Removing a Load Bearing Pillar: CEQ's Rescinding of NEPA Implementation

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On February 19, the Council on Environmental Quality ("CEQ") submitted an interim final rule to remove its National Environmental Policy Act ("NEPA") implementing regulations. This rule, which is set to take effect immediately upon final publication, will be a virtual reset of the NEPA regulatory space.

CEQ's Rescission

This rollback is part of a broader deregulatory agenda spurred by the Trump administration's "Unleashing American Energy" executive order, which directed CEQ to replace its binding NEPA regulations with nonbinding guidance intended to streamline environmental permitting. In response, CEQ is rescinding all NEPA regulations it has promulgated since 1977[1], requiring federal agencies to draft their own NEPA regulations to best serve their agencies' missions—even if this results in patchwork requirements.

CEQ's notice states, "the removal of CEQ's regulations does not strip agencies of discretion to continue following similar procedures." Federal agencies can continue to use or amend their own NEPA implementing procedures. Furthermore, when defending a NEPA challenge, an agency can "continue to rely on the version of CEQ's regulations that was in effect at the time that the agency action under challenge was completed." Nevertheless, CEQ's rescissions remove a central pillar of the NEPA process, transforming the agency from a regulator into an advisory body.

CEQ's Agency Guidance

An accompanying implementation memorandum for federal agencies directs agencies to revise or otherwise establish their own NEPA implementing procedures, including shorter review timelines for environmental impact statements and environmental assessments, which is intended to expedite project approvals. Additionally, the memo promotes broader use of categorical exclusions, which exempt certain projects from detailed environmental review if they are deemed to have minimal impact. This change is likely to reduce the number of projects subject to extensive NEPA review, particularly for infrastructure and energy developments.

Further, this rollback intends to reduce the emphasis on cumulative effects in environmental reviews, a crucial element in assessing the long-term and interconnected effects of federal actions. By narrowing the scope of cumulative effect analysis, the rule downplays the consideration of broader environmental justice issues, such as how certain communities may face disproportionate

[1] In 1977, President Carter issued Executive Order 11991 which directed the CEQ to promulgate regulations to direct implementation of NEPA.

environmental harm. Further, the rollback curtails agencies' ability to factor climate change considerations into their NEPA reviews, which could lead to reduced scrutiny of projects with potential long-term climate effects.

Legal challenges are anticipated, particularly regarding CEQ's reliance on the "good cause" exception to bypass the traditional notice-and-comment period. CEQ justifies its expedited approach by citing recent court rulings, but this rationale may face scrutiny from environmental advocates who contest both the procedural legitimacy and substantive impacts of the rule.

Recent Litigation

These proposed NEPA changes align with recent litigation challenging the authority of CEQ and the scope of NEPA analyses. The D.C. Circuit's decision in *Marin Audubon Society v. FAA*[2] questioned CEQ's statutory authority to promulgate binding NEPA regulations. The court's decision weakened CEQ's regulatory foundation, setting the stage for the current shift. This ruling, along with the subsequent *Iowa v. Council on Envtl. Quality*[3] case, which vacated the Biden Administration's Phase 2 NEPA Rule, underscores the weakening of CEQ's regulatory authority and paves the way for the current rollback.

Also, in December 2024, the U.S. Supreme Court heard arguments in *Seven County Infrastructure Coalition v. Eagle County, Colorado*.[4] The case involved the Surface Transportation Board's approval of an 80-mile railroad segment for the transportation of waxy crude oil. Eagle County and environmental groups challenged the scope of the indirect environmental impacts analysis for the project under NEPA.

Seven Counties Infrastructure Coalition argued that NEPA only requires an agency to consider effects with a "reasonably close causal relationship" to the project. Eagle County and the environmental groups countered that NEPA requires consideration of all reasonably foreseeable effects, including the impact of the railway on Gulf Coast refining, increased rail accidents downline from the railway, increased wildfire risks, and the impact of the railway on downline water resources along the Colorado River.

CEQ's implementation memorandum reminds federal agencies that the Fiscal Responsibility Act of 2023 amended NEPA, specifically Section 102, to clarify the requirements for Environmental Impact Statements ("EIS"). Under those amendments agencies must analyze and disclose the "reasonably foreseeable environmental effects of the proposed agencies action,' [and] 'any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented[.]'"[5] The Court has not yet ruled, but *Seven Counties* is expected to clarify the ongoing NEPA issue of the temporal and spatial limits of an EIS.

Going Forward

As federal agencies work to revise their NEPA procedures over the next 12 months, industry stakeholders should anticipate potential delays and heightened legal uncertainty surrounding project approvals. Especially as the agencies must continue processing ongoing environmental reviews even without the proverbial "playbook."

During this transition, GableGotwals will continue to monitor developments and keep our clients informed of emerging regulatory risks and compliance strategies.

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[2] 121 F.4th 902 (D.C. Cir. 2024).
[3] 1:24-cv-089 (D.N.D. Feb. 3, 2025)
[4] No. 23-975.
[5] *Quoting* 42 U.S.C. § 4332(C)(i)-(ii).

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