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National Environmental Policy Act/Council on Environmental Quality Rule Revisions: Environmental Organizations File Federal Judicial Challenge

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The Southern Environmental Law Center (“SELC”) filed a Complaint in the United States District Court for the Western District of Virginia on July 29th challenging the recently finalized Council on Environmental Quality (“CEQ”) revisions to the regulations that implement the National Environmental Policy Act (“NEPA”).

The organizations SELC is representing include:

- Wild Virginia
- Virginia Wilderness Committee,
- Upstate Forever
- South Carolina Wildlife Federation
- North Carolina Wildlife Federation
- National Trust for Historic Preservation
- Mountaintrue
- Haw River Assembly
- Highlanders for Responsible Development
- Defenders of Wildlife
- Cowpasture River preservation Association
- Congaree Riverkeeper
- The Clinch Coalition
- Clean Air Carolina
- Cape Fear River Watch
- Alliance for the Shenandoah Valley
- Alabama Rivers Alliance

The CEQ regulations had been promulgated on July 15th and represented the first revisions in 40 years.

CEQ was established in 1970 (as part of the Executive Office of the President) with its duties including oversight of the federal agency implementation of NEPA. Regulations issued by CEQ are intended to guide the federal agencies in interpreting NEPA’s procedural requirements. The regulations are generally viewed by the federal agencies as the guide post for compliance.

Of course, CEQ's interpretation and the federal agencies themselves through their regulation and guidance are sometimes superseded by judicial decisions. In other words, regardless of CEQ and the federal agencies' rules, courts have not infrequently disagreed with CEQ/federal agency regulatory interpretations.

The Complaint in its initial criticism of the CEQ rule revisions states in part that:

. . . in direct response to President Trump's call to "simplify and accelerate" the approval process for major projects like pipelines and highways, the Council on Environmental Quality ("CEQ") deleted the central provisions of regulations that have been in place for over 40 years to implement one of our nation's most fundamental "good government" laws: the National Environmental Policy Act of 1969 ("NEPA" or the "Act"), 42 U.S.C. §§ 4321-4370 (1970).

Rather than make this drastic change deliberately and with the careful process the APA requires, CEQ cut every corner. The agency disregarded clear evidence from over 40 years of past implementation; ignored the reliance interests of the citizens, businesses, and industries that depend on full and complete NEPA analyses; and turned the mandatory public engagement process into a paper exercise, rather than the meaningful inquiry the law requires.

SELC challenges the legality of the revisions, arguing:

- Exclusion of a range of projects from any NEPA review
- Severely limiting the environmental effects that must be considered under NEPA
- Restricting which alternatives should be studied
- Allowing projects to proceed before the NEPA process is complete

A copy of the 181-page Complaint can be downloaded [here](#).