Testimony of Robert G. Dreher

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My name is Robert Dreher. I am an environmental attorney, and have had extensive experience with the implementation of the National Environmental Policy Act (NEPA) over the course of my career. I have represented and advised citizen groups, tribes and businesses regarding environmental reviews under NEPA, and have worked to implement the statute effectively in government service as Deputy General Counsel of the Environmental Protection Agency, as Principal Deputy and Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and as Associate Director of the U.S. Fish and Wildlife Service. I have studied and taught NEPA as Deputy Executive Director of the Georgetown Environmental Law & Policy Institute at Georgetown University Law Center and as an adjunct professor at George Washington University Law School. Thank you for inviting me to testify here this morning. I would note that I do not represent any organization in my testimony; I speak solely as someone who has experience with and respect for the role NEPA plays in protecting the environment.

The National Environmental Policy Act

NEPA is this nation's basic national charter for protection of the environment. It is also this nation's environmental conscience. It is the model for laws enacted in states and nations around the world, because it establishes the basic principle that governments must consider the effects of their actions on the human environment and consult with the people who will be affected by those actions.

It is first and foremost a government accountability statute. It is the primary law that requires public involvement and public disclosure of the effects of government actions on people and communities. It is a law that empowers people. It empowers businesspeople. It empowers Native Americans. It empowers communities burdened with environmental contamination. It empowers all of your constituents. And virtually every case that has been brought to enforce this law has been brought by your constituents to ensure that the Federal government looks carefully at the consequences of its actions on their communities. In that sense, it is, indeed, the nation's environmental conscience.

The Congress that enacted NEPA in 1969 by overwhelming bipartisan majorities knew that the nation faced serious and growing environmental threats, and recognized that part of the problem was that Federal agencies lacked clear statutory direction to incorporate environmental values into their decision making. As the Senate committee report noted, "One major factor contributing to environmental abuse and deterioration is that actions, often actions with irreversible consequences, are undertaken without adequate consideration of, or knowledge

about, their impact on the environment." S. Rep. No. 91-296 at 9 (1969). NEPA addressed that critical need by declaring a far-sighted national policy seeking to achieve productive harmony between man and nature, and by crafting an "action-forcing" mechanism to prod Federal agencies to become more sensitive to environmental values: a specific requirement that all Federal agencies consider and disclose to the public the effects of their major actions on the quality of the human environment before taking action. At its core, NEPA thus simply gives effect to the common-sense axiom "look before you leap."

NEPA has been extraordinarily successful in accomplishing its goals. NEPA has unquestionably improved the quality of Federal agency decision making in terms of its sensitivity to environmental concerns. Although the Supreme Court has read the statute as imposing procedural duties rather than mandating environmentally beneficial outcomes, as a practical matter the requirement to prepare detailed and public environmental reviews ensures that agencies recognize and engage with environmental impacts of their actions. Agencies have broadly incorporated environmental expertise into their planning processes, and proposed Federal actions are frequently revised to lessen their adverse environmental impacts while still achieving the agencies' objectives. Because they are so pervasive and largely unrecorded, It is difficult to quantify the environmental benefits NEPA has secured, but they are unquestionably very substantial.

Public engagement in the NEPA process has been critically important in this success. Public comments raised at the scoping stage and in response to draft environmental documents have often called overlooked or underestimated environmental issues to agencies' attention, provided important scientific information, and identified practicable alternatives with less environmental impact.

A new study for the first time quantifies the value of public comment. Based on detailed review of 108 EISs spanning 22 years, researchers found that "public comments resulted in substantive decision alterations in 62% of cases, with 64% showing modifications to alternatives, 42% showing modifications to mitigation plans and 11% leading to the selection of an entirely new preferred alternative." Ashley Stava *et al., Quantifying the substantive influence of public comment on United States Federal environmental decisions under NEPA*, 2025 Environ. Res. Lett. 20 074028, at 1. In virtually every case, the Federal agency involved explicitly credited public comments for these improvements in the environmental review and final decision. *Id.* "Most importantly," the researchers note, "the agencies' changes were substantive—not simple textual changes to the document, but decision-altering modifications." *Id.* at 4. The authors conclude: "Our study provides evidence that public comment influences agency decisions and is a valuable tool for agencies to gather information and refine plans, which could lead to more sustainable outcomes for affected communities and the natural world. Ultimately, the true impact and lasting power of public engagement depends not just on its implementation by government agencies, but on the active participation of the public itself." *Id.* at 6.

