



American  
Petroleum  
Institute

January 23, 2023

The Honorable Brenda Mallory  
Chair, Council on Environmental Quality (CEQ)  
The White House  
1600 Pennsylvania Ave NW  
Washington DC 20500

Dear Chair Mallory,

The American Petroleum Institute (API) shares the Biden administration's goal of reducing greenhouse gas (GHG) emissions across the economy and, specifically, those from energy production, transportation, and use by society. We also share the administration's goal of permitting reform to reduce Americans' energy bills, promote energy security for the US and our allies, and boost our ability to build energy projects. The [API Climate Position](#) and [API Climate Action Framework](#) outline the oil and natural gas industry's actions to reduce GHG emissions through industry-led solutions and our active work on policies that address the risks of climate change while meeting the global need for energy. Achieving meaningful GHG emissions reductions while meeting the energy needs of a growing global economy will take a combination of innovation and thoughtful, targeted public policy.

**However, the recently released *CEQ National Environmental Policy Act (NEPA) Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*<sup>1</sup> is counter-productive climate policy that will likely harm the development of energy projects necessary to provide Americans and our allies with affordable, reliable, and cleaner energy.** We urge the Biden administration to rescind the immediate effect of the Guidance, revise it according to the detailed comments that API and many others will submit, and to work with industry and non-industry stakeholders on a bipartisan basis to encourage Congress to enact durable NEPA permitting reform.

API represents nearly 600 member companies that engage in a wide variety of federally regulated activities that trigger NEPA reviews, including exploration and production of oil and natural gas resources on federal lands and the Outer Continental Shelf; construction of interstate natural gas pipelines and natural gas and oil pipelines that cross federal lands; and construction and operation of petroleum refineries, liquefied natural gas terminals, and carbon capture facilities.

**The *CEQ NEPA Guidance on GHGs* is unprecedented and unsound policy.**

The immediate effect and the far-reaching scope of the CEQ Guidance make it unprecedented and unsound policy. Despite its designation as a "Notice of Interim Guidance," the Guidance takes immediate effect for agencies' implementation of NEPA.<sup>2</sup> This raises uncertainty even for energy

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<sup>1</sup> National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, [Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices](#), pp. 1196-1212.

<sup>2</sup> "CEQ is issuing this guidance as interim guidance so that agencies may make use of it immediately..." [Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices](#), p. 1196.

projects that are far advanced in the agency NEPA review process and that may have been nearing agency authorization.<sup>3</sup>

The Guidance contains several provisions that seek to maximize the mitigation of upstream and downstream GHGs with very little regard for: the strong climate regulations of other agencies, duplication across multiple agencies' implementation of NEPA, the benefits of natural gas and oil projects, or a need for cost-effectiveness in reducing GHGs. Several of these provisions are unprecedented as guidance for the broad implementation of NEPA across agencies.

The most harmful provisions of the Guidance include:

- ***The Guidance Wrongfully Includes Upstream and Downstream Indirect GHGs.*** The inclusion of all upstream and downstream indirect GHGs is not appropriate when those effects are not within an agency's ability to mitigate those effects.
  - ***This is legally inappropriate.*** As we have previously noted, the consideration of this wide scope of GHGs in all instances is legally inappropriate according to the terms of NEPA itself, as well as subsequent court rulings.<sup>4</sup> As the Supreme Court held in *Department of Transportation v. Public Citizen*, "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions" it is not required to include those effects in its NEPA analysis.<sup>5</sup>
  - ***Individual projects subject to NEPA review do not cause upstream and downstream indirect GHGs.*** Expecting individual projects subject to NEPA to account for and mitigate these indirect GHGs defies the realities of consumer demand in energy markets. For 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. Similarly, the liquefaction of natural gas at a US liquefied natural gas (LNG) export terminal is not a cause of the emissions overseas from converting that natural gas into electricity for consumer use. Rather, consumers and their demand in US and global markets drive the need for projects put forward for authorization under NEPA. Project developers – including API member companies – respond to this demand.
  - ***This duplicates other agencies' NEPA reviews.*** In addition to these indirect GHGs being outside of NEPA's intended scope of review, the consideration of upstream and downstream GHGs is duplicative of other agencies' own NEPA reviews and authorization. By requiring all agencies in their respective NEPA reviews to consider all direct and indirect GHG emissions, the Guidance invites a multiple-counting of GHGs and multiple layers of mitigation.
  - ***This disregards other agencies' GHG regulation.*** Also, where applicable, the consideration of indirect GHGs disregards other agencies' often stringent regulations that already address these upstream and downstream GHG emissions. For the example of an LNG terminal, which is subject to NEPA review by the Federal Energy Regulatory

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<sup>3</sup> The Guidance notes that "Agencies should 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." [Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices](#), p. 1212.

