May 24, 2010

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

Re: *National Environmental Policy Act (NEPA) Draft Guidance, "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions"*

VIA ELECTRONIC MAIL (GCC.guidance@ceq.eop.gov)

Good afternoon:

The Interstate Natural Gas Association of America ("INGAA") submits this comment letter pursuant to the notice issued under the referenced heading by the Council on Environmental Quality ("CEQ") on February 18, 2010, and published in the *Federal Register* on February 23, 2010.[1] INGAA is a non-profit trade association representing interstate natural gas transmission pipeline companies operating in the United States and interprovincial pipelines operating in Canada. INGAA's U.S. members operate over 200,000 miles of pipeline, carrying over 90% of all natural gas transported and sold in interstate commerce.

Given the impending regulation of greenhouse gas ("GHG") emissions from stationary sources, guidance in this area is largely unnecessary and should either be withdrawn or very narrowly circumscribed. In light of the "Tailoring Rule" recently promulgated by the Environmental Protection Agency ("EPA")[2] an agency's NEPA analysis should be limited to documenting either that a required GHG permit has been obtained (and then describing the permit) or that no permit is necessary.

Detailed guidance, such as that proposed in the draft memorandum, threatens to substantially impair (if not completely gridlock) federal permitting. The proposed guidance falsely assumes there is a generally accepted model for gauging broad-based climate change. In fact, no such model exists, and because no model exists the proposed guidance change invites agencies to estimate climate change effects by whatever means they think reasonable. Disparities, inconsistencies, conflicts and confusion will ensue, all to the detriment of INGAA's members and other parties whose businesses heavily rely on the timely processing of federal permits.

It would be appropriate for CEQ to refrain from issuing guidance until the science behind climate change modeling more fully evolves and the potential effects of various forms of guidance can be assessed using the GHG emissions database EPA is assembling per its recently-issued GHG reporting rule.[3] If CEQ instead goes forward, its guidance should be limited to advising agencies to:

(1) Estimate the direct GHG emissions from individual federal actions (*e.g.*, the GHG emissions that would come from a project if it receives a federal air permit);

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1 75 Fed. Reg. 8046.

2 *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule*, Docket No. EPA-HQ-OAR-2009-0517 (2010) [hereinafter "the Tailoring Rule"].

3 *Mandatory Reporting of Greenhouse Gases*, 74 Fed. Reg. 56260 (2009).

(2) Acknowledge that there is no standard methodology for determining how these emissions would translate into global warming effects; and

(3) Assess the planned facility's climate change vulnerability by ascertaining that the planned facility is designed to withstand and operate effectively in a variety of weather conditions.

Moreover, if CEQ issues guidance in this area, the reference point for deciding to undertake a NEPA examination of GHGs should be direct emissions of at least 100,000 tons per year (tpy) measured on a carbon dioxide equivalent ("CO_2-e") basis, consistent with the Tailoring Rule, rather than 25,000 metric tpy CO_2-e, which EPA is using for a minimum threshold to develop its GHG emissions reporting rule database. Furthermore, the recognized metric for GHG policy analysis and regulatory standard setting, as reflected in the Tailoring Rule, EPA's GHG reporting rule and elsewhere, is annual emissions. CEQ has no empirical or legal basis for suggesting a NEPA analysis reference point based on cumulative GHG emissions over a federally permitted project's useful life.

Finally, no CEQ guidance on GHGs and climate change should suggest or imply that NEPA requires federal agencies to impose — and permit applicants to implement — measures to reduce GHG emissions or otherwise "address" the potential climate change effect of individual, federally-permitted projects. NEPA requires agencies to assemble environmental impact information and consider it, but the statute does not mandate specific substantive results or requirements.

COMMENTS

1. Since GHG emissions from stationary sources are subject to direct regulation under the Tailoring Rule, CEQ guidance regarding GHGs and climate change should be extremely limited: Where a permit is necessary, the agency should describe the permitting program and ascertain that a permit was obtained or will be obtained where necessary; where a permit is not necessary, the agency should ascertain that a permit is not needed.

After CEQ released its draft guidance memorandum, EPA issued its "Tailoring Rule," subjecting stationary sources of GHGs to a comprehensive scheme of regulation under the Prevention of Significant Deterioration ("PSD") and Title V provisions of the Clean Air Act ("CAA"). Of particular importance to this docket, beginning July 1, 2011, new stationary sources that emit or have the potential to emit at least 100,000 tons of GHGs per year CO_2-e will be required to obtain PSD and Title V permits. PSD permits will also be required if a source has the potential to emit at least 100,000 tpy CO_2-e and the source will be undergoing a modification that will increase the source's net GHG emissions by at least 75,000 tpy CO_2-e. EPA chose these levels in light of the overwhelming economic burdens that would be imposed if PSD and Title V permitting were required for smaller emission sources.

