



May 24, 2010

The Council on Environmental Quality  
Attn: Ted Boling, Senior Counsel  
722 Jackson Place, NW.  
Washington, DC 20503

RE: Draft NEPA Guidance on Consideration of the Effects of Climate Change and  
Greenhouse Gas Emissions

Dear Mr. Boling:

The American Wind Energy Association (AWEA) wishes to thank the Council on Environmental Quality (CEQ) for developing its draft guidance document “Consideration of the Effects of Climate Change and Greenhouse Gas Emissions” (Draft Guidance).<sup>1</sup> Based on mounting scientific information, dramatic cuts in greenhouse gas emissions (GHGs) are necessary to avoid dangerous climate change. It is, therefore, imperative for CEQ to help federal agencies consider ways in which they can reduce or eliminate GHG emissions. With that end in mind, we believe the Draft Guidance is an excellent first step towards providing important and helpful guidance to agencies in considering climate change in the course of compliance with the National Environmental Policy Act (NEPA). However, AWEA believes, as discussed further below, that there are certain areas in which the Draft Guidance could be improved to ensure this guidance, consistent with NEPA’s purpose, “promote[s] efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.”<sup>2</sup>

## **I. Introduction**

AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA’s members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy

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<sup>1</sup> AWEA reviewed draft comments prepared jointly by the Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Humane Society of the United States, International Center for Technology Assessment, Natural Resources Defense Council, National Wildlife Federation, Marine Fish Conservation Network, Ocean Conservancy, Sierra Club, Southern Environmental Law Center, and Wilderness Society. We generally support those comments and incorporate many of their positions herein.

<sup>2</sup> NEPA, Section 2, 42 U.S.C. § 4321.

supporters, utilities, marketers, customers, and their advocates. As the leading source of greenhouse gas-free electricity that is both technologically ready and rapidly deployable today, the wind energy industry is supportive of CEQ's attempts to consider climate change in NEPA review.

AWEA is encouraged that the Draft Guidance emphasizes the use of the NEPA process to identify alternatives and mitigation, including the deployment of clean, renewable energy (such as wind energy), that would reduce GHGs and other climate change related-phenomenon and mitigate the effect of climate change. As the Draft Guidance recognizes:

By statutes, Executive Orders, and agency policies, the Federal government is committed to the goals of energy conservation, reducing energy use, eliminating or reducing GHG emissions, and promoting the deployment of renewable energy technologies that are cleaner and more efficient. Where a proposal for Federal agency action implicates these goals, information on GHG emissions (qualitative or quantitative) that is useful and relevant to the decision should be used when deciding among alternatives.<sup>3</sup>

AWEA notes that we believe the final guidance should not exclude coverage of federal land and resource management actions. Such an exclusion would threaten to eviscerate the positive impacts of this important guidance, potentially allowing numerous proposed federal actions that would emit GHGs avoid NEPA analysis with respect to their emission levels. NEPA requirements, as interpreted by both CEQ and the courts, are flexible enough that available qualitative and quantitative information can appropriately be used to inform decision-making in all areas of federal actions, including those related to federal land and resource management actions.

With these general considerations in mind, we would like to offer the following more detailed comments on the Draft Guidance:

**A. Federal Land and Resource Management Actions Should not be Excluded**

The Draft Guidance perfunctorily states that CEQ does not propose to make this guidance applicable to federal land and resource management actions. AWEA believes it was unreasonable for CEQ to have removed these activities from NEPA's coverage without even providing a justification for proposing this broad exclusion. Such an exemption could also potentially be read as relieving a large number of federal agencies from their responsibility to consider climate change effects in the course of their compliance with NEPA. In other words, the exclusion could be misinterpreted to mean that CEQ believes that NEPA only requires that only certain agencies consider GHGs for federal actions. This is all the more true in light of the fact that the Draft Guidance does not define the parameters of "federal land and resource management actions." Accordingly, this confusion could lead to a failure to ensure compliance with NEPA for some proposed actions.

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<sup>3</sup> Draft Guidance at p. 2.

AWEA is unaware of anything in NEPA’s history, statutory language, CEQ’s regulations or prior guidance, or in any case law, that would support this type of broad exclusion. The Draft Guidance appears to imply that NEPA practice for land and resource management actions is somehow fundamentally different than other federal actions falling under the act. We do not agree. While the technical methodologies, protocols and models may naturally vary depending upon the subject, the flexible framework of the NEPA process remains the same and should be able to accommodate these type of federal actions as well.

