

NEPA Alternatives Analysis: From Cost to Benefit (Newsletter)*

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The number of alternatives in a NEPA compliance document, and how equally all are considered, are the most common basis for appeal or legal challenge during permitting of a new or expanded mine.

When a mine is being developed, technical experts consider how to lay out, construct, and operate the mine. The most desired configuration is presented in the proposed Plan of Operations and is the Preferred Alternative in the environmental impact assessment. Sometimes the Preferred and No Action alternatives are the only ones considered. Then the project is presented to the public. Too often, the Plan is returned to the proponent to be modified and resubmitted. This iterative process increases costs and the time needed to complete the permitting process. Participants in the public participation and scoping process who feel left out or ignored consider an agency appeal or legal challenge their only options. This process benefits no one, and the costs in time and money can be high. Fortunately, both alternative issues can be readily resolved.

There are always options in the physical layout and operations of a mine. Instead of evaluating these internally and presenting only one to the regulatory agency and public, present all options as separate alternatives and bring them to the public during scoping of the assessment. Add the ideas from other stakeholders and the public and evaluate all of them for their impacts on the economic, natural, and societal environments in the impact assessment. The benefits of this approach include eliminating revisions of the Plan of Operations during the permitting process, encouraging full participation by stakeholders and the public, demonstrating openness and transparency in the NEPA process, saving time and money, and removing one reason for appeal or legal challenge at the end.

One reason why many alternatives are not presented and analyzed during the NEPA compliance process is the difficulties of quantifying the effects of each alternative on the existing economic, natural, and societal environments. In addition, if the alternatives are presented with specific numbers, the value of

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those numbers can become a distracting issue that prevents expeditious completion of the assessment. This is where so many dueling expert problems arise. To avoid this problem, describe the effects of the alternatives relative to the existing conditions. For example, you might present traffic as "slightly increased," wetland volume as "decreased," and plant forage values as "much higher." Since forecasts are not expected to be completely accurate, expressing the affected environment under each alternative as a relative change from what is now there is very reasonable, technically sound, and legally defensible. And, this approach permits many alternatives to be evaluated with equal thoroughness so the decision-maker has more support for the Record of Decision.

The permitting of a new or expanded mine can affect availability and cost of development financing, shareholder value based on extraction of proven and probable reserves, and corporate revenues and expenses. Shortening the time required to successfully permit operations while reducing the liability of appeal or law suit does not require changes to statutes or agency recommendations. It is within your control because you can choose to take advantage of the opportunities.