Moreover, allowing citizens to communicate and engage with Federal decision makers serves fundamental principles of democratic governance. NEPA reflects the belief that citizens have a right to know, and to be heard, when their government proposes actions that may affect them. For many individuals and communities who understandably perceive Federal agencies as remote and insensitive, public participation in the NEPA process creates a valuable opening in the bureaucratic wall. Social scientists observe that stakeholder participation builds trust and confidence in government decisions. *Id.* at 2.

Although it has been the source of much criticism, citizen litigation has also been instrumental in NEPA's success. It is important to bear in mind that NEPA has no other enforcement mechanism; unlike other environmental laws that protect our communities from pollution and ensure wise use of our natural resources, there is no Federal agency with enforcement authority over the NEPA process. Citizen litigation has therefore played an indispensable role in ensuring that sometimes reluctant Federal agencies faithfully adhere to Congress's direction to consider carefully the environmental consequences of their actions. Judicial decisions in cases brought by citizens have explicated the broad statutory mandate of the Act, articulated reasonable approaches for agencies to meet its requirements, and prompted agencies to improve their consideration of environmental effects in hundreds of cases. More broadly, individual NEPA suits send the message to agencies that the courts will police compliance with the law. If citizens did not have the right to go to court to enforce NEPA, it is fair to presume that the Act would quickly become a virtual dead letter.

NEPA's critics exaggerate the volume of litigation arising from NEPA, however. Effective enforcement of the law does not require litigation in every case, but merely the potential of a lawsuit if the requirements of NEPA are ignored. Because agency compliance with NEPA is now generally quite good, NEPA actually generates a relatively small volume of litigation. Recent studies show that only one in 450 Federal decisions subject to NEPA – 0.22% -- lead to court challenges. John C. Ruple and Kayla M. Grace, *Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases*, 50 Envtl. L. 479, 503-04 (2020). EISs, which document the most complex, impactive and contentious Federal actions, resulted in court decisions 16% of the time, and were found deficient only 6.9% of the time. *Id.* at 505-506. And even the tiny fraction of NEPA actions that give rise to court suits overstates the significance of litigation, because only a small number of these suits result in court orders blocking government action, *id.* at 512-513, and even those are in effect only until the agency involved corrects the flaws in its compliance with the law. Other studies show that only a relatively small number – less than 5% --- of renewable energy projects require full EISs, and only a handful – 21 wind projects, 8 solar projects, and 14 transmission lines out of almost 2,000 constructed over a decade -- were subject to Federal litigation. David Adelman, *Permitting Reform's False Choice,* 51 Ecology L. Quarterly 129, 134 (2024).

Although critics claim that NEPA is a cause, or even the primary cause, in delays in project construction across the country, multiple studies have concluded that permit delays are rarely due

to compliance with the statute or litigation enforcing such compliance. *See, e.g.,* David Adelman *et al., Dispelling the Myths of Permitting Reform and Identifying Effective Pathways Forward*, 55 Envtl L. Reporter 10038, 10046 (Jan/Feb 2025). Instead, delays in project development are often attributable to external factors, such as lack of funding, engineering requirements, delays in obtaining nonfederal approvals and permits, or political opposition. *Id.* Renewable energy projects face prolonged delays in approval for connecting to the grid, *id.*, while other projects, such as the high-speed train line being constructed in California, have been held up for years by opposition to condemnation of needed rights of way. As Professor Adelman and his coauthors note, "These delays create the appearance of a long NEPA process, even though the NEPA analysis did not cause the delay." *Id.* In fact, NEPA's ability to serve as a coordinating and convening umbrella for a wide range of other federal and nonfederal regulatory requirements,[1] can make a permitting process significantly more efficient, as experience with the coordinated reviews of infrastructure projects under FAST-41 demonstrates. *Id.* at 10051-52.

Finally, NEPA's success results from the flexibility inherent in Congress's broad command to agencies to consider the consequences of their actions. From the beginning, the Council on Environmental Quality, established by NEPA, and Federal courts have emphasized that NEPA compliance embodies a rule of reason. The NEPA process allows environmental reviews to be finely tuned to the scale and significance of governmental actions. Most – in fact, the vast majority – of government actions are excluded from individualized review by categorical exclusions, developed to cover categories of Federal actions that usually do not generate significant environmental impacts. A much smaller subset of Federal actions receives abbreviated environmental assessments, generally to determine whether those actions may have significant effects that warrant full study. Only a tiny fraction of Federal actions is addressed in full environmental impact statements.[2] Agencies can achieve substantial economies of scale by addressing broad programs or regional activities through programmatic EISs; individual actions implementing such programs can then be tiered to such EISs.

