



May 24, 2010

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

Subject: Comments of the American Forest & Paper Association, Inc. on the Council on Environmental Quality's "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions"

Dear Council on Environmental Quality and Mr. Boling:

The American Forest & Paper Association, Inc. (AF&PA) is pleased to submit these comments to the Council on Environmental Quality (CEQ) on its Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions," (Draft Guidance) dated February 18, 2010. CEQ made the Draft Guidance available and invited comment by May 24, 2010. See NOA, 75 Fed. Reg. 9046 (February 23, 2010).

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about \$175 billion in products annually and employ nearly 900,000 men and women, exceeding employment levels in the automotive, chemicals and plastics industries. The industry meets a payroll of approximately \$50 billion and is among the top 10 manufacturing sector employers in 48 states. Visit AF&PA online at www.afandpa.org.

Operations of our members are affected directly and indirectly by federal agency implementation of the National Environmental Policy Act of 1969¹ (NEPA). Therefore, AF&PA has a direct interest in the Draft Guidance.

¹ 42 U.S.C. § 4321 et seq.

CEQ has invited comment, among other things, on “when and how Federal agencies must consider the impacts of proposed Federal actions on global climate change, as well as the expected environmental effects from climate change that may be relevant to the design of the proposed federal action.” Further, CEQ requests comment “on the appropriate means of assessing the greenhouse gas emissions and sequestration that are affected by Federal land and resource management decisions.” We address these and other matters as follows.

I. The Draft Guidance will ensure that Federal Agencies Act arbitrarily and capriciously when complying with NEPA obligations

The stated purpose of the Draft Guidance is to assist Federal agencies to improve their consideration of the effects of greenhouse (GHG) emissions and climate change in evaluation of proposals for federal actions under NEPA. (Draft Guidance, p. 1) Unfortunately, the Draft Guidance will instead ensure arbitrary and capricious final actions by federal agencies. This arbitrary and capricious activity will subject the agencies to Administrative Procedure Act litigation (5 U.S.C.706) and produce additional but otherwise avoidable delays in fulfilling their permitting and other regulatory duties (such as their implementation of the Clean Air Act, Clean Water Act and Endangered Species Act). While AF&PA applauds CEQ for its attempt to ensure some consistency across federal agencies with regard to the matter of GHG emissions and climate change, the Draft Guidance does not accomplish this purpose. Rather, it facilitates confusion, potential for litigation and delay.

The Supreme Court has cautioned that any federal agency performing a NEPA analysis should focus on the reasonably close causal relationship between the environmental effect and the alleged cause (Id., p.7, citing *Public Citizen*, 541 U.S. at 767). Nevertheless, the Draft Guidance encourages agencies to comply with their NEPA obligations by (1) quantifying cumulative emissions over the life of the project, (2) discussing “qualitatively” the link between those proposed project emissions and climate change, and (3) discussing measures to reduce the emissions, including reasonable alternatives to the proposed action.

There currently are no definitive models available for “evaluating or quantifying end-point impacts attributable to the emissions of GHGs from a single source. Thus, attempts to demonstrate qualitative links between emissions from any given project and its effect on climate change will be inherently arbitrary and speculative. This lack of understood causal linkage is particularly problematic with regard to the Draft Guidance’s encouragement that the agencies engage in analysis

of the “indirect” impacts of climate change and those impacts be considered in agency assessments. This can only invite speculation on the part of agencies about what “potential” effects the project could have on climate change.

Scientific modeling for simulating climate change focuses on global and regional-scale modeling, such as that reported in the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment. The IPCC report itself notes that the climate models are not designed to make forecasts for small regions, but rather are for use in looking at continental or hemispheric-sized areas. They also do not account for climatic cycles such as the Pacific Decadal Oscillation. As such there is limited scientific capability in assessing, detecting, or measuring the relationship between GHG emissions from a single source or the localized impacts on the environment and no sound scientific basis for downscaling models of indirect effects and incorporating them into project-level analyses. A federal agency’s attempt to make such assessments and form conclusions about prospective impacts will be inherently speculative.