<sup>4</sup> [Joint-Trades-NEPA-Comments-Phase-1 \(api.org\)](#); [FINAL-API-et-al-CEQ-NEPA-NPRM-comments-1020.pdf](#)

<sup>5</sup> *Department of Transportation v. Public Citizen* 541 U.S. 752 (2004)

Commission (FERC), other agencies such as the Environmental Protection Agency (EPA), and Pipeline and Hazardous Materials Safety Administration (PHMSA) enforce their own regulations that address upstream GHG emissions from the production and transportation of the natural gas that is supplied to an LNG terminal. For the example of US Gulf of Mexico offshore oil production, the downstream CO<sub>2</sub> emissions from combustion of gasoline in motor vehicles are regulated by National Highway Traffic Safety Administration (NHTSA) and EPA GHG and fuel efficiency standards.

- ***The Guidance Dramatically Increases the Consideration of Project Alternatives.*** The Guidance is a departure from established practices regarding agencies' consideration of project alternatives. The Guidance recommends that "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."<sup>6</sup> This would be a significant departure from the longstanding consideration of reasonable alternatives, which should not include those that are "remote and speculative possibilities"<sup>7</sup> The Guidance does not limit alternatives to variations of the same type of proposed project, but invites the consideration of an altogether different type of and completely hypothetical alternative project(s). This provision in the Guidance defies common sense and decades of practice by agencies and environmental experts worldwide in conducting environmental impact assessments such as under NEPA.
- ***The Guidance Directs the Inappropriate Use of the Social Cost of GHGs (SC-GHGs).*** The Guidance states that in most circumstances agencies should apply the SC-GHGs to the GHG emissions of the proposed project. This is clearly an inappropriate use of the SC-GHGs as a tool, which should only be used in the evaluation of economically significant regulatory actions to reduce GHGs that include the full monetization of costs and benefits as a part of regulatory impact analysis. The use of the SC-GHGs for individual projects subject to NEPA review is a confusing rather than clarifying tool for the public and for decision makers because it would only present an accounting of estimated costs of GHGs without any sense of the fully estimated benefits to society, such as energy, economic development, and national security. Presenting the SC-GHGs of an individual project does not provide the proper accounting or context to correctly interpret this monetization.
- ***The Guidance Maximizes GHG Emissions Reductions without any Regard for Cost-Effectiveness.*** The Guidance states, "Given the urgency of the climate crisis, CEQ encourages agencies to mitigate GHG emissions to the greatest extent possible."<sup>8</sup> This creates an expectation for agencies to maximize GHG emissions reductions with no consideration of the costs of doing so or of the benefits that the project would provide. API supports mitigating the direct GHG emissions of projects, and our industry as a whole and individual companies with projects subject to NEPA have a long track record of mitigating GHGs to a sufficient level so as to receive agency authorization. But the limitless high bar to "mitigate GHG emissions to the greatest extent possible" is one that agencies and project developers might never clear, compromising our nation's ability to build the energy projects that we and our allies need.

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<sup>6</sup> [Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices](#), p. 1204.

<sup>7</sup> *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1979) (quoting *NRDC v. Norton*, 458 F.2d 827 (DC Cir 1972)).

<sup>8</sup> [Federal Register / Vol. 88, No. 5 / Monday, January 9, 2023 / Notices](#), p. 1206.