Congress has also enacted important reforms in recent years to ensure that the NEPA process is conducted efficiently and effectively. To improve the timeliness, predictability, and transparency of Federal environmental review and authorization processes for infrastructure projects, Title 41 of the Fixing America's Surface Transportation Act, 43 U.S.C. 4370m *et seq.*, (FAST-41), established the Federal Permitting Improvement Steering Council to coordinate government agency permit processes, established new procedures that standardize interagency consultation and coordination practices, and codified into law the Permitting Dashboard, a public online tool used to track covered project timelines. Most recently, Congress enacted a suite of

[1] Congressional Research Service, RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation* 1 (2011) ("Most agencies use NEPA as an umbrella statute—that is, a framework to coordinate or demonstrate compliance with any studies, reviews, or consultations required by any other environmental laws.").
[2] U.S. Government Accountability Office, GAO-14-370, *National Environmental Policy Act: Little Information Exists on NEPA Analyses* 8-9 (Apr. 2014) (estimating that roughly 94% of NEPA decisions fall under CEs, about 5% are covered by EAs, and less than 1% are reviewed under EISs).

administrative reforms to NEPA in the Fiscal Responsibility Act of 2023, including presumptive page limits and timeframes for environmental studies, clarifications regarding the roles and responsibilities of a lead agency and cooperating agencies in a NEPA reviews, and authorization for agencies to rely on programmatic EISs for up to five years (absent substantial changed circumstances or new information about environmental effects), or longer (provided the agency reevaluates the analysis), among other things.

This is not to say that NEPA's implementation, like that of any statutory program, should not be further improved. Implementation of NEPA depends heavily on the expertise of the Federal personnel and the resources committed by agencies to making the process work effectively and efficiently. For decades, scholars, agencies and the Council on Environmental Quality have noted the urgent need for more resources and training for agency NEPA staff. *See, e.g.*, Adelman, *supra*, 55 Envtl L. Reporter at 10048-50. Unfortunately, the massive cuts in Federal agency workforce and funding to improve NEPA's efficiency in the current administration will almost certainly make it even harder for agencies to carry out their responsibilities under the Act.

Other reforms in NEPA's implementation would be beneficial. Agencies should treat mitigation measures proposed to offset a project's environmental impacts as binding commitments that are funded and implemented as part of a project, to ensure that promises of mitigation are not forgotten after an EIS is written. Agencies should also monitor actual project impacts to assess the accuracy of their environmental predictions and to identify the need for additional mitigation measures where needed. And greater attention by agencies to project management and adherence to timelines would help make the NEPA process more efficient.

But the fact that NEPA's implementation can be improved through such administrative measures is not a reason to cut the substance of the environmental analysis that the Act calls for and on which the public depends. Imagine returning to the world Congress confronted in 1969, where agencies felt free to make unilateral decisions affecting resources and communities without consideration of their environmental impacts. As an example, consider that in the late 1950s the Atomic Energy Commission seriously contemplated Project Plowshare, a proposal to use nuclear weapons to excavate a harbor in Alaska, create quarries and dig a new Panama canal. Such a proposal could never survive public scrutiny under NEPA, and today would never get off the drawing boards.

NEPA is a simple, but profound, guarantee of good government – government that cares about the effects of its actions on the human environment, on its citizens, and on future generations. Each of your constituents depends on NEPA for basic information about what the Federal government is doing that will affect his or her life and community. Federal agencies can and should work harder to fulfill NEPA's promise. But NEPA continues to serve the important values Congress recognized in establishing our national environmental policy of "productive harmony" between man and nature.

The SPEED Act

The primary purpose of NEPA's environmental review requirements is to promote better and more-environmentally sensitive Federal decision making on matters affecting the environment. Any proposal to reform or improve the operation of the Act should be measured against that primary purpose.

Unfortunately, the proposed SPEED Act fails that test. Its provisions would arbitrarily restrict Federal agencies from taking into account relevant scientific information; bar agencies from correcting errors in their environmental analyses; force impossibly tight time frames on environmental review, potentially forcing agencies to rely on incomplete and inadequate environmental documents; preclude environmental review for projects funded by and substantially controlled by Federal agencies; limit the scope of environmental analysis to exclude plainly foreseeable cumulative impacts; impose an impossible standard and unworkable deadlines for judicial review of NEPA documents; and allow Federal agencies and project proponents effectively to ignore the judicial process by completing disputed projects while the court's review is underway. In all of these respects, the SPEED Act would undermine reasoned and environmentally informed decision making by Federal agencies. Instead of promoting the national policy NEPA establishes of "productive harmony" between man and nature, the SPEED Act would promote ill-considered action that needlessly harms the environment and the health and welfare of human communities.

