



April 10, 2023

The Honorable Ms. Mary B. Neumayr
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

RE: Comments on the Council on Environmental Quality’s Notice of Interim Guidance, “National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change,” Docket ID No. CEQ-2022-0005.

Submitted electronically via regulations.gov

Dear Ms. Neumayr:

The American Chemistry Council (ACC) appreciates opportunity to provide recommendations in response to the Council of Environmental Quality’s (CEQ) Interim Guidance, “National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change.”¹ ACC supports CEQ’s important efforts to create a domestic energy infrastructure industrial base that is diverse, resilient, and competitive while meeting economic, national security, and climate objectives. As CEQ and the current Administration begin to distribute unprecedented levels of legislative resources through initiatives like the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA) to deploy lower-emissions energy, manufacturing, and transportation technologies, it is critical that the federal permitting policies and procedures that enable these developments promote timely and effective federal action while maintaining appropriate protection for communities. To inform CEQ’s consideration of these issues, ACC provides the comments outlined in this letter and joins the separate comments of the U.S. Chamber submitted to this docket.

ACC represents a diverse set of companies engaged in the business of chemistry, an innovative, \$517 billion enterprise. The chemical manufacturing industry works to solve some of the biggest challenges facing our nation and our world, driving innovation through investments in research and development (R&D) that exceed \$11 billion annually. ACC members supply the chemical products, polymers, and materials underpinning the energy sector’s industrial base and the energy efficiency, clean energy, and clean energy-enabling technologies needed for a low-carbon economy.

Through programs like Responsible Care®, ACC members have historically demonstrated a sector-wide commitment to continuous improvement in environmental performance, particularly for greenhouse gas (GHG) emissions. As reported through the program, from 2017 to 2021, ACC’s reporting members have reduced their GHG intensity by more than 12 percent, a metric calculated by determining the pounds of Carbon Dioxide (CO₂),

¹ NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023).



equivalent emissions per million pounds of production. A considerable portion of this performance improvement and emissions reduction achievement can be attributed to the switch to lower carbon intensity fuel such as natural gas.

ACC members are focused on continuing this progress to achieve a lower emissions future. Our members regularly explore and invest in new energy sources, feedstocks, and manufacturing technologies that can help reduce the emissions associated with every point in their value chains. To facilitate this, our members rely on NEPA permitting processes that promote certainty, transparency, and efficiency to enable timely investment and development of these important projects. In the past, this critical need has received bipartisan recognition from previous administrations through executive orders and guidance designed to streamline and expedite decision-making at the federal level and accelerate project delivery. Further, the success of landmark legislation like the IRA and BIL rely heavily on an efficient permitting process to capitalize on unprecedented opportunities to accelerate the country's transition to a lower emissions future through tools like grants, loans, and federal and state investment in critical infrastructure.

As we remain focused on a lower emissions future, ACC notes that the realization of our shared goals will not happen overnight and cannot happen without significant investments paired with an appropriately streamlined NEPA permitting process. The continued development of natural gas as an essential feedstock to domestic manufacturing will be critical to maintaining U.S. competitiveness on a global scale while lowering emissions.

While ACC appreciates CEQ's efforts to further these aims through its Interim Guidance, we are concerned that its implementation and singular focus on GHG emissions could have the opposite effect. Specifically, due to its immediate effect, the Interim Guidance will create uncertainty at the outset for projects that are already undergoing NEPA review – even for those nearing agency authorization. CEQ compounds this problem by directing agencies to “consider applying this guidance to actions in the EIS or EA preparation stage if this would inform the consideration of alternatives or help address comments raised through the public comment process.”² CEQ should clarify that the Interim Guidance does not apply to – and will not delay – the thousands of pending critical private sector actions for which federal authorizations were requested prior to issuance of the draft Interim Guidance. It would be unreasonable and undermine basic principles of fairness and certainty in permitting if CEQ were to change existing federal requirements for these actions during current reviews. As such, ACC recommends that the provisions in the final guidance should only apply to new applications that require NEPA review submitted after the guidance's effective date.

Additionally, instead of streamlining a potential path for future programs, the Interim Guidance anticipates significant new information and process requirements for several types of projects. For example, the Interim Guidance suggests amendments to agency NEPA implementing regulations “to ensure they are able to gather from applicants the information

² 88 Fed. Reg. 1212.

needed to analyze the climate change effects of their proposed actions.”³ The Interim Guidance also states that agencies may not “necessarily” need to “fund and conduct original climate change research to support their NEPA analyses” to include the potential that agencies may require project proponents to do the same, leaving open the possibility that they should do so. This undercuts both this Administration’s goals regarding efficient federal permitting and the longstanding NEPA regulations that do not require pursuit of “incomplete information” if the overall cost of obtaining specific additional information is unreasonable or means to obtain it is not known. The arbitrary nature of CEQ’s Interim Guidance is underscored by CEQ’s invocation of the “rules of reason” and “proportionality” which CEQ applies to only some categories of projects.

ACC is concerned that the cumulative impact of CEQ’s approach as outlined in the Interim Guidance will be to prevent, rather than promote, investment in projects that are needed as a predicate to the adoption of industry abatement technologies, thereby delaying broader energy efficiency projects and emissions reductions. For example, widespread electrification to further reduce emissions from large industrial and mobile sources will require a rapid and significant expansion of the domestic grid. To enable this, it is essential for associated projects to move swiftly and efficiently through the federal review and permitting process so that emissions reductions can be realized as soon as possible with increased electrification. However, as stated earlier, CEQ’s Interim Guidance as drafted will only serve to increase delays and additional requirements, unnecessarily slowing down the projects necessary to achieve these goals. Similarly, timely permitting will be critical for expanded pipeline infrastructure to advance emissions reductions approaches, including increased carbon capture, utilization, and storage, direct air capture, and distribution networks connecting industrial users with hydrogen suppliers.

Diversifying the energy sector ensures security and reliability when addressing the impacts of climate change. To support the energy transition and help accelerate reductions in GHG emissions, our nation’s permitting program needs to enable access to a broad range of sources and technologies through permitting programs that create efficient, transparent review processes while avoiding unnecessary burdens. As currently drafted, CEQ’s Interim Guidance will result in significant and unfair delays for current and future projects that would improve manufacturing sector emissions and domestic competitiveness. Prior to proceeding, ACC recommends that CEQ fully consider the issues raised in these comments and those from the U.S. Chamber and revise its Interim Guidance as necessary.

Thank you for your consideration of these comments. If you have any questions or would like more information, please free to contact ACC at (202) 249-6423 or brendan_mascarenhas@americanchemistry.com.

Sincerely,

Brendan Mascarenhas
Director, Regulatory & Scientific Affairs, American Chemistry Council

³ 88 Fed. Reg. 1205, FN 90.