CEQ does not propose making the guidance applicable to Federal land and resource management actions, but seeks public comment on the appropriate means of assessing GHG emissions and sequestration affected by Federal land and resource management decisions. Given the arbitrary and speculative nature of attempts to demonstrate qualitative links between emissions from any given project and its effect on climate change, we support CEQ’s exclusion of Federal land and resource management actions from the guidance.

II. The Draft Guidance will lead to confusion regarding the reference level of 25,000 metric tons per year

NEPA directs federal agencies to prepare an environmental impact statement for “major federal actions significantly affecting the quality of the human environment.”²

CEQ’s Draft Guidance needs to reflect more clearly that CEQ’s proposed reference level of 25,000 metric tons per year of CO₂ equivalent (CO₂e) does not constitute a “significant” environmental effect or require more detailed environmental analysis of a particular federal action. While the Draft Guidance states that it “does not propose this [long term actions that have annual direct emissions of more or less than 25,000 metric tons of CO₂e] as an indicator of a threshold of significant effects,” (Draft Guidance, p. 2), it seems quite probable that, based on the bulk of the Draft Guidance, federal agencies complying with their NEPA obligations will treat it as the

² 42 U.S.C. §4332(2)(c).

threshold of significance, particularly as it elsewhere describes the measure as “a useful, presumptive, threshold for discussion and disclosure of GHG emissions.” (Draft Guidance, p.3, n.2)

Having declared that the measure does not determine significance, the Draft Guidance nevertheless states that “agencies should consider this an indicator that a quantitative and qualitative assessment may be *meaningful* to decision makers and the public.” (Draft Guidance, p. 1) What does “meaningful” mean? Are there other indicators? Are there countervailing indicators? How is the agency to know how meaningful this meaningful indicator is? Is meaningful just a proxy for significant, thereby turning every project into one requiring a full EIS, notwithstanding CEQ’s caveat quoted in the previous paragraph? Moreover, AF&PA questions whether 25,000 tons truly is “meaningful” when it represents only 5/100,000th of one percent (0.0000005) of the 49 billion tons of global GHG emissions in 2004. Moreover, the 25,000-ton indicator level was developed *to collect emissions data*, not as a measure of environmental significance. EPA’s recently promulgated the “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (signed May 13, 2010) sets 100,000 tons CO₂e for Title V permitting, indicating that far higher levels of GHG emissions are not of immediate concern.

Finally, for the reasons set forth in our earlier comment above, the Draft Guidance should not require agencies to engage in a “qualitative” discussion of the impacts of such emissions based on this reference level; any such changes are far too speculative to predict and any such discussion is inherently arbitrary. Agencies should not be required to conduct detailed environmental analyses simply because of the activity’s GHG emissions; rather, publication of the projected annual emission levels should be sufficient.

III. The Draft Guidance mandates analyses that may lead to violations of the Information Quality Act (IQA); the CEQ guidance should explain how agencies can comply with the IQA when undertaking their NEPA obligation

The IQA was enacted as an amendment to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et seq., and mandated that OMB issue government-wide guidelines and each federal agency issue guidelines consistent with OMB’s to ensure the “quality, objectivity, utility, and integrity of information” disseminated by federal agencies. The OMB IQA Guidelines and Final Bulletin provide the blueprint for the agencies subject to the IQA mandates, and these agencies have adopted administrative measures that incorporate OMB’s substantive requirements. Agencies that disseminate “influential” or “highly influential” information (meaning information that will have or does have clear and substantial impact on important public policy or

private sector decisions) must ensure that such information presented is “accurate, clear, complete, and unbiased.”

Given that any NEPA document analyzing the “qualitative” effects of GHG emissions of any particular project will be inherently speculative (as described above), especially due to the lack of ability to demonstrate any direct effects (i.e., those which occur at the same time and place³) or the causal relationship to an indirect effect (i.e., an effect that is reasonably foreseeable but later in time or farther removed in distance⁴), it is almost certain that agencies attempting to comply with the Draft Guidance will inevitably violate their IQA obligations.

