

in the now-withdrawn CEQ NEPA regulations).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⁸ These requirements were confirmed by the Courts before issuance of the now-withdrawn CEQ NEPA regulations which were issued on November 22, 1978 (43 Fed.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).