

### 3. WHITE HOUSE:

#### Comment period on NEPA climate guidance ends with a bang

Hannah Northey and Jean Chemnick, E&E reporters

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Top Senate Republicans yesterday blasted draft guidance on how federal agencies should incorporate climate change into their project reviews as an "illegitimate expansion" of a key environmental law.

Several industry groups also harshly criticized the proposal while environmentalists strongly supported it in comments submitted ahead of last night's deadline for public input on the National Environmental Policy Act (NEPA) document.

Senate Environment and Public Works Chairman James Inhofe (R-Okla.) spearheaded a [letter](#) to the White House Council on Environmental Quality arguing that the draft guidance to agencies on how to address greenhouse gas emissions in their NEPA reviews went beyond the scope of the law, would retard economic development in a host of ways and must be scrapped.

"Failure to do so will paralyze agency action, including actions needed to create jobs and grow our economy, by requiring endless and meaningless analyses and creating new opportunities for litigation to delay and block important projects," the senators wrote.

The guidance the White House released in December could affect the way federal agencies treat a host of economic activities, from timber operations to energy development to the siting of transmission and pipeline infrastructure that cross federal lands ([E&ENews PM](#), Dec. 18, 2014).

But the EPW Republicans said agencies must consider only the "direct or indirect effect" of a federal action when preparing an environmental impact statement under NEPA. Climate change does not fit either definition, they argued in the letter, because no single project has a "reasonably close causal relationship" to climate change -- a global phenomenon.

The letter also challenged the draft's assertion -- upheld by most climate scientists -- that greenhouse gases and climate change are linked. And it said the draft ignores statutory requirements that there be a "proximate causal connection and agency control over an action's effects before those effects must be considered."

The six senators also echoed comments from natural gas and other industries that the proposal should be changed to give agencies discretion to consider climate change and greenhouse gas emissions as they see fit when applying NEPA - including the right to ignore them.

"By prohibiting agencies from stating the obvious truth, that individual agency actions could have only a small, if any, effect on the global climate, the draft guidance sends agencies down the rabbit hole of meaningless analysis for each and every action they may take," they wrote.

One of the letter's signatories was Sen. Deb Fischer (R-Neb.), who has filed an amendment to the budget resolution now before the Senate that would prevent the guidance from becoming final. It is not clear yet whether it will receive a vote.

But environmentalists note the purpose of the guidance is to create a uniform policy for how agencies across the government incorporate climate change into NEPA implementation. Currently some agencies consider its effects fully when permitting projects, and some do not.

Increasing agency discretion in the guidance "would defeat the whole purpose," said Michael Gerrard, director of the Center for Climate Change Law at Columbia Law School and one of the lawyers who first petitioned the George W. Bush administration in 2008 to promulgate the guidance.

"I think that it is extremely important that agencies consider climate change because it is such a pressing issue, so giving them the discretion to ignore it is the ostrich method," he said.

Green advocates and lawyers including Gerrard have long urged the Obama White House to require agencies to consider the effect the projects they permit will have on climate change -- and vice versa.

They were frustrated when CEQ never finalized a previous draft guidance released in 2010. But they lauded changes made in the new version, which solidifies how climate change would be considered in federal land-use decisions and directs agencies to consider the vulnerability of the projects they permit.

The latter has the potential to save taxpayers money, Gerrard said.

"If you're building an airport runway on a coastline, you want to make sure that the runway will still be above water at the end of its useful life," he said. "The NEPA review during the planning process is the perfect time to think about that and has the potential to save the federal government an enormous amount of money."

## Industry opposition

The oil, gas and power sectors joined manufacturers yesterday in calling on the White House to scrap the guidance, making many of the same points the Republicans did. The language, they said, is too expansive and could drive up the cost of project reviews, trigger delays and even "paralyze" land management programs.

More than a dozen industry groups in a [letter](#) yesterday cast the revisions as inconsistent with NEPA, which requires agencies to take a "hard look" at environmental consequences of any major federal action without mandating any particular outcome.

The global, incremental nature of greenhouse gas emissions cannot be tied back to one project under NEPA, and requiring agencies to follow the proposed guidance threatens to transform NEPA from a procedural statute into a "substantive one that directs agencies to adopt alternatives with the lowest GHG emissions," the groups warned.

The Chamber of Commerce, American Public Power Association, National Association of Manufacturers, American Chemistry Council, American Petroleum Institute and National Rural Electric Cooperative Association signed the letter.

The groups also laid out specific revisions they want should the White House decide to finalize the language.

To prevent NEPA reviews that are "boundless," CEQ should clarify that agencies won't be required to consider the international and global effects of emissions, they said. Any final guidance should also impose legal limits on their scope, including the proximate "cause and foreseeability limits" in gauging a project's indirect and cumulative effects, they said.

The groups also raised concerns that the new language -- unlike the original 2010 proposal -- includes land and resource management actions that are already complex in nature. Interest groups opposed to actions such as snowmobiling, timber harvests, and oil and gas development could file lawsuits using NEPA -- and potential impacts related to climate change -- to stall actions they disagree with, the groups warned.

The CEQ guidance drew particular criticism from gas producers, pipeline developers and companies looking to export domestic shale gas.

The Center for LNG warned in a letter to CEQ that the guidance could create ambiguity for developers of export projects, open the door to unnecessary litigation and add regulatory expenses. The group asked for the language to be withdrawn, warning that NEPA reviews, when poorly framed, can add costs, uncertainty and delay.

Joan Dreskin, vice president of regulatory affairs for the Interstate Natural Gas Association of America, in comments to CEQ yesterday also [said](#) the draft revisions contradict NEPA law and regulation, past Supreme Court decisions, and agency precedent.

Dreskin argued that issues are required to be "reasonably foreseeable" and "significant" before they're incorporated in NEPA reviews, and there must be a "causal connection and agency control" over an action's effects before it's considered. Climate change, as it stands, doesn't fit into those categories, she said.

"The nature of climate change is such that there is no causal connection -- much less a reasonably foreseeable and proximate causal connection -- between a single project's [greenhouse gas] emissions and a climate change-related effect like sea-level rise," Dreskin wrote.

She also said more than 23,000 miles of large-diameter transmission pipelines must be built in the next two decades to meet an uptick in demand as the EPA's Clean Power Plan and other environmental rules take effect. The United States and Canada together will need to invest \$313 billion through 2035 on new pipelines, storage fields, power plants and processing facilities, as well as export-related facilities and equipment, she said.

"Given the projected need for new infrastructure, INGAA is concerned about any policy initiative that might hinder the critical infrastructure necessary to meet market demand for natural gas on a timely and predictable basis," Dreskin wrote.

The National Mining Association, Colorado Mining Association, Tennessee Mining Association and Utah Mining Association said the draft guidance created additional permitting burdens and uncertainty without benefits.

"The NEPA process is already complex and time consuming," their comments said. "CEQ's proposal will merely serve to amplify these problems by directing agencies to consider impacts beyond their statutory authority to address and convey the false impression that reliable analyses can be done on many aspects of climate change."

But Columbia's Gerrard said the very fact that many agencies are already considering climate change and greenhouse gas emissions in their NEPA projects shows the landmark environmental law provides ample authority for all agencies to do that.

Columbia released a [study](#) in 2012 showing how various agencies incorporate warming into their NEPA processes.

"It shows that it's feasible to do that, and sensible," he said. Gerrard's [comments](#) to the White House reflect that.

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Twitter: [@chemnipot](#) | Email: [jchemnick@eenews.net](mailto:jchemnick@eenews.net)

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