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March 27, 2025

Ms. Katherine R. Scarlett
Chief of Staff
Council on Environmental Quality
730 Jacson St NE, Washington DC 20503

Re: Removal of National Environmental Policy Act Implementing Regulations, Council on Environmental Quality (CEQ), Docket No. CEQ-2025-0002

Dear Ms. Scarlett:

Thank you for the opportunity to submit comments in response to CEQ's Interim Final Rule *Removal of National Environmental Policy Act Implementing Regulations*, 90 FR 10610. Our comment will focus on the role of CEQ in the NEPA process and underscore a need for consistency and durability going forward.

The Associated General Contractors of America is the nation's leading construction trade association. It dates to 1918 and today represents more than 28,000 member firms. Our members include construction contractor firms, both union and open-shop, suppliers, and service providers. Through a nationwide network of 88 chapters, AGC contractors are engaged in the construction of the nation's highways, bridges, utilities, airports, transit systems, public and private buildings, water works facilities and multi-family housing units, among other things critical to the economy.

AGC fully supports the goals of NEPA to inform federal decision-making and the public's understanding of the potential environmental impacts of major federal actions. Unfortunately, what began as a useful procedural exercise has evolved into an administrative behemoth. NEPA now serves as an umbrella for compliance with more than 50 statutes and executive orders.¹

The delays and uncertainty that come with such complex compliance demands stymie development and the completion of crucial infrastructure projects. This administration should seek lasting and durable change to the NEPA process. AGC supported the reforms passed in the Fiscal Responsibility Act² (FRA) and hopes to see CEQ help agencies to achieve those goals. We believe CEQ best serves the public in an advisory role, ensuring agency procedures stay within the lines of the statute and providing accountability to agencies who fail to do so.

Thank you for the chance to comment on this Interim Final Rule. Public engagement and transparency are indelible to the administrative process.

¹ See Enclosure 11, *LIST OF RELEVANT ENVIRONMENTAL STATUTES AND EXECUTIVE ORDERS*, to the Coast Guard's [NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES AND POLICY FOR CONSIDERING ENVIRONMENTAL IMPACTS](#).

² Pub. L. No. 118-5, tit. III, 137 Stat. 38.

I. AGC’s Engagement on the Proposed Rule

AGC has been engaged on this subject for years. Proponents of critical infrastructure projects funded or authorized by federal officials or impacting federal lands (“major Federal Action”) need to comply with NEPA in order to break ground. AGC members are at the forefront of constructing the nation’s infrastructure—important work that cannot proceed without myriad permits and approvals. Delays and inefficiencies in the NEPA process lead to escalating costs, workforce disruptions, and increased risk of litigation. We have a long history of engagement on the development of NEPA regulations and guidance with recurring themes of predictability, efficiency, and transparency. AGC was supportive of *One Federal Decision* policy, which set page limits and time limits for agencies to complete reviews. This policy was rescinded by the Biden administration before Congress enacted it into law.

Recently the Senate invited our general counsel, Mrs. Leah Pilconis, to testify in front of the Committee on Environment and Public Works during a hearing on “Improving the Federal Environmental Review and Permitting Processes.” During this hearing, Mrs. Pilconis testified on behalf of AGC members and explained that the current NEPA process makes it nearly impossible for the construction industry to complete infrastructure projects in a timely fashion.³ AGC offered detailed recommendations on ways to streamline the environmental review process.⁴

We have also signed on to a coalition letter, led by the U.S. Chamber of Commerce, which we incorporate by reference herein. In that letter, AGC represents one of a diverse set of businesses and industries that have elected to speak with one voice on this important issue.

II. Environmental Reviews due to Regulatory Uncertainty Continue to Delay Major Construction Projects

We support the removal of the CEQ NEPA regulations from the CFR, as long as what rises from the ashes provides a clear, consistent, and durable framework for contractors to operate in.

A. Avoid Unintended Consequences by Ensuring Consistency Between Agencies

CEQ has provided agencies with an excellent opportunity to develop and refine implementing procedures that are durable, efficient, and instructive. However, without the regulations to guide them, CEQ must ensure that agencies do not take disparate approaches to implementing NEPA.

We appreciate that the administration has acknowledged this with the establishment of a working group to coordinate the revision of agency-level NEPA regulations for consistency. AGC would appreciate more information about this working group. Who will participate? Will there be any opportunity for public engagement? Would the administration consider a working group under the

³ Mrs. Pilconis’ entire testimony can be found [here](#), along with video of the hearing.

⁴ Further recommendations for streamlining the federal permitting process can be found in AGC’s [white paper](#), *Reforms for Improving Federal Environmental Review and Permitting*, drafted July 24, 2017.

Federal Advisory Committee Act, such that stakeholders can be involved in a more meaningful way? AGC and our members would be able to provide extremely valuable input if such a strategy was considered.

