November 22, 2021

Ms. Amy B. Coyle
Deputy General Counsel
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Attn: Docket ID No. CEQ-2021-0002

Re: National Environmental Policy Act Implementing Regulations Revisions

Comments submitted electronically at https://www.regulations.gov/

The American Coal Council (ACC) appreciates the opportunity to submit these comments in response to the Council on Environmental Quality’s (CEQ) Notice of Proposed Rulemaking (NPRM) per its Federal Register notice of October 7, 2021 inviting comments on its proposal to modify certain aspects of its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

The ACC is a nonprofit trade association in its 39th year representing the collective business interests of the American coal industry. Our members include coal suppliers and energy traders, utilities and independent power providers, industrial consumers, transportation companies, terminals, and support services suppliers. ACC member companies are involved in every aspect of the vital U.S. coal supply chains for power generation, steelmaking, and producing cement, chemicals, and paper. They strengthen the United States economy by directly contributing to a reliable, affordable supply of electricity and the availability of consumer and industrial products. Our members also contribute to the global supply chains for these same purposes and needs, exporting both thermal and metallurgical coal to countries around the world. Our Association’s broad base of members has first-hand experience with the direct and indirect impacts of coal-related regulations and a unique, “boots on the ground” perspective. It is from this broad perspective that we assess the impacts of coal-related regulations. While ACC provides these comments from that broad perspective, individual member companies of ACC may submit separate comments on their own behalf that offer additional or other views.
In its NPRM, CEQ states it is proposing to modify certain aspects of its regulations for implementing the procedural provisions of NEPA “to generally restore regulatory provisions that were in effect for decades before being modified in 2020”.

The ACC supports efforts to prioritize regulatory efficiency, transparency, consistency, and certainty by CEQ and federal agencies. In that spirit, ACC supported CEQ’s 2020 NEPA modifications targeted to streamline environmental review and authorization processes and accomplish them in a coordinated, consistent, predictable, and timely manner. These regulatory objectives were important when the 2020 NEPA modifications were promulgated, and their importance is amplified today. Whether viewed through the lens of the increasing U.S. demand for electricity, steel, and consumer products, or the lens of the recent infrastructure legislation signed by President Joe Biden on November 15, 2021, CEQ’s currently-proposed NEPA revisions would unnecessarily add to regulatory requirements and may impede infrastructure and other projects. This would have detrimental impacts to our nation’s economy, industries, and consumers. We encourage CEQ to withdraw these proposed revisions.

**NEPA Reviews in the Context of America’s Needs and Priorities Today**

The current global energy crisis is reinforcing the importance of energy security and the consequences of energy scarcity. Policy choices to restrict or eliminate fuels including coal are limiting options for reliable, affordable energy and threatening businesses, manufacturing, and citizens. In Europe, the failure to maintain fuel and resource diversity for electric generation has already proven to be enormously costly and now threatens to be catastrophic. The U.S. has abundant fossil fuel reserves, led by coal which our country has in greater quantities than any other country in the world. The mining of coal and its use at coal-fueled facilities are stringently governed under a comprehensive federal and state legal and regulatory framework, a framework that exceeds the environmental standards and practices of other countries. The U.S. has the diverse resources and systems to buffer the impacts of changes in energy markets but only if they are not constrained by policies and regulations that render them off limits.

The basis for Congressional support for the $1.2 trillion Infrastructure Investment and Jobs Act was a recognition of the need for investments in our nation’s roads, bridges, airports, transportation, energy, water, and broadband infrastructure. However, there are longstanding issues and impediments associated with federal regulatory reviews and infrastructure permitting decisions. Decades of inefficiencies have delayed investments, increased project costs, and blocked the benefits of improved infrastructure. With his decades of service in the U.S. Congress, President Biden is familiar with these inefficiencies which hamper the economic development and job opportunities the President wants to foster.

Coal-related projects through the years have been deterred by excessively long processes and uncertain timeframes for approval. Regulatory delays and uncoordinated, inefficient
reviews cause costs to balloon and discourage development. This delays or precludes the benefits of such projects at the federal, state, and local community levels. In addition to negative domestic impacts, these regulatory barriers inhibit projects associated with the export of coal to international steel, industrial, and power sector customers.

