

**COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)
EXECUTIVE OFFICE OF THE PRESIDENT**

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OVERVIEW of CEQ

Congress established the Council on Environmental Quality (CEQ) in 1969 with the National Environmental Policy Act (NEPA) (42 U.S.C. 4371, *et seq.*). In enacting NEPA, Congress recognized the profound impact that human activities have on our environment and directed that Federal agencies consider the effects of their proposed actions on the quality of the human environment. In furtherance of this policy, CEQ has unique authorities and capabilities to chair interagency groups, balance competing positions, and encourage government-wide cooperation.

CEQ is assigned responsibilities under NEPA, other statutes, Executive Orders, and Presidential Memoranda. CEQ works to balance the nation's environmental, economic, and social objectives; advises and assists the President in the development of environmental policies and proposals for legislation; identifies, assesses and reports on trends in environmental quality and recommends appropriate response strategies; provides support and leadership in the coordination of activities of the Federal agencies and departments; fosters cooperation among Federal, State, and local governments, the private sector and citizens; and interprets NEPA and the CEQ regulations that implement NEPA.

Specific NEPA responsibilities include reviewing and approving agency NEPA procedures; working with agencies to develop guidance to address systemic, localized, or project-specific problems; overseeing Federal agency implementation of the environmental impact assessment process; and mediating disputes regarding the adequacy of final environmental impact statements if they are referred to CEQ by another Federal agency.

CEQ AUTHORITIES AND OPERATIONS

The National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) is often referred to as the Magna Carta of Federal environmental law. It sets forth broad environmental policy goals for the Nation, requires Federal agencies to consider the environmental effects of their proposed actions in the course of decision-making, and establishes the Council on Environmental Quality (CEQ).

In NEPA, Congress declared a “continuing policy of the Federal government, in cooperation with State and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can live in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans.” 42 U.S.C. § 4331. NEPA made environmental considerations part of the authorities of every Federal agency and mandated the documentation of the environmental impacts of proposals and alternatives for major Federal actions that may significantly affect the quality of the human environment. 42 U.S.C. § 4332.

The U.S. Supreme Court has held that only NEPA’s procedural requirements are enforceable through litigation. *Strycker’s Bay Neighborhood Council v. Karlen*, 444 U.S. 223, 227 (1980). The most well-known procedural requirement is the duty to prepare an environmental impact statement (EIS) for a proposal that is “a major federal action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Last year, 381 EIS’s were published by Federal agencies (182 draft and 199 final) to document the effects of a broad range of actions from rule-making to land management and infrastructure development decisions. As with previous years, the U.S. Forest Service (USFS) published the most documents (71), followed by the Bureau of Land Management and Army Corps of Engineers (40) and the Federal Highway Administration (23). Federal agencies typically find that most of their proposed actions are not significant, and document that finding based on a shorter environmental assessment or by reference to a categorical exclusion established in agency procedures for the implementation of NEPA.

CEQ’s Oversight of the NEPA Process

CEQ is authorized to interpret the requirements of NEPA and oversee its implementation. The Supreme Court has upheld CEQ’s authority and stated that CEQ’s regulatory interpretation of NEPA is owed “substantial deference.” *Marsh v. Oregon Natural Resources Council*, 490 US 360 (1989). The CEQ regulations implementing the procedural provisions of NEPA are binding on all Federal agencies. 40 CFR §§ 1500-1508. CEQ has also issued guidance and published handbooks and reports offering information and advice to NEPA practitioners.

In addition to interpreting NEPA and overseeing implementation, CEQ has several specific NEPA responsibilities:

Review and approval of agencies' NEPA procedures. The CEQ regulations require each Federal department and agency to promulgate their own NEPA procedures that adapt CEQ's general requirements to their own authorities, activities, and decision-making procedures. 40 CFR § 1505.1. CEQ works with the agencies in the drafting of the procedures and, following public review and comment, CEQ reviews the final agency procedures for conformity with NEPA. 40 CFR § 1507.3.

Designation of lead agency. CEQ determines the appropriate lead agency if there is a dispute between two or more Federal agencies. 40 CFR § 1501.5. Last year, this role was codified and incorporated into the procedures for infrastructure permitting under Title 41 of the Fixing America's Surface Transportation Act.

Alternative arrangements for supplemental EISs. When agencies make substantial changes to a proposed action that are relevant to environmental concerns or there is significant new information bearing on the impacts of a proposed action in an EIS, the agency is required to prepare a supplemental EIS. CEQ may develop alternative procedures for EIS supplementation if needed to address a particular situation. 40 CFR § 1502.9(c).

