

Testimony of Christy Goldfuss, Managing Director of the Council on Environmental Quality, before the House Committee on Natural Resources on September 21, 2015

Chairman Bishop, Ranking Member Grijalva, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the Council on Environmental Quality's Final Guidance on Considering Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act (NEPA) Reviews. This final guidance represents the culmination of over six years of work by CEQ with Federal agencies and two rounds of public comments from a wide variety of stakeholders. CEQ's message is clear: NEPA implementation should be consistent with the law, policy, and science that is leading efforts here and around the world to consider the impacts associated with climate change and Federal actions. I appreciated the committee's interest in this issue when I testified in front of this committee on May 13, 2015 and thank you for inviting me back to discuss the final guidance.

CEQ issued its final guidance under the authority of NEPA, which is the Nation's basic environmental charter and CEQ's organic act. Section 102 of NEPA contains action-forcing requirements for Federal agencies to consider and publicly disclose the potential environmental effects of their proposed actions on the human environment. Simply put, the NEPA review process directs agencies to "look before they leap" to ensure that Federal decision makers take into account the direct, indirect, and cumulative impacts of their actions on the natural and physical environment.

The consideration of the impacts of human activities on our climate has been identified as a CEQ concern since 1970, when it issued its first annual report on the state of the environment.¹ As the science of climate change developed over time, CEQ was called upon to provide guidance on the application of this information in the context of NEPA reviews. CEQ developed draft guidance for interagency review in 1989 and in 1997 but it never finalized these guidance. This did not impede agencies from considering climate change in their NEPA reviews. For example, as early as 1989 Federal agencies like the Department of Energy were leading the way with the incorporation of climate change considerations into their environmental impact statements. Federal courts have also gotten involved over the years by requiring Federal agencies to consider the greenhouse gas emission effects in NEPA analyses of major Federal actions.

Today, taking into account climate change in environmental impact assessment processes has become a standard practice that has been adopted by Federal agencies, State agencies, international bodies, and public and private organizations around the world. The final CEQ guidance is built on this record of experience to help ensure that NEPA analysis provides the public and Federal agencies with a clear picture of how many types of Federal actions can implicate climate change issues and identify opportunities to build climate resilience. The guidance encourages consistency across Federal agencies in how they take these considerations into account in the NEPA process. Agencies must consider and disclose the impacts of their actions with respect to climate change, but it does not require them to choose any specific outcome.

Road Leading to the Final Guidance

NEPA implementation is based on the idea that Federal agencies should consider and disclose the reasonably foreseeable effects of their proposed actions on the human environment. For a number of years, Federal agencies struggled with how they should analyze actions that contribute to climate change and how to best consider the myriad of ways in which climate change is affecting Federal agency actions.

In many cases, Federal actions have the potential to contribute to climate change by causing greenhouse gas emissions. Federal agency actions may also affect ecosystems and communities that are particularly vulnerable to climate change impacts. Additionally, Federal agency actions may themselves be affected by many of the impacts of a changing climate, such as rising sea levels, extreme weather, drought, and wildfires, and NEPA assists in considering a range of alternatives to address those impacts.

Not surprisingly, Federal courts have found that evaluating the impacts of Federal actions on climate change should be part of agencies' NEPA reviews. Litigation over various NEPA documents creates the potential for different standards across the Nation on the appropriate scope and extent of this analysis. These analytical challenges, and their legal implications, led agencies to request CEQ provide guidance and technical assistance on this topic. CEQ also received a formal petition from three non-governmental organizations under the Administrative Procedure Act to amend its regulations to address climate change in NEPA reviews.

In light of the agencies need for formal guidance, CEQ circulated drafts of guidance for interagency comment beginning in 1989 and issued initial Draft Guidance for public comment in February 2010. CEQ sought public comments on the 2010 Draft Guidance generally and included a number of questions regarding the assessment of climate change effects for land and resource management actions specifically. CEQ received more than 100 public comments and other feedback from private citizens, corporations, environmental organizations, trade associations, and Federal and State agencies. During the time CEQ was considering these comments and was engaging with Federal agencies on changes to the guidance, it received formal recommendations to finalize the guidance. The U.S. Government Accountability Office (GAO), for example, recommended CEQ finalize the guidance to assist agencies in determining how to consider the effects of climate change in the NEPA process.² In addition, the State, Local and Tribal Leaders Task Force on Climate Preparedness and Resilience recommended to the President that the guidance be finalized.³ Following years of engagement CEQ released a Revised Draft Guidance in December 2014 that reflected consideration of comments and input received.

