
STAY AHEAD OF THE HEADLINES

CLIMATE:

Federal reviews must weigh indirect emissions -- legal experts

Amanda Reilly, E&E reporter

Published: Tuesday, April 5, 2016

Federal agencies should consider upstream and downstream emissions of greenhouse gases when conducting environmental reviews of fossil fuel extraction and transportation projects, Columbia University legal experts said in a paper released today.

Not only are courts likely to treat the study of such emissions as required by the National Environmental Policy Act, but their consideration would also improve federal decisionmaking, the Sabin Center for Climate Change Law [paper](#) said.

"We hope that the paper will serve as a roadmap for agencies, courts, and environmental advocates to ensure that the federal government conducts a thorough analysis of indirect greenhouse gas emissions prior to approving any projects that will contribute to the production and consumption of fossil fuels," Sabin Associate Director Jessica Wentz wrote in a blog post. Wentz and Executive Director Michael Burger wrote the report.

Whether federal agencies should consider upstream extraction and downstream combustion when reviewing the environmental impacts of federal fossil fuel projects has been the subject of more than a dozen lawsuits in the last five years.

"This question is an essential one," the paper says, "because it can significantly affect the balance of costs and benefits of a proposed project and an agency's ability to justify the approval of the project in light of that balance."

Direct emissions from fossil fuel projects on publicly leased land represent "only a small proportion of the life cycle emissions," the Columbia University authors argue.

Liberal Democrats and environmentalists have previously pushed federal agencies to take into account these indirect emissions. They've sparred with the Federal Energy Regulatory Commission over the issue ([Greenwire](#), April 4).

In its paper, Sabin Center experts found, in general, that federal agencies are beginning to recognize that both upstream and downstream emissions fall under NEPA's scope. The Department of the Interior recently announced it would analyze those emissions as part of its review of the federal coal leasing program.

But there are "major inconsistencies in the analytical approaches both within and across agencies," the paper says.

While the White House in 2010 issued draft guidance on greenhouse gas emissions within the context of NEPA reviews, there's still no final guidance document to guide agencies.

Sabin Center researchers say they conducted a thorough review of litigation on the subject and found that courts have generally regarded upstream and downstream emissions as required by NEPA in coal extraction and transportation projects.

Courts haven't yet ruled on cases that involve indirect emissions from oil and gas projects -- four of which are before the U.S. Court of Appeals for the District of Columbia Circuit -- but the Sabin paper argued that courts are likely to take a similar view.

The law requires federal agencies to consider environmental "impacts that are caused by the action and are later in time or farther removed in the distance, but still reasonably foreseeable."

"Upstream and downstream emissions," the paper says, "fit squarely within the regulatory definition of 'indirect impacts' that should be evaluated in NEPA reviews."

The paper calls on federal agencies to inventory all emissions occurring throughout all stages of the fossil fuel supply chain. Agencies should also take into account a federal project's effect on fossil fuel prices and production, they argued.

Twitter: [@apeterka](#) | Email: areilly@eenews.net



The Premier Information Source for Professionals Who Track Environmental and Energy Policy.

© 1996-2016 E&E Publishing, LLC [Privacy Policy](#) [Site Map](#)