



***Via Electronic Mail and US Mail***

May 24, 2010

The Council on Environmental Quality  
Attn. Ted Boling, Senior Counsel  
722 Jackson Place, NW  
Washington, DC 20503  
GCC.guidance@ceq.eop.gov

Re: Devon Energy Corporation's Comments Regarding the Council on Environmental Quality's Draft National Environmental Policy Act Guidance On the Consideration of the Effects of Climate Change and Greenhouse Gas Emissions

Dear Mr. Boling:

This is to provide Devon Energy Corporation's (Devon) strong concerns about the Council on Environmental Quality's (CEQs) Draft National Environmental Policy Act (NEPA) Guidance on the Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (Guidance) dated February 18, 2010,) and published in the Federal Register on February 23, 2010; 75 Fed. Reg. 8046 (Feb. 23, 2010).

Devon is a leading independent natural gas and oil exploration and production company. Devon's operations are focused onshore in the United States and Canada. The company's portfolio of gas and oil properties provides stable, environmentally responsible production and a platform for future growth. The company's production mix is approximately two-thirds natural gas and one-third oil and natural gas liquids, such as propane, butane and ethane. Devon produces over 2.5 billion cubic feet of natural gas each day, about 3 percent of all the gas consumed in North America.

In addition to the comments set forth here, Devon also associates itself with and endorses the comments submitted by the American Petroleum Institute (API).

**General Comments**

Devon operates on Federal lands extending from southeast New Mexico up through parts of Utah, Wyoming and Montana, all of which often require permits, licenses or approvals from federal agencies and, hence, may be subject to review under the National Environmental Policy Act (NEPA). Therefore, Devon has a strong interest in ensuring that the agencies implement NEPA and achieve its goals effectively and efficiently.

While we support the efforts of CEQ to provide guidance to federal agencies on how they should address and consider climate change and greenhouse gas (GHG) emissions, we are especially concerned about the "quantitative threshold and mitigation" language applied to these emissions and whether this concept is relevant in the NEPA context. NEPA's primary goal is to ensure that any adverse environmental effects of a proposed federal action are adequately identified and evaluated by an agency through a "hard look" and prescribes a necessary process for this consideration, rather than mandating prescribed results.

We find no substantiated reason why the CEQ is creating special rules for GHG emissions, including the establishment of a "quantitative threshold." The adoption of quantitative thresholds is inconsistent with historical NEPA practice and settled case law. There is currently no other established "threshold" for reporting or quantifying more traditional pollutants, and there is nothing unique about GHG emissions that would require CEQ to establish such a uniform threshold.

The Guidance seems to be premised on an erroneous perception that NEPA provides agencies the authority to regulate and mitigate GHG emissions. However, NEPA provides no such substantive authority. The authority to regulate GHG emissions must be found in another statute. Outside of recent disputed developments pertaining to the Clean Air Act, federal law does not authorize agencies to mandate limits for GHG emissions. The Guidance further advances a tone of substantive authority by requiring agencies to quantify GHG emissions and consider measures to mitigate these emissions, and identifies “mitigation” options to include “enhanced energy efficiency, lower GHG-emitting technology, renewable energy, planning for carbon capture and sequestration, and capturing or beneficially using fugitive methane emissions.”

The Guidance rightfully portrays climate change as a global issue in terms of effect, and that contributions to global climate change arise from numerous and varied sources. However, the Guidance contradicts this statement when it proposes that useful and realistic information is provided to decision makers for those actions that the agency finds are significant source of GHGs and asks them to “ensure their scientific and professional integrity” when assessing the design of a proposed action and the ways in which climate change is affecting or could affect the environment. The Guidance continues down a contradictory path in recognizing that “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.” Moreover, given the nature of GHG emissions and global climate change, based on the limits of current science, no individual action can be viewed as proximately causing global climate change impacts, because the effect results from the entirety of natural and anthropogenic emissions of GHGs worldwide. Current scientific models are not only unable to determine the effect on the global climate from a single major federal action, but lack the ability to link GHG emissions associated with a particular action to specific effects on the resources or lands that agencies manage.

If a quantitative threshold were to be implemented, it would be duplicative of those that other agencies already use in evaluating GHG emissions under their statutory authorities. In addition, many of the protocols identified in the Guidance are unreasonably expensive and difficult to implement. Moreover, the EPA methodologies that are referenced are intended for those facilities with monitored operations and emissions. This “one size fits all” approach is inflexible in considering the various sources in which the Guidance may apply.

### Conclusion

CEQ should revise its draft Guidance to be consistent with historical practice and binding case law precedent and dispense with any attempt to attach substantive requirements to NEPA’s procedural framework. The fundamental and settled NEPA considerations all factor against quantifying GHG emissions for a specific project. Identifying and setting quantitative thresholds on GHG emissions, when the agency lacks the authority to regulate and mitigate those emissions, in addition to the fact that we currently lack the ability to understand the relationship between these emissions and the environment, would be an inefficient exercise and counter to the original and settled intent of NEPA. Furthermore, the CEQ should acknowledge that GHG emissions are no different from any other environmental impacts that agencies have previously considered.

Sincerely,



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