Alternative arrangements for emergencies. If emergency circumstances make it necessary for a Federal agency to take an action without first complying with procedures for the preparation of an EIS, the agency may develop alternative arrangements for compliance with NEPA in consultation with CEQ. 40 CFR § 1506.11. CEQ has no authority to "waive" the requirements of NEPA.

Dispute resolution. The CEQ regulations provide for a formal interagency dispute resolution process through referral of environmentally unacceptable actions to CEQ. The regulations spell out the process and timeframe for undertaking a referral. 40 CFR Part 1504. The last formal referral, involving the U.S. Army Corps of Engineers and National Marine Fisheries Service, was resolved in 2003. See, <http://www.whitehouse.gov/ceq/agencyreferral.html>.

While the referral process is formal and rarely invoked, CEQ is frequently engaged in informal dispute resolution processes. As the agency with responsibility for overseeing implementation of NEPA, CEQ receives requests for help from Federal agencies, State and local governments, tribes, businesses, public organizations and private citizens. The resolution of these issues usually involves communication with the Federal action agency and may involve an informal process to resolve a particular problem. Additionally, CEQ is an ex officio member of the Board of Trustees for the Morris K. Udall Foundation, an independent Federal entity. CEQ's role with the Foundation is closely tied to the U.S. Institute for Environmental Conflict Resolution, which provides professional alternative dispute resolution services to Federal agencies. CEQ has been actively involved in working with the Institute, and has a concurrence role if the Institute is asked to mediate a dispute between two or more Federal agencies.

Other Authorities:**Title 41 of the Fixing America's Surface Transportation Act (FAST Act)
Federal Infrastructure Permitting Improvement. 42 U.S.C. § 4370m.**

Title 41 of the FAST Act provides coordinated oversight, dispute resolution services, and some funding for environmental review and authorization of covered (+\$200 million) infrastructure improvement projects. The FAST Act establishes the Federal Permitting Improvement Steering Council (FPISC), with CEQ as a member, to oversee implementation of the Act by: maintaining an inventory of covered infrastructure projects; designating specific agencies to facilitate different project categories; creating performance schedules for environmental reviews for each project category; and recommending to CEQ or the Office of Management and Budget (“OMB”), as necessary and appropriate, that guidance be issued to direct agency action under the Act.

On the recommendation of the FPISC's Executive Director, CEQ is responsible for consulting with OMB on the resolution of disputes regarding permitting timetables and for resolving project-specific disputes over appropriate “facilitating” or lead agency designations for particular projects. Also upon recommendation of the FPISC's Executive Director, CEQ is required to consult with designated lead agencies on the determination that analyses and documentation prepared under State environmental impact assessment laws and procedures allow for opportunities for public participation and consideration of alternatives, environmental consequences, and other required analyses that are substantially equivalent to NEPA. 42 U.S.C. § 4370m-4(b)(1)(A)(i).

Ongoing Work under the FAST Act

CEQ and OMB are developing guidance to help agencies implement FAST-41, support use of the Permitting Dashboard, and create an application fee structure for implementation of the Act. CEQ and OMB are also providing support to the FPISC Executive Director.

Next Steps

- November through January: Finalize FAST-41 guidance in coordination with the FPISC Executive Director and OMB.
- April 15, 2017: Annual report to Congress (42 U.S.C. § 4370m-7(a)). CEQ will assist the FPISC Executive Director in preparing the report, which will detail the progress accomplished under FAST-41 during the previous fiscal year. The report must include an assessment of each participating and lead agency's performance in regards to the best practices identified pursuant to 42 U.S.C. § 4370m-1(c)(2)(B). This includes agency progress in making improvements consistent with the identified best practices, and agency compliance with the recommended performance schedules.
- Looking forward: CEQ is responsible for guidance on the adoption or incorporation by reference of elements from state environmental reviews. CEQ will work with OMB and the FPISC Executive Director to develop a wide range of best practices, IT tools, and other innovations in 2016 and beyond.

OTHER AUTHORITIES

Armed Forces Strategic Environmental Research and Development Program

10 U.S.C. § 2904. CEQ is responsible for nominating at least one person who is a representative of environmental public interest groups to the program Scientific Advisory Board.

Aviation Development Streamlining—Environmental Review Process

49 U.S.C. § 47171. Under this statute CEQ receives notification from the Secretary of Transportation when a Federal agency, State agency, or airport sponsor that is participating in a coordinated environmental review process has not met a deadline. No later than 30 days after receipt of notice, CEQ is to receive from the agency or sponsor involved a report explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval.

