

Proposed Rulemaking to Update Environmental Review Process under National Environmental Policy Act – How Your Company Can Participate

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by Wells Parker

One of the principal sources of uncertainty, expense, and delay in the permitting process for many mining and infrastructure projects in the United States, especially those generating public controversy, is compliance with the environmental review process under the National Environmental Policy Act (NEPA).

On June 20, 2018, the Council on Environmental Quality (CEQ) issued an advance notice of proposed rulemaking (ANPR) seeking public comment on potential revisions to its implementing regulations for the procedural provisions of NEPA. NEPA documentation is generally required for any project, public or private, that requires approvals from the federal government. The ANPR is a continuation of the Trump administration's efforts to address inefficiencies in the federal permitting process and follows recent proposals from the Department of Interior and other agencies to streamline their NEPA review processes. The ANPR is significant because revisions to the CEQ's NEPA regulations would apply government-wide, while the previous reform efforts have been on an agency-by-agency basis.

Specifically, CEQ published a list of 20 questions for which it is seeking comments. These questions relate to ways to streamline the NEPA process, including potential revisions to the definitions of key terms, issues to be considered in NEPA documents, the range of alternatives that must be considered, the timing and preparation of NEPA documents, and interagency coordination.

The ANPR presents a valuable opportunity for Canadian companies with mining or infrastructure projects in the United States and other interested parties to help shape revisions to CEQ's NEPA regulations to ensure that the regulations serve NEPA's purpose of informed decision making while minimizing unnecessary litigation, cost, and delay for project proponents.

The deadline for submitting comments is July 20, 2018. Dorsey regularly represents companies in rulemaking processes through the submission of comments that

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communicate to the regulatory agencies our clients' concerns and objectives. If you have any questions or would like to learn more about participating in this important comment process, please contact us.

The Federal Register notice announcing the ANPR and requesting public comments is available at www.federalregister.gov/documents/2018/06/20/2018-13246/update-to-the-regulations-for-implementing-the-procedural-provisions-of-the-national-environmental.