Where an environmental concern is being addressed directly through a permit program an extensive NEPA review is redundant, confusing and unnecessary. The Tailoring Rule's GHG permitting thresholds were determined after examining thousands of comments from hundreds of parties (including a number of state permitting agencies and other state offices), and EPA set these thresholds on the basis of environmental impact — precisely the same basis underlying NEPA. If a federal action, *e.g.*, the issuance of a permit, will result in a source that exceeds the Tailoring Rule's thresholds, the source will be required to implement the "best available control technology" for GHGs.[4] In these cases, NEPA review should be

[4] 42 U.S.C. § 7475(a)(4).

strictly limited to describing the permit process and ascertaining either that the necessary permits have been obtained or that a permit is not necessary.

For projects requiring a PSD or Title V permit, any additional NEPA review is redundant, and wasteful. After all, when a source is already required to employ the best available control technology, there is nothing to be gained (other than uncertainty and confusion) through using NEPA to develop and consider more stringent alternatives. INGAA is concerned the current guidance implies that agencies should use NEPA in this way.

As for federal actions resulting in GHG sources that emit below the Tailoring Rule emission thresholds, EPA determined that these sources should be spared PSD and Title V permitting obligations, at least for now, since this would impose an undue burden relative to their environmental impact. The draft guidance would, in effect, reverse EPA's considered judgment, as sources spared the burden of PSD and Title V permitting would essentially become subject to the burden of NEPA review. The "Tailoring Rule" answered the substantive question when it determined which stationary sources emit enough GHGs to warrant permits and their associated controls. NEPA, a procedural statute, should not be used to undo what EPA has already determined [5]

2. Given the present state of climate change science, the proposed guidance is premature and issuing it invites confusion, conflict and delay.

The draft guidance memorandum (page 2) correctly observes that it is not productive to attempt to link a proposed action to climate change.

> Because climate change is a global problem that results from global GHG emissions, there are more sources and actions emitting GHGs (in terms of both absolute numbers and types) than are typically encountered when evaluating the emissions of other pollutants. From a quantitative perspective, there are no dominating sources and fewer sources that would even be close to dominating total GHG emissions. 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.

The draft guidance memorandum then notes (page 3) that, "[I]t 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, at various points the draft guidance memorandum properly notes that agencies should ensure the scientific integrity of their analysis, not engage in wholly speculative analysis, be realistic in their assessments, and take actions based on the understanding of environmental consequences.

Still, the draft guidance memorandum proposes to direct agencies (1) to determine what sources emit enough GHGs to warrant NEPA analysis; (2) to assess the direct, indirect and potential effects of a project's GHG emissions, as well as the potential effects of any project alternatives; and, (3) to apply mitigation and reasonable alternatives that avoid or minimize these effects. Consequently, by its very nature, the guidance is instructing federal agencies to burden or deny projects based on alleged climate change effects, with no basis to support their conclusions.

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[5] Since PSD and Title V permitting is subject to public notice and an opportunity to comment, there is no basis for insisting on NEPA review as a vehicle for public engagement.

There is presently no generally accepted model for gauging broad-based climate change, let alone assessing how such change (if any) affects individual, federally permitted projects. In the absence of generally accepted emissions modeling, advising agencies to examine the potential impacts of climate change invites agencies (and perhaps even the individual project analysts within an agency) to estimate climate change effects by whatever means they think reasonable. Disparities and even conflicts between agencies and analysts would be inevitable. If the draft guidance goes forward as proposed, the resulting conflict and confusion will cause federal air permits to be significantly delayed if not completely gridlocked.

3. If CEQ moves forward with guidance on GHGs and climate change, any such guidance should direct the agencies to limit the review to quantifiable annual GHG emissions, and should base the point of reference on the Tailoring Rule, not EPA's GHG emissions reporting rule.

Until generally accepted climate change modeling protocols are established, agency consideration of GHG emissions and climate change should be limited to (1) estimating the direct GHG emissions from individual federal actions (*e.g.*, the GHG emissions that would result from a project if it receives a federal permit); (2) acknowledging that there is no standard methodology for determining how these emissions would translate into global warming effects; and (3) ascertaining that the planned facility is designed to withstand and operate effectively in a variety of weather conditions.

Furthermore, if CEQ determines to move forward with GHG and climate change guidance the reference point should mirror the permitting thresholds referenced in the Tailoring Rule. As presently drafted, if a federal agency reasonably anticipates that a pending action will cause direct GHG emissions of 25,000 metric tons or more, "the agency should consider this an indicator that the agency's NEPA analysis of the pending action should address GHGs and climate change." Footnote 2 of the draft guidance memorandum recognizes that the 25,000 metric ton reference point is drawn from EPA's recently-issued GHG emissions reporting rule. Significantly, the purpose behind the reporting rule is to develop a database that can be used to make informed policy decisions in the future:

> Accurate and timely information on GHG emissions is essential for informing many future climate change policy decisions. Although additional data collection (e.g., for other source categories or to support additional policy or program needs) will no doubt be required as the development of climate policies evolves, the data collected in this rule will provide useful information for a variety of policies. Through data collected under this rule, EPA, States and the public will gain a better understanding of the relative emissions of specific industries across the nation and the distribution of emissions from individual facilities within those industries. The facility-specific data will also improve our understanding of the factors that influence GHG emission rates and actions that facilities could in the future or already take to reduce emissions, including under traditional and more flexible programs.[6]

The draft guidance memorandum represents precisely the sort of uninformed policymaking the GHG reporting rule was promulgated to avoid.

