

August 4, 2025

Submitted via Regulations.gov: Docket COE-2025-0007 and Docket COE-2025-0006

The Honorable Adam Telle
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Re: Interim Final Rules, Army Corps of Engineers' NEPA Implementation
Docket Numbers COE-2025-0007 (civil works) and COE-2025-0006 (regulatory)

Dear Assistant Secretary Telle:

On behalf of our millions of members and supporters nationwide, the 135 undersigned organizations write in strong opposition to the Army Corps of Engineers' Interim Final Rules Implementing the National Environmental Policy Act for its civil works (COE-2025-007) and regulatory (COE-2025-006) programs. These rules will silence public input, erode public health and safety, and harm vital and cherished wildlife habitats across the country.

These Interim Final Rules bear no relation to improving efficiencies in project delivery. To the contrary, they will lead to inefficient, inconsistent, and inadequate NEPA reviews that will further undermine agency decision-making and the public's trust in project decisions. The Interim Final Rules functionally repeal essential NEPA protections, including eliminating the most basic safeguards for meaningful public input. They make a mockery of the Corps' stated purpose of aligning the NEPA regulations with current law.¹ And they fail to provide any guidance at all on multiple, critical NEPA requirements.

Civil Works Program Interim Final Rule (COE-2025-007)

The Civil Works Program Interim Final Rule eliminates the regulations that previously implemented NEPA reviews for civil works projects (e.g., flood control, navigation, and restoration).² Moving forward, the Corps' civil works NEPA reviews are to follow guidance issued by the Department of the Defense (DOD NEPA Guidance).³ This DOD NEPA Guidance abandons critical NEPA safeguards, misinterprets NEPA's legal requirements, and fails to provide critical substantive guidance. Those few procedural protections that are retained in

¹ The purpose of the Interim Final Rules is to "align with the changes Congress made to NEPA in the 2023 Fiscal Responsibility Act, and with the Supreme Court's recent decision in *Seven County Infrastructure Coalition v. Eagle County*." Office of the Assistant Secretary of the Army (Civil Works) Press Release, [Army and Corps of Engineers publish implementing procedures for the National Environmental Policy Act](#), July 1, 2025.

² The Civil Works Program Interim Final Rule retains the program's Categorical Exclusions as regulations.

³ [Department of Defense National Environmental Policy Act Implementing Procedures](#) (June 30, 2025). This guidance and additional information currently can be accessed at <https://www.denix.osd.mil/nepa/>.

the DOD NEPA Guidance could be ignored by some agency staff because guidance documents are not legally binding. Among other problems, the DOD NEPA Guidance:

- **Jettisons Long-Standing Public Comment Requirements:** Under all prior NEPA regulations, agencies were required to publish a draft EIS and seek public comment on that draft. The DOD NEPA Guidance jettisons these requirements that are essential to meaningful public comment—a cornerstone of a NEPA review. Instead, the Guidance allows public comment “at any time that is reasonable in the process of preparing the EIS” and makes it clear that the Corps does not even have to publish a draft EIS.⁴ This effectively eliminates all public comment on a draft EIS, as it is not possible for the public, Tribes, or other federal and state agencies to provide meaningful comments on a document they have not seen.⁵ In short, the DOD NEPA Guidance could be used to turn public comment into little more than a check the box exercise.
- **Improperly Narrows the Scope of Review:** The DOD NEPA Guidance improperly narrows the scope of NEPA review. For example, the Guidance states that “effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain” and repeatedly encourages the Corps to limit the “consideration of any environmental effects” that will occur outside the defined project.⁶ However, this approach was explicitly rejected by the Supreme Court’s recent decision in *Seven County Infrastructure Coalition v. Eagle County*, which recognizes that “the environmental effects of the project at issue may fall within NEPA even if those effects might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas.”⁷ Robust analysis of such effects is critical for understanding the impacts of a civil works project.
- **Fails to Provide Important Guidance:** The DOD NEPA Guidance fails to provide direction on many important NEPA requirements (direction that was previously included

⁴ DOD NEPA Guidance at 12 (Draft feasibility reports with an integrated or attached EA and FONSI (as appropriate) or EIS can be circulated to agencies, organizations, and members of the public known to have an interest in the study for comment.”); DOD NEPA Guidance at 17 (“During the process of preparing the EIS, DoD may publish such draft, pre-decisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA.”); DOD NEPA Guidance at 19 (“During the process of preparing any environmental document provided for by these procedures, DoD may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and this guidance.”)

⁵ The DOD Guidance, like the prior Corps NEPA rules, does require the Corps to request public comment when it issues a Notice of Intent to prepare an EIS. DOD NEPA Guidance at 11. This could, however, be interpreted by the Corps to constitute the public comment required “at any time that is reasonable in the process of preparing the EIS.”