Clean Air Act—EPA “Policy Review” & Referral to CEQ

42 U.S.C. § 7609. Under § 309 of the Clean Air Act CEQ receives referrals from EPA when it finds “unsatisfactory” from a public health or welfare or environmental quality standpoint, any matter relating to EPA’s responsibilities under the Clean Air Act contained in: 1) legislation proposed by any Federal department or agency, 2) major Federal agency action required to produce an environmental impact statement pursuant to NEPA, or (3) proposed regulations published by any department or agency of the Federal Government.

Global Change Research Act—Committee on Earth and Environmental Sciences

15 U.S.C. § 2932. As part of the Global Change Research Act of 1990, the President established a Committee comprised of at least one representative from several agencies, including CEQ, to assist the Federal Coordinating Council on Science, Engineering, and Technology in its efforts to develop a comprehensive research program to “assist the Nation and the World to understand, assess, predict, and respond to human-induced and natural processes of global change.” 15 U.S.C. § 2931(b). Each agency is to designate a high-ranking official as its representative.

Harmful Algal Bloom and Hypoxia Research and Control Act—Inter-Agency Task Force

33 U.S.C. § 4001(a). CEQ is required to appoint a representative to an Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia in United States coastal waters and the Great Lakes. This Act became law in 1998 and was amended in 2004 to retain the Task Force and require it to produce periodic reports, discussing, among other things, the threat and impacts of hypoxia and algal blooms in coastal waters, as well as plans for reducing such impacts.

Mortgage Insurance—Multifamily mortgage credit programs—Environmental Review

12 U.S.C. § 1715z-22. The Secretary of Housing and Urban Development may issue regulations for the provision of new forms of Federal credit enhancement for multifamily loans only after consultation with the Council on Environmental Quality. The regulations must, among other matters, provide for the monitoring of the performance of environmental reviews.

Protection and Conservation of Wildlife, Game, Fur-Bearing Animals, and Fish

16 U.S.C. § 661. The Secretary of the Interior is authorized to assist and cooperate with interested entities in such activities as stocking of wildlife, providing access to public lands, and

controlling disease in wildlife; the Secretary is authorized to survey and investigate wildlife “of the public domain” and to accept donations of land and funds in furtherance of the act. This Act was followed by Executive Order Number 13443 of August 16, 2007 (“Facilitation of hunting heritage and wildlife conservation”), which requires, *inter alia*, that the Chairman of CEQ periodically convene a White House Conference on North American Wildlife Policy to facilitate the exchange of information and advice.

Toxic Substances Control—Committee Appointment

15 U.S.C. § 2603(e). Within the Department of Commerce, there is established a committee to make recommendations to the Administrator of the Environmental Protection Agency respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule. The Chairman of CEQ must appoint a member to the committee from CEQ or its officers or employees.

CEQ BUDGET AND STAFFING

Congress originally modeled CEQ after the Council of Economic Advisors: NEPA establishes a Council on Environmental Quality with three full-time Senate-confirmed Members, one of whom would be appointed Chairman by the President. Several issues, including the Government in the Sunshine Act and budget considerations, led both the Bush and the Clinton administrations to appoint only one Council Member who then served as Chair. That arrangement has since been recognized and provided for in annual appropriations.¹ However, NEPA itself has not been amended.

The Environmental Quality Improvement Act of 1970 (EQIA), later authorized an “Office of Environmental Quality” to “provide the professional and administrative staff for the Council on Environmental Quality.” 42 U.S.C. § 4371. The Chair of CEQ, a Senate-confirmed Presidential appointee, serves as Director of the Office of Environmental Quality. EQIA also provided for a Deputy Director, another Senate-confirmed Presidential appointee. 42 U.S.C. § 4372.

Today, CEQ has these two Presidentially Appointed Senate Confirmed positions, 24 full-time equivalent (FTE) positions and a budget of \$3,000,000. For fiscal year (FY) 2017, CEQ’s budget justification estimated a funding requirement of \$3,015,000 to support 24 FTE. This request was \$15,000 above the FY 2016 enacted level for anticipated increased personnel costs with no increase in staffing.

CEQ also has management fund authority under EQIA, 42 U.S.C. § 4375, which allows task forces, study contracts, and other interagency environmental projects to be financed through cost-sharing arrangements with other agencies. CEQ regulations govern the use of these authorities. 40 CFR Part 1518.

