



August 20, 2018

Edward A. Boling
Associate Director for NEPA
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Attn: Docket No. CEQ-2018-0001

RE: Advanced Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. 83 FR 28591 (June 20, 2018)

Dear Mr. Boling:

The Pennsylvania Department of Environmental Protection (PADEP) appreciates the opportunity to comment on the Council on Environmental Quality's (CEQ) Advanced Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act published on June 20, 2018 (83 FR 28591) (Advance Notice).

PADEP does not support major amendments to or a wholesale overhaul of regulations implementing the National Environmental Policy Act (NEPA), because no demonstrated need for such substantial revisions exists. Instead, PADEP urges CEQ to conduct targeted research and analysis regarding the effectiveness of NEPA regulations, including outreach with PADEP's Bureau of Abandoned Mine Reclamation (BAMR) related to its work reclaiming Abandoned Mine Lands under Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1231 – 1244).

Background

PADEP joins with the attorneys general of several States¹ concluding that the breadth of the questions posed by the Advance Notice appears to assume that CEQ's existing NEPA regulations need major amendments or even a wholesale regulatory overhaul, and that no demonstrated need for such substantial revisions exists.

The States also conclude that, given the lack of data demonstrating a need to revise NEPA's regulations—including the absence of meaningful discussion in the Advance Notice

¹See Comment of Attorneys General of California, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont and Washington, and the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection, dated August 20, 2018.

demonstrating a need to revise CEQ's NEPA regulations — CEQ must engage in a careful and detailed review before proposing any regulatory revisions. Additionally, CEQ should analyze existing studies and reports on the effectiveness of the current NEPA regulations and solicit input from federal agencies, State and local governments, the public, academics, scientists, and other stakeholders to determine whether changes are appropriate.

If CEQ endeavors to solicit such input, PADEP recommends it begin with outreach to states regarding the effectiveness of NEPA regulations in the state-led reclamation of Abandoned Mine Lands under Title IV of the Surface Mining Control and Reclamation Act of 1977. These reclamation projects remedy environmental pollution and hazards to human health and safety. Thus, the effective implementation of NEPA, with respect to these projects, is a unique area worthy of further study and analysis.

Comments

PADEP encourages CEQ, as part of any analysis and solicitation of information on the current effectiveness of the NEPA regulations prior to rulemaking, to engage with PADEP's BAMR regarding the effectiveness of NEPA regulations with regard to BAMR's work. PADEP urges CEQ to focus such analysis and solicitation on the following:

- Office of Surface Mining Reclamation and Enforcement (OSMRE) engaging in early outreach to cooperating agencies and stakeholders on projects requiring an Environmental Impact Statement.
- Reliance on online studies and analyses developed by recognized federal and state professionals to make environmental reviews or authorization decisions. E.g., the Pennsylvania Natural Diversity Inventory Environmental Review Tool (PNDI Tool) administered by the Pennsylvania Department of Conservation and Natural Resources (DCNR), and the Web Soil Survey administered by U.S. Department of Agriculture.
- The role of OSMRE in identifying significant and insignificant environmental issues during the scoping of a project under 40 CFR 1500.4 (relating to reducing paperwork).
- The use of categorical exclusions in Title IV projects, drawing on Pennsylvania's experience with categories of projects that have been closely studied and repeatedly result in an Environmental Assessment – Finding of No Significant Impact, or Environmental Impact Statements that identify no adverse effects/impacts.
- OSM's role in driving the Environmental Impact Statement process to achieve deadlines.
- Coordination among federal agencies involved in review of Title IV projects and integration of future anticipated project activities.
- Consideration of historical site conditions and context in resource identification.

Conclusion

PADEP does not support major amendments to or a wholesale overhaul of regulations implementing the National Environmental Policy Act (NEPA) vis-à-vis CEQ's Advance Notice, because no demonstrated need for such substantial revisions exists. CEQ should undertake targeted analysis and outreach to evaluate the effectiveness of NEPA regulations prior to any rulemaking process and should consult with PADEP's BAMR regarding the effectiveness of NEPA regulations as those regulations relate to BAMR's work.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is written in a cursive, flowing style.

Patrick McDonnell
Secretary