

February 3, 2006

The Honorable Cathy McMorris  
Chair  
Task Force on Improving NEPA  
Committee on Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

Dear Representative McMorris:

I am submitting the attached comments and recommendations on behalf of Peabody Energy in response to the "Initial Findings and Draft Recommendations" provided by the Task Force on Improving the National Environmental Policy Act (NEPA). Peabody Energy recognizes and applauds the excellent efforts of the House Resources Committee, Chairman Pombo, the Task Force members and staff as evidenced in these initial recommendations. Your leadership in this effort is greatly appreciated.

Peabody Energy finds many of the recommendations in the draft report of findings both beneficial and warranted. The attached comments are intended to inform, expand, strengthen and support the existing recommendations. New recommendations are proposed as well. Consideration of these comments is greatly appreciated. I would be glad to provide additional discussion and clarification on any of the comments or recommendations if needed.

Sincerely,



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**House Resources Committee Task Force on Updating the National Environmental Policy Act**

**Comments – Initial Findings and Draft Recommendations 12/21/05**

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01/31/06

**Group 1 – Addressing Delays in the Process**

**Recommendation 1.1: Amend NEPA to define “major federal action”**

**Comment:** Peabody Energy supports the proposal to amend NEPA to define “major federal action”. It is proposed that an element of the definition should clearly state the following:

- a. *A project’s alleged controversial nature will not, in and of itself, be considered to be a point of criteria for a “major federal action” determination.*

**Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)**

**Comment:** The development of unambiguous criteria to clearly determine the appropriate use of CE’s, EA’s, or EIS’s is a very important consideration of NEPA reform. At a minimum, such criteria should:

- a. *Adequately consider a project proponent’s ability to mitigate environmental impacts when determining the project’s level of significance.*
- b. *Consider subsequent requirements of other environmental laws when making a determination of significance.*
- c. *Consider whether a proposed project is unique with respect to environmental impact or if the anticipated environmental impact is similar to existing on-the-ground projects.*

- **Example:** The mining industry has a strong track record of successfully reclaiming mined lands to a condition that is equal to or better than before mining occurred. It is proposed that, in many cases, modern mining projects could be evaluated under a Categorical Exclusion and maximally require an Environmental Assessment.

**Group 2 – Enhancing Public Participation**

**Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments**

**Comment:** In some instances, entities intending to obstruct a project will “develop” local opposition to advance their agenda and establish standing.

When preparing regulations, CEQ should anticipate this as an unintended consequence of Recommendation 2.1.

- a. *One suggestion to effectively address this potential situation is to require all comments to include a formal "Statement of Direct Affect". Such a statement could provide the necessary information to the lead federal agency to adequately comply with regulations proposed in this recommendation.*

### **Group 3 – Better Involvement for State, Local and Tribal Stakeholders**

#### **Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating agency status.**

**Comment:** Appropriate resources and on-going training opportunities should be provided for local, state and tribal governments to best prepare these entities to participate as cooperating agencies in the NEPA process. These governmental bodies are particularly obligated to their constituencies to participate effectively. For example, in "western federal land states" federal agency planning processes have the very real potential to extensively impact regional, state and local economies.

Unfortunately, due mainly to lack of knowledge, understanding, and/or available resources, these entities are often ill prepared to take their rightful place in the NEPA process. Add to this the possibility of regular overturn of elected officials and it is clear that there must be on-going training opportunities and resources available for these entities.

### **Group 5 – Clarifying Alternatives Analysis**

#### **Recommendation 5.1: Amend NEPA to require that "reasonable alternatives" analyzed in NEPA documents be limited to those which are economically and technically feasible.**

**Comment:** Criteria should be developed which will lead to an adequate, unbiased, fully disclosed economic impact analysis for each alternative considered in the NEPA process. The revenue that could be earned by the action should be included in the analysis. Without an adequate economic analysis, the public is denied critical information.

- **Example:** Land and Resource Management Plan and EIS for the Thunder Basin National Grassland

The economic analysis for the above-referenced Plan and EIS prepared under the direction of the U.S. Forest Service is biased. In preparation of the EIS, the Forest Service chose to focus only on **county** economic diversity.

Coal produced from the Thunder Basin National Grassland in Wyoming represents between 20% and 30% of all coal mined in the United States. Coal from the Wyoming Powder

River Basin fuels a substantial percentage of the electricity generated in the United States. Not surprisingly, coal mining generates the majority of revenue of all production categories on the Thunder Basin National Grassland.

The IES acknowledged that the State of Wyoming received from \$16 million to \$30 million (during the late 1990's) per year from the coal produced specifically from the Thunder Basin National Grassland lands, and that other Payment in Lieu of Taxes (PILT) and non-PILT payments on any of the other grassland areas are dwarfed by this. However, since that revenue is administered by the Bureau of Land Management, not the Forest Service, and because it is dispersed to the state, not the individual counties, **the format selected by the United States Forest Service in the EIS omitted any coal mining income from the economic comparison tables for each alternative.** This economic assessment approach, and inherent omission of coal revenues, denied substantive information to the public and biased the assessment.