⁶ DOD NEPA Guidance at 25, 15, 8.

⁷ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. ____ (2025) (decided May 29, 2025, Supreme Court Document 23-975).

in the now-withdrawn CEQ NEPA regulations). For example, the DOD Guidance contains no information at all on the need to assess direct, indirect, and cumulative effects, requirements that remain in full effect.⁸ These requirements should be highlighted in the DOD NEPA Guidance so that Corps staff, other federal and state agencies, and the public can understand these requirements without having to conduct their own legal research. The DOD NEPA Guidance also does not mention that agency staff must ensure the scientific integrity of NEPA analyses, a vital requirement codified in the Fiscal Responsibility Act of 2023. NEPA explicitly requires agencies to “ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document”⁹ and “make use of reliable data and resources in carrying out this Act.”¹⁰

Regulatory Program Interim Final Rule (COE-2025-006)

Our organizations support the continued reliance on regulations (and not guidance) to implement NEPA reviews under the Corps’ permit programs. However, the regulatory program’s Interim Final Rule (COE-2025-006) suffers from the same problems that infect the DOD NEPA Guidance. This Interim Final Rule improperly narrows the scope of review and fails to provide important guidance as described above and incorporated by reference as though fully set forth in these comments on COE-2025-006.

Critically, the regulatory program Interim Final Rule is even more problematic than the DOD NEPA Guidance with respect to public input. The regulatory program Interim Final Rule

⁸ These requirements were confirmed by the Courts before issuance of the now-withdrawn CEQ NEPA regulations which were issued on November 22, 1978 (43 Fed. Reg. 55990). *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978) (“NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action.”); *Jackson County, Mo. v. Jones*, 571 F.2d 1004, 1013 (8th Cir. 1978) (“under NEPA, indirect, as well as direct, costs and consequences of the proposed action must be considered”) (*Jackson City* was decided on February 7, 1978; the regulations were issued on November 22, 1978 (43 Fed. Reg. 55990)); *Environmental Defense Fund, Inc. v. Hoffman*, 566 F.2d 1060, 1067 (8th Cir. 1977) (if an impact significantly affects the environment, it should be considered in the EIS whether the impact is a primary or secondary one”); *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 89 (2d Cir. 1975) (holding that the Navy must consider the cumulative effects of disposing polluted dredged spoil at the New London dumping site in Long Island Sound); *Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314, 1322 (8th Cir. 1974) (NEPA “is concerned with indirect effects as well as direct effects. There has been increasing recognition that man and all other life on this earth may be significantly affected by actions which on the surface appear insignificant.”); *Hiram Clarke Civic Club v. Lynn*, 476 F.2d 421, 427 (5th Cir. 1973) (NEPA requires agencies to assess “all potential environmental effects that affect the quality of the human environment”); *Hanley v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972), cert. denied, 412 U.S. 908 (1973) (NEPA requires assessment of “the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.”).

⁹ 42 U.S.C. 4332(D).

¹⁰ 42 U.S.C. 4332(E).

explicitly allows the Corps to completely eliminate public comment on an EIS from members of the public, the applicant, and many other interested stakeholders. “During the process of preparing an environmental impact statement” the Corps “**may**”—but is not required to—request comments from the public, the applicant, or many Federal, state and Tribal entities.¹¹ The regulatory program Interim Final Rule, like the DOD NEPA Guidance, also makes it clear that the Corps does not have to publish a draft EIS.¹² This effectively eliminates all public comment on a draft EIS, as it is not possible for the public, Tribes, or other federal and state agencies to provide meaningful comments on a document they have not seen or that does not have a public comment period.¹³

Conclusion

For at least the reasons highlighted above, our organizations urge the Corps to withdraw both Interim Final Rules, and in their place issue regulations that properly implement the National Environmental Policy Act.

Sincerely,

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¹¹ 33 C.F.R. 333.21(a)(3), 90 Fed. Reg. 29465, 29480 (July 3, 2025). “During the process of preparing an environmental impact statement” the Corps is required to request comments from “Any Federal agency that has specific statutory jurisdiction or special expertise identified in statute with respect to any environmental impact involved or is authorized to develop and enforce environmental standards” and from “Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.” 33 C.F.R. 333.21(a)(2), 90 Fed. Reg. 29464-65.

¹² 33 C.F.R. § 333.26, 90 Fed. Reg. 29482 (“During the process of preparing the environmental impact statement, the District Engineer may publish a draft statement or other materials that in their judgment may assist in fulfilling their NEPA responsibilities.”).

¹³ The Interim Final Rule, like the prior Corps NEPA rules, does require the Corps to request public comment on the scope of the EIS when it issues a Notice of Intent to prepare an EIS.

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