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National Environmental Policy Act/Proposed Amendments: U.S. House of Representatives Committee on Natural Resources (Congressman Westerman - Arkansas) Hearing

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The United States House of Representatives Committee on Natural Resources ("Natural Resources Committee") held a September 4th Hearing addressing:

- Discussion Draft of H.R. ___ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes;
- H.J. Res. 168 (Rep. Graves of LA), Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to "National Environmental Policy Act Implementing Regulations Revisions Phase 2"; and
- H.R. 6129 (Rep. Yakym), "Studying NEPA 's Impact on Projects Act".

The Natural Resources Committee is chaired by Congressman Bruce Westerman (Arkansas – 4th District).

The National Environmental Policy Act ("NEPA") was enacted in 1969. It was arguably the first federal environmental statute enacted in the modern era of environmental law.

NEPA requires federal agencies to include values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions.

The statute requires federal agencies in certain circumstances to prepare a detailed Environmental Impact Statement ("EIS"). However, the requirement to prepare this document is only triggered in the event of a major federal action which will significantly affect the human environment.

NEPA differs from action forcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an EIS or an environmental assessment. As a result, NEPA does not require a certain alternative or meet a particular standard.

The 1969 legislation also created the Council of Environmental Quality in the White House which is tasked with the oversight of the federal implementation of NEPA. Regulations issued by CEQ are intended to guide the federal agencies interpreting NEPA's procedural requirements. However, the federal agencies themselves typically have in place regulations that address NEPA requirements applicable to its activities.

Both the Trump and Biden Administrations promulgated revisions to the CEQ rules. The Biden Administration rules have been argued to have narrowed the scope of the Trump revisions. In other words, there is a continuing argument about the breadth of environmental issues that a NEPA EIS must address (i.e., should a natural gas transmission pipeline that must obtain a 404 Permit to cross a wetland address potential impacts on climate change or just the affected water body?).

In addition, the Fiscal Responsibility Act of 2023 included amendments to NEPA that were intended to streamline the review process. The Act's provisions included clarification of whether to prepare an environmental document and the appropriate level of NEPA review, page limits, timing requirements, utilization of categorical exclusions, and other provisions. Regardless, an ongoing debate continues as to whether or not NEPA should be further amended.

Critics argue that NEPA still unnecessarily impedes a number of important projects. Proponents, in contrast, state that it performs a critical function to ensure mission-oriented agencies consider environmental values.

The Natural Resources Committee majority Republicans in announcing the legislative hearing identified the following as "key messages":

- While well-intentioned, NEPA (the National Environmental Policy Act of 1969) has evolved into an extremely cumbersome and lengthy process that has increased costs and delays for a wide range of projects, from transportation and infrastructure to forestry and energy development.
- NEPA is the most frequently litigated environmental statute, and NEPA-related litigation on environmental impact statements takes an average of 4.2 years to resolve.
- NEPA must be reformed to provide developers and federal agencies with certainty. This will allow various projects to move forward responsibly, improving America's energy security, national security, and economic competitiveness.
- The Council on Environmental Quality (CEQ) has intentionally ignored provisions in the bipartisan Fiscal Responsibility Act (FRA) to further the Biden-Harris administration's radical environmental agenda through its NEPA Phase II rule. H.J. Res. 168 would provide for congressional disapproval of the Biden-Harris administration's "National Environmental Policy Act Implementing Regulations Revisions Phase 2."
- H.R. 6129 would mandate CEQ to publish annual reports on NEPA's impact on projects. Regular reporting will establish greater transparency in environmental reviews and help ensure that the NEPA reforms enacted by Congress are properly implemented by the administration and have their intended impact.

Witnesses at the hearing included:

- Mr. Chip Jakins, CEO, Jackson Energy Membership Corporation (EMC), Jefferson, GA
- Mr. Keith Pugh, President 2022-2023 American Public Works Association, Asheville, NC
- Mr. John Beard Jr., Founder, President and Executive Director Port Arthur Community Action Network, Port Arthur, TX [Minority Witness]
- Ms. Heather Reams, President, Citizens for Responsible Energy Solutions (CRES), Washington, D.C.

A link to the hearing, witness testimony, and proposed legislation can be found [here](#).