



National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55,757 (Oct. 7, 2021)

<https://www.regulations.gov/document/CEQ-2021-0002-0002>

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Submitted via regulations.gov

RE: Council on Environmental Quality, National Environmental Policy Act Implementing Regulations Revisions, Docket ID No. CEQ-2021-0002

Dear Ms. Coyle:

We, the undersigned members of the Choose Clean Water Coalition, Coalition for the Delaware River Watershed, and the Healing Our Waters – Great Lakes Coalition welcome the opportunity to comment on the Notice of Proposed Rulemaking, National Environmental Policy Act (NEPA) Implementing Regulations Revisions.¹ Together, we are dedicated to safeguarding water resources and empowering communities in the Chesapeake Bay, Delaware River, and Great Lakes watershed. NEPA provides the public at large and interested parties, such as organizations like ours the ability to participate in the federal decision-making process by providing information on all the environmental consequence of potential major federal actions as well as reasonable alternatives. This is essential to the restoration of more than 370,000 square miles and the protection of 60 million residents across the Chesapeake Bay, Great Lakes, and Delaware River watersheds.

We submit the following comments in support of the Phase I regulatory revisions to the Council on Environmental Quality (CEQ) regarding the NEPA regulations and urge the swift adoption of these changes.

I. The Proposed Rule Properly Restores the Definition of “Effects” Allowing for Cumulative Impacts Like Climate Change, Greenhouse Gas Emissions, and Environmental Justice Concerns to be Analyzed During the NEPA Process.

¹ Council on Environmental Quality, Notice of Proposed Rulemaking, *National Environmental Policy Act Implementing Regulations Revisions*, 86 Fed. Reg. 55757, Oct. 7, 2021.

We applaud the Administration’s proposal to return to the definition of “effects” contained in the 1978 NEPA Regulations (40 C.F.R. § 1508.1(g)) restoring the long precedent that cumulative impacts should be analyzed during the NEPA process. Cumulative impacts are a fundamental aspect of Environmental Impact Statement development. As noted by the Supreme Court in *Kleppe v. Sierra Club*, “cumulative impacts are, indeed, what require a comprehensive impact statement.”² By restoring the cumulative impacts agencies can once again fulfill NEPA’s mandate to “utilize a systemic, interdisciplinary approach”³ that ensures the “integrated use of natural and social sciences and the environmental design arts in planning and in decision-making”.⁴

a. CEQ’s Decision to Restore Cumulative Impacts Properly Allows Climate Change and Greenhouse Gas Emissions to Be Analyzed during the NEPA Process.

The impacts of climate change are being seen and felt across our watersheds. For instance, average precipitation in the U.S. has increased since the 1990s, and the frequency and intensity of heavy precipitation events is increasing due to climate change.⁵ These increased scouring and runoff from more intense rain events carry significantly higher loads of nitrogen, phosphorous, and sediment into our watersheds. Additionally, within 20 years, nearly 170 U.S. communities will be chronically inundated with flooding⁶ and more than 70% of these communities will be in Louisiana and Maryland: the “canaries in the coal mine” for sea level rise.⁷ Thus, whether it be increased flooding and runoff, sea level rise, ocean acidification, or warming waters, it is imperative that federal decision-makers consider the impacts that major federal actions will have on climate change, as well as the impacts from climate change and greenhouse gas emissions will have on major federal actions.

Chesapeake Bay Watershed: The Impacts of Climate Change and Greenhouse Gas Emissions

Parts of The Chesapeake Bay watershed are already experiencing the regular flooding effects of sea level rise (13 inches over the last 100 years)⁸ and land subsidence, as well as the effects of stronger and wetter storms. In the Mid-Atlantic and Northeastern regions, the precipitation intensity is trending upward at a faster rate than anywhere else in the U.S.⁹ In Maryland alone,

² *Kleppe v. Sierra Club*, 427 U.S. 390,413 (1976).

³ 42 U.S.C.S. § 4332(a).

⁴ James M. McElfish, *Practitioners Guide to the Proposed NEPA Regulations*, Environmental Law Institute, Feb. 2020.

⁵ U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment*, 19, 20, 2017.

⁶ Erika Spanger-Siegfried, et. al, *When Rising Seas Hit Home: Hard Choices Ahead for Hundreds of US Coastal Communities*, Union of Concerned Scientists 2, 2017.

⁷ *Id.*

⁸ <https://tidesandcurrents.noaa.gov/sltrends/>.