**The CEQ NEPA Guidance on GHGs will likely have the practical effect to delay significantly the NEPA process and agency decision making for energy projects.**

Since it was originally enacted, the scope of NEPA has expanded dramatically – resulting in lengthened review times, fostering confusion among project sponsors and regulators, and resulting in divergent court decisions regarding the review process. Costly delays within the complex review process restrict project development. Under the current NEPA process, the average EIS takes four and half years to complete, and 25% of completed impact statements took more than six years. Ten major infrastructure projects, reflecting \$34 billion in capital expenditures, were cancelled, stalled, or were at risk of cancellation due to permitting and review delays in recent years. This includes four natural gas projects in Appalachia that could support 4.6 billion cubic feet per day of production needed by families and businesses in the region.<sup>9</sup> In addition to delays, the intense review process also creates uncertainty, suppressing investment in key infrastructure projects and hampering US oil and natural gas production.

**This CEQ NEPA Guidance on GHGs compromises energy supply and security and the deployment of lower carbon solutions.**

The delays this Guidance will likely lengthen are for the very projects our nation and our allies need: natural gas and oil on federal lands and in federal waters, interstate natural gas pipelines and natural gas and oil pipelines that cross federal lands, LNG terminals, carbon capture, utilization, and storage (CCUS) facilities, and hydrogen facilities. Delays in permitting these much-needed projects would compromise the supply of affordable, reliable energy that US and global consumers use every day. They would compromise the deployment of lower carbon solutions, including CCUS and hydrogen produced from both natural gas and from electrolysis using electricity.

And NEPA permitting delays would compromise US and European energy security at a time when Russia’s invasion of Ukraine has made US oil and natural gas essential to meet the needs of our European NATO allies, Japan, South Korea, and Taiwan. A robust natural gas industry enables the US to export our LNG overseas. The US is now the world’s leading exporter of LNG, reducing our allies’ reliance on countries with less-stringent environmental regulations in supplying oil and natural gas resources.<sup>10</sup> The use of our LNG supports emissions reductions worldwide, supporting GHG emissions reductions needed to meet international climate goals.<sup>11</sup> In order to ensure that US oil and natural gas resources can meet growing demand and support the US in reaching its climate goals, the US must provide regularity and certainty in the review and permitting of oil and natural gas projects.

**This unsound CEQ NEPA Guidance on GHGs underscores the need for bipartisan permitting reform in the Congress.**

Fixing the NEPA permitting process is a priority for API: to establish agency uniformity in reviews, limit review timelines, and reduce the burdens placed on project proponents. This unsound CEQ Guidance is further evidence that the NEPA process remains unnecessarily complex, unreasonably time-consuming,

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<sup>9</sup> Rystad Energy, *API’s “10 in ‘22” Policy Plan: Quantification of policy impacts* (Nov. 1, 2022), <https://www.api.org/-/media/files/misc/rystad-energy-apis-10-in-2022-policy-plan-quantification-of-policy-impacts>.

<sup>10</sup> CNN Business, *US becomes world’s top exporter of liquified natural gas*, (Jan. 5, 2022), <https://www.cnn.com/2022/01/05/energy/us-lng-exports/index.html>.

<sup>11</sup> Rystad Energy, *API’s “10 in ‘22” Policy Plan: Quantification of policy impacts* (Nov. 1, 2022), <https://www.api.org/-/media/files/misc/rystad-energy-apis-10-in-2022-policy-plan-quantification-of-policy-impacts>.

and significantly uncertain, which in turn impedes investment in the nation's energy resources and infrastructure.

The entire energy industry – from oil and natural gas to renewables – needs consistency and durability in the application of NEPA across the long-time horizons to develop, construct, and operate projects that last longer than Presidential administrations. This Guidance reveals again that the CEQ in each successive Presidential administration of a different political party will continue to issue widely diverging guidance from its predecessor, which undermines the certainty that project developers need to make significant capital investments in energy. This underscores the need for statutory permitting reform, and we look forward to working across industry sectors and political parties to achieve this in Congress.

Our industry is committed to working with CEQ to enable meaningful, efficient NEPA reviews. Unfortunately, this Guidance significantly misses the mark, and for the reasons expressed in this letter we urge CEQ to rescind the Guidance's immediate effects, revise it, and work to enact durable NEPA permitting reform in this Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Padilla". The signature is fluid and cursive, written in a professional style.

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