Purpose

Section 2(a) of the SPEED Act would amend Section 2 of NEPA to declare that the Act is "a purely procedural statute," and does not mandate any substantive outcome or result. While the courts have long taken the narrow view that the Act is "essentially procedural," *see, e.g., Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.,* 435 U.S. 519, 558 (*1978*); *Seven County Infrastructure Coalition v. Eagle County,* 605 U.S. ___, slip op. at 6 (2025), Congress explicitly directed in Section 102 that "to the fullest extent possible: the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act." The "action-forcing" mechanism Congress chose to achieve the national environmental policy – the requirement that federal agencies carefully consider the potential impacts of their actions on the environment – should thus be carried out and enforced "to the fullest extent possible."

Threshold and scope of environmental review

Section 2(b) of the SPEED Act would amend NEPA Section 106, which addresses the threshold for determining the level of review, in several detrimental respects.

- It would exempt agency actions where the agency's compliance with another statute serves a "similar function" as NEPA. This "functional equivalence" concept would open a dangerous loophole for agencies to skirt the procedures required by NEPA. Most

Federal agencies lack any organic statutory direction other than NEPA for conducting comprehensive pre-decisional environmental reviews; that is why Congress enacted NEPA in the first place. Only one agency, the U.S. Environmental Protection Agency, has been recognized by the courts as engaging in environmental assessments that serve a function similar to that of NEPA as part of its rulemaking under certain statutes, such as the Clean Water Act and the Safe Drinking Water Act. Embedding this concept in the Act would invite other agencies that lack EPA's primary focus on environmental protection to invoke general language in their organic statutes governing their decision-making process as serving the same functions as NEPA.

- It would authorize agencies to dispense with new scientific and technical research after receipt of an application for a project, even where such research is essential to a reasoned decision. NEPA Section 106(b)(3) currently allows agencies to forego conducting new scientific or technical research except where the research "is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable." The new language proposed by the SPEED Act allows agencies to forego new research after receipt of an application without regard to whether the research is essential to a reasoned decision or can reasonably be obtained. Agencies could thus proceed blindly based solely on the materials in an application, even where it is obvious that further research is essential for reasoned decision-making.
- It adds new language restricting the scope of environmental reviews under NEPA, directing Federal agencies to only consider "effects that share a reasonably close causal relationship to, and are proximately caused by, the immediate project or action under consideration," and prohibiting agencies from considering effects that are "separate in time or place from the project or action, or in relation to separate existing or potential future projects or actions." This language bars agencies from considering effects of the action in question that are downstream from the project physically or that occur later, even when plainly caused by the action itself.[3] It also bars consideration of foreseeable environmental impacts from future projects or actions, even where the cumulative effects of future projects and the current action could have disastrous consequences, such as by overdrawing water supplies, overloading sewer or transportation systems, or exceeding pollution limits under Federal statutes.
- Finally, it prohibits Federal agencies from rescinding, withdrawing, or even amending any environmental document completed under NEPA unless the agency has been so ordered by a court. This bars Federal agencies from correcting or expanding their environmental documents, even where the agency itself recognizes that its

[3] In this respect, the bill disregards the Supreme Court's recent decision in *Seven County Infrastructure Coalition*, which recognized that downstream and future effects may fall within NEPA. "To be clear, 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. Those so-called indirect effects can sometimes fall within NEPA….". 605 U.S. ___, slip op. at 16.

environmental document is incomplete, inadequate, or erroneous in material respects and cannot support a reasoned decision, increasing litigation risk for the agency and applicant and leading to unnecessary environmental harm.

Timely and Unified Federal Reviews

Section 2(c) of the SPEED Act would amend NEPA Section 107, governing the process for timely and unified Federal reviews, in several detrimental respects:

- It reiterates the bill's earlier language authorizing Federal agencies to disregard scientific or technical research that becomes available after the date of receipt of an application, and extends that authorization to research that becomes available after the date of publication of a notice of intent or decision to prepare an environmental document for the proposed action. After the beginning of the NEPA process, agencies could thus disregard scientific research directly relevant to the environmental impacts of their proposed action and essential to making a reasoned decision on the proposed action. Moreover, agencies could entirely ignore scientific information provided in public comments, vitiating Congress's explicit direction to federal agencies in Section 107(c) of the Act to request public comment on notices of intent, including "relevant information, studies, or analyses with respect to the proposed agency action."

