By guest contributor Justin Pidot.

On September 10, the House Natural Resources Committee will convene a hearing on the SPEED Act—the latest NEPA reform bill championed by Chairman Bruce Westerman. The bill includes provisions that would fundamentally compromise the integrity of federal decision making processes by allowing—or even compelling—the government to ignore scientific and technical information critical to understanding the effects of a federal action and how those effects could be mitigated.

This component of the SPEED Act would operate against the backdrop of a provision Congress added to NEPA in 2023 to limit an agency's obligation to generate new information. NEPA section 106 (b)(3), which addresses the threshold question of whether to prepare an environmental impact statement (EIS), provides an agency:

"is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable."

This approach to new information strikes a balance, an appropriate one in my view, between analytical integrity and efficiency. The SPEED Act would obliterate that balance by providing that an agency is also not required:

> "to undertake new scientific and technical research after the receipt of an application, as applicable, with respect to such proposed agency action."

If you're scratching your head trying to parse the language precisely, you're in good company. I think the convoluted text running from "receipt" to "proposed agency action" describing the covered circumstances simply means whenever an agency receives an application, but maybe there's a nuance I'm missing.

But that text certainly seems to provide that where it applies, an agency *never* needs to perform scientific or technical research, no matter how essential or reasonably obtained.

The SPEED Act would add even more capacious (and clearer) provisions to section 107—which addresses conducting environmental reviews—providing:

- "no Federal agency shall be required to consider any scientific or technical research that becomes publicly available" after the agency has received an application or published a notice of intent (NOI) to prepare an environmental

document, whichever comes sooner; and
- "[a] Federal agency may not delay the issuance of an environmental document or a final agency action . . . on the basis of awaiting new scientific or technical information."

One consequence of those provisions is that they would allow agencies to entirely ignore information provided during public comment periods, including a provision of the 2023 NEPA amendments requiring agencies to take comment on NOIs—which, by definition, occur after the NOI is published.

It is Orwellian indeed to require an agency to seek input from the public that the agency is expressly excused from having to consider. And if you're wondering if this is an intended consequence, it clearly is, because the bill specifies that permitting agencies to ignore information in environmental review processes does not affect their obligation under the Administrative Procedure Act to respond to comment when issuing or revising regulations.

So far, I've talked about the consequences of the SPEED Act in abstract terms. Here's a concrete example of two agencies developing essential information that would be compromised: In 2003, the BLM and Forest Service commenced an EIS for a proposal to expand a phosphate mine in Idaho and dispose of toxic waste from the expansion at a site nearby. Evaluating the risk of contaminating streams, rivers, and groundwater in the area required information about the geology of the disposal site. But as is typical, that kind of detailed site-specific information didn't exist when the environmental review process began. So, during the EIS process (which concluded in 2006), more than 50 bore holes were drilled to characterize the geochemistry of the site. Information from that research enabled development of a new alternative in the final EIS with improved engineering of the disposal site. That alternative, enabled by research occurring during the environmental review, was ultimately adopted.

This kind of circumstance isn't unusual. The environmental review process often involves some degree of research on the:

- natural resources occurring in a project area
- amount of air pollution a project will generate, where it will end up, and how that may impact people's health
- fate of oil or chemicals released in an accident and how they could be contained

- area’s risks of wildfire, flood, earthquake or other natural disasters; and
- hydrology of the area and how a project could pollute drinking water or reduce water supply.

Developing information about those kinds of things is central to the NEPA process and can often be done quickly and affordably.

The SPEED Act’s approach would have further, and I suspect unintended, consequences: It 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.

By calcifying scientific and technical information at the moment an agency receives an application, or publishes an NOI, the 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.

Justin Pidot *holds the Ashby Lohse Chair in Water & Natural Resources and is co-director of the environmental law program at the University of Arizona James E. Rogers College of Law. From January 2021 to June 2024, he served as general counsel at the White House Council on Environmental Quality. The views expressed are his own.*