⁹ U.S. Global Climate Change Research Program [USGCCR], 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. USGCCR, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018. <https://nca2018.globalchange.gov/chapter/18>; National Oceanic and Atmospheric Administration, *U.S. Climate Normals*, www.ncei.noaa.gov/products/us-climate-normals.

these interrelated phenomena threatens to flood over 61,000 homes by 2100, valued at \$19 billion.¹⁰ Entire previously inhabited islands are now underwater in the Chesapeake Bay, with more likely to follow if greenhouse gas (GHG) emissions do not decrease substantially.¹¹ For instance, the Chesapeake Bay Foundation recently had to close down its Fox Island Environmental Education Program, in Virginia, because land loss has made the center unsafe.¹² Likewise, in Hampton Roads/Norfolk, Virginia, sea level rise poses significant risk to the public and military infrastructure and operations.¹³

Wetlands are also threatened by sea level rise. These important filters reduce the level of pollutants entering the Bay¹⁴ and protect coastal communities from storm surge and erosion.¹⁵ Wetlands inundated with saltwater from sea level rise, however, cannot provide the same water quality and habitat benefits as healthy wetlands.¹⁶ They are typically some of the first areas to be exposed to chronic flooding and while they can migrate in response to changes in water levels provided they have the space and time to do so,¹⁷ the pace of sea level rise and changes in land use in coastal communities have weakened the ability of wetlands to migrate.¹⁸ In addition, forested buffers along creeks, tidal rivers, and the Bay are also impacted by sea level rise as saltwater seeps into the soil, killing trees and creating “ghost forests.”¹⁹ In the Chesapeake Bay headwaters, the brook trout, a coldwater fish species, is feeling the effects of a warming planet. As rain patterns change, air temperature rises, and waters warm, brook trout are losing habitat.

Warming waters - that have already been recorded in 92 percent of the Bay - deplete the level of available oxygen in the Bay.²⁰ This will have major repercussions as the Bay already struggles with dead zones of hypoxic water from nitrogen and phosphorus pollution (these nutrients fuel

¹⁰ Catherine Rentz, *Rising sea levels threaten \$19 billion in real estate across Maryland*, study says, The Baltimore Sun, Oct. 28, 2017, <http://www.baltimoresun.com/news/maryland/investigations/bsmd-suninvestigates-sea-level-20171026-story.html>.

¹¹ Erik Ortiz, *How to Save A Sinking Island*, NBC NEWS, November 13, 2017, <https://www.nbcnews.com/specials/deal-island>; David Fahrenthold, *Last house on sinking Chesapeake Bay island collapses*, Washington Post, October 26, 2010, <http://www.washingtonpost.com/wpdyn/content/article/2010/10/24/AR2010102402996.html>; Jon Gertner, *Should the United States Save Tangier Island From Oblivion?*, New York Times Magazine, July 6, 2016, <https://www.nytimes.com/2016/07/10/magazine/should-the-united-states-save-tangier-island-fromoblivion.html>.

¹² A 1773 land survey of Fox Island documented 426 acres, in 2019 only 34 acres remain. Tamara Ward, *Going, Going, Gone: Rising Seas Drown Island Center*, E&E News, November 18, 2019, <https://www.eenews.net/greenwire/2019/11/18/stories/1061539807>

¹³ “Sea level rise at just one site can have a significant impact on [both military policy and] strategy. Hampton Roads, Virginia, dubbed ‘the greatest concentration of military might in the world’ for former Secretary of Defense Leon Panetta, is by itself an invaluable operational and strategic hub for both the United States and its allies. It . . . is the backbone of the U.S. Atlantic Fleet. It is also a low-lying site and very exposed to sea level rise and storm surge. If significant portions of the Hampton Roads infrastructure we regularly inundated, as is projected under a number of scenarios for the years 2023-2100, the impediment to force deployments for critical Atlantic, Mediterranean and Pacific war-fighting and humanitarian operations – many of which are tied to core strategic goals of the United States – would be significant.” The Center for Climate and Security, *Military Expert Panel Report: Sea Level Rise and the U.S. Military’s Missions, 23-24, 2016*, <https://climateandsecurity.files.wordpress.com/2016/09-center-for-climate-and-security-military-expert-panel-report2.pdf>.

¹⁴ Chesapeake Bay Program, *Wetlands*, <https://www.chesapeakebay.net/issues/wetlands>

¹⁵ *Id.*

¹⁶ Joseph Kurt and Victor Unnone, *Climate Change and the Chesapeake Bay Total Maximum Daily Load: Policy Priorities and Options*, Virginia Coastal Policy Center, 4, 2016.

