



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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May 8, 2023

The Honorable Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Re: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, Docket ID, CEQ-2022-0005

Dear Chair Mallory:

On January 9, 2023, the Council on Environmental Quality (CEQ) published a notice of interim guidance in the *Federal Register* seeking public comment on new requirements for considering greenhouse gas emissions pursuant to the National Environmental Policy Act (NEPA).¹ I write to express strong concerns about this interim guidance and its likely impact on major infrastructure projects.² In light of the serious issues the United States currently faces with energy independence and advancing infrastructure priorities, I believe this guidance will further jeopardize our nation's sensitive energy, infrastructure, and national security interests. Accordingly, I ask CEQ to withdraw the guidance and refocus efforts on streamlining, modernizing, and reforming the NEPA process.

NEPA is a broad procedural statute meant to ensure that federal, state and Tribal agencies, as well as project stakeholders and the public are informed of the potential environmental impacts of certain proposed projects.³ NEPA requires that the environmental impacts of potential actions requiring federal permits, funding, or approval are reviewed and

¹ National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 51,196 (Jan. 9, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00158.pdf> [hereinafter GHG Guidance].

² *Id.*

³ 42 U.S.C. § 4321 *et. seq.*

disclosed publicly.⁴ According to the Congressional Budget Office, the United States spends over \$400 billion per year on infrastructure, which illustrates the vast number of projects that potentially go through the NEPA process.⁵ NEPA is frequently used to delay or stop crucial infrastructure growth, including critical safety and maintenance upgrades to highways, railroads, bridges, ports, and waterways.⁶ For transportation agencies, the NEPA process averages 7.72 years for the Federal Aviation Administration (FAA), 7.30 years for the Federal Highway Administration (FHWA), and 5.16 years for the Federal Railroad Administration (FRA).⁷ Moreover, the length of an Environmental Impact Statement (EIS) – a major NEPA component for some projects – averaged more than 600 pages despite CEQ’s recommendations to limit EISs to fewer than 150 pages.⁸ As such, NEPA remains a significant and worsening impediment to infrastructure growth across the nation.

Unfortunately, CEQ’s greenhouse gas (GHG) guidance seeks to erect new, vague, and complicated barriers for major energy infrastructure development. The new policy seeks to impermissibly favor certain projects under the broad pretext of combating climate change, which will threaten energy and infrastructure growth and prosperity.⁹ The guidance’s focus on quantifying upstream and downstream indirect GHGs clearly targets oil and gas infrastructure projects.¹⁰ This new requirement for singular projects is not only overly broad, but also potentially beyond the bounds of NEPA legal precedent.¹¹ Of concern, the guidance does not define the threshold for a “significant” quantity of GHG emissions that would trigger the requirement for agency review.¹² As a result of this ambiguity, agencies and project developers are left with an unclear understanding of how to meet CEQ’s requirements.

The guidance also advises on “de minimis” and “small” estimates of GHG emissions without elaborating on the meaning of these standards, failing to provide certainty for project applicants and agencies.¹³ Moreover, the guidance insists that agencies must consider the social

⁴ *Id.*

⁵ CBO, PUBLIC SPENDING ON TRANSP. AND WATER INFRASTRUCTURE, 1956 to 2017 (2018), *available at* <https://www.cbo.gov/system/files/2018-10/54539-Infrastructure.pdf>.

⁶ National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55,757 (Oct. 7, 2021), [hereinafter NEPA NPRM].

⁷ Environmental Impact Statement Timelines (2010-2017), CEQ, (Dec. 14, 2018), *available at* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timelines_Report_2018-12-14.pdf.

⁸ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304, (July 16, 2020).

⁹ Jean Chemnick, *White House puts a ‘thumb on the scales’ for green energy*, E&E News (Jan. 10, 2023) *available at* https://subscriber.politicopro.com/article/eenews/2023/01/10/ceq-puts-a-thumb-on-the-scales-for-green-energy-00077117?utm_source=ground.news&utm_medium=referral.

¹⁰ GHG Guidance, *supra* note 1.