IV. With regard to CEQ’s request for comment on federal land and resource management issues, we adopt and incorporate those comments sent by the National Council for Air and Stream Improvement, Inc. as follows:

- A. Federal land management agencies should consider natural disturbance regimes and predictable effects of management practices on sources and sinks of greenhouse gases. Agencies should explicitly consider the possibility that frequency and severity of natural disturbance (and associated emissions) will be higher under a non-management alternative than under active management (USDA 2009).

- B. We believe there are several issues related to carbon release and sequestration that should be considered in NEPA guidance applicable to federal land management issues. First we reiterate the suggestion that, if agencies do assess GHG emissions and climate change issues for proposed land management actions, they should include emissions associated with no management and the natural disturbance regimes that would likely result. Second, the common suggestion that undisturbed forests “sequester” the most carbon is only true in the short term and if all other human actions are ignored (Sampson and Hair 1992, IPCC 2007, Marland and Schlamadinger 1997, Schlamadinger and Marland 1996). If trees are not harvested and used for lumber and other products, substitute products such as concrete or steel, which may have much higher CO₂ emissions, will be used. Product substitution issues should be considered in agency assessments. Similarly, much wood waste is used for fuel at wood product facilities, acting as a substitute for fossil fuels. The same applies to wood used directly as a biofuel by burning or as input to liquid biofuel creation.

³ See 40 CFR 1508.8 (a) (Defining the term Direct Effects)

⁴ See 40 CFR 1508.8(b) (Defining the term Indirect Effect)

If timber harvest is severely constrained on federal lands in the United States, no net sequestration would occur, because we would simply import more wood. Much of the carbon in wood used for construction is kept out of the atmosphere for 50 to 100+ years and when it becomes scrap it ends up in a landfill where it decays slowly. Many of these activities and product pools are located outside of federal lands, so the issues of boundaries arises. If carbon is only counted on a federal facility, then wood leaving the boundaries is an “emission” when in reality it is accomplishing product substitution or being removed from the atmosphere for long periods.

- C. CEQ’s guidance should recognize that there are very large levels of uncertainty associated with climate change projects. The range of outputs of climate models is huge. Climate models vary even more in their predictions about any particular region. They differ in predictions of both temperature and precipitation, as well as in seasonal trends of each. This makes scenario uncertainty enormous. With respect to ecosystem responses, many approaches have been proposed for prediction future extinction risks, but Botkin et al. (2007) have argued that these methods are in general either invalid for this purpose or untested. As a result, we encourage CEQ to recommend an approach that agencies should use for handling these uncertainties under NEPA. That approach should include explicit acknowledgment of the uncertainties and estimates of how they affect emission possibilities as well as climate change projections, if any.
- D. It is impossible to show that any single action, even a large power plant, has a detectable effect on climate. Therefore, in the context of the usual NEPA guidance no actions on federal lands (nor any federal actions in general) would ever be likely to meet the criterion (of “significance”) for NEPA purposes. Any guidance to agencies on determining whether GHG emissions are “significant” would include an approach for considering the large levels of uncertainty associated with climate change projects when making such determinations.

Conclusion:

AF&PA thanks CEQ for the opportunity to comment. For the foregoing reasons we question the utility of guidance that will serve only to heighten the confusion and potential for litigation in this important area. We believe that CEQ should rather ensure that the guidance does not require NEPA analyses to discuss the effect of an activity’s emissions on climate change, either quantitatively or qualitatively. While it may be possible to measure or estimate an activity’s potential for GHG emissions, CEQ should provide guidance to agencies that makes clear that any individual project GHG

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emissions will be miniscule compared to global emissions and so do not need to be studied in any qualitative or substantial detail when complying with the agency's NEPA obligations. Neither the current state of the science nor the federal agencies implementing NEPA are equipped to handle in any manner that is not arbitrary or capricious the uncertainties associated with the effects of any given project on the climate. Until climate science evolves to a point that these speculative uncertainties are removed, federal agencies will inevitably violate their obligations to disseminate information that is accurate, clear, complete and unbiased.

Sincerely,

A handwritten signature in cursive script that reads "Jan Poling". The signature is written in black ink and is positioned above the typed name and title.

Jan A. Poling
Vice President, General Counsel and
Corporate Secretary