¹⁷ Erika Spanger-Siegfried, *et. al*, *When Rising Seas Hit Home: Hard Choices Ahead for Hundreds of US Coastal Communities*, Union of Concerned Scientists, 10, 2017.

¹⁸ *Id.*

¹⁹ *Id.* See also John Upton, ‘Ghost Forests’ Appear as Rising Seas Kill Trees, *Climate Central*, Sept. 15, 2016, <http://www.climatecentral.org/news/ghost-forests-appear-as-rising-tides-kill-trees-20701>.

²⁰ See Army Corps of Engineers and City of Norfolk Draft *Integrated City of Norfolk Coastal Storm Risk Management Feasibility Study/Environmental Impact Statement*, October 2017, <http://www.nao.usace.army.mil/NCSRM/>

algal blooms, creating hypoxic and anoxic areas in the Bay).²¹ Warming ocean temperatures will only exacerbate the dead zone in the Bay because warmer water molecules hold less oxygen than colder water molecules.²²

Finally, GHG emissions cause ocean waters to acidify. Our oceans are a sink for atmospheric carbon, absorbing about a quarter of the CO₂ released into the atmosphere each year.²³ This absorption is not without consequence: excess CO₂ is changing the saltwater chemistry.²⁴ A chemical reaction occurs between carbon dioxide, water, and carbonate ions that reduces seawater pH depleting the concentration of carbonate ions and calcium carbonate minerals.²⁵ This negatively affects calcifying species by impairing their shell making ability. Ocean acidification threatens the growth and reproduction of oysters, clams, and other creatures with calcium shells.²⁶ The Chesapeake Bay blue crab population may be particularly susceptible to acidification because larval crabs spend a portion of their life offshore in the ocean. Blue crabs are a particularly important commercial species in the region's multi-billion-dollar seafood industry.²⁷

Taken together, the effects of GHG emissions will impact the complex ecosystem – including water quality and habitat - needed for species survival in the Bay region. Indeed, these impacts are identified and reflected through various sections of the Chesapeake Bay Watershed Agreement, an Interstate Compact,²⁸ to which the United States is a signatory.²⁹

The Great Lakes Watershed: The Impacts of Climate Change and Greenhouse Gas Emissions

The Great Lakes are already experiencing increases in extreme rainfall events, which have increased over the last century. The trend towards heavier rains is expected to continue.³⁰ While overall precipitation increased 4 percent between 1901 and 2015, the Great Lakes region saw an almost 10 percent increase during this time, often coming as “unusually large events.”³¹ When precipitation falls during the year is also changing. A recent study suggested that the region will

²¹ EPA, Chesapeake Bay Program, *The Dead Zone*, https://www.chesapeakebay.net/state/dead_zone

²² Chris Mooney, *Global warming could deplete the oceans' oxygen – with severe consequences*, Washington Post, April 28, 2016, https://www.washingtonpost.com/news/energyenvironment/wp/2016/04/28/global-warming-could-deplete-the-oceans-oxygen-levels-with-severeconsequences/?utm_term=.9c3333011616.

²³ NOAA Pacific Marine Environmental Laboratory Carbon Program, *Ocean Acidification: the Other Carbon Dioxide Problem*, <https://www.pmel.noaa.gov/co2/story/Ocean+Acidification>

²⁴ NOAA Pacific Marine Environmental Laboratory Carbon Program, *What is Ocean Acidification?*, <https://www.pmel.noaa.gov/co2/story/What+is+Ocean+Acidification%3F>

²⁵ *Id.*

²⁶ Sarah M. Giltz and Caz M. Taylor, *Reduced Growth and Survival in the Larval Blue Crab Callinectes sapidus Under Predicted Ocean Acidification*, 36, J. of Shellfish Research, 481, 2017.

²⁷ Chesapeake Bay Foundation, *The Economic Importance of the Bay*, <http://www.cbf.org/issues/whatwe-have-to-lose/economic-importance-of-the-bay/>

²⁸ One of the purposes of the Chesapeake Bay Restoration Act of 2000 was to “expand and strengthen cooperative efforts to restore and protect the Chesapeake Bay; and to achieve the goals established in the Chesapeake Bay Agreement.” 33 U.S.C. § 1267. The Chesapeake Bay Agreement is an interstate compact as Congress developed and authorized the joint state action. See *Cuyler v. Adams*, 449 U.S. 433; 101 S. Ct. 703 (1981); *Seattle Master Builders Assoc. v. Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359 (9th Cir. 1986).

