



Does Climate Change Belong in an Environmental Impact Statement?

Center for Biological Diversity v. National Highway Traffic Safety Administration:

In 2007, the Ninth Circuit Court of Appeals held that federal agencies must assess carbon dioxide emissions and other climate change impacts in environmental review documents prepared under NEPA (the National Environmental Policy Act). The case determined that the impact of greenhouse gas emissions on climate change should be included in the cumulative impacts analysis of an EIS. The court also found that just because an agency's proposed action would reduce greenhouse gas emissions relative to the status quo does not mean that the action will not have a significant impact or that an EIS should not be required.

The following are relevant sections of NEPA describing what belongs in an EIS:

§ 102(2)(c):

"The Congress authorizes and directs that, to the fullest extent possible: ...

(2) all agencies of the federal government shall...

(c) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action"

According to § 1502 & 1508 of the CEQ regulations, the scope of the EIS must consider actions that are connected with, cumulative, or similar to the proposed action, direct and indirect effects, as well as reasonable alternatives and mitigation measures.

- *Connected Actions § 1508.25:* "(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

- *Cumulative Actions §1508.25*: “(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
- *Similar Actions §1508.25*: (3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”
- *Direct impacts §1508.8*: “caused by the action and occur at the same time and place.”
- *Indirect effects §1508.8*: “(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”
- *Cumulative impacts §1508.7*: “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”
- *Alternatives Analysis §1502.14*: “In this section agencies shall:
 - Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
 - Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
 - Include reasonable alternatives not within the jurisdiction of the lead agency.
 - Include the alternative of no action.
 - Identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
 - Include appropriate mitigation measures not already included in the proposed action or alternatives”

As greenhouse gas emissions are a direct effect of any drilling plan and climate change is an indirect effect with environmental, economic, and social consequences, they must be adequately addressed in an Environmental Impact Statement.