United States Senate

WASHINGTON, DC 20510

March 9, 2020

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

RE: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket ID: CEQ-2019-0003

Dear Ms. Neumayr:

We write in strong opposition to the Council on Environmental Quality's (CEQ) proposed rule to fundamentally change the National Environmental Policy Act (NEPA) regulations. The effects of the proposed rule will exacerbate harmful environmental impacts on communities of color, disadvantaged communities, and indigenous communities, which are known as Environmental Justice (EJ) communities and which are already disproportionally affected by environmental impacts.

For 50 years, NEPA has served not only as our nation's preeminent instrument for protection of the environment, but also as a critical tool for civil rights. NEPA and its regulations mandate government agencies to consider the environmental impacts of projects, including any potential costs and consequences for nearby communities, before those projects are executed. Subsequently, NEPA has protected EJ communities by ensuring that all adverse impacts of projects are fully examined, and that public input from impacted communities is considered. One of the tenets of NEPA ensures that all residents and communities can voice their concerns, objections and opposition to proposed federal development projects.

EJ communities experience disproportionate adverse impacts resulting from contaminated air, land and water. Generations of economic and racial inequality have disproportionately exposed workers, low-income communities, communities of color and others to low wages, toxic legacy pollution and climate threats. Historically, EJ communities have been targeted for projects, and, in turn, the populace of these frontline communities continue to experience proven negative environmental and health impacts.

In February 1994, President Clinton issued Executive Order 12898, titled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This Executive Order directs federal agencies to incorporate environmental justice principles into their operations, and it includes the objective of improving opportunities for community input during the NEPA process. Rather than embracing and strengthening the forward-looking environmental justice principles that are mandated by Executive Order 12898, however, CEQ's proposed revisions sharply careen in the opposite direction, threatening to undermine years of hard-fought progress.

For example, CEQ's proposed change to NEPA's implementing regulations to remove the consideration of cumulative impacts and indirect effects would be especially detrimental to EJ communities. Allowing federal agencies to disregard the cumulative impacts and indirect effects of a project could have a

disastrous effect on EJ communities that have already had higher exposure to land, air and water pollution, which often stem from multiple legacy or active sources of pollution. Thus, in those communities, comprehensive environmental analysis is essential to determining the long-term, wide-ranging consequences of any federally approved project.

EJ communities already have to fight to be heard on project decisions that affect their day-to-day lives. CEQ's proposed changes that would allow companies to conduct their own environmental impact statements and that eliminate the conflict of interest provision of the current regulation are both an affront to EJ communities whose only recourse is often the public input afforded to them during NEPA's current approval process. Company's interests lie largely with their profit margins and a good deal less with the communities directly affected by their actions. Allowing companies to write their own environmental impact statements is akin to offering a self-graded take-home exam. We simply cannot trust every company or businesses to do the right thing when, too often, history has shown us otherwise.

Finally, the short public comment period that CEQ has allowed for this proposed rule – which is greatly disproportionate to the scope of its implications – sadly ensures that EJ communities will continue to be an afterthought when it comes to decision-making that directly affects their communities. This process is unfair to millions of Americans, and it stands in stark contrast to the principle of citizen participation on which both NEPA and our democracy were built.

These communities deserve the opportunity to be well-informed of these proposed changes to the NEPA process, and they must have a real and meaningful opportunity to provide feedback. Otherwise, we risk perpetuating a generations-long series of harmful actions that both disempower and dismiss the needs of marginalized communities. The shortened comment period for this proposal is not nearly enough time to gain a proper response from EJ communities, so we urge you to extend the public comment period for this proposal.

This Administration has issued a proposed rule that would undermine key aspects of the NEPA process and result in the comprehensive dismantling of core protections for EJ communities. NEPA is essential to protect frontline communities and ensure that their environment, health, and quality of life are preserved for generations to come, especially in EJ communities that have been historically excluded from major decisions that affect them.

In addition to noting the substantial shortcomings and harms associated with the substance of this rule, we urge you to extend the public comment period for this proposed rule so that further outreach can be done to these affected EJ communities and further study can be done to assess the potential impacts of this proposed rule.

Sincerely,

Thomas R. Carper
United States Senator

Tammy Duckworth
United States Senator

Cory Booker
United States Senator

Robert P. Casey, Jr.
United States Senator

Kamala D. Harris
United States Senator

Edward J. Markey
United States Senator