²⁹ *Chesapeake Bay Watershed Agreement*, 2014,

https://www.chesapeakebay.net/documents/FINAL_Ches_Bay_Watershed_Agreement.withsignatures-HIres.pdf

³⁰ U.S. Climate Resilience Toolkit: Great Lakes. At <https://toolkit.climate.gov/regions/great-lakes>

³¹ Environmental Law & Policy Center. 2020. “An Assessment of the Impacts of Climate Change on the Great Lakes.”

experience “wetter winters and springs, while summer precipitation should decrease by 5-15%.”³²

These impacts may not be felt the same across the eight states that make up the Great Lakes basin. For example, Michigan has experienced several major storms – one that dropped over six inches of rain in just five hours in Detroit – over the past few years that have flooded city streets and basements³³ and caused mass evacuations.³⁴

The changes in precipitation are also affecting agriculture and water quality throughout the region. Spring floods are frequently causing planting delays. Heavy downpours are already occurring twice as frequently as they did a century ago.³⁵ Increased multi-day storms can lead to more streambank erosion and nutrient-rich runoff, which feed toxic algal blooms, from farm fields. Wetter springs combined with drier summers will also likely increase the demand for groundwater withdrawals and diversions for irrigation.³⁶

Heavier rains are not the only consequence of climate change that is impacting the region. Temperatures in the region have also been rising over the past several decades. The average temperature in the northern portions of the region has increased by more than 1.5°F compared to 1901-1960 average. The rate of this warming has increased over the last decade.³⁷

The changes in temperature also have significant impacts on lake levels, ice cover, and public health. Lake levels have recently been at historic highs affecting shoreline communities, which face increased shoreline erosion, flooding and increased property damage. However, the past decade has seen increased variability in water levels. As recently as 2013, lake levels set record low levels impacting commercial shipping, recreation, and hydropower generation.³⁸

Higher air temperatures also lead to less ice cover during winter months and overall warmer surface water temperatures. It is projected that lake surface temperatures for Lake Huron and Lake Superior will rise by as much as 7°F by 2050 above the 5.2°F and 4.5°F increases each lake has respectively already experienced.³⁹ Higher temperatures, combined with increased precipitation and lengthening growing seasons, are likely to result in increased toxic algal blooms, such as the one near Apostle Islands National Lakeshore this fall.⁴⁰ Algal blooms were first seen in Lake Superior in 2012. Largely ephemeral, these blooms did not have serious levels of toxins until this fall when one near Superior, Wisconsin, left a beach streaked with green water and toxins more potent than cyanide were detected past levels safe for swimming. Lake

³² Id. P. 1.

³³ <https://www.detroitnews.com/story/news/local/wayne-county/2021/07/16/flood-advisories-issued-wayne-washtenaw-amid-heavy-rain/7990468002/>

³⁴ <https://www.nbcnews.com/news/us-news/flooding-hits-parts-midwest-evacuations-michigan-n1210536>

³⁵ https://uwm.edu/centerforwaterpolicy/wp-content/uploads/sites/170/2013/10/Great-Lakes_Agriculture_Final.pdf

³⁶ Ibid.

³⁷ U.S. Climate Resilience Toolkit: Great Lakes. At <https://toolkit.climate.gov/regions/great-lakes>

³⁸ <https://glisa.umich.edu/resources-tools/climate-impacts/lake-levels/>

³⁹ <https://toolkit.climate.gov/regions/great-lakes>

⁴⁰ Ibid.

Superior is one of the world's fastest warming freshwater lakes. Its warming waters have "pushed Lake Superior into a new state, one where we get these blue-green blooms."⁴¹

Heat waves are also increasing in frequency and length with deadly consequences in the region. A 2021 Midwestern heat wave and drought caused more than \$30 billion in economic damages and 123 direct deaths. By mid-century it is projected that the number of days greater than 90°F for states bordering the Great Lakes will increase by 21 to 30 days with extremely cold days decreasing dramatically.⁴² On average, more people in the U.S. die each year from heat-related illness than any other weather disaster.⁴³

The Great Lakes region's efforts to restore and protect this freshwater source of drinking water for 30 million Americans relies on clear analysis of climate impacts when evaluating projects.

