



August 20, 2018

Mr. Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Attn: Docket ID No. CEQ-2018-0001

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

Comments submitted electronically at <https://www.regulations.gov/>

The American Coal Council (ACC) appreciates the opportunity to submit these comments in response to the Council on Environmental Quality's (CEQ) Advanced Notice of Proposed Rulemaking (ANPR) of June 20, 2018 notice inviting comments on its consideration of potential revisions to update and clarify CEQ's National Environmental Policy Act (NEPA) regulations.

Interests of the American Coal Council

The American Coal Council has been in existence for 36 years and represents the collective business interests of the American coal industry. Our members include mining companies and suppliers, transportation companies and terminals, electric utilities and independent power producers, industrial coal consumers, and many industry support services providers. ACC's member companies touch every aspect of turning one of America's most abundant resources into reliable and affordable electricity for the United States economy. In addition to its use by the electric power sector, coal is utilized in the industrial production of cement and chemicals and is integral to the steel-making process. ACC's diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of new or revised regulations impacting coal supply and use. While ACC provides these comments from

that broad perspective, individual member companies of ACC may submit separate comments on their own behalf that offer additional or other views.

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ACC appreciates CEQ's consideration of revisions to update and improve the environmental analysis and review process. Coal projects are deterred by the excessively long process and uncertain timeframe for approval, or even whether approval may ultimately be granted. Regulatory delays and uncoordinated, inefficient reviews cause costs to balloon and discourage development. This delays or precludes the benefits of such projects at the federal, state, and local community levels in the United States. In addition to negative domestic impacts, these regulatory barriers inhibit projects associated with the export of coal to international steel, industrial, and power sector customers. Priority must be given to streamlining the analysis-review-decision processes, reducing timeframes, and coordinating project reviews when performed by multiple agencies.

Importance of Presidential Executive Order 13807

Mine project permitting in the United States takes seven to ten years and sometimes even decades for NEPA reviews to be completed and other approvals obtained. This is far longer than in other advanced economies with similar environmental standards. For example, permitting in Canada and Australia is typically completed in two to three years.

The Trump administration recognizes that permitting is facilitated by efficient, timely review and effective coordination between federal and state agencies. The administration understands that delays add barriers and costs to mining, and are a disincentive to capital investments for mine development and expansion.

President Trump signed Executive Order (EO) 13807 *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* in August 2017. It states "Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or

authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment. More efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews.”¹

EO 13807 directs various federal agency goals, accountability, best practices, and process enhancements in order for environmental review and authorization processes to be streamlined and accomplished in a coordinated, consistent, predictable, and timely manner. Importantly, EO 13807 sets a goal of completing all federal environmental reviews and authorization decisions for major infrastructure projects within two years. Energy production and generation from fossil sources, as well as electricity transmission, are included in such infrastructure projects. It also establishes the “One Federal Decision” protocol whereby each major infrastructure project will have a lead federal agency responsible for navigating the project through the federal review process. With regard to the applicability of NEPA, the lead, cooperating, and participating agencies are to agree on a permitting timetable except under certain circumstances and the lead agency will coordinate the recording of individual agency decisions into one Record of Decision (ROD).

ACC is encouraged that twelve federal departments, agencies, commissions and councils have signed the Memorandum of Understanding (MOU) to implement the “One Federal Decision” for the timely coordination and processing of environmental reviews and decisions. These are the Departments of Agriculture, Commerce, Energy, Homeland Security, Housing and Urban Development, Interior, Transportation, and the Environmental Protection Agency, Federal Energy Regulatory Commission, Federal Permitting Improvement Steering Council, Advisory Council on Historic Preservation and U.S. Army Corps of Engineers. We support the MOU’s objectives to “establish standard operating procedures for how the Federal Government will make concurrent and synchronized reviews for major infrastructure projects” and “eliminate duplication of effort among agencies, improve the efficiency of project delivery, make better-informed decisions and promote good environmental, community and economic outcomes.”²

American Coal Council Recommendations

¹ President Donald Trump, August 15, 2017, Executive Order 13807 “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”, Section 1.

² Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807, April 9, 2018, p. A-2.

EO 13807 and the interagency MOU outline a pragmatic and reasonable approach to more efficient, effective environmental reviews and approvals including those under NEPA. CEQ should revise its existing regulations to the extent needed in order to align them with this approach, and the American Coal Council emphasizes inclusion of the following:

I. Regulatory Review Framework, Participants, and Timeframes

- Designating a lead federal agency per the “One Federal Decision” protocol and preparing a single ROD for each major infrastructure project. Beyond major infrastructure projects, CEQ should consider applying this to all federal agency actions that involve multiple agency reviews.
- Establishing the two year timeframe per the “One Federal Decision” and holding agencies accountable for compliance.
- Communicating with potential cooperating agencies early in the project analysis and review process and establishing timeframes for response as to whether they will participate.
- Coordinating the project analysis and review process to utilize existing relevant documents, studies, and other material. This may include adopting another agency’s Environmental Impact Statement (EIS) or Environmental Assessment (EA). Specifically, often the state-level review requirements meet or exceed the requirements of a federal NEPA review. CEQ should require that lead agencies preparing an EIS or EA defer to state agencies performing equivalent reviews for the same action.
- Assessing possible coordination of NEPA reviews on projects that involve the evaluation of similar subject matter, such as the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA).

II. Regulatory Scope

- Addressing regulatory redundancy resulting from additional environmental laws created in the decades following NEPA enactment. Examples of such laws are the Clean Air Act (CAA), Clean Water Act (CWA), ESA, NHPA, and Resource Conservation and Recovery Act (RCRA), and these apply across all industries. Additionally, other laws apply specifically to mining. In conjunction with these other laws for mining, regulatory programs and federal permitting are administered by the Forest Service (FS), the Office of Surface Mining (OSM), the Bureau of Land Management (BLM), and other agencies. These additional post-NEPA environmental laws cause duplicative environmental reviews. The breadth, depth, and stringency of the environmental standards and requirements for permitting today assures thorough analysis of the possible environmental effects of proposed projects and appropriate mitigation measures. It provides for

environmental performance and reclamation standards that minimize and mitigate environmental impacts from mining operations. In the current legal and regulatory landscape, NEPA is duplicative and distracts from many of the specific statutes that address environmental impacts for projects that require permits or authorizations. As long as an agency's environmental assessment satisfies the primary goals of NEPA, there is opportunity for agency and public comment, and the agency's responsibilities are judicially reviewable, there should not be a need for duplicative NEPA reviews and regulatory hurdles.

- Revising the NEPA scoping process to focus on reviews of significant issues and eliminating analysis of insignificant or minor issues not material to the proposed project.
- Refocusing the review process to eliminate consideration of issues or factors outside of the scope or regulatory authority of the federal agency evaluating a proposed project and ultimately not relevant in determining the possible impacts of a proposed action. Federal agencies charged with review and authorization of permits to produce a product but which have no authority over the commercial and use aspects of the product should not be forecasting its marketplace effects nor deemed to be responsible for such.
- Adjusting the project priority goals where needed to ensure appropriate focus by the agency on the project developer's goals, rather than on objectives as redefined by the agency to allow for consideration of alternatives beyond the scope of the applicant's project. NEPA's requirement for the consideration of alternatives refers to major federal actions significantly affecting the quality of the human environment, not to alternatives to the project developer's plans.

Conclusion

The American Coal Council appreciates the opportunity to submit these observations and recommendations to improve the environmental analysis and review process. The "scope creep" and regulatory delays and impediments in recent years must be addressed to appropriately rebalance regulations, and we appreciate CEQ's attention to NEPA reforms and other reforms needed to achieve that.