

May 21, 2010

The Council on Environmental Quality
Attn: Ted Boling
722 Jackson Place, N.W.
Washington, DC 20503

**RE: Comments on National Environmental Policy Act (NEPA) Draft Guidance,
“Consideration of the Effects of Climate Change and Greenhouse Gas Emissions.”**

Dear Mr. Boling:

The American Farm Bureau Federation (AFBF) is pleased to offer its comments on the Council of Environmental Quality’s (CEQ) draft National Environmental Policy Act (NEPA) guidance entitled “Consideration of the Effects of Climate Change and Greenhouse Gas Emissions.”

The draft guidance is intended to assist federal agencies in analyzing the environmental effects of greenhouse gases (GHG) and climate change within the context of NEPA responsibilities. The draft guidance seeks to advise agencies on when to consider greenhouse gas emissions and climate change in NEPA reviews and how agency analysis should be done.

We have a number of concerns with the guidance; these include general matters related to analysis of the effects of greenhouse gas emissions and climate changes on a particular, localized area within the boundaries of the NEPA project area, as well as specific concerns with the draft guidance. These issues are addressed below.

At the outset, there are several challenges facing both CEQ and federal agencies in conducting meaningful greenhouse gas and climate analyses while still benefiting the consideration of environmental impacts of a proposed agency action. Many of these challenges are somewhat unique to the consideration of greenhouse gas emissions and climate change, any of which could result in uncertain or speculative environmental impacts.

1. There is no Link Between Greenhouse Gas Emissions and the Environmental Impacts required to be Evaluated in the NEPA Process.

One of the unique aspects of the impact of GHG emissions on an environment is that they are secondary, and not primary, impacts. This factor makes the consideration of GHG emissions particularly ill-suited for NEPA purposes.

Most of the environmental impacts addressed during the NEPA process are direct impacts that contain a level of certainty and measurability. For example, consideration of a proposed development authorized or funded by the federal government on a species listed under the Endangered Species Act looks at direct habitat loss, projected habitat alterations that might result and potential diminishment of species populations. These are direct, measurable impacts resulting from the proposed action.

By contrast, emissions of greenhouse gases do not result in direct, measurable impacts to the environment. Any impacts claimed to occur as a result of greenhouse gas emissions (climate changes) are at best secondary impacts. The claim is that emission of greenhouse gases causes changes in climate that in turn produces the environmental impacts studied in the NEPA process. The distinction is important, because there is no reliable predictive capacity to link specific greenhouse gas emissions with a definite climatic outcome, much less a discrete impact on a given project.

A cornerstone of the NEPA process is a requirement that there be a causal link between the specific effect and the environmental impact. Quoting *DOT v. Public Citizen*, 541 U.S. 752, 767 (2004), the draft guidance states that the “obligation of an agency to discuss particular effects turns on “a reasonably close causal relationship between the environmental effect and the alleged cause” (p. 7). The draft guidance advises agencies to consider “the nexus of those effects with projected climate change effects on the same aspects of our environment” (p. 7).

Even if one were to accept the very questionable premise of the draft guidance that “It is now well-established that rising global GHG emissions are significantly affecting the global climate,” (p. 10) agencies will be unable to establish the required causal link between GHG emissions of a planned project and the environmental impacts within the NEPA project area. Consideration of GHG emissions will not produce any useful information about the effects of climate change in a project area, including possible floods, drought, or other impacts. Any attempt to link these factors creates considerable uncertainty that clouds the entire NEPA process.

The draft guidance recognizes this challenge to some extent by stating, “It is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions, as such direct linkage is difficult to isolate and to understand” (p. 3). In the absence of such a link between emissions, climate impacts and the environmental impacts on a project area, there appears to be no basis for incorporating emissions and climate impacts in the NEPA process. If the causal link required by NEPA and re-affirmed in *Public Citizen* cannot be made, it should not be evaluated.

The draft guidance proposes that “the NEPA process should incorporate consideration of both the impact of an agency action on the environment through the mechanism of GHG emissions and the impact of changing climate on that agency action” (p. 11). The challenge and the difficulty is that it is not possible to link these two considerations with the degree of certainty required by NEPA.

2. GHG Emissions are a Global Issue.

A second key challenge is that greenhouse gas emissions are distributed across the planet, and are a global issue. A ton of greenhouse gases emitted in the United States is the same as a ton emitted in China. Contrast this with the traditional environmental impacts considered by NEPA that are local in nature and that can be attributed to a single source or to a few identifiable sources.

Not only can GHG emissions not be linked to cause specific environmental impacts, but the environmental impacts cannot be linked to particular GHG emissions.

The draft guidance recognizes and describes this problem. It acknowledges that “Climate change is a global problem that results from global GHG emissions” (p. 2). It also recognizes that “There are no dominating sources and fewer sources that would even be close to dominating total GHG emissions” (p. 2). Against this backdrop it is futile to attempt to attribute any specific climate change impacts to any specific GHG emission, much less measure its impact, when there are millions of sources of emissions around the world.

The global nature of the issue and the fact that there are millions of sources of GHG emissions underscores another important fact—any environmental benefits that might be obtained from adoption of a less GHG-intensive alternative would be negligible, at best. Requiring agencies to quantify GHG emissions of a proposed action and develop less GHG-intensive alternatives for negligible or no environmental benefit is an exercise in futility.