The Delaware River Basin: The Impacts of Climate Change and Greenhouse Gas Emissions

States in the Delaware River Watershed are warming faster than the global average and faster than the rest of the Northeast. If GHG emissions are not addressed, the region will experience increased frequency and intensity of storms, sea-level rise, ocean acidification, and the associated impacts to the ecological systems, natural resources, human health, and the economy⁴⁴.

Climate change has already brought more destructive storms to New Jersey. A recent report found that hurricane-related winds and floods caused up to \$1.3 billion more destruction in the state today contrasted to if the climate of the 1980s had remained constant⁴⁵. Annual rainfall and heavy downpours have increased, a pattern that will lead to regular flooding if it continues. Currently, intense downpours routinely overwhelm the capacity of antiquated sewer systems in certain urban areas, causing the release of untreated sewage into our waterways⁴⁶.

In South Jersey and along the coasts in the watershed, sea level rise exacerbates saltwater migration into aquifers that serve as a critical source of drinking water. In New Jersey alone, sea levels have risen by 12 inches since 1950 and could rise another inch in the next five years - eroding beaches and wetlands and increasing damages from coastal storms. There's additional concern that climate change, along with nutrient pollution, may cause harmful algal blooms to be more extensive and frequent in our lakes⁴⁷.

⁴¹ <https://www.detroitnews.com/story/news/environment/2021/10/23/climate-change-may-culprit-behind-lake-superior-algae-blooms/6134302001/>

⁴² Environmental Law & Policy Center. 2020. "An Assessment of the Impacts of Climate Change on the Great Lakes." Pg. 13.

⁴³ U.S. National Climate Assessment. "Climate Change Impacts in the United States." Accessed: <https://nca2014.globalchange.gov/highlights/report-findings/human-health#intro-section-2>

⁴⁴ <https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf>

⁴⁵ [New Jersey's Rising Coastal Risk | Rhodium Group \(rhg.com\)](#)

⁴⁶ [New Jersey's Sea Level Rise - Sea Level Rise](#)

⁴⁷ <https://njclimateresourcecenter.rutgers.edu/climate-resilience-corps/>

Not only do heat waves threaten vulnerable frontline communities the rising temperatures will harm migratory bird species like the Red Knot, which stop in Delaware Bay.. Changing temperatures may also provoke earlier migration or altered timing of spawning, reducing the availability of food and accelerating the decline of the species⁴⁸.

As such, we support the proposed rule as it restores analysis of the effects of GHG emissions and climate change during the NEPA process.

b. CEQ’s Decision to Restore Cumulative Impacts Allows for Environmental Justice Concerns to be Analyzed During the NEPA Process.

Environmental Justice is defined as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to development, implementation, and enforcement of environmental laws, regulations, and policies.”⁴⁹ The Environmental Protection Agency considers this goal to be achieved when everyone enjoys: (1) the same degree of protection from environmental health hazards, and (2) equal access to the decision-making process to have a healthy environment in which to live, learn and work.⁵⁰ Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*,⁵¹ directs all agencies to incorporate environmental justice into their missions by “identifying and addressing, as appropriate, disproportionately high adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income population in the United States...”⁵² The accompanying Memorandum of Understanding (“MOU”) further directs each federal agency to “analyze the environmental effects, including human health, economic and social effects, of Federal Actions, including effects on minority communities and low-income communities when such analysis is required by the National Environmental Policy Act of 1969 (NEPA).”⁵³ In 2012, the Federal Interagency Working Group on Environmental Justice (“IWG”) (of which CEQ is a member) established the NEPA Committee⁵⁴ pursuant to the E.O 12898 MOU.⁵⁵ In the 2016 Report on *Promising Practices for EJ methodologies in NEPA Reviews*, the IWG established guiding principles for agencies to consider as part of an impact analysis. Such principles include:

3. Potential direct, *indirect*, and *cumulative impacts* on minority populations and low-income populations in the affected environment include both human health and environmental

⁴⁸ Environment America, *An Unfamiliar State*, 2009.

⁴⁹ EPA, *Environmental Justice*, <https://www.epa.gov/environmentaljustice>.

⁵⁰ *Id.*

⁵¹ E.O 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*, 59 Fed. Reg. 7629, Feb. 16, 1994.

⁵² *Id.*

⁵³ *Memorandum of understanding on Environmental Justice and Executive Order 12898*, <https://www.epa.gov/sites/production/files/2015-02/documents/ej-mou-2011-08.pdf>.