¹¹ *Id.*; *see also* Letter from Aaron Padilla, Vice President, Corporate Policy, Am. Petroleum Inst. to the Honorable Brenda Mallory, Chair, CEQ (Jan. 23, 2023), *available at* <https://www.api.org/~media/files/news/2023/01/23/api-ceq-nepa-ghg-guidance-letter> (noting that “[f]or example, the production of oil offshore in the US Gulf of Mexico is not a cause of the emissions from motor vehicles because those would have occurred irrespective of the source of oil.”) [hereinafter *API Letter*].

¹² GHG Guidance, *supra* note 1 (explaining “[t]his guidance does not establish any particular quantity of GHG emissions as ‘significantly’ affecting the quality of the human environment.”).

¹³ *Id.*

cost of GHGs for proposed projects.¹⁴ This measurement is a confusing and difficult to utilize metric for both agency decision makers and the public. Using the social cost of GHG emissions may also conflict with NEPA's existing regulations that discourage the use of cost-benefit analysis when "important qualitative considerations" exist.¹⁵ These issues will likely lead to unnecessary costs, delays, legal threats, and widespread confusion that delay or shut down major energy infrastructure projects. Moreover, agencies already possess full discretion to discuss these issues as part of its their NEPA reviews if they deem such information appropriate. Therefore, such guidance is unnecessary, duplicative, and counterproductive for infrastructure development.

This ill-timed guidance was issued after the Biden Administration finally acknowledged the need to advance and promote oil and gas infrastructure projects. The guidance sends inconsistent and uncertain messages about the Administration's policies, creating instability for energy and infrastructure interests. In his 2023 State of the Union address, President Biden conceded that the country will "need oil for at least another decade . . . and beyond that."¹⁶ President Biden has also supported efforts to streamline NEPA and project permitting.¹⁷ The Administration's openness to fossil fuels signals an understanding that these resources remain a powerful force in advancing our county's energy and infrastructure security. Contrary to these admissions, CEQ's guidance imposes onerous review requirements on the very projects necessary to achieve energy independence.

On the international stage, American-produced liquified natural gas (LNG) represents a critical force in countering Russian power after Russia severely restricted natural gas deliveries in Europe.¹⁸ In an important step for domestic interests, the United States recently committed to "ensuring U.S. LNG deliveries to Europe of 50 [billions of cubic meters] in 2023" to maintain a stable supply of energy to our European allies at Russia's expense.¹⁹ This necessary commitment will require developing and promoting our LNG resources and infrastructure to strengthen our international standing and weaken Russia's stronghold on the world's energy supply.²⁰ The Energy Information Administration now predicts that LNG exports and imports will continue to grow in the coming years, necessitating increased infrastructure to meet these essential energy

¹⁴ *Id.*

¹⁵ 40 C.F.R. § 1502.22 (2023).

¹⁶ President Joseph R. Biden, State of the Union Address (Feb. 7, 2023), *available at* <https://www.whitehouse.gov/state-of-the-union-2023/>.

¹⁷ Press Release, THE WHITE HOUSE, *Statement from President Joe Biden on Senator Joe Manchin's Permitting Reform Proposal*, (Dec. 15, 2023) *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/15/statement-from-president-joe-biden-on-senator-joe-manchins-permitting-reform-proposal/#:~:text=The%20Congress%20promised%20the%20American,Manchin's%20permitting%20reform%20legislation.>

¹⁸ Timothy Puko, *Why Big Oil is less worried about Biden phasing out fossil fuels*, WASH. POST (Mar. 10, 2023), *available at* <https://www.washingtonpost.com/climate-environment/2023/03/10/biden-oil-companies-climate-change/>.

¹⁹ EU-U.S. TASK FORCE ON ENERGY SECURITY, PROGRESS REPORT AND OUTLOOK 2022-2023 (2023), *available at* https://energy.ec.europa.eu/system/files/2023-04/EU-US%20Energy%20Security%20TF_report_final_0.pdf.

