



"Wamsley, J. Cooper"  
 <Cooper.Wamsley@VirginiaDOT.org>

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To: "ceq\_nepa@fs.fed.us" <ceq\_nepa@fs.fed.us>  
 cc: "Robb, Earl Taylor" <Earl.Robb@VirginiaDOT.org>, "Long, Stephen J." <Steve.Long@VirginiaDOT.org>  
 Subject: Comments on NEPA Task Force Proposal

We appreciate the opportunity to comment on the initiatives identified by the Council on Environmental Quality's National Environmental Policy Act Task Force published in the Federal Register on July 9, 2002. We support the effort to "improve and modernize NEPA analysis and documentation," however, we believe the proposed course of action falls short of addressing that challenge.

The challenge associated with improving NEPA implementation exceeds the limits of technology, intergovernmental collaboration, programmatic analysis/tiering, adaptive management, and increased use of categorical exclusions. NEPA issues that should be addressed by the task force are much more fundamental. Environmental Impact Statements often exceed \$10,000,000 in cost and require many years of process time. We believe that the result of these studies does not justify the time and money expended.

We suggest the task force address the following challenges associated with NEPA implementation:

**Multiple environmental approvals:** As a result of the convoluted maze of federal regulation developed to implement NEPA, numerous federal environmental approvals are required. The federal government does not speak with one unified voice, but comes across as fragmented with numerous conflicting agendas and objectives. Environmental documents are sent to 13 separate federal agencies for review, comment, and/or approval. The lead federal agency should have the authority to speak as the sole federal voice on federal projects. A single public interest finding is critical for efficient and effective decisions.

**Minimized role of lead federal agency:** It appears that the Federal Highway Administration (FHWA) has surrendered the leadership role to other "partners" such as the Environmental Protection Agency and the U.S. Army Corps of Engineers. Often the strongest personality on the federal team, regardless of expertise becomes the dominant participant. Environmental regulatory agencies are allowed excessive latitude in the development and review of project-specific traffic, engineering, and other technical fields outside their area of expertise. FHWA acknowledges it is no longer a project proponent, but an equal "partner" in the environmental decision process. The lead federal agency must be recognized as the *single* lead agency for decision making.

**Duplicate requirements:** Each federal agency has developed its own procedures for NEPA implementation, creating inconsistency in the interpretation of NEPA. CEQ's regulations are now superceded and overshadowed by multiple regulations promulgated by federal agencies who believe their regulations to be superior to all others. Other redundant laws and regulations relating to NEPA implementation have been promulgated. This redundancy must be eliminated. For example, Section 4(f) and Section 106 provide redundant protection of historic properties. Section 404 of the clean water act and NEPA require redundant federal decisions based on a review of project factors such as purpose and need, alternatives, costs, and environmental impacts.

**NEPA is the primary vehicle to stop projects:** NEPA is the preferred tool of project opponents to delay or stop projects. The complexity associated with its implementation makes NEPA an easy target. Project opponents use NEPA to stop a project not out of a genuine desire to protect the environment, but simply because they will be personally affected by the proximity of a project. Opponents have delayed projects for years, costing millions of taxpayers dollars in court and other expenses associated with project delays. Projects can be delayed indefinitely simply because regulations are prescriptive and detailed, and the

agencies administering them are not decisive.

**Expanded federal decision authority:** Federal agencies are empowered beyond their existing statutory authority. Environmental agencies are now empowered to make decisions regarding project purpose and need, and regarding the development and selection of alternatives. Environmental agencies now consider themselves to be experts in traffic and other technical components of projects. All study decisions should be expertise-based and rendered by the agency with recognized knowledge and legal authority.

**States need flexibility in process design and compliance:** The state Departments of Transportation have been directly responsible for NEPA compliance in transportation programs for 30 years. The states have the personnel, expertise and experience necessary to implement programs to meet local needs. States also have experience in the implementation of other federal agency NEPA regulations. The CEQ task force should acknowledge this and provide for state certification to administer NEPA programs.

**Flexibility:** CEQ should allow applicants, such as state highway administrators, the opportunity to develop their own procedures to implement NEPA. These procedures could be certified by the lead federal agency as meeting NEPA requirements.

**State control of project development:** States must have the flexibility to develop projects consistent with their needs. Due to the potential for conflict with unique state processes, CEQ should mandate no new prescriptive project development process changes. For example, CEQ should not impose "intergovernmental collaboration" (a task force recommendation) requirements that could be in conflict with existing state-level project development processes.

Thank you for this opportunity to comment on the Task Force recommendations.

Cooper Wamsley

Engineer II

Virginia Department of Transportation