⁵⁴ The NEPA Committee “seeks to improve the effective, efficient, and consistent consideration of environmental justice issues in the NEPA Process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of federal NEPA practitioners.”

⁵⁵ *Promising Practices for EJ Methodologies in NEPA Reviews: Report of the Federal Interagency Working Group on Environmental Justice & NEPA Committee*, Interagency Working Group on Environmental Justice, Mar. 2016.

impacts from an agency's programs, policies, or activities. Potential environmental impacts encompass both the natural and physical environment and can include ecological, aesthetic, historic, cultural, economic, social, or health impacts to minority populations and low-income populations in the affected environment.

...

4. Background data on minority populations and low-income populations in the affected environment ***can enhance an agency's understanding of the nature and severity of potential impacts, which in turn informs an agency's decision-making process....***

8. ...When assessing ***cumulative impacts***, agencies may wish to (as appropriate):

- be mindful that minority populations and low-income populations in the affected environment ***may be differently affected by past, present, or reasonably foreseeable future impacts*** than the general population; and
- in some circumstances, ***consider (among other existing conditions) chemical and non-chemical stressors that could potentially amplify impacts from the proposed action*** to the health of minority populations and low-income populations in the affected environment. Non-chemical stressors can include current health status (e.g. pre-existing health conditions) and past exposure histories, and social factors such as community property values, sources of income, level of income, and standard of living.⁵⁶

These principles are the product of almost 48 months of researching, analyzing and discussing the interaction between environmental justice and NEPA.⁵⁷ CEQ and 13 other federal agencies worked to ensure that NEPA's implementation was consistent, not only with E.O. 12898's directives, but with current agency methodologies and practices.⁵⁸ Considering this, the IWG's thorough articulation of the role of cumulative impacts analysis in achieving environmental justice in NEPA practices establishes its crucial role in protecting overburdened and endangered communities.

⁵⁶ Promising Practices for EJ Methodologies in NEPA Reviews: *Report of the Federal Interagency Working Group on Environmental Justice & NEPA Committee*, Interagency Working Group on Environmental Justice, Mar. 2016.

⁵⁷ *Id.*

⁵⁸ *See also*, E.O. 14008, Tackling the Climate Crisis at Home and Abroad 86 Fed. Reg. 7619 (Feb. 1. 2021).

c. CEQ’s Decision to have Consultation and Coordination with Indian Tribal Governments and Require Agencies to Have a Process to Ensure Meaningful and Timely Input by Tribal Officials.

Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments*,⁵⁹ requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. Such policies include regulations that have substantial direct effects on one or more Indian Tribes. For centuries, Tribal communities have been systematically excluded from federal decision-making processes. Tribes should have robust representation throughout the NEPA process for activities that could impact their communities to include off-reservation lands and sacred areas. NEPA is one of the only avenues Tribal communities have to provide input on federal action. Restoring these protections would better protect them from direct, indirect, and cumulative impacts they face from a human health and environmental standpoint.

Chesapeake Bay Watershed: Environmental Justice

The Chesapeake Bay Watershed is home to roughly 18 million people and spans six states and the District of Columbia.⁶⁰ The population within the Chesapeake Bay Watershed is expected to surpass 20 million by 2030 and 21.1 million by 2040.⁶¹ As Congress recognized, with continued population growth comes increased development, and in turn a need for thoughtful measure that ensure the safety and health of the environment.⁶² Communities within the watershed have borne the brunt of rapid development and as a result are bearing a disproportionate burden of environmental harm.

At present, the city of Baltimore, Maryland, has a population of approximate 593,490 people with 62.8% of those individuals identifying as African American.⁶³ Large parts of the city are in the 97th, percentile for hazardous waste proximity, with almost all of city registering in the 80th percentile or above, according to EJSCREEN.⁶⁴ The city, and surrounding area, is also in the 80th percentile, or above for lead paint indicators and superfund proximity. Similarly, the city of Portsmouth has a population that is 54.4% African American and registers in the 99th percentile for Superfund Proximity and 80th percentile for Wastewater Discharge.⁶⁵ These figures by no means represent the extent of environmental harm suffered by these communities, but they

⁵⁹ <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>

⁶⁰ Chesapeake Bay Foundation, *Geography and Facts*, <https://www.cbf.org/about-the-bay/chesapeake-bay-watershed-geography-and-facts.html#overview>.

⁶¹ Chesapeake Bay Program, *Population*, <https://www.chesapeakebay.net/state/population>.

