AMERICAN SOCIETY OF CIVIL ENGINEERS

Washington Office
25 Massachusetts Avenue, NW
Suite 500
Washington, D.C. 20001
(202) 789-7850
Fax: (202) 789-7859
Web: http://www.asce.org

March 10, 2020

Re: Docket ID: CEQ-2019-0003

The American Society of Civil Engineers (ASCE) is pleased to offer the following comments on the Council on Environmental Quality's (CEQ) proposed rule to update its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). The proposed rule was published in the Federal Register for comment on January 10, 2020, with the comment period closing on March 10, 2020.

Founded in 1852, ASCE is the country's oldest civil engineering organization. Representing more than 150,000 civil engineers from private practice, government, industry, and academia, ASCE is dedicated to the advancement of the science and practice of engineering. ASCE members represent the profession that plans, designs, and manages much of the nation's infrastructure. As a result, civil engineers are keenly aware of and often most affected by regulations that either facilitate or impede expeditious, cost efficient, and environmentally effective infrastructure development to support our modern society.

The National Environmental Policy Act (NEPA), signed into law in 1970, is a procedural statute that requires Federal agencies to assess the environmental impacts of proposed major Federal actions. CEQ issued regulations for Federal agencies to implement NEPA in 1978. CEQ has not comprehensively updated these regulations in over 40 years and has made only one limited substantive amendment in 1986. The NEPA review process is broad and includes making decisions on permit application, adopting federal land management actions, and constructing highways and other publicly owned facilities.

ASCE supports NEPA's primary purpose and goals to protect the public health, safety, and welfare and preservation of the natural environment. Any changes to the rules and procedures that govern the implementation of NEPA should maintain those principles as a fundamental tenant.

The goal of environmental reviews is to get to an answer. Do the benefits of a project outweigh the environmental impact? Sometimes the answer is no, and the project should be modified or not proceed as originally planned. However, inefficient regulatory approval processes that preclude or delay investment and implementation of needed infrastructure improvements serve no purpose. Delays and changes in project scopes due to regulatory inefficiencies and uncertainties increase costs and adversely affect the economic, societal and environmental benefits of the project.

Therefore, ASCE believes that reducing delay in the permitting process is a critical step in helping our nation achieve an infrastructure fit for the 21st century. In fact, ASCE's *2017 Infrastructure Report Card*, which gave our nation's infrastructure a grade of "D+," explicitly recommends streamlining the permitting and approval process across infrastructure sectors – to provide greater clarity to regulatory requirements, bring priority projects to reality more quickly, and secure cost savings – as a critical step in raising our nation's infrastructure grade. However, any such efforts must be made with safeguards in place to protect the natural environment.

Most recently, ASCE supported the permitting reforms in the Moving Ahead for Progress in the 21st Century (MAP-21) Act in 2012 and the Fixing America's Surface Transportation (FAST) Act in 2015, including the use of a single NEPA document when possible; the designation of a lead agency for environmental reviews; and the creation of a publicly accessible dashboard to publish the status of NEPA. However, many of these reforms have not yet been implemented, and thus, their effect on the actual permitting process is not yet clear. All of these improvements in the NEPA process should still be implemented.

ASCE Position

ASCE has historically urged the creation of strategies to expedite decision making in the regulatory process for infrastructure development at the federal, state, and local levels. The goal should always be to allow critical infrastructure projects to proceed in a timely manner, without putting the environment at risk and without shorting the public input process. Unfortunately, our current process has become outdated and inefficient, delaying critical investments to our nation's infrastructure.

Therefore, *ASCE Policy Statement 427 – Regulatory Process for Infrastructure Development*, recommends the following strategies to streamline the regulatory process for infrastructure development:

- Designation of a lead administrative processing or permitting agency to shorten and improve the approval process and improve inter-agency collaboration;
- Concurrent review of project documents;
- Timely resolution of interagency conflicting purposes, goals, criteria, and objectives;
- Time limits for reviews and decisions on infrastructure projects; and
- Allow reuse of previously completed and approved studies by a jurisdictional authority for the proposed infrastructure area within a five-year timeframe.

With these goals in mind, ASCE has focused its attention on four different aspects of the proposed rulemaking, and we ask that CEQ adopt these views into consideration as a final rule for NEPA is determined. ASCE and its diverse membership applaud the intent of the rulemaking to bring infrastructure projects to fruition more quickly, and request that you will take into account our views related to ***public comment periods, appropriate time and page limitations, interagency coordination, and accelerated project implementation***.

Public Comment Periods

ASCE supports the involvement of individual citizens and coalitions in the legislative and regulatory decision-making processes of engineering projects. It is through this commitment that we strongly believe civil engineers have a responsibility to develop clear scopes of work and analyze the costs, benefits, and impacts of proposed actions. This information serves to educate the general public and assist public officials in making better informed decisions on engineering projects.

In order for public comment periods to be effective and serve their underlying purpose, ASCE strongly supports proposed language requiring all public comments be specific and timely to ensure appropriate consideration. By deeming comments and objections to environmental analyses that are untimely or not submitted as forfeited, the proposed rule prohibits parties from challenging analyses based on issues

they did not raise during the public comment period. Civil engineers work to inform, educate and engage the public about proposed policies, plans, designs, projects, and programs and need timely and appropriate public involvement during this process. Bringing forward concerns about a project through litigation after a public comment period closes has become a tool to slow down infrastructure projects and undermines the intent of the public comment period.

