The Need for National Environmental Policy Act Reforms

Background:

The National Environmental Policy Act (NEPA) was enacted in 1969, when the United States had very few laws in place to protect the environment. NEPA's goal was to ensure more awareness about the environment in federal decision making. Since NEPA’s enactment numerous environmental laws have been enacted that prescribe substantive goals and practices to prevent or minimize adverse impacts to environmental resources.

ENVIRONMENTAL LAWS APPLICABLE TO MINING OPERATIONS

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Resource Conservation and Recovery Act
- Endangered Species Act
- National Historic Preservation Act
- Federal Land Management and Policy Act
- National Forest Management Act
- Comprehensive Environmental Response, Compensation and Liability Act
- Emergency Planning Community Right to Know Act
- Wilderness Act
- Toxic Substances Control Act
- Surface Mining Control and Reclamation Act
- Wild and Scenic Rivers Act

Given the detailed requirements of these laws and their corresponding regulations, it is time to recognize that NEPA would benefit from modernization that recognizes the body of environmental law that post-dates NEPA. NEPA was intended to be a planning tool for agencies. Now, it duplicates and distracts from many of the specific environmental statutes that provide for plans and analyses of environmental effects for projects that require permits or authorizations. NEPA was intended to require only that federal agencies take a "hard look" at the environmental consequences before taking major actions. These other specific environmental statutes and permits now supply the hard look.

There is so much focus on the NEPA process and endless analyses of any conceivable impacts and alternatives that federal agencies often forget that at the end of the day a decision is required. This NEPA “analysis paralysis” has obscured NEPA's original purpose. NEPA is solely procedural in nature and does not elevate environmental concerns over other appropriate considerations. The National Academy of Sciences found the permitting process for mining projects is cumbersome, complex and unpredictable, largely due to NEPA.

NEPA has become the tool-of-choice used by special interest groups to block projects and thwart federal decisions through litigation, even where local communities strongly favor the projects. Literally thousands of federal lawsuits have
been brought under NEPA. In response to the ongoing threat of litigation, EIA documents have become increasingly costly and lengthy, and so have the time frames to complete the NEPA process.

**Needed Reforms:**

- Limit NEPA Review to Significant Environmental Issues Not Evaluated under Any Existing Federal Permit Process or Other Program
- Establish Mandatory Time Frames
  - Time frames should be established for completion of Environmental Impact Statements and Environmental Assessments
  - Consulting agencies should have deadlines for consultations and if these deadlines are not met, the lead agency must proceed with the NEPA process using best available information
  - EPA should no longer be required to comment on EIS documents prepared by other agencies
- Ensure Federal Agencies Have Adequate Resources/Staff to Efficiently Conduct NEPA Analyses
- Limit the Number of Alternatives Studied to Those That Meet the Purposes and Need Statement of the Project and Are Reasonable, Technologically Achievable and Economically Feasible
- Promote the Use of Programmatic Environmental Assessments for Projects with Limited, Routine and Well Understood Impacts and Few Reasonable Alternatives
- Expand Use of Site-specific Analyses’ Reliance on a Broader Programmatic Analyses (Tiering)
- Prevent Frivolous Litigation
  - Confirm that NEPA is procedural only and prohibit challenges to NEPA decisions unless there is a substantive defect demonstrating noncompliance with substantive environmental laws and regulations
  - Clarify definition of significant
  - Limit standing to challenge NEPA decisions to those directly affected parties who participated in the NEPA process and present legitimate evidence of harm related to issues they actually raised during the process

**Impact:**

A lengthy and unpredictable permitting process discourages the capital investments required for mineral exploration and mine development – destroying US job opportunities and contributing to our increased reliance on foreign supplies of minerals to supply US manufacturing and technology companies. NEPA is no longer fulfilling its original intent and must be reformed.