We note that the draft guidance recognizes the challenges and difficulties of incorporating GHG emissions and climate change considerations into the NEPA process. The draft guidance refers to the “rule of reason” that is supposed to guide the NEPA process. The draft guidance also directs agencies to consider only those emissions levels that are “meaningful” from an effects standpoint and suggests a 25,000 ton threshold as a guide. It directs agencies to be “realistic” in analysis and assessments to ensure that useful information is provided. It recognizes the global context of GHG emissions and directs agencies to take that context into account. In discussing the analysis of cumulative effects, the draft guidance points out that the analysis of cumulative effects may properly be limited by “practical considerations.”

The draft guidance provides agencies with some discretion to determine when its NEPA analysis is “reasonable,” “meaningful” and “realistic.” That same discretion also provides fodder for litigation to determine whether an agency’s actions comply with these standards. We urge that agencies be truly given the discretion to follow these principles. We would suggest that the guidance be tightened to reflect this agency discretion and to remove this discretion from litigation to the maximum extent possible.

3. The Draft Guidance Appears to Direct Agencies to Take Actions that are Beyond the Scope of NEPA.

One additional concern with the draft guidance is that it appears to direct agencies to act in ways that go beyond the scope and intent of NEPA.

Courts have often and consistently held that NEPA is a procedural statute that only requires agencies to identify and disclose the environmental impacts of a proposed federal action as part

of their decision-making process. The disclosure of these environmental impacts and evaluation of alternatives to the proposed action are to accompany any proposed federal rule or federal action. The complexity of the required analysis depends on the significance of the proposed action on the environment. Rules or actions that might have an impact on the environment are required to have an Environmental Analysis (EA) to determine the extent of any impacts. Rules or actions having a “significant” impact on the environment must also have a more detailed and complex Environmental Impact Statement (EIS). These analyses are subject to public scrutiny through notice and the opportunity for public comment. According to the statutory language and court decisions, NEPA is an action-informing statute, and not an action-forcing document. We are therefore concerned about statements such as the following statement in the first paragraph of the introduction:

“CEQ proposes to advise Federal agencies that they should consider opportunities to reduce GHG emissions caused by proposed Federal actions and adapt their actions to climate change impacts throughout the NEPA process and to address these issues in their agency NEPA procedures.” (p.1)

Similarly, when a proposed action meets an applicable threshold for quantification and reporting of GHG emissions, “CEQ proposes that the agency should also consider mitigation measures and reasonable alternatives to reduce action-related GHG emissions.”

This direction appears to go beyond the scope of NEPA. It goes beyond describing how and when to analyze environmental impacts, and what environmental impacts are to be considered. It transforms the NEPA process from an action-informing process to an action-forcing process by advising agencies that they need to consider mitigation and adaptation measures as part of their decisions.

It also appears to elevate considerations of GHG emissions and impacts of climate change above other environmental impacts for purposes of assessing alternatives. Environmental assessments or environmental impact statements are likely to evaluate a number of different environmental factors besides GHG emissions and impacts of climate change. In a number of those cases, some of these other impacts will likely have greater impacts on the environment than those produced by GHG emissions or climate change. A direction to consider mitigation and adaptation measures may inhibit or restrict agency decision-making with respect to these other alternatives.

4. The Draft Guidance Assumes the Science and Suppresses Scientific Inquiry of the Impacts of Possible Climate Effects.

The Draft Guidance appears to direct federal agencies to what they must consider with regard to the scientific bases for climate change effects.

First, the Draft Guidance starts with the assumption that “it is now well-established that rising global GHG emissions are significantly affecting the Earth’s climate.” In light of recent events such as “Climategate” and revelations that call into question basic studies relied upon by the IPCC, legitimate and serious questions still clearly remain unanswered when it comes to establishing how great an impact an impact rising GHG emissions will have on future climate conditions. A growing body of knowledge and a growing number of climate scientists are

questioning the degree to which anthropogenic GHG emissions will affect the climate change; at a minimum, respected experts in the field call into question the programmed sensitivity of the climate change models, and it is this facet of the computers that drives the “predictions” of potentially catastrophic outcomes. It appears that the draft guidance is directing federal agencies to a conclusion that is still an open debate with the scientific community.

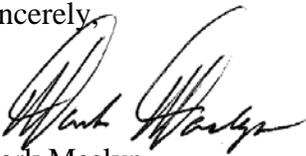
Next, the draft guidance appears to tell federal agencies what “the best scientific information available” is for purposes of the analyses they are to conduct. Thus, even though acknowledging that “Research on climate change impacts is an emerging and rapidly evolving area of science,” the draft guidance says that certain existing reports can be relied upon as the “best scientific information available.”

The draft guidance also says it is permissible to summarize such reports rather than undertake “analysis of projected climate change impacts in the project area or on the project itself.” Yet, it is the very type of analysis that is required by NEPA. To allow substitution of summarization from journals for independent analysis of site- and project-specific impacts defeats the whole purpose of NEPA.

We suggest CEQ remove these impediments to sound scientific analysis and instead direct the agencies to do the type of scientific analysis that NEPA requires.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Maslyn', written in a cursive style.

Mark Maslyn
Executive Director
Public Policy