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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

April 9, 2020

The Honorable Mary B. Neumayr
Chairman
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Dear Chairman Neumayr:

I write to request information about the Council on Environmental Quality's (CEQ's) recent proposal to revise the National Environmental Policy Act (NEPA), docket number CEQ-2019-0003, and the process CEQ used to receive comments on the proposed regulations.

It has come to my attention that, in addition to receiving public comments on this rule through www.regulations.gov, the White House accommodated industry requests for the use of an email address, NEPA-Update@ceq.eop.gov, to receive comments on the proposed regulations. Comments accepted through this email address do not appear to have been publicly available to others during the comment period, and it is my understanding that they remain unavailable today. This practice appears to violate Section 206(d) of the E-Government Act of 2002¹, which requires agencies to make dockets and comments submitted on proposed rules available online. Additionally, Executive Order 13563² states that "To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on www.regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings."

In addition to violating the law, using this mechanism to receive comments raises several issues of concern. First, I have heard from multiple sources that the White House provided this email address to individuals, organizations and industry groups with whom it directly communicated during the open comment period and invited those entities to use the email address to submit their comments. In doing so, the White House created a two track system to receive and process comments – one track for those working closely with the White House and another for the rest of the public.

Additionally, transmittal of comments through an email address is much easier than through the relatively cumbersome process required by www.regulations.gov. Most strikingly, www.regulations.gov only accepts a small amount of material at a time, and it is my understanding that some environmental stakeholders had to spend several days shrinking the size of the files so they would be able to get through the portal. I also have heard that the online submission itself could take several hours to upload files.

¹ <https://www.govinfo.gov/content/pkg/PLAW-107publ347/pdf/PLAW-107publ347.pdf>

² <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>

In order to better understand how the use of this email address to receive public comments on the proposed revision to NEPA's implementing regulations is affecting CEQ's rulemaking process and is proceeding in a manner that is consistent with statutory and other requirements, please provide answers to the following questions by April 30, 2020:

1. During the open comment period, how many comments on CEQ's proposed NEPA regulations, docket number CEQ-2019-0003, did CEQ receive through the email address, NEPA-Update@ceq.eop.gov, or any other email addresses?
2. Do you commit that CEQ will upload all comments that it received on the proposed regulations through email to www.regulations.gov within the next 30 days? Will CEQ also commit to clarify the date of receipt for each uploaded comment sent by email, as www.regulations.gov does automatically?
3. Who, within the Executive Office of the President, made the decision to direct select parties to use the email address, NEPA-Update@ceq.eop.gov, as a means to receive comments on CEQ's proposed revisions to the NEPA implementing regulations?

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Brian Eiler (Brian_Eiler@epw.senate.gov) or Andrew Wishnia (Andrew_Wishnia@epw.senate.gov) of the Environment and Public Works Committee staff.

Sincerely,



Thomas R. Carper
Ranking Member