

Questions for the Record
Hearing before the Energy and Power Subcommittee
Committee on Energy and Commerce
June 18, 2013

Questions from Chairman Ed Whitfield:

1. The President's Council on Environmental Quality released draft guidance in 2010 proposing that federal agencies consider the climate change effects of their actions. This is an unprecedented step with far reaching geopolitical implications, as it effectively puts the U.S. in the position of evaluating the energy consumption choices and environmental policies of our trading partners.

a. Question: If CEQ's 2010 draft guidance on climate change is finalized, would this guidance require the U.S. Army Corps of Engineers to consider the international climate change impacts associated with coal consumed in foreign countries that was exported from U.S. ports?

Answer: Should the guidance be finalized as written, and absent any change in law or relevant decision in a federal court, the Corps would make a legal determination as to whether the guidance provides the requisite authority to the Corps to consider the international climate change impacts associated with coal consumed in foreign countries that was exported from U.S. ports. The Corps does not currently possess the requisite technical expertise to make such an international climate change analysis.

b. Question: Has the Corps ever considered the international climate change effects in the permitting of U.S. export terminals?

Answer: No. The Corps implements its Regulatory Program based on statutory authorities, regulations and existing legal precedent, which charge the Corps to ensure that regulated structures and fill in waters of the United States, and the impacts of those structures and fills, are addressed in compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

c. Question: How much longer would it take for the Corps to incorporate a global life-cycle environmental analysis, including greenhouse gases, into the NEPA review?

Answer: A global life-cycle analysis would be extremely complicated and complex, requiring extensive time and resources. Based on existing statute and regulation, the Corps does not have the authority to incorporate a global life-cycle analysis as part of the evaluation associated with activities that require a Department of the Army permit for the discharge of fill material into waters, or for structures/work in navigable waterways. Greenhouse gas emissions will be evaluated to the extent that they occur within the Corps' control and responsibility in association with construction activities and potential increase in vessel traffic associated with any work that may be permitted.

d. Question: What are some of the challenges to performing such a global life-cycle analysis?

Answer: This type of analysis is beyond the Corps' statutory authorities. Because the Corps does not have control or responsibility over the activities associated with the full life-cycle of a commodity we are unable to provide details regarding the challenges of such an evaluation.

2. Question: If the Corps is required to complete a global life-cycle environmental analysis as part of its NEPA review for a coal export terminal, would the Corps be able to determine the relationship between a single coal export facility and the global environment? What are some of the variables you would have to contend with in understanding such a relationship?

Answer: We do not have sufficient information at this time to conclude whether it would be possible to connect the effects of extracting, transporting and burning coal from a specific mine, through a specific shipping facility, to its ultimate global destination for consumption and the potential resulting effects on global climate change.

3. Question: What is the average timeframe for the Corps to complete an environmental impact statement for a proposed marine export terminal?

Answer: We reviewed readily available information for eight marine facilities located along the Atlantic, Gulf and Pacific Coasts in three states over the last 10 years. The average time to complete an environmental impact statement (EIS) for such a marine export terminal facility was 3 1/2 years.

4. Question: You testified that the NEPA documents for the three proposed projects are "at an early stage." How long do you anticipate the whole NEPA process will take for these projects. How about just for the Corps portion of the review? Will you commit to an expeditious timeline for completion of the review?

Answer: For the Gateway Pacific Terminal, the Draft EIS is expected to be published for public comment in August 2014, with a final Record of Decision published in November 2015. For the Millennium Bulk Terminal, the Draft EIS is expected to be published for public comment in June 2015, with a final ROD published in September 2016. For the Coyote Island Terminal, the current Environmental Assessment is underway and expected to be completed by March 2014. I assure you that the Corps is carefully evaluating each of these pending proposals and will make decisions as efficiently and as expeditiously as possible while complying with all applicable laws and regulations.