  As Professor Justin Pidot, former general counsel of the Council on Environmental Quality, notes, this exemption "would encourage development in locations where we know less about the environment; and it would encourage the use of less tested technologies and methods. That's because analysis would only be required to the extent that technical and scientific information is already available. In other words, if we know nothing, no analysis needs to occur." Justin Pidot, *House Natural Resources Committee Holds Hearing on Another Ill-Conceived Permitting Reform Bill*, Legal Planet (September 7, 2025). Professor Pidot concludes: "[T]he SPEED Act would enable the government to turn a willfully blind eye to inconvenient information about harms to human health, air and water quality, biodiversity, and other aspects of the human environment. That's a recipe for ill-conceived decisions, not better government." *Id.*

- It extends this authorization for arbitrary disregard for relevant scientific research by prohibiting agencies from delaying the issuance of an environmental document or a final agency action to obtain new scientific or technical research or information that was not available at the outset of the NEPA process, no matter how critical.
- It redefines how agencies define the purpose and need for a proposed action by requiring that "the statement of purpose and need shall meet the goals of the applicant." Federal agencies have always considered the goals of applicants in establishing the purpose and need for a Federal action, but have recognized that their actions must also fulfill the independent Federal responsibilities of the agency to the public.

- It requires Federal agencies to obtain the approval of an applicant before seeking an extension of time from the statutory deadlines for completion of an environmental document. The applicant can thus veto an extension of time even where the agency believes it needs additional time to complete an adequate environmental document, leading to issuance of incomplete or inadequate documents that do not support a reasoned decision and that risk unnecessary environmental harm.

Categorical Exclusions

Section 2(e) of the SPEED Act would amend NEPA Section 108 to authorize agencies to adopt categorical exclusions legislatively enacted by Congress as well as those adopted other agencies. This would open a dangerous loophole. Because categorical exclusions, by definition, exclude entire categories of Federal activities from environmental review under NEPA altogether, reserving such exclusions for actions that truly lack significant environmental impact is critical to the integrity of the NEPA process. NEPA Section 111(1) specifies that a categorical exclusion means "a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment" within the meaning of the Act. The process by which Federal agencies establish categorical exclusions is governed by the procedural safeguards of rulemaking to ensure that the agency makes a reasoned determination that a particular category of its actions meets that standard, and NEPA Section 108 requires agencies seeking to adopt another agency's categorical exclusion to consult with that agency to ensure that adoption of the categorical exclusion in question is appropriate. Congressionally legislated exclusions are tailored to particular activities of specific agencies, however, and may be the product of legislative negotiation and bargaining. Allowing other agencies to claim the coverage of a legislative exclusion effectively amends the original legislation and extends it to agencies and activities that Congress did not intend. Moreover, such legislation lacks the procedural safeguards of the agency rulemaking process to ensure that covered activities meet the statutory standard, and may lack sufficient explanation of Congress's reasoning in the legislative record to allow other agencies to reliably determine that their activities are sufficiently similar to those subject to the legislative exemption.

Definitions

Section 2(f) of the SPEED Act would amend the definitions in NEPA Section 111 in several detrimental respects:

- It would unreasonably narrow the scope of actions subject to NEPA by excluding from the definition of "major Federal action" activities that are funded by Federal agencies and over which the Federal government maintains substantial, but not complete, control. Actions receiving Federal funding would only qualify as "major Federal actions" if a Federal agency maintains "complete" control over the use of the funding or the effect of the action.

- It would exclude from the definition of major Federal action the issuance of a permit or other authorization by an agency where the proposal is otherwise being evaluated by the lead agency under NEPA, allowing agencies to give the go-ahead for construction before the lead agency has even completed its NEPA analysis.
- It adds a definition of "reasonably foreseeable" that, as with the previous language in section 2(b), restricts agencies from considering environmental impacts that are in fact "reasonably foreseeable" but are separate in time or place from the proposed action, or relate to separate existing or potential future projects. As discussed above, this language precludes agencies from considering downstream effects or effects occurring later in time, even when clearly caused by their action itself. It also bars agencies from considering the cumulative effects of their actions when conjoined with reasonably foreseeable impacts from future projects.