Mine project permitting in the United States takes seven to ten years and sometimes even decades for NEPA reviews to be completed and other approvals obtained. This is far longer than in other advanced economies with similar environmental standards. For example, permitting in Canada and Australia is typically completed in two to three years.

The ACC and many other parties have described the adverse impacts of the NEPA process as it has evolved over time in prior comments to CEQ. Streamlining and clarifying the NEPA regulations, improving coordination of reviews, and enforcing timelines and requirements can better support coal and minerals projects important to our nation’s energy and mineral security. This will save time and money for the agencies conducting the reviews. It will benefit the public which relies on coal and minerals for the products and technologies of today and tomorrow – and the electricity, steel, cement and other materials needed to produce them.

With the evolution of the NEPA process over some forty years, it has become increasingly time-consuming, cumbersome, and difficult to navigate the regulatory environment. Delays, uncertainties, and duplication by federal and state agencies add barriers and costs or prohibit projects entirely. While there has been some improvement in the past few years, the process remains very bureaucratic.

With the passage of the Infrastructure Investment and Jobs Act, many projects will be going into the regulatory pipeline for environmental reviews and permitting decisions and most of these will be federal projects subject to NEPA. The Act includes some provisions aimed at streamlining environmental reviews, a recognition by Congress of the longstanding permitting challenges. Among these provisions is the “One Federal Decision Policy” established by the prior administration. This Policy is intended to facilitate collaboration among the lead agency and other participating agencies. It sets a timeline for permitting projects and encourages federal agencies to use a single document to track permitting decisions.

The Infrastructure Investment and Jobs Act should not be jeopardized by a more burdensome regulatory environment. Thus, adding back regulatory requirements that were removed or changed in order to facilitate the streamlining of regulatory processes is not in step with America’s needs and priorities today.

2020 NEPA Changes, and the Phase 1 Proposed Rule

CEQ’s 2020 changes to the NEPA review procedures were targeted at reducing the time and cost associated with NEPA reviews. These 2020 changes included having agencies
evaluate the effects or impacts that are within their control, and analyzing only the alternatives that would meet the purpose and goals of the projects. Over the years, situations had developed whereby effects or impacts beyond an agency’s control were included, and alternatives beyond the scope of the applicant’s project were considered. The intended efficiencies of CEQ’s 2020 changes would be negated by CEQ’s now-proposed Phase 1 revisions.

ACC therefore opposes the three Phase 1 revisions:

- ACC does not support the return to a broad definition of the effects or impacts agencies are required to evaluate that includes direct, indirect, and cumulative effects or impacts.
- ACC does not support adding back the ability and flexibility for agencies to develop and analyze project alternatives including those that would not meet the stated goals of the project applicant or that would go beyond them.
- ACC does not support giving agencies the discretion to develop their own procedures that go beyond those established by CEQ; this would set the CEQ requirements as a floor and not a ceiling.

The importance of efficient and timely NEPA reviews cannot be overstated. CEQ’s proposed changes risk unduly expanding the scope of reviews in ways that are not appropriate or helpful and that increase the cost and time for reviews and decisions.

**Conclusion**

The American Coal Council appreciates the opportunity to submit these comments on CEQ’s proposed revisions to NEPA regulations. The American people will be looking to our federal government for appropriate actions and accountability to achieve the benefits of the $1.2 trillion Infrastructure and Investment Jobs Act. These CEQ Phase 1 revisions would unnecessarily add to regulatory requirements and may impede project development. A return to “scope creep” by adding back regulatory requirements or introducing unnecessary new ones is not aligned with the needs of our country nor the goals of the infrastructure bill. We encourage CEQ to withdraw these proposed revisions.

For any questions, please contact me at bmonseu@americancoalcouncil.org or 202.756.4540.

Betsy B. Monseu, CEO
American Coal Council
1101 Pennsylvania Ave. NW, Ste. 300
Washington, DC 20004