



MINING MINNESOTA™

RESPONSIBLE DEVELOPMENT
of NATURAL RESOURCES

April 9, 2010

The Council on Environmental Quality
Attn: Ted Boling
722 Jackson Place, NW
Washington, D.C. 20503

Re: Establishing and Applying Categorical Exclusions under the National Environmental Policy Act

Dear Mr. Boling:

MiningMinnesota appreciates the opportunity to comment on the Council on Environmental Quality (CEQ) Draft Guidance on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (NEPA).

MiningMinnesota is a non-profit, non-partisan trade association based in Duluth, Minnesota and represents companies involved in nonferrous exploration and mining development in Minnesota. Our membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies.

Several MiningMinnesota members conduct mineral operations on federal lands and have significant experience with the NEPA process, especially the project delays and escalating costs associated with NEPA compliance. Therefore, MiningMinnesota members are interested in and supportive of efforts to make the NEPA process more streamlined and efficient. However, we are concerned that the proposed guidance from CEQ will have the opposite effect.

Proposed 2010 Guidance on Establishing and Applying CE's

A categorical exclusion (CE) is a vital tool which enables Federal agencies to expedite the environmental review process for proposals that typically do not require more in-depth and costly Environmental Assessments or Environmental Impact Statements. Exempting such actions from a more detailed NEPA environmental review promotes the cost-effective use of agency NEPA-related resources. Federal agencies should be encouraged to utilize CE's whenever possible and appropriate. Unfortunately, it appears this latest guidance from CEQ is geared more toward limiting the use of CE's.

In the introduction of the proposed guidance, CEQ cites the need for additional guidance on the use of CE's due to "the expansion of the number and range of activities categorically excluded combined with the extensive use of categorical exclusions" and

that “inappropriate reliance on categorical exclusions may thwart the purposes of NEPA, compromising the quality and transparency of decision making as well as the opportunity for meaningful public involvement and review.”

CEQ is encouraging agencies to increase public participation in the use of CE’s. By definition, though, a CE describes a category of actions that do not typically result in individual or cumulative significant environmental effects or impacts. Therefore, there is no need to further delay the process by creating unnecessary bureaucratic procedures to increase public participation in an environmentally benign project. Increasing public engagement and disclosure of the use of CE’s is an inefficient use of scarce agency resources and a waste of time for citizens wanting to have meaningful participation in the environmental review process.

CE’s, when used properly, are a legitimate part of the NEPA process. The existing CEQ regulations provide adequate protections to ensure against misuse of CE’s by agencies tempted to escape public scrutiny or the need to prepare detailed environmental analyses. Consultation with CEQ is required for development of NEPA regulations generally, and specifically on adoption of categorical exclusions. Also, agencies are required to identify “extraordinary circumstances” when an action that otherwise might be categorically excluded would require an environmental analysis under NEPA. Furthermore, agencies must put proposed new categorical exclusions in the Federal Register for public comment. These safeguards mean that the documentation and decision-making necessary for a categorical exclusion are largely similar to those required for other NEPA actions. Consequently, MiningMinnesota views the new proposed guidance as a solution in search of a problem.

Conclusion

MiningMinnesota is concerned that the guidance will result in limiting the use of CE’s by placing too many constraints and paperwork burdens on agencies seeking to use them. Existing CEQ regulations adequately ensure against agency abuse of CE’s, and additional impediments to their use should not be put in place. To do so as outlined in the proposed guidance is contrary to the very purpose of a categorical exclusion.

Thank you for the opportunity to comment.

Sincerely,



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