In addition to the workgroup, CEQ should establish additional mechanisms for keeping agency NEPA regulations consistent. One possible tool would be an internet platform that houses all the agency regulations together, as well as keeping track of projects under review. This would allow the public to contribute to CEQ's role as a watchdog and to report any inconsistencies that are frustrating stakeholders.

B. Find Durable Solutions to Avoid Mistakes of the Past

AGC appreciates the steps this administration is taking to streamline the environmental review process. However, our members have also experienced the uncertainty that comes with regulatory whiplash (like contractors saw with the definition of Waters of the United States) and encourage the administration to seek lasting solutions. This is best done by working with Congress to amend NEPA.

Many of our members are working on major infrastructure projects⁵ that have transcended multiple administrations. When the statute is not clear, it allows regulations to shift with the political winds and contractors are being asked to hit a moving target. In that situation, contractors will typically choose to over-comply rather than risk having to restart the environmental review because of a change in administration. For that reason, AGC is concerned that the Interim Final Rule alone does not go far enough to ensure that the environmental process is streamlined in a durable fashion. CEQ should work with Congress to further amend NEPA in a way that provides clarity and consistency among agency regulations. There is bipartisan support for doing so.

CEQ's most proper role is to enforce the guardrails set out by Congress in statute. This has the dual effect of satisfying the separation of powers and providing durable procedures that can stand the test of time.

C. Hold Agencies Accountable for Following the Law and Meeting Deadlines

CEQ's most proper role is that of a statutory enforcer. Consistent with the Constitution's principles that the executive branch should "take care that the Laws be faithfully executed," CEQ should work closely with agencies to ensure that implementing procedures stay within the statutory guardrails that have been put in place.

In the FRA, Congress amended NEPA to require page and time limits, to reduce the scope of alternatives that must be considered, and to allow for the sharing of categorical exclusions. These changes were made with the intent of simplifying the environmental review process. But when CEQ

⁵ See Appendix [here](#) *Written Testimony of Leah Pilconis to the Senate Committee on the Environment and Public Works*, for a list of projects stalled by the environmental review process. The list includes projects such as the \$10B Sunzia Energy Transmission Project in Arizona, which was approved in 2023 after it took more than a decade to finalize a draft environmental impact statement.

promulgated its Phase 2 regulations a few months later, the rule instead made things more complex by adding new requirements that forced project proponents to address impacts that were extremely remote in time and space.⁶ While AGC appreciates that these regulations have now been removed from the CFR, we want to work towards a point where regulations that depart from the intent of the statute are impossible to enact.

In addition to the FRA, Congress has also stressed the importance of this in Title 41 of the Fixing America's Surface Transportation Act (FAST-41)⁷ which requires agencies to write a report that explains why a project has missed its NEPA deadlines. The Moving Ahead for Progress in the 21st Century Act (MAP-21)⁸ even provides for financial penalties when a reviewing agency fails to render a decision by the deadline. These programs should be expanded to include all major federal actions.

D. AGC Stands Ready to Assist with Further Reforms

As the major permitting agencies (DOT, DOE, EPA, USACE) begin developing their new agency-level NEPA implementing procedures, it will be important to offer meaningful opportunities for public comment. Given the complexity and scope of these procedures—which often span hundreds of pages--AGC can be a valuable resource for these agencies to develop and issue procedures that are legally sufficient, consistent with the statute, and consistent with other agencies within their sphere of influence.

AGC is ready to provide real world examples and help create well-informed and durable policies that stand the test of time and litigation. We would welcome the opportunity to contribute to this process and to support the administration's efforts to modernize and improve the NEPA process.

III. Conclusion

AGC of America supports the removal of the NEPA regulations from the CFR but encourages the administration to identify durable solutions that ensure consistency between the agencies' implementing regulations. AGC believes that the best solution is to continue to amend NEPA to reduce inefficiencies and then have CEQ ensure that agencies stick to the statute. We look forward to continuing to work with the administration to streamline the environmental review process. Thank you for this opportunity to comment and please reach out to me at spencer.phillips@agc.mil if you have any questions.

Very Respectfully,

⁶ AGC joined a group of organizations led by the U.S. Chamber of Commerce to submit a comment on the Phase 2 regulation. In this letter, co-signed by AGC and a coalition of organizations representing just about every major sector of the American economy, the Chamber criticized a lack of predictability, efficiency, and transparency in the environmental review process. The comment can be found [here](#).

⁷ Pub. L. No. 114-94, tit. I, 129 Stat. 1312.

⁸ Pub. L. No. 112-141, tit. I, 126 Stat. 405.

AGC of America to CEQ

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A handwritten signature in black ink, appearing to read "Spencer Phillips", with a long horizontal line extending to the right.

Mr. Spencer Phillips
Counsel, Regulation and Litigation Advocacy
AGC of America