



April 10, 2023

Submitted via [www.regulations.gov](http://www.regulations.gov)

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 – Interim Guidance. CEQ-2022-0005**

Dear Chair Mallory,

The Petroleum Association of Wyoming (PAW) represents companies involved in all aspects of responsible oil and gas development in Wyoming, including upstream production, oilfield service, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more<sup>1</sup>. Disclosure of greenhouse gas emissions has clearly become an area of great focus in environmental reviews. PAW would encourage the Council on Environmental Quality (CEQ) to offer more reasonable guidance for federal agencies to follow than that currently presented. This interim guidance is prescriptive, broad and carries far too much weight, likely to the detriment of the other factors to be considered during National Environmental Policy Act (NEPA) reviews. Simpler yet fair guidance would provide more consistent, comparable disclosure across analyses. It would also help to reduce the incentives to litigate on NEPA related issues.

Standing at 48 percent surface and 67 percent subsurface federally managed estate, Wyoming understands the importance of having workable implementing guidance for NEPA. This is more acute for the oil and gas industry in this state, where an average of 73 percent of the molecules produced have a federal nexus. The federal government has a profound effect on the vibrancy of this industry. PAW and its members go to great lengths to ensure that NEPA is implemented in a rigorous but fair manner.

Starting with a broad view, CEQ's current implementing guidance covering the entire NEPA process (and its 68 underlying aspects) is 25,559 words long. This includes describing processes to consider defining the purpose and need, determining the appropriate level of NEPA, analyzing the affected environment, cost-benefit analysis and more. This interim guidance (covering one aspect) took CEQ 19,847 words to provide what it deems sufficient explanation to federal agencies. It has eleven umbrella

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<sup>1</sup> PAW advocates for oil and gas development that supports sustainable production of Wyoming's abundant resources; fosters mutually beneficial relationships with Wyoming's landowners, businesses, and communities; and upholds the values of science-based, environmental stewardship. Recent studies show this industry supports over 12,000 jobs in Wyoming and contributes \$5 billion in economic activity. Our industry generates significant tax revenue to the state of Wyoming, funding state and local government operations, education and public infrastructure. Eighty-five percent of the oil and gas companies operating in Wyoming are classified as small businesses.

areas of consideration, each filled with numerous avenues for agencies to traverse. This incorporates a voluminous amount of new analysis for federal agencies to conduct, and to do so at a level to be considered appropriately disclosed. This will strain federal agencies resources, restricting their ability to keep up with their many other demands.

A report<sup>2</sup> distributed by CEQ in 2020 calculated that the average environmental impact statement took 4.5 years to complete and 25 percent of EIS's took more than six years. Without any meaningful streamlining of the general NEPA process, adding this complex GHG guidance into the mix will drag out that timeframe and, pointedly, only for actions with the potential to emit GHG emissions. PAW believes the guidance does not align with NEPA's principles of "rule of reason" and "proportionality". While guidance is not binding, it is a federal agency's interpretation of their authority and requirements under federal law. Setting a standard that is not realistically achievable for federal agencies, CEQ is opening federal agency actions up to more opportunities for litigation. Uncertainty on NEPA requirements by the BLM already has every lease sales since February 2015 and over 5,000 approved APDs challenged in federal courts.

PAW generally appreciates CEQ's focus on disclosure of the impacts from taking the No Action Alternative. A major caveat to that appreciation is, as written, it's apparent bent towards suggesting any No Action Alternative resulting in lower or no GHG emissions is the beneficial path. PAW encourages CEQ to ensure its guidance on analyzing the No Action Alternative results in a fair disclosure and the analysis is put into context for the action under consideration. The context for oil and natural gas is bounded in the reality that they are currently invaluable resources, providing a level of beneficial human welfare that is not achievable by any other means. Oil and natural gas have been and will continue to be in high demand. The Energy Information Administration released its Annual Energy Outlook 2023 on March 16, 2023. It's reference case incorporates the Inflation Reduction Act into its projection extending to 2050. Even with the influence of the largest piece of climate change legislation in U.S. history, the AEO 2023 projects that U.S. natural gas and petroleum consumption will remain essentially flat through 2050 (-0.2 percent and -0.1 percent, respectively.) Production of natural gas will increase by 15 percent, due primarily to greater exports, and similarly oil production will increase by 12 percent. These are fundamental factors for federal agencies to consider.