⁶² See 42 U.S.C. § 4331(a) (The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to 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 of Americans.”).

⁶³ U.S. Census Bureau, *Quick Facts: Baltimore city, Maryland*,

<https://www.census.gov/quickfacts/fact/table/baltimorecitymarylandcounty/AGE295218>.

⁶⁴ EPA, *EJ Screen Mapping Tool*, <https://ejscreen.epa.gov/mapper/>, (last visited Feb. 27, 2020).

⁶⁵ *Id.*

provide a striking example of the cumulative impacts that the IWG identified as indicators to be used for achieving environmental justice.

The Great Lakes Watershed: Environmental Justice

The Great Lakes are national treasures. They power the region's economy, provide drinking water to tens of millions of Americans, and promote a healthy, outdoor way of life. The Great Lakes are vital to the people, communities, and economy of the eight-state region of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. Even with their majesty and size, the Great Lakes face serious and urgent threats compounded by climate change and the unjust and disproportionate burden of pollution and environmental harm to vulnerable communities.

Detroit, for example, has the most heavily polluted zip code, 48217. Four of the state's top emitters of particulate matter sulfur dioxide and nitrous oxides, which can, respectively, cause respiratory issues and create acid rain are located within a five-mile radius of Boynton in Detroit. The situation in the 48217 is by far the worst out of all the areas in Detroit, but environmental problems pervade the entire city. And in Detroit, the blackest major city in the United States, those problems fall disproportionately on poor communities and communities of color. Depopulation, white flight and the implosion of the city's manufacturing industry have left behind vulnerable communities. These communities are now struggling, and fighting to survive.⁶⁶

Lead-emitting facilities in Detroit are disproportionately located or moving to black neighborhoods, according to a 2017 [study](#).⁶⁷ And another study found that Michigan zip codes with higher concentrations of people of color and poverty levels, lower educational attainment, and other indicators of social disadvantage bore the greatest pollution-related burdens in the state.⁶⁸

The Delaware River Basin: Environmental Justice

The Delaware River Watershed provides drinking water to an estimated 13.3 million people, including two out of the five largest metropolitan centers in the country: New York City and Philadelphia. Communities in the watershed have experienced environmental injustices including polluted water, illegal chemical dumping, and the building of hazardous waste disposal sites. The Delaware River winds past major urban areas including the cities of Trenton, NJ; Philadelphia, PA; Wilmington, DE; Chester, PA; and Camden, NJ, which are home to many environmental justice communities. The following are different examples of environmental injustices in two of the four states comprising the watershed.

Camden is most impoverished city in the state of New Jersey and one of the poorest in the nation: per capita income is less than \$8,000.22 and the citywide poverty rate is well over 30

⁶⁶ <https://www.theguardian.com/us-news/2020/jan/09/the-blackest-city-in-the-is-us-facing-an-environmental-justice-nightmare>

⁶⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5750864/>

⁶⁸ <https://www.theguardian.com/us-news/2020/jan/09/the-blackest-city-in-the-is-us-facing-an-environmental-justice-nightmare>

percent. Within Waterfront South of Camden, less than one square mile, one can find two federal Superfund sites and thirteen other known contaminated sites, four junkyards, a petroleum coke transfer station, a scrap metal recycler, several auto body shops, a paint and varnish company, a chemical company, three food processing plants, and numerous other heavy industrial uses⁶⁹.

Chester, Pennsylvania is a small city with a low-income Black population, located in the affluent, mostly white Delaware County. The population of Chester is 65% Black, the highest percentage in the state and ten times higher than in Delaware County, median family income is 45% lower than in Delaware County, and the poverty rate is 25%, more than 3 times the rate in Delaware County. Chester has been home to a trash incinerator that handled waste from the entire county, a sewage treatment plant that still receives the entire county's sewage, and numerous other waste processing plants, oil refineries, and industrial polluters⁷⁰.

Without the consideration of cumulative impacts from federal *and* non-federal projects, these communities are susceptible to the devastating environmental and health impacts associated with energy and transportation expansion. E.O. 12898 requires all agencies make achieving environmental justice part of their mission. Additionally, President Biden has issued a number of executive orders that make it clear that environmental justice considerations must be incorporated into the regulatory process.⁷¹ We support the proposed rule in its effort to require environmental justice concerns to be analyzed during the NEPA process.

II. The Proposed Rule Restores CEQ NEPA Regulations As a “Floor” for What is Required by the Agencies Instead of Being the “Ceiling”.