**Proposed New Recommendation: A “Statement of Energy Effects” (described in Presidential Executive Order 13211) must be included for all alternatives considered in a NEPA process when the proposed legislation or major Federal action has the potential to affect energy supply, distribution or use.**

**Comment:** President Bush's Executive Order No. 13211 requires that any agency that takes an action with an adverse effect on the supply of domestic energy resources must submit a “Statement of Energy Effects” to the Office of Management and Budget (OMB). The Order directs agencies to consider the effects of proposed actions on the supply, distribution and use of energy. This requirement should be codified by Congress so that the impacts on energy production are properly considered in the NEPA process and are conveyed to the Administration and the public.

### **Group 6 – Better Federal Agency Coordination**

**Proposed New Recommendation 1: Require Federal Land Management Agencies with Overlapping Jurisdiction to Undertake Joint Land and Resource Management Planning Efforts.**

**Comment:** § 1506.2 (b) of NEPA discusses the elimination of duplication with State and local procedures. Specifically, this section requires:

- (1) Joint planning processes
- (2) Joint environmental research and studies
- (3) Joint public hearings (except where otherwise provided by statute)
- (4) Joint environmental assessments

*a. It is recommended that this particular section be revised to require these same joint planning processes by and between federal land management agencies – particularly where mineral exploration, development, and production is a significant land use.*

- **Example:** Four large surface coal mines are located within the boundary of the Thunder Basin National Grassland in the Powder River Basin of Wyoming. These four mines together produce between 20 and 30% of all the coal mined in the U.S. and are very important to local, state, regional and national economies, not to mention national energy self-sufficiency.

The U.S. Forest Service (and the State of Wyoming to a lesser extent) are the surface land management agencies for a substantial portion of area currently leased or available for leasing coal reserves. The Bureau of Land Management (and again, the State of Wyoming to a lesser extent) are the subsurface mineral management agencies.

This area is covered by two separate Resource Management Plans (RMP's) These RMP's are developed by each of these federal agencies – on a different timetable and with different management objectives. It is important to note that the plans of the U.S. Forest Service could significantly affect the ability of the Bureau of Land Management to manage its resources to the greatest benefit of the general public. Therefore, it is proposed that in these types of situations, the agencies must jointly undertake one single planning process covering both the surface and subsurface resources.

Local governments and other cooperating/consulting agencies should benefit from this approach since they would be able to focus their limited resources on one plan at one point in time in a more effective and efficient manner.

**Proposed New Recommendation 2: Require Federal Land Management Agencies with Overlapping Jurisdiction to Coordinate Efforts to Eliminate Redundant or Duplicative NEPA Analyses (i.e. a single tract of land undergoing multiple tiers or layers of NEPA review)**

- **Example –** The environmental impacts of the federal coal leasing process in Wyoming are evaluated (rarely) through an EA or – more frequently – through an EIS. The U.S. Department of Interior – Bureau of Land Management (BLM) is the lead agency in this process. The U.S. Department of Interior – Office of Surface Mining (OSM), and in certain cases, the US Forest Service (USFS) are cooperating

agencies in the federal coal leasing process. The NEPA process for the Wyoming federal coal leasing program is deemed appropriate and adequate for the purpose of follow-on permitting under the auspices of the OSM. However, the USFS requires on-going NEPA analysis for every follow-on permit application under its purview (Special Use Permit) within the mine permit boundary. This is the same area previously evaluated and approved for mining and mining-related activities through the federal coal leasing process by this same agency.

**Group 8 – Clarify meaning of “cumulative impacts”**

**Proposed New Recommendation: Consider the role and value of mitigation when assessing and defining cumulative impacts**

**Comment:** It is suggested that any assessment or definition of “impact” must take into account the effect of environmental impact mitigation.

**Group 9 – CEQ study of NEPA’s interaction with other Federal environmental laws.**

**Comment:** Peabody Energy recognizes the value of and supports this recommendation. Since the NEPA was enacted in 1970, numerous environmental laws have come into play with prescriptive requirements relative to mining. A list of several of these laws is provided below:

ENVIRONMENTAL LAWS APPLICABLE TO MINING OPERATIONS	
<ul style="list-style-type: none"><li>• Clean Air Act</li><li>• Clean Water Act</li><li>• Safe Drinking Water Act</li><li>• Resource Conservation and Recovery Act</li><li>• Endangered Species Act</li><li>• National Historic Preservation Act</li><li>• Federal Land Management and Policy Act</li><li>• Multiple-Use Sustained Yield Act</li><li>• Mineral Leasing Act</li></ul>	<ul style="list-style-type: none"><li>• National Forest Management Act</li><li>• Comprehensive Environmental Response, Compensation and Liability Act</li><li>• Emergency Planning Community Right to Know Act</li><li>• Wilderness Act</li><li>• Toxic Substances Control Act</li><li>• Surface Mining Control and Reclamation Act</li></ul>