INGAA appreciates the value in using a fixed reference point as described in the draft guidance memorandum.[7] Absent a fixed reference point, agencies will have that much more latitude for conflict

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6 *Id.*, 74 Fed. Reg. 56265.

7 As noted on page 2 of the draft guidance memorandum, "CEQ does not propose [the reference point] as an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG

and confusion, including the possibility of adopting state or local reference points which may be even further removed from the current state of climate change science. Thus, if CEQ insists on issuing GHG and climate change guidance, that guidance should contain a reference point and the reference point should be direct emissions or potential to emit at least 100,000 tpy CO_2-e.

On a related note, several provisions of the draft guidance memorandum suggest an alternative NEPA reference point based on a project's "lifetime" cumulative GHG emissions rather than annual emissions. The following passage from pages 1 and 2 of the draft guidance memorandum illustrates this approach:

> For long-term actions that have annual direct emissions of less than 25,000, metric tons of CO2-equivalent, CEQ encourages Federal agencies to consider whether the action's long-term emissions should receive similar analysis.

The draft guidance memorandum offers no reference point for cumulative, lifetime emissions, probably because this metric is not used in the Tailoring Rule, EPA's GHG reporting rule, the various proposals for U.S. climate change legislation or any other commonly regarded policy arena. A lifetime emissions standard — particularly one with no reference point — threatens to expose a vast new array of federal actions to NEPA analysis. The recognized metric for GHG policy analysis and regulatory standard setting, as reflected in the Tailoring Rule, EPA's GHG reporting rule and elsewhere, is annual emissions. CEQ has no empirical or legal basis for suggesting a NEPA analysis reference point based on cumulative GHG emissions, and this aspect of the proposed guidance should be withdrawn in its entirety.

4. CEQ should consistently portray NEPA as a procedural statute and not a vehicle for mandating particular GHG "solutions."

Finally, if CEQ issues GHG and climate change guidance, it should consistently and accurately characterize NEPA's strictly procedural role. After observing that no federal action results in enough GHGs to dominate global emissions, page 2 of the draft guidance memorandum states:

> CEQ proposes to recommend that environmental documents reflect this global context and be realistic in focusing on ensuring that useful information is provided to decision makers for those actions that the agency finds are a significant source of GHGs.

This sentence reasonably captures the essence of NEPA, assembling useful information for public examination and , ultimately, for decision makers to consider in contemplating a pending federal action. In contrast, several passages in the draft guidance memorandum suggest or imply that NEPA compels federal agencies to impose substantive provisions to reduce GHG emissions or abate climate change. Consider, for example, the following language from page 9 (emphasis supplied):

> [Requiring federal agencies to prepare environmental impact statements] attempts to ensure that agencies consider environmental consequences as they decide how to proceed **and take steps, where appropriate, to eliminate or mitigate adverse effects**.

The draft guidance memorandum should articulate clearly that NEPA requires agencies to *consider* GHGs emissions and climate change. NEPA does not mandate specific substantive results, and specifically does

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emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs." INGAA concurs in this characterization, and particularly in the distinction it draws between a reference point and a significance threshold.

not require agencies to impose substantive measures to reduce GHG emissions or otherwise address climate change.[8]

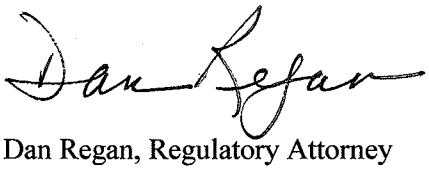
CONCLUSION

For the reasons detailed above, CEQ guidance on GHGs and climate change is overbroad, premature and ambiguous. At this time, climate change science does not allow agencies to accomplish the objectives of the guidance to make informed decisions while avoiding wholly speculative effects, while at the same time attempting to assess significance and select alternatives based on effects. Thus, in its current form, the draft guidance is potentially harmful to entities that depend on receiving federal permits and similar federal actions. CEQ should withdraw the proposed guidance and wait until the science of climate change advances and the GHG emissions database being assembled by EPA is more fully developed.

If CEQ insists on going forward, it should limit its guidance. If a project will be subject to GHG permitting under the Tailoring Rule, the Agency should ascertain that a permit was obtained and describe the permitting process. Otherwise, the agency should ascertain that no permit was required.

However CEQ proceeds, its guidance should emphasize the strictly procedural nature of NEPA and carefully avoid any suggestions that could be interpreted as authorization for agencies to use NEPA to impose substantive GHG emissions or climate change provisions.

Respectfully submitted,



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8 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989). The examination of possible mitigation measures is also misstated. Page 3 of the draft guidance memorandum states that in evaluating GHG mitigation measures one of the standards is additionality. The Energy Information Administration defines additionality as a means of measuring the amount of emission reduction credits an entity should report on Form EIA-1605. Footnote 3 of the draft guidance memorandum cites EIA, but misstates additionality in terms of whether an entity is eligible to report credits rather than a device for determining how much to report.