouse gas emissions from gas pipelines or fracking expansion lead ultimately to climate effects that would be felt more severely in Connecticut and other northern coastal states where sea level is rising faster than in other states. The costs, both economic and ecological, are greatest at locations that are distant and remote in time.

Some changes proposed in the Draft Regulations may actually increase the cost of doing business. CEPA requires consideration of indirect impacts of a proposed action. The Draft Regulations suggest that this is not necessary. Whereas now a NEPA analysis may suffice for a CEPA analysis, an analysis that is shortened, due to the length and time constraints of the Draft Regulations, might ultimately necessitate two analyses – a NEPA study and a supplement to meet the requirements of CEPA.

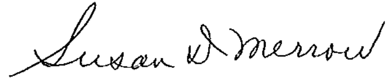
Additionally, much environmental case law is, to some extent, based on the current NEPA regulations and process. Significant revisions to NEPA may render the pertinent historic case law irrelevant, making necessary the re-litigation of the many precedents that would be overturned as a consequence of its revised language.

SUMMARY

The proposed revisions to the NEPA Regulations are presented as means to reduce unnecessary burdens and delays, and to facilitate efficient reviews. Many of those alleged efficiencies are illusory. While some of the proposed changes could improve

efficiency in conducting environmental analyses, most are an expeditious way of arriving at an inadequate analysis. The Council believes that the proposed changes would result in inferior environmental analyses that could lead to adverse economic and environmental consequences for Connecticut and the nation. These include, but are not limited to, damage from shoreline flooding, and diminished air quality with consequent public health impacts. Additional costs to the State and to project developers could result if supplemental analyses are needed to satisfy CEPA requirements, which would no longer be part of a NEPA analysis. The Council asks that the Federal Council on Environmental Quality abandon these proposed Draft Regulations and craft new regulations that are more compliant with the intent of the National Environmental Policy Act of 1970.

Sincerely,



Susan Merrow, Chair