CEQ made the 2014 Revised Draft Guidance available for public review and comment for a total of 90 days (60-day comment period and a 30-day extension). We received over 100 substantive comments from a wide range of stakeholders including from this Committee, individual members of Congress, Tribes, corporations, environmental organizations, trade associations, academics, private citizens, and Federal, State, and local government agencies.

The final guidance adopted on August 1, 2016 reflects CEQ's consideration of comments and feedback. Throughout this process, CEQ consulted with Federal agencies and other stakeholders

on the most helpful and appropriate ways to provide all Federal agencies with clarity on how they should consider the potential impacts of their actions on climate change in their NEPA reviews.

Content of the Final Guidance

The final CEQ guidance provides Federal agencies with a CEQ-endorsed framework they can rely on, providing a more predictable and consistent approach when considering climate impacts as part of NEPA alternatives, effects, and public input. This increased predictability and consistency will allow decision-makers and the public to better understand the relevant climate impacts of all proposed Federal actions, and in turn, assist agencies in comparing alternatives and considering measures to mitigate the impacts of climate change and identify opportunities to build climate resilience. It will also allow agencies to manage public resources more efficiently by focusing their attention on climate change issues when and where they matter.

The final guidance explains the application of NEPA principles and practices to the analysis of GHG emissions and climate change, and:

- Recommends that agencies quantify a proposed agency action's projected direct and indirect GHG emissions, taking into account available data and GHG quantification tools that are suitable for the proposed agency action;
- Recommends that agencies use projected GHG emissions (to include, where applicable, carbon sequestration implications associated with the proposed agency action) as a proxy for assessing potential climate change effects when preparing a NEPA analysis for a proposed agency action;
- Recommends that where agencies do not quantify a proposed agency action's projected GHG emissions because tools, methodologies, or data inputs are not reasonably available to support calculations for a quantitative analysis, agencies include a qualitative analysis in the NEPA document and explain the basis for determining that quantification is not reasonably available;
- Discusses methods to appropriately analyze reasonably foreseeable direct, indirect, and cumulative impacts of reasonably foreseeable GHG emissions and climate effects;
- Guides the consideration of reasonable alternatives and recommends agencies consider the short- and long-term effects and benefits in the alternatives and mitigation analysis;
- Advises agencies to use available information when assessing the potential future state of the affected environment in a NEPA analysis, instead of undertaking new research that is unnecessary, and provides examples of existing sources of scientific information;

- Counsels agencies to use the information developed during the NEPA review to consider alternatives that would make the actions and affected communities more resilient to the effects of a changing climate;
- Outlines special considerations for agencies analyzing biogenic carbon dioxide sources and carbon stocks associated with land and resource management actions under NEPA;
- Recommends that agencies select the appropriate level of NEPA review to assess the broad-scale effects of GHG emissions and climate change, either to inform programmatic (e.g., landscape-scale) decisions, or at both the programmatic and tiered project- or site-specific level, and to set forth a reasoned explanation for the agency's approach; and
- Counsels agencies that the "rule of reason" inherent in NEPA and the CEQ Regulations allows agencies to determine, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information.

Agencies have substantial discretion on how to implement to their programs and actions. Many are already developing strategies and their own guidance to apply the general CEQ guidance to their particular actions, programs, and decisions. Guidance does not impose new requirements -- this is not a regulation. Nothing in the guidance requires agencies to make a specific decision. It simply guides agencies on how they can take climate change impacts into consideration, which strengthens those decisions scientifically, legally, and as a matter of informed public policy.