The omission of a discussion of federal land and resource management actions in the final guidance document would also severely limit the applicability and import of this document by limiting the opportunities to reduce GHG emissions with respect to certain federal actions. The exception would, in effect, ensure that a large class of federal decisions (likely the majority) would be exempted from this meaningful review.<sup>4</sup> Thus, if CEQ continues to omit this class of federal decisions, it could make the exception greater than the rule with respect to factoring climate change into the NEPA reviews. Therefore, AWEA encourages CEQ to reconsider this exclusion and include the entire range of NEPA actions in its next iteration of this guidance document.

## **B. Consideration on a Programmatic Basis**

NEPA analysis for climate-related impacts associated with site-specific projects can often be more difficult than analysis at the programmatic level because of the lack of scientific study and modeling at smaller scales. In recognition of this fact, the Draft Guidance notes that programmatic Environmental Impact Statements (EIS) on long-range energy and resource management programs offers a particularly effective framework for identifying, analyzing, and choosing criteria designed to address climate change concerns. AWEA also believes that climate change adds urgency to the need to consider classes of actions on a programmatic basis. Such an approach offers the potential for substantive benefits in identifying and implementing the best policy choices and provides for procedural efficiencies, although this should not preclude site-specific analysis if feasible.

## **C. Alternatives and Mitigation**

The purpose of the NEPA process is to make for more informed decisions.<sup>5</sup> Thus, the proposed guidance should lead to improved policies, as it should help encourage reaching decisions that will reduce GHG emissions and mitigate impacts of climate change. To achieve that end, the guidance should focus more on ensuring that useful information is provided to decision makers with respect to alternatives and mitigation measures for those actions that the agency finds are a significant source of GHGs.

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<sup>4</sup> Over the past three years, based on the statistics, available at [www.nepa.gov](http://www.nepa.gov), proposed federal land and resource management actions account for the overwhelming majority of EISs.

<sup>5</sup> “The environmental analysis and documents produced in the NEPA process should provide the decision maker with relevant and timely information about the environmental effects of his or her decision and reasonable alternatives to mitigate those impacts.” Draft Guidance at p. 1.

From a process perspective, agencies should be reminded of the key points in the NEPA process, beginning with scoping, that specifically relate to the identification of alternatives and mitigation measures that reduce GHG emissions and related effects. For example, CEQ regulations require agencies to explain how each alternative analyzed in an EIS, and the decisions based on the EIS, will or will not achieve the policy goals of NEPA and other environmental laws and policies.<sup>6</sup> Combined with a summary of the analysis of the effects of each of the alternatives, this can help focus attention on the implications of the ultimate agency decision.

CEQ should assist federal agencies in developing categories of measures that would allow agencies to consider alternatives, such as renewable energy sources, that reduce action-related GHG emissions. Those measures must be sufficient to ensure that projects, following their recommendations, would result in the reduction or elimination of GHGs and other global warming pollutants in the atmosphere. Agencies should also be instructed that they have a basic obligation under NEPA to identify, disclose and analyze the effects of alternatives on climate change and to identify alternatives and mitigation that would lessen or eliminate those effects.<sup>7</sup> Specifically, agencies should identify alternatives and mitigation measures that would be beneficial in reducing activities that contribute to or exacerbate climate change effects, as well as changes to programs needed for long-term adaptation to climate change effects. Just as individual GHG emissions accumulate to cause climate change, so do individual emission reductions accumulate to reduce its effects. Agencies are obligated to analyze both the adverse and beneficial effects of proposed federal actions.<sup>8</sup> The underlying premise of the NEPA process is an obligation to analyze effects of proposed actions and reasonable alternatives no matter whether they are labeled as beneficial or adverse.<sup>9</sup>

To accurately identify alternatives that will best mitigate climate change effects, it is important to direct agencies to set an accurate baseline that will allow for a fact-based comparison of an alternative's effects and the value of mitigation. In this regard, AWEA believes that the document should direct agencies to look at the relative percentage of improvements an alternative could produce compared to the baseline carbon performance. To be effective, these measures could be tailored to address different sectors of the economy and

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<sup>6</sup> 40 C.F.R. § 1502.2(d).