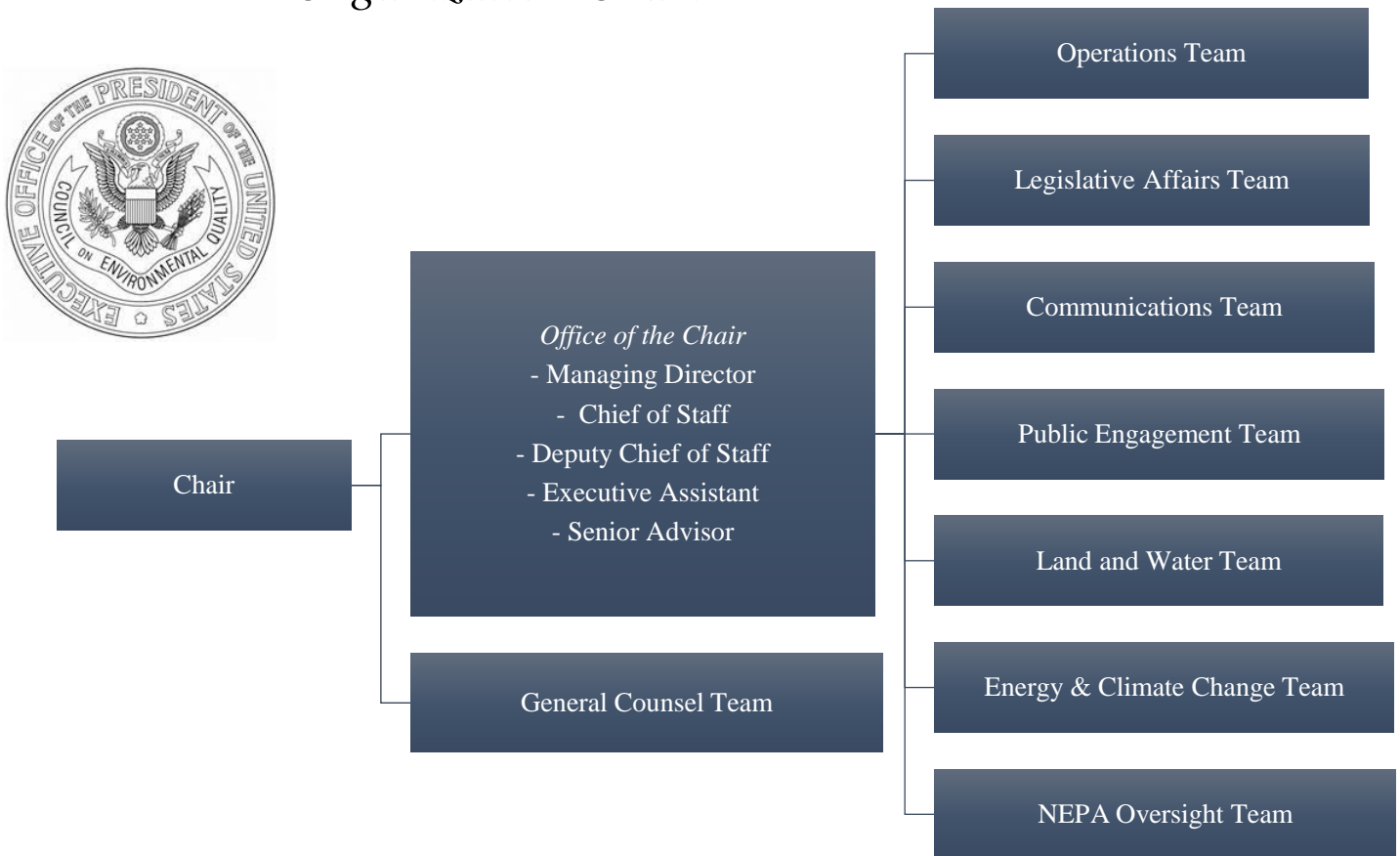
¹ “Provided, that, notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.” *Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016.*

In addition to its small permanent staff, CEQ has a long-standing practice of hosting detailees from other agencies. CEQ has the authority to accept voluntary and uncompensated services, 42 U.S.C. § 4343, as well as to utilize the services of other agencies and organization in order to avoid duplication of effort and expense. 42 U.S.C. § 4345.

As of January 21, 2017, CEQ anticipates having approximately six career employees on board and approximately twelve detailees with details expiring during the course of 2017.

ORGANIZATION CHART

*Council on Environmental Quality
2016 Organization Chart*



+Associate Director Level: Federal Chief Sustainability Officer: EPA employee, sits at CEQ