Incorporating Public Comment and Agency Feedback in the Final Guidance

After receiving public comments and agency feedback on the 2014 Draft Guidance, CEQ made a number of changes to the final guidance to address concerns raised. First, CEQ eliminated the concept of a reference point. In both the 2010 and 2014 drafts, CEQ had proposed a 25,000 metric ton CO₂-equivalent reference point to assist agencies in identifying when quantification of greenhouse gas emissions would be appropriate, something in which this Committee was specifically interested. However, after receiving feedback from Federal agencies and other stakeholders, CEQ found that many tools are available to estimate GHG emissions and there was no need to establish a reference point for the decision whether to quantify emissions. This led CEQ to remove the reference point and instead to encourage agencies to quantify and disclose GHG emissions whenever the necessary tools, methodologies, and data inputs are reasonably available. If appropriate quantitative calculators or data inputs are not available, a qualitative analysis is recommended. To assist agencies in this area, CEQ updated its information on existing GHG accounting tools that Federal agencies have developed and used, and that may be appropriate for GHG emission quantification in particular NEPA analyses. An updated list of these GHG accounting tools was published simultaneously with the Final Guidance⁴ and will be further updated from time to time as new tools are identified.

In addition to the removal of this reference point, CEQ made changes throughout the guidance to remind agencies that they should rely on the NEPA concepts of “proportionality” and the “rule of reason” to establish when and how to take climate change into account. The Final Guidance encourages agencies to draw on their experience and expertise to determine the appropriate level and extent of quantitative or qualitative analysis required to comply with NEPA. This would help agencies avoid develop in-depth analysis when they are unnecessary.

Another change CEQ made as a result of the input received is the removal of the terms “upstream” and “downstream” in reference to GHG emissions. Comments received expressed confusion since these were not terms typically used in the NEPA process. CEQ removed these terms and focused on the more familiar NEPA regulatory terms of “direct,” “indirect,” and “cumulative effects.”

Finally, the guidance provides the agencies with more details on what to consider when determining whether to apply the guidance to ongoing NEPA reviews. In particular the guidance indicates that in making these decisions the agencies should factor whether following the guidance would inform the consideration of differences between alternatives or address comments raised through the public comment process. Agencies should also consider whether the additional time and resources needed would be proportionate to the value of the information included.

Implementation of the Final Guidance

This guidance is part of an ongoing effort to adapt NEPA implementation and help agencies make informed and transparent decisions about the impacts of climate change associated with their actions. The Final Guidance makes recommendations that will benefit all agencies and build off of the work agencies are already doing to engage in climate change-related analyses for their actions.

Since the release of the Final Guidance, CEQ has received positive feedback from agencies and is providing technical assistance to those agencies interested in developing their own agency-specific guidance materials that take into account their unique programs and missions. CEQ recommends that agencies review their NEPA procedures and propose any updates they deem necessary or appropriate to facilitate their consideration of GHG emissions and climate change. This guidance will inform CEQ’s review of agency proposals for revising their NEPA procedures. The Final Guidance and CEQ’s review of agency NEPA procedures will be important tools for achieving consistency across Federal agencies on how climate change is considered in NEPA reviews.

Conclusion

This final guidance is another big step in this Administration’s effort to consider how federal actions will impact climate change and to identify opportunities to build climate resiliency into projects with a federal nexus.

Mr. Chairman, Ranking Member Grijalva, and Members of the Committee, I firmly believe that this guidance will help agencies build more resilient projects and communities, and make more transparent decisions, which in turn improve environmental and community outcomes. I appreciate the opportunity to testify before you today and look forward to answering your questions.

¹ See CEQ, First Annual Report of the Council on Environmental Quality, pp. 93-104 (Aug. 3, 1970).

² See GAO Report to Congressional Requesters, Climate Change: Future Federal Adaptation Efforts Could Better Support Local Infrastructure Decision Makers, p. 87, GAO-13-242 (April 2013) available at <http://www.gao.gov/assets/660/653741.pdf>.

³ Recommendations of the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, p. 20, Recommendation 2.7 (November 2014) available at https://www.whitehouse.gov/sites/default/files/docs/task_force_report_0.pdf.

⁴ The list of GHG accounting tools currently can be accessed at: https://ceq.doe.gov/current_developments/ghg-accounting-tools.html.