<sup>7</sup> Agencies should be assisted in identifying sources of credible methodologies and information while being reminded that precise quantification is not necessary and that there is a protocol for addressing unavailable and incomplete information. We note that while the draft guidance anticipates and allows for qualitative analysis, AWEA thinks that CEQ should emphasize that there should not be an overemphasis on identifying quantitative indicators and thresholds. Although the inclusion of credible scientific quantitative analyses is, of course, appropriate when available, its lack of availability should not in any way deter agencies from engaging in credible qualitative assessments and identifying appropriate alternatives and mitigation strategies. Alternatives that reduce adverse impacts of either the proposed action or the impacts of climate change on the management area in question can be intelligently identified and shaped without precise quantitative information.

<sup>8</sup> 40 C.F.R. § 1508.8(b). NEPA's regulatory framework, as a whole, supports the consideration of the benefits of a proposed agency action. It directs the CEQ to "formulate and recommend national policies to *promote* the *improvement* of the quality of the environment" and "to develop and recommend to the President national policies to *foster* and *promote* the *improvement* of environmental quality." 42 U.S.C. § 4344 (emphasis added).

<sup>9</sup> AWEA is not suggesting that actions that are advocated as means to address GHG emissions, such as renewable energy projects, should be exempt from the same analysis. If an action warrants review, such activities should go through the same type of impartial and rigorous analysis that any other proposed federal action would under NEPA.

different federal agencies. Many of these types of mitigation measures, such as wind energy, are likely readily available and may cost very little.

Evaluation of “significance” under NEPA is done by the action agency based on the categorization of actions in agency NEPA procedures and action-specific analysis of the context and intensity of the environmental impacts.<sup>10</sup> As the Draft Guidance points out, examples of proposals for federal agency action that may warrant a discussion of GHG impacts of various alternatives, as well as possible measures to mitigate climate change impacts, include approval of energy facilities, such as coal-fired power plants. With respect to that example, agencies should consider clean, renewable energy as an alternative to such proposed agency actions. At a minimum, federal agencies should examine renewable energy as a mitigation measure and assist in developing the models needed for considering the benefits of renewable energy.

Renewable energy, such as wind generation, furthers NEPA’s goals of promoting efforts that prevent or eliminate damage to the environment and biosphere.<sup>11</sup> Consistent with NEPA’s requirement that the federal government use all practicable means to “enhance the quality of renewable resources”<sup>12</sup> and “attain the widest range of beneficial uses of the environment,”<sup>13</sup> renewable energy offers a clean and endless source of power, which offsets fossil fuel emissions, improves air quality, and decreases the emission of pollutants contributing to global warming.<sup>14</sup> In contrast to fossil fuels, renewable energy emits no pollutants and would result in a significant reduction in emissions.<sup>15</sup> Therefore, renewable energy should serve as an alternative or mitigation measure for offsetting greenhouse gases produced by fossil fuels in proposed significant actions. Not considering clean, renewable energy would be contrary to NEPA’s purpose of promoting environmental quality,<sup>16</sup> since replacing fossil fuels with renewable energy as a source of electricity would reduce GHG emissions.

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<sup>10</sup> 40 C.F.R. § 1501.4, 1508.27.

<sup>11</sup> 42 U.S.C. § 4321.

<sup>12</sup> *Id.* at § 4331(b)(6).

<sup>13</sup> *Id.* at § 4331(b)(3).

<sup>14</sup> In its May 2008 report on the feasibility of achieving 20 percent of U.S. electricity from wind by 2030, the U.S. Department of Energy (“DOE”) recognized the significant environmental benefits of wind energy. DOE concluded that wind energy is feasible and would have significant environmental benefits. In the context of reducing GHG emissions, it found that wind energy could avoid approximately 825 million metric tons of CO<sub>2</sub> in the electric sector in 2030. Available at <http://www.20percentwind.org>.

<sup>15</sup> Determining the amount of GHG emissions that would be reduced by the substitution of wind energy for fossil fuels is also more feasible than is immediately apparent. For example, due to the fact that many states now require public disclosure of information on the sources and types of fuels used in particular areas and their emissions, the fuel mix and its emission can be identified. States typically require information, such as generation sources, fuel mix, fuel emissions, kilowatt per hour, price volatility, and contract terms. In addition, computer modeling programs are available to quantify GHG emissions. Thus, measures for assessing the geographic impact of emissions are determinable and readily accessible.

<sup>16</sup> As stated by the Ninth Circuit, the “intent of NEPA is to require agencies to consider and give effect to the environmental goals set forth in the Act.” *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 508 F.3d 5008, (9th Cir. 2007), *vacated and superseded on denial of reh’g*, 538 F.3d 1172, 1215 (9th Cir. 2008) (modifying earlier decision in part only).