Additionally, requiring earlier solicitation of input from the public to ensure informed decision making by Federal agencies and requiring agencies to summarize alternatives, analyses, and information submitted by commenters further strengthens the public comment period and encourages timely participation. ASCE is pleased to see both included in the proposed rule.

Appropriate Time and Page Limitations

The proposal sets both page and time limits for environmental impact statements (EIS) and environmental assessment (EA). Specifically, an environmental impact statement must be completed in two years and have a maximum of 150 pages, or 300 pages for projects of "unusual scope or complexity," while an EA must be completed in one year, at a maximum of 75 pages. While agencies still retain the discretion to extend the page limits, these limits are arbitrary and can weaken an EIS or EA.

ASCE acknowledges that the average length for an EIS is over 500 pages; however, many projects require significant documentation at the onset in order to properly outline the impacts of a proposed project. Without some of this supporting documentation, more projects could end up in litigation, which is a result that would go against the intent of the proposed rule. In fact, since most major projects do end up in court, EISs and EAs are often developed with the eventual litigation already in mind. While this makes the document longer, it can save time if a project were to go to court. A more thoughtful approach to page limits could be requiring that a page limited executive summary be made available in plain language.

Similarly, forcing an EIS or EA to meet an arbitrary deadline can often be done at the cost of the quality of the process. While in many cases the process can be sped up, setting either a 2 year or one-year deadline for every EIS or EA, respectively, is not always realistic. These abbreviated timeframes can open civil engineers up to litigation since some requirements might not be able to be met in order to reach a deadline. ASCE recommends instead providing the support necessary to complete an EIS or EA quickly, instead of setting indiscriminate deadlines.

Additionally, the proposed rule looks to move EISs and EAs forward more quickly through the use of reliable existing data and resources, instead of requiring new scientific and technical research. ASCE does support the use of existing studies and research when available, timely, and relevant; it must be recognized that quality data is not available for every project and therefore original research might still be necessary. For example, many studies on the impact related to site specific wetlands do not have the site-specific data unless someone collects it during the process. The collection of biological data in many areas can only be collected from May 1 to October 15, limiting the time engineers and scientists can collect data. This data collection is still important; however, it can make it more difficult to meet consolidated timelines.

Interagency Coordination

ASCE supports efforts to codify the Administration's policy to designate one lead agency to develop joint schedules, a single EIS/EA and a joint record of decision for multi-agency projects when practicable, and the development of procedures to elevate delays or disputes. Revisions such as One Federal Decision can assist with streamlining project delivery because it strengthens the role of the lead agency and requires senior agency officials to resolve disputes in a timely manner. However, it is important to maintain environmental protections, and this should be made clear in the proposed rule.

ASCE also supports efforts to strengthen the role of the lead agency, but further guidance on how the lead agency is determined would be beneficial, as each agency has its own mandate.

Finally, the creation of the Federal Permitting Improvement Steering Council (FPISC) in the FAST Act was an excellent step to enforce government-wide efforts to modernize the federal permitting and review process. This one-stop-shop for coordinating permits across federal agencies is proving an effective tool for streamlining and shortening the overall process for some large projects and ASCE applauds efforts by the federal government to make this effort successful.

Accelerated Project Delivery

As previously stated, ASCE supports several regulatory streamlining procedures for infrastructure development. However, ASCE believes that environmental standards should not be lowered, nor should existing environmental challenges be worsened, in order to streamline the process. Therefore, while ASCE has historically urged a timelier project delivery process, ASCE *Public Policy Statement 360, Impact of Climate Change,* states that government policies should encourage the anticipation of and preparation for impacts of climate change on the built environment.

ASCE also encourages the federal government to continue to work with states to eliminate duplicative reviews. The creation of a pilot program in the FAST Act intended to eliminate duplication of environmental review processes by allowing up to five states to conduct the reviews using state law, rather than federal law, was a good first step. Finding ways to reconcile NEPA with state processes like the California Environmental Quality Act will further streamline the process.

Additionally, CEQ should examine how other environmental rating tools can be used to complement the NEPA process. For example, Envision is an environmental rating tool that has proven effective. Developed by the Institute for Sustainable Infrastructure, of which ASCE is a founding member, Envision is used to evaluate the environmental benefits of infrastructure projects. While it follows a different process than NEPA, it shares many common goals and can be used to advance sustainability and resiliency for our nation’s infrastructure. The tool measures the sustainability of an infrastructure project from design through construction, maintenance and decommissioning, can help guide decisions on how to invest limited resources, increase community engagement, and assess costs and benefits over the project’s lifecycle.

Conclusion

In conclusion, ASCE supports a balanced approach that streamlines the permitting and approval process for infrastructure projects, but not at the expense of the environment. The goal of NEPA is to ensure well-informed decision-making. For the past forty years that process has struggled to balance the documentation necessary to inform the decision-making process with the ever-growing infrastructure

needs of this nation. We welcome the opportunity for this public discussion and look forward to working with CEQ going forward.