Judicial Review

Section 3 of the SPEED Act would amend NEPA by adding a new section 113 addressing and limiting judicial review. As discussed above, judicial review plays an important role in ensuring that agencies comply faithfully with Congress's directive to consider environmental effects of their actions. The limitations the SPEED Act would place on judicial review would have serious detrimental effects on the integrity of the NEPA process:

- It establishes a new standard of review for cases under NEPA that is far more restrictive than the customary standard of review for challenges to administrative actions under the Administrative Procedure Act, 5 U.S.C. title 7. Indeed, the proposed new standard would effectively make it impossible for reviewing courts to hold that agency action does not comply with NEPA. The proposed new standard of review would allow a court to hold that agency action violates NEPA only if the court determines that the agency abused its substantial discretion in complying with the Act, and that "the agency would have reached a different result with respect to the final agency action absent such abuse of substantial discretion." (Emphasis added). Given that NEPA, as construed by the courts and as the SPEED Act itself would declare, is procedural in nature and does not mandate particular substantive results, no court could ever determine conclusively that an agency would in fact alter its decision in light of more accurate or more thorough environmental analysis under the Act. The SPEED Act's proposed standard of review upends well-settled legal doctrine regarding "harmless error," which authorizes a court to withhold a judicial remedy where it concludes that the deficiency in the NEPA process would not affect the agency's decision.[4] As long as a corrected environmental analysis might

[4] As the Supreme Court emphasized in *Seven County Infrastructure Coalition*, a deficiency in NEPA compliance "may not necessarily require a court to vacate the agency's ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS." 605 U.S. ___, slip op. at 14 (emphasis added).

change the agency's decision, the public interest generally warrants giving the agency the opportunity to make that determination for itself on remand.

- It would strip the courts of equitable and legal remedies that are essential judicial tools used throughout administrative law to ensure agency compliance with Congressional mandates. Proposed section 113(c) would only allow a court to remand a defective agency decision to the agency for a narrow 180-day time period. The court could not enter an injunction halting the project until its environmental consequences have been reassessed, nor could it vacate a flawed agency decision, the presumptive remedy for any other challenge to agency action under the Administrative Procedure Act. *See* 5 U.S.C. Sec. 706(2) ("The reviewing court shall …hold unlawful and set aside agency action, findings and conclusions" found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or without observance of procedure required by law.)
- The ineffectual nature of the court's remedy under the SPEED Act is compounded by the proposed bill's explicit direction that a final agency action remanded to the agency "shall remain in effect while the Federal agency corrects any errors or deficiencies specified by the court." An agency would thus be legally free to proceed with construction, causing potentially irreversible harm and effectively mooting the case, while it makes *pro forma* corrections to its environmental analysis.
- Where a comment period was allowed on an environmental document, the bill would restrict plaintiffs to persons who commented on the document and limit their claims to the matters on which they commented. The limitation to plaintiffs who had commented on environmental documents would effectively excuse deficient environmental analysis, even if egregious and obvious, if the public did not call it to the agency's attention. But it is the agency that bears the legal responsibility to conduct an adequate environmental review; it is not the public's responsibility to ensure that it does. Imagine, for example, an agency that overlooked the existence of a seismic fault under a proposed nuclear power plant. Surely NEPA's purposes are not served by allowing the agency to escape judicial review merely because members of the public did not recognize the deadly flaw during the comment period.
- It establishes unreasonably tight deadlines for every aspect of litigation under the Act, from a narrow, 150-day statute of limitations for claims under NEPA to draconian 180-day deadlines for judicial decision, 60-day deadlines for notices of appeal, and 180-day deadlines for decision by appellate courts. Such narrow deadlines virtually ensure rushed decision making by all parties. The narrow statute of limitations may trigger defensive filing of litigation that might have been foregone if potential plaintiffs had more time to review the agency's environmental analysis. The highly accelerated schedule for the litigation will force parties, including agencies and applicants, to craft their arguments in haste, and require courts to make hasty judgments on the merits of complex issues, undermining the integrity of the judicial review process.

Conclusion

NEPA is a justly regarded as the foundation for U.S. environmental protections. In addition to establishing our nation's basic commitment to a policy of environmental protection, NEPA creates a framework for informed and responsive government decision-making on actions affecting the environment. NEPA's implementation can and should be improved, but as I have discussed, the SPEED Act's provisions would in many ways undermine the integrity and accuracy of environmental reviews under the Act rather than improve its effectiveness. The American people depend on this law to protect them from environmentally reckless Federal action that could harm their communities. I urge the Committee not to move forward with this bill.