The most responsible action, both from an environmental perspective and from an economic and environmental justice perspective, is to encourage development of resources on federal lands. Federal land resource development is the safest, cleanest, most sustainable production in the world. If these resources are not developed in the U.S., they will certainly come from another source to meet our nation's and the world's present and future demands. Currently, 40 percent of the oil consumed in the U.S. is sourced internationally. One could assume that if supply from Wyoming is diminished due to decisions made from unbalanced analysis, that diminished supply will be replaced in part by international production. The U.S. has no control over how resources are developed in other countries – no oversight on emission controls, monitoring or compliance. This would generally lead to a higher environmental footprint than domestically produced resources. International supply will also invariably require longer and more intensive supply chains, directly contributing to higher GHG emissions. These

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<sup>2</sup> Council on Environmental Quality, Environmental Impact Statement Timelines (2010-2018) - June 12, 2020

considerations meet the call from CEQ for federal agencies to “place GHG emissions in appropriate context.”<sup>3</sup>

In the following, PAW highlights a few examples of recommendations that highlight the broad consequences of CEQ’s flawed interim guidance.

**At page 1201, CEQ suggests: “This section of the guidance identifies and explains the following steps agencies should take when analyzing a proposed action’s climate change effects under NEPA:**

**(3) Analyze reasonable alternatives, including those that would reduce GHG emissions relative to baseline conditions, and identify available mitigation measures to avoid, minimize, or compensate for climate effects.”**

Proper analysis of alternatives is important, as long as they stay within the confines of the applicant’s purpose and need for federal action. And while there are limited avenues for compensatory mitigation to offset disturbance to habitat, PAW is not aware of any compensatory framework for GHG emissions. This provision does not appear to be one within the jurisdiction of CEQ to recommend.

**At page 1204, CEQ suggests: “agencies should evaluate reasonable alternatives that may have lower GHG emissions, which could include technically and economically feasible clean energy alternatives to proposed fossil fuel-related projects”**

PAW fails to understand, within the confines of a Purpose and Need statement, how a federal agency could determine that a reasonable alternative to developing oil and gas on federal lands would be to disapprove the project and replace it with an entirely different electricity generating project. PAW does not agree that increasing production and sale of electric vehicles or house appliances run on something besides natural gas is a recommendation that is within CEQ’s authority.

**At page 1206, CEQ suggests: “CEQ encourages agencies to mitigate GHG emissions associated with their proposed actions to the greatest extent possible, consistent with national, science-based GHG reduction policies established to avoid the worst impacts of climate change.”**

PAW is unsure what CEQ means by “the greatest extent possible.” Again, fitting into the Purpose and Need of a project, and appreciating the ‘rule of reason’, does CEQ expect federal agencies to only approve an action with associated GHG emissions by requiring full elimination of Scope 1, 2 and 3 emissions? This seems an absurd outcome, but one within the extreme range of possibilities given the vague yet profound directive. This type of hyperbole should be removed from what is a consequential subject.

**At page 1209, CEQ suggests: “Federal agencies should identify any communities with environmental justice concerns, including communities of color, low income communities, and Tribal Nations and Indigenous communities, impacted by the proposed action, and consider how impacts from the proposed action could potentially amplify climate change-related hazards...”**

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<sup>3</sup> Page 1197

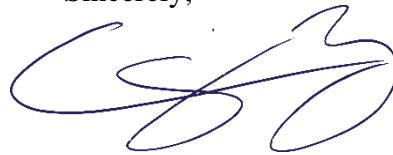
This seems an inappropriate opportunity for CEQ to suggest additional local analysis of a project than is necessary for GHG emissions. Other provisions of NEPA appropriately require disclosure of impacts to local communities. Requiring this disclosure through a GHG purview would result in disclosure of impacts too theoretical to be considered practical.

### **Conclusion**

CEQ has gone far outside of its jurisdiction in proposing such a vast level of analysis for federal agencies to consider during the NEPA process. Instead of crafting a NEPA process that encourages economic development on federally managed lands while understanding the impacts of that development, CEQ is instead proposing to put a significant burden on federal employees, prolong the already arduous permitting process and open actions up to more litigation. CEQ should instead be encouraging agencies to disclose the profound environmental cost of taking the No Action Alternative. Disclosing that information in an unbiased manner would lead a quick and repeatable outcome that encourages domestic production. As written, PAW requests CEQ to rescind this interim guidance.

PAW urges CEQ to remember that the availability of affordable and reliable energy has ushered in a period of human flourishing unmatched in all of human history. Wyoming's oil and gas operators are here to better the lives of all Americans, just as we have done since statehood. CEQ should be working in every way to ensure that NEPA supports domestic industries proven to support the livelihoods of modern life.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Colin McKee', with a stylized flourish at the end.

Colin McKee  
Regulatory Affairs Director  
Petroleum Association of Wyoming

cc: The Honorable John Barrasso, U.S. Senate, State of Wyoming  
The Honorable Cynthia Lummis, U.S. Senate, State of Wyoming  
The Honorable Harriet Hageman, U.S. House of Representatives, State of Wyoming  
The Honorable Mark Gordon, Governor, State of Wyoming