



July 30, 2019

Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions – Docket CEQ-2019-0002

Dear Associate Director Edward Boling,

The National Association of Environmental Professionals (NAEP) is an interdisciplinary organization dedicated to developing the highest standards of ethics and proficiency in the environmental profession. We represent more than 5,000 members and affiliated environmental professionals working across the country in the public and private sectors. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., has been a major focus area of the NAEP for many years and we work closely with CEQ and other agencies and organizations to promote efficient and effective compliance with NEPA.

We respectfully submit the following comments on the subject draft guidance. Many of our members are experienced in the analysis of greenhouse gas (GHG) emissions and climate change in accordance with the 2016 final guidance on this topic, as well as the two draft versions that preceded the 2016 final guidance. We have found the 2016 guidance to be practical and workable. We strongly believe that any replacement guidance should provide clear direction to NEPA practitioners that addresses the range of potential impacts of GHG emissions from actions that are the subject of NEPA analyses.

One of the stated purposes of the draft guidance is “to facilitate more timely environmental reviews and permitting decisions for infrastructure projects requiring Federal agency approvals” (CEQ fact sheet on draft guidance). In our experience, GHG analyses in NEPA reviews that followed the 2016 guidance very rarely resulted in delayed decisions. In addition, many of the court rulings issued since 2016 on GHG analyses in NEPA analyses which resulted in delays were, in part, due to the failure of the federal action agencies to follow the 2016 guidance. We question whether the draft guidance will reduce delays and litigation over the topic.

The draft guidance provides little new guidance that was not included in the 2016 guidance. Most of the changes from the 2016 guidance are omissions. Some of these omissions, such as the acknowledgement of the importance and implications of anthropogenic GHG emissions and their associated climate change impacts, are consistent with the current Administration’s approach to the topic. The effects of this particular omission on future environmental impact analysis are unclear and it could be interpreted as deemphasizing the importance of GHG emissions and climate change.

The omission of substantive guidance on evaluating the effects of future climate change on the proposed action is more troubling. Such an analysis, including consideration of resiliency and adaptation measures, is essential for numerous infrastructure and other projects in areas

predicted to see the greatest effects of climate change. It is not clear to us that agencies are routinely incorporating such an analysis in their planning, as well as their NEPA reviews. Addressing this topic by stating “when relevant, agencies should consider whether the proposed action would be affected by foreseeable changes to the affected environment under a reasonable scenario” is not sufficient and may result in reducing or eliminating analyses of this important topic.

We also note the omission of any discussion of the consistency of a proposed action with “relevant approved federal, regional, state, tribal, or local plans, policies, or laws for GHG emission reductions or climate adaptation” as stated in the 2016 guidance. While this discussion is a component of determining the significance of the resulting impacts (40 CFR § 1508.27), its omission from the guidance will likely result in less attention to this important topic.

One of the major topics in recent court rulings on analyses of GHG emissions in NEPA reviews has been the scope of the analysis of indirect GHG emissions. The draft guidance contains a much abbreviated discussion of this topic. Few agencies are statutorily prohibited from considering “downstream” impacts in their decision-making and such consideration is a reasonable component of a “public interest” or “public convenience” determination. The draft guidance states that agencies should attempt to quantify “direct and reasonably foreseeable indirect GHG emissions when the amount of those emissions is substantial enough to warrant quantification, and when it is practicable to quantify them using available data and GHG quantification tools.” In our experience, the instances where quantification of reasonably foreseeable GHG emissions is not practicable are quite limited and rare, particularly for major actions. The statement “substantial enough to warrant quantification” is also vague and will likely be interpreted in future NEPA court rulings.

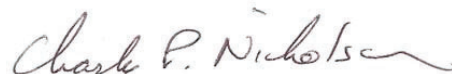
While the discussion of the use of cost-benefit analysis, particularly using Social Cost of Carbon estimates, was expected, we note a contradiction in the draft guidance. The draft guidance, in footnote 8, states that “any such analysis should focus on the impacts that accrue to citizens and residents of the United States.” This contradicts the earlier acknowledgement that “the potential effects of GHG emissions are inherently a global cumulative effects.” Because the effects of GHG emissions are global, as acknowledged in a large body of scientific reports, the limited scope of a cost-benefit analysis is contradictory. Imposing arbitrary geographic boundaries on this analysis is also contrary to accepted NEPA practice when analyzing the impacts to other resources.

Thank you for consideration of these comments. We look forward to continuing to work closely with CEQ and other agencies to improve the implementation of NEPA. Should you have any questions about our comments, please contact Charles P. Nicholson at cpnicholson53@gmail.com.

Sincerely,



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