



September 11, 2024

The Honorable Bruce Westerman
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Westerman, Ranking Member Grijalva and Members of the U.S. House Committee on Natural Resources:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I write to thank you for holding a [legislative hearing](#) on Rep. Westerman's discussion draft, [H.J. Res. 168](#) and [H.R. 6129](#). This hearing is vital to examining legislative solutions to the U.S. Council on Environmental Quality's burdensome National Environmental Policy Act rulemakings.

Since the Biden-Harris administration took office in January 2021, its CEQ has circumvented Congressional intent and issued burdensome NEPA Implementing Regulations Revisions [Phase 1](#) and [Phase 2](#) final rules, which reversed the much-needed 2020 [Update to the Regulations Implementing the Procedural Provisions of the NEPA](#) that streamlined the federal environmental review and permitting process.

Overview of the NEPA Phase 2 Rule

On May 1, 2024, the CEQ issued its [NEPA Implementing Regulations Revisions Phase 2](#) final rule, adding layers of complexity to the NEPA permitting process. Specifically, the rule:

- Adds new factors for environmental reviews, such as environmental justice and climate change effects, while requiring agencies to identify “environmentally preferable alternatives;”
- Establishes new monitoring and compliance requirements for NEPA decisions involving mitigation efforts;
- Expands judicial review of NEPA reviews;
- Widens the scope of agency review regarding the “context and intensity” of proposed actions; and
- Removes language that placed reasonable limitations on the public engagement process and specified that NEPA does not mandate any particular decision by agencies (instead being focused on ensuring environmental factors are considered during the decision-making process, in alignment with congressional intent).

Additionally, instead of streamlining permitting processes for all critical infrastructure projects, the rule favors projects deemed to have environmental benefits, such as solar/wind energy, electric vehicle charging facilities and electrical transmission infrastructure, by allowing them to bypass the NEPA process;

At a time when environmental reviews already take years, the CEQ's NEPA Phase 2 rule expands and lengthens environmental reviews while failing to meaningfully improve environmental protections. It also undermines key provisions of the [ABC-supported](#) Fiscal Responsibility Act, which became law on June 3, 2023, by weakening its reforms to NEPA and the federal permitting process.

Overview of the NEPA Phase 1 Rule

On April 20, 2022, the CEQ issued its [National Environmental Policy Act Implementing Regulations Revisions Phase 1](#) final rule, which reversed key provisions of the Trump 2020 rule that provided clarity and maintained consistency with the original 1978 NEPA rulemaking and decades of case law. Specifically, the rule:

- Establishes CEQ's NEPA regulations as a floor, rather than a ceiling, for the environmental review standards, allowing agencies to develop additional layers of review

- Requires federal agencies to evaluate impacts beyond those that are a direct effect of the decisions they make; and
- Widens the scope of a review's purpose beyond the agency's statutory duty and applicant's goals.

Disappointingly, the Phase 1 rule disregards stakeholder concerns that the rule would hinder NEPA's goal of more informed agency decisions and reduce the effectiveness of recently passed legislation providing an unprecedented investment in our nation's infrastructure, even as this legislation included language explicitly calling for streamlined environmental review. Notably, on August 4, 2022, the Senate passed [S.J.Res.55](#), a Congressional Review Act resolution introduced by Sen. Dan Sullivan, R-Alaska, to overturn the Phase 1 rule by a [50-47](#) vote.

Call for Comprehensive NEPA Reform

ABC is concerned the CEQ's Phase 1 and Phase 2 rules defy Congressional directives calling for permitting certainty on critical infrastructure projects. By advancing the Phase 1 and Phase 2 rules, the CEQ is making it more difficult to build important projects, marking a major step backward for critical infrastructure, the construction industry and America's economic future. To resolve America's permitting challenges, ABC writes in support of the below legislation.

- **ABC supports the discussion draft**, to amend the National Environmental Policy Act of 1969, and for other purposes, introduced by Rep. Westerman, R-Ar., which would enshrine Congressional intent by directly amending NEPA. This draft includes vital provisions that clarifies NEPA's intent is to prescribe the necessary processes rather than mandate particular results; removes unnecessary bureaucratic delays related to unissued rulemakings or research; expedites judicial review of NEPA actions; and narrows the scope of NEPA reviews and federal agency authority and responsibilities to be specific to their expertise. The provisions included in this draft would reduce NEPA permitting delays and improve the predictability of the federal permitting process, which would allow businesses to confidently plan and invest, enhance economic productivity and boost environmental stewardship.
- **ABC supports [H.R.6129](#)**, the Studying NEPA's Impact on Projects Act, introduced by Rep. Rudy Yakym, R-In., which would establish transparency regarding the impact of NEPA. This legislation would provide Congress with the knowledge necessary to evaluate the effectiveness and efficiency of federal agency implementation of NEPA and craft future legislation to enhance the permitting process.
- **ABC supports [H.J. Res. 168](#)**, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to "National Environmental Policy Act Implementing Regulations Revisions Phase 2," introduced by Rep. Garret Graves, R-La.

ABC supports Rep. Westerman's discussion draft, H.J. Res. 168 and H.R.6129's purpose of promoting a coordinated, predictable and transparent process to streamline permitting. These bills would enable the construction industry to plan and execute even the most complex projects while safeguarding our communities, maintaining a healthy environment and successfully stewarding public funds.

ABC appreciates the opportunity to comment on the committee's legislative business and urges it to report the legislation considered in today's hearing to the floor.

Sincerely,



Kristen Swearingen
Vice President, Legislative & Political Affairs