²⁰ Frederica Di Sario & Antonia Zimmerman, *US pledges to keep pumping natural gas to Europe*, POLITICO PRO (Apr. 4, 2023), *available at* <https://www.politico.eu/article/us-supply-natural-gas-lng-eu-antony-blinken/>.

needs.²¹ Nonetheless, CEQ's new GHG guidance will directly target the growth of LNG terminals through convoluted new requirements, draw out NEPA reviews, and increase exposure of these projects to weaponized litigation.²²

Sacrificing energy independence and national security for the misguided and confusing policy in CEQ's GHG guidance represents a dangerous and unnecessary domestic gamble. After Americans struggled with record high gas prices last year, gas prices are now rising again in the face of increasing demand and the foreign influence of OPEC+.²³ The rise in gas prices is already predicted to impact the price of essential goods such as food, creating higher costs for Americans with continuing inflation.²⁴ Adding extra NEPA requirements to energy infrastructure projects compounds existing problems and creates new obstacles for development, further increasing the cost of energy for all Americans.

Additionally, this guidance creates policy instability and regulatory uncertainty by imposing new requirements onto the industry on top of existing NEPA regulations. The fact that the guidance went into effect immediately could impact infrastructure projects at advanced stages of completion as well as the planning of future projects.²⁵ Changing policy and requirements for a project in the late stages of its development is an unfair, chaotic, reckless, and irresponsible abuse of power.

Finally, NEPA-related delays in infrastructure projects can lead to the loss of investment and extinguish the labor force when jobs are put on hold or never materialize. These delays represented a significant reason for national labor and commerce groups' strong support of the updating, modernizing, and streamlining of NEPA regulations during the Trump Administration.²⁶ Given that NEPA is already the most frequently litigated federal environmental statute, this GHG guidance will only serve to increase litigation, further delaying necessary infrastructure development.²⁷

CEQ's GHG Guidance represents a prime example of the Administration creating barriers to the United States' success, while other countries like China, Russia, and Saudi Arabia continue to grow and develop their energy infrastructures. President Biden correctly acknowledged that fossil fuel and the infrastructure supporting these resources will remain an

²¹ Victoria Zaretskaya, *Liquefied natural gas will continue to lead growth in U.S. natural gas exports*, (Mar. 8, 2023), available at <https://www.eia.gov/todayinenergy/detail.php?id=55741>.

²² See *White House puts a 'thumb on the scales' for green energy*, *supra* note 9.

²³ Ellen Chang, *Gasoline is Doing Something to Make You and the Fed Unhappy*, THE STREET, (Apr. 10, 2023), available at <https://www.thestreet.com/commodities/gas-prices-rising-again>.

²⁴ Lee Stoll, *Rising gas prices expected to affect food costs, report says*, KOMO, (Apr. 10, 2023), available at <https://wcti12.com/news/nation-world/rising-gas-prices-expected-to-affect-food-costs-report-says-opec-plus-russia-saudi-arabia-united-arab-emirates-gulf-countries-middle-east-petroleum-food-prices-economics-finances-fuel-consumer-price-index-mileage-spring-break-summer-vacation>.

²⁵ *API Letter*, *supra* note 11.

²⁶ See e.g. UNLOCK AMERICAN INVESTMENT, *About*, available at <https://www.unlockamericaninvestment.com/about/>.

²⁷ NINA M. HART & LINDA TSANG, CONG. RESEARCH. SERV., IF11932, NATIONAL ENVIRONMENTAL POLICY ACT: JUDICIAL REVIEW AND REMEDIES, (2021), available at <https://crsreports.congress.gov/product/pdf/IF/IF11932>.

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essential part of our country's success for at least the next decade and beyond.²⁸ The Administration must take steps to acknowledge that stance and provide certainty and stability to the business community. Accordingly, we ask that CEQ promptly withdraw this GHG guidance and instead focus on streamlining the permitting process and promoting the development of all American infrastructure.

Sincerely,



Sam Graves
Chairman
Committee on Transportation
and Infrastructure

CC: The Honorable Rick Larsen, Ranking Member
Committee on Transportation and Infrastructure

²⁸ See e.g. *State of the Union Address*, *supra* note 18.