We support the administration's proposed reversal in using NEPA as a “ceiling” for agency environmental procedures and restoring the prior practice that CEQ's NEPA regulations are a “floor” allowing agencies to have flexibility in tailoring their NEPA regulations. This also provides the public with the opportunity to submit more detailed comments tailored to the mission of each agency.

Additionally, as the CEQ specifically invites comments on “whether CEQ should provide in a Phase 2 rulemaking more specificity about the manner in which agencies should analyze certain categories of effect,”⁷² we urge the administration to consider doing so for environmental justice. Phase 2 provides the unique opportunity for CEQ to explicitly require all agencies to incorporate environmental justice into environmental impact statements and codify federal guidance on environmental justice considerations. Given the reversion back to CEQ NEPA regulations acting as a floor for agencies environmental considerations, agencies would then have a framework on

⁶⁹ Pomar, O. D., & Cole, L. W. (2002). [Camden, New Jersey, and the Struggle for Environmental Justice](#). *Clearinghouse Rev.*, 36, 94.

⁷⁰ Schiff, Alyssa. [“Environmental Injustice in Delaware County.”](#) *The Review*, 20 March 2018.

⁷¹ See, e.g., E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021); E.O. 14008, Tackling the Climate Crisis at Home and Abroad 86 Fed. Reg. 7619 (Feb. 1, 2021).

⁷² 86 Fed. Reg. 55767.

what environmental justice considerations should be reviewed and the flexibility to define those further to fit each agency's mission.

Conclusion

We urge the Administration to work swiftly to finalize these changes to ensure that communities across the United States, including those in our watersheds, can rest assured that federal decisions are informed by “the environmental consequences of those decisions” and that their voices are heard during the process. We also encourage the administration to expeditiously work to release Phase II of these regulatory changes to our nation's bedrock environmental law.

Thank you for the opportunity to comment on CEQ's *Notice of Proposed Rulemaking, National Environmental Policy Act Implementing Regulations Revisions*.⁷³ Please let us know if we can answer any questions or provide additional information.

Sincerely,

American Chestnut Land Trust, Inc.

American Littoral Society

Anacostia Watershed Society

Appalachian Mountain Club

Audubon Naturalist Society

Blue Ridge Watershed Coalition

Blue Water Baltimore

Bucks County Audubon Society

Cacapon Institute

Catskill Center for Conservation and Development

Chapman Forest Foundation

Chesapeake Bay Foundation

Citizens to Conserve and Restore Indian Creek

Conservation Voters of Pennsylvania

Deerpark Rural Alliance

Delaware Highlands Conservancy

Delaware Nature Society

Delaware River Greenway Partnership

Eastern PA Coalition for Abandoned Mine Reclamation

FracTracker Alliance

Friends of Quincy Run Watershed

Friends of the Nanticoke River

Friends of the Upper Delaware River

Great Egg Harbor Watershed Association

Glen Foerd

Holy Spirit Missionary Sisters, USA-JPIC

Illinois Council of Trout Unlimited

Izaak Walton League, New York State Division

Milwaukee Riverkeeper

National Aquarium

New Jersey Highlands Coalition

New Jersey Sustainable Business Council

Newtown Creek Coalition

Otsego Land Trust

⁷³ Council on Environmental Quality, Notice of Proposed Rulemaking, *National Environmental Policy Act Implementing Regulations Revisions*, 86 Fed. Reg. 55757, Oct. 7, 2021.

Outdoor Equity Alliance
Patuxent Tidewater Land Trust
PennFuture
Penns Valley Conservation Association
Pennsylvania Council of Churches
Pennypack Ecological Restoration Trust
Pocono Heritage Land Trust
Phillips Wharf Environmental Center
Rachel Carson Council
Restore America's Estuaries
Rock Creek Conservancy
Save the Dunes Conservation Fund
Save The River Upper St Lawrence Riverkeeper
ShoreRivers

SouthWings
St. Mary's River Watershed Association
The Alliance for the Great Lakes
The Watershed Institute
Tip of the Mitt Watershed Council
Tookany/Tacony-Frankford Watershed Partnership
Trash Free Maryland
Virginia Aquarium & Marine Science Center
Virginia Conservation Network
Waterkeepers Chesapeake
West Virginia Environmental Council
West Virginia Rivers Coalition
Western Pocono Trout Unlimited
West Virginia Wilderness Coalition