#### **D. Level at which GHG Emissions should be Considered Significant**

AWEA does not believe CEQ's focus should be on determining a quantitative level of "significance" for NEPA purposes. To do so would be inconsistent with the typical CEQ-approved agency practice of identifying classes of actions that are considered "significant" for purposes of NEPA.<sup>17</sup> Rather than attempting to label a particular effect significant, the guidance should instead emphasize alternatives that advance our nation's environmental policies.

In that regard, we understand that CEQ's suggestion of 25,000 metric tons or more of a CO<sub>2</sub> equivalent in GHG emissions on an annual basis is not a threshold for determining significance, but rather meant to be an indicator of when a quantitative and qualitative assessment would be appropriate. There are at least two fundamental problems with this approach. There is no reason to draw this number from the EPA reporting rule, and the Clean Air Act (CAA) rule and NEPA serve different ends and are considerably different in purpose and scope. NEPA requires consideration and disclosure of impacts to inform decision-making and the public with the goal of implementing this nation's environmental policies; in contrast, the CAA's provisions focus on quantitative standards with respect to specific regulatory consequences. Because NEPA is focused on providing information needed to make better decisions, NEPA necessarily sweeps in more than just those impacts that would violate substantive mandates in other laws. Thus, agencies should quantify and disclose GHG emissions levels and consider alternatives that may reduce those emissions, regardless of whether the impacts are ultimately determined significant.<sup>18</sup>

Finally, there is no reasoned justification for focusing on a project's annual, rather than lifetime, emissions as the indicator level of significance. Nothing in NEPA restricts the agencies' impacts analysis to a rate or a one-year time scale. If CEQ does not remove the discussion of an indicator level from the final guidance, it should at least buttress its indicator level with a life-cycle or life-of-the-project "volume" indicator. That level should be set low enough to capture actions that may not emit the full threshold rate in any given year, but would still contribute to the larger overall volume of GHG emissions over the life of the project. For example, while a 20-year project may not emit more than 10,000 tons GHG/year, its total volume of emissions will be far above even the high level identified as "meaningful" in the Draft Guidance. Thus, if CEQ wishes to indicate a level of significant emissions, it must ensure that its indicator accounts both for the rate of the emissions and the volume of emissions (over the life of a project).

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<sup>17</sup> To our knowledge, CEQ has never required or even advised agencies to develop numerical thresholds for significance.

<sup>18</sup> CEQ's suggested indicator level would also ignore the nature of climate change. As the Draft Guidance notes, the global climate change problem is much more the result of numerous and varied sources, each of which might seem to make a relatively small addition to global atmospheric GHG concentrations. Draft Guidance at p. 2. Therefore, while agencies should use the scoping process to set reasonable spatial and temporal boundaries for assessing and focusing on aspects of climate change that may lead to changes in the impacts, sustainability, vulnerability and design of the proposed action and alternative courses of action, an indicator for agencies' action-specific evaluation of GHG emissions and disclosure of that analysis in their NEPA documents is not necessary. In other words, AWEA does not believe that GHG emissions of a proposed action that are negligible warrant consideration in the NEPA documentation by decision makers and the public; however, agencies should be free to identify NEPA procedures for determining if actions are either individually or cumulatively significant with respect to GHG emissions and other environmental effects and warrant inclusion.

## II. Conclusion

AWEA believes that the issuance of this Draft Guidance successfully integrates the evolving scientific understanding of climate change with the dynamic and flexible framework of NEPA review and represents a landmark in CEQ's work on climate change. However, we urge CEQ to include in its next iteration of this guidance direction that is applicable to all federal actions that fall under NEPA. We also believe that the guidance should focus on implementing NEPA's goal, among others, to encourage agencies to "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects" of federal actions."<sup>19</sup> Directing agencies to consider alternatives that reduce or eliminate GHG emissions – and providing the assistance in the form of suggested measures that would achieve this goal – would significantly further NEPA's goals to take actions that restore and protect the quality of the environment. Finally, AWEA respectfully asks that any future iterations of this guidance be consistent with the comments raised herein.

Sincerely,

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<sup>19</sup> 40 C.F.R. § 1500.2 (e)-(f); *see also* 40 C.F.R § 1500.1(c) (“it is not better documents, but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action . . . [and] to help public officials . . . take actions that protect, restore, and enhance the environment.”).