

*For Your Information (also see the diagram on this site)*  
**OVERVIEW OF THE NEPA PROCESS**

Development projects involving Federally-administered land or minerals are required to submit an application, in this case for a Coal Lease. The lead Federal agency must then evaluate this application for compliance under the National Environmental Policy Act of 1969 (NEPA; 42 USC 4321) and the Council on Environmental Quality regulations (CEQ; 40 CFR 1500-1508). If more than one Federal agency is involved, the lead agency is determined by agreement based upon the level of involvement or resources affected. If the approval of the project is determined to be a major Federal action with a potential for significant environmental impact, an **environmental impact statement** (EIS) is required. Technically, the lead Federal agency is responsible for funding and conducting the EIS. However, Federal agencies generally do not have the staff or funding to complete large scale, development-related EISs in a timely manner. In these cases, the development proponent may fund the EIS and the Federal agency may direct a third party contractor to conduct the EIS.

Numerous Federal and state agencies may be involved in preparing an EIS, depending upon the location and scope of the proposed project. In the case of the **East Lynn Lake Project**, the BLM-Milwaukee Field Office is the lead Federal agency. The US Army Corps of Engineers (USACE) and the Office of Surface Mining (OSM) are cooperating agencies. Numerous other Federal, state, and local permits and approvals are also generally required. When these approvals are dependent upon the NEPA findings, they are generally obtained following the NEPA process.

Regular meetings are held involving the lead agency and the contractor to provide direction to the third-party contractor preparing the EIS documents. Interdisciplinary (ID) teams of agency specialists may also be created. These are teams of agency specialists in each resource area relevant to the proposed project. The ID team for each resource area is responsible for reviewing, directing, and ultimately deciding upon the level and significance of impacts in their area of expertise that will be reported in the EIS.

The **Proposed Action** is developed from the proponents' applications and associated documents, and should include a summary of the proposed project in layman's terms. In this situation, since the proposed action only involves leasing, a Reasonably foreseeable Development Scenario, RFDS, is also developed to describe what actions (mining) may be expected to occur if the leasing takes place.

**Scoping meetings** are held in locations convenient for the public to attend. The Proposed Action is presented and the public is allowed to comment on the impacts they foresee the project having on the environment, social structure, economics and archaeological resources of the area. The Federal, state and local agencies also provide input on the potential impacts. The areas of concern identified in the scoping process are described in a scoping report that may become an appendix

**Although each Federal agency has to interpret and implement the NEPA regulations in their own way, the process generally includes the following components:**

- **development of a proposed action**
- **scoping and development of a scoping report**
- **baseline data collection and evaluation**
- **impact evaluation**
- **development of alternatives and mitigation measures**
- **preparation of both a Draft and Final EIS, and**
- **public participation and review process.**

to the EIS. It is important that a reviewer be able to follow all of the issues identified in the scoping process through the EIS to either a determination of non-significance or mitigation.

Once scoping is complete, the existing *baseline data* are evaluated. Additional studies are required if the baseline data are found lacking in any area. It is critical to the EIS schedule that all parties are in agreement on the adequacy and depth of the baseline studies. Once agreements are made and documented, any additional necessary baseline data can be collected by either the proponent or a third-party contractor.

Once the Proposed Action, RFDS, and baseline data are deemed adequate and complete, an *evaluation of the impacts* can begin. NEPA provides very little guidance as to the depth of study required in the impact analysis. The regulations state that “a study of reasonable depth” be conducted. This has been interpreted to both extremes in the past. The facts that the CEQ guidelines set limits for EISs (150 for simple and 300 for complex) and be prepared in concise layman’s terms, indicates the EIS documents should be as succinct as possible. The level of detail in the documents is generally determined by the lead and cooperating agencies during the NEPA process. A preliminary prediction of impacts is usually prepared. Alternatives for the project which minimize, reduce, or eliminate these impacts, can be developed after impacts are predicted. The guidelines require that a reasonable range of alternatives be analyzed, not all possible alternatives. A subsequent, more in-depth evaluation of impacts is then prepared for use in the Draft EIS.

Once the impacts have been determined, *mitigation measures* can be proposed. The Draft EIS will consider what residual impacts remain following the application of proposed mitigation measures. Cumulative impacts are determined by evaluating the effect of the residual impacts of the proposed project in light of any other “past, existing or reasonably foreseeable” activities in the area. For example, a proposed project may add a small amount of emissions into the air which combine with several other existing or proposed sources to produce a predicted, significant deterioration of the regional air quality. Cumulative impact determination has been a matter of contention in numerous Development-related NEPA processes and must be defined and addressed early in the process.

Following impact determination and mitigation development, the Draft EIS is prepared and released for a 90-day public review process. *Public hearings* may be held during this time period to facilitate public response. These meetings are typically informal presentations of the project and identified impacts with opportunity for verbal or written public response.

The *Final EIS* can take several forms. It can be an edited version of the Draft, an entirely new document with substantial new information, or a summary of the Draft, if no significant changes were required. In development-related EISs, the Final EIS is an edited version of the Draft EIS with an added section detailing how and where the comments were addressed. In whatever form, the Final EIS must address the public and agency comments.

A second 30-day *public review period* is allowed after the release of the Final EIS. Following this period, the lead Federal agency prepares the *Record of Decision* (ROD). The ROD is the final statement of the agencies’ proposed decision and selection of required mitigation measures for the project to proceed. It will contain all of the requirements which the project must adhere to, usually by referral to the EIS. Typically, all of the other permitting agencies will set standards equal to or exceeding those in the ROD. In controversial NEPA processes, a “cool-off period” of a few weeks may be required. Following this period, if all other requirements have been met, the next step in the process can take place, in this case a coal lease sale.

It is important to realize that *NEPA is an environmental review process, intended to be analytical and provide full disclosure.* The EIS is not a permit document or a design report. The intent of NEPA is to allow all concerned parties the opportunity to evaluate the project, its potential impacts, and the available alternatives and mitigation measures prior to the project's approval. This is a significant difference from permitting processes in that the Draft and Final EIS are intended to document the review process, not provide a starting point for negotiations, or ultimate designs. Therefore, any commitments, alternatives, or mitigation measures, which are printed in the EIS documents, become available for selection as the preferred alternative or as a requirement in the ROD. Subsequent actions such as the leasing or permitting processes, often have additional public involvement or protest/appeal provisions.