

APPENDIX A
THE NEPA PROCESS

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1.0 INTRODUCTION

Congress passed the National Environmental Policy Act (NEPA) in 1969 as the “National Charter for the Protection of the Environment” (40 CFR 1500.1). Permit decisions made by the U.S. Army Corps of Engineers (Corps) and other federal agencies are subject to the provisions set forth in the law.

NEPA is “intended to help public officials make decisions that are based on an understanding of environmental consequences”. Projects requiring a permit from a federal agency must meet NEPA requirements.

There are three levels of project analysis available to deciding officials:

1. Categorical Exclusions
2. Environmental Assessments
3. Environmental Impact Statements

Categorical exclusions (CE) are used for routine projects with little risk of environmental effects, and in some emergency situations. Environmental assessments (EA) are used to determine if a proposed project may have significant environmental effects. If the significance finding in an EA is positive, an environmental impact statement (EIS) must be prepared.

The Corps determined that the issuance of a Section 404 Permit for this facility would have potentially significant environmental effects as defined under the NEPA; therefore, the Corps decided to prepare an EIS for this project.

A discussion of Corps responsibilities, as well as other federal, state, and local agencies, with regard to the proposed tailings storage facility, is set forth in Appendix C, Agency Jurisdictions (Permits and Approvals).

2.0 THE EIS PROCESS

The environmental analysis actions leading to a final EIS are prescribed by NEPA and consist of the following:

- Scoping;
- Analysis Actions;
- Documentation; and,
- Implementation, Mitigation and Monitoring

2.1 SCOPING

The scoping process determines the extent of the environmental analysis necessary for a decision on a project. Elements of the scoping process include the following:

- Describe the proposed action;
- Address the nature of the decision to be made;
- Collect existing data and information about the project and general area;
- Initiate public participation in the EIS process;
- Determine the type and extent of analysis to be used in EIS preparation;
- Identify and initiate contact with involved government agencies;

- Prepare plans for the preparation of the draft and final EIS, including selection of a formal organization for the document;
- Develop a tentative schedule for EIS completion and publication; and,
- Narrow the scope of the EIS to significant issues.

As part of scoping, the Corps cultivated discussions with private citizens, concerned and special interest groups, and government agencies regarding the proposed project.

On August 26, 2013, the Corps announced their intent in the *Federal Register* to prepare an EIS that would analyze the proposed Ripsey Wash tailings storage facility. The Corps allowed for a 60-day comment period, which was originally scheduled to close on October 28, 2013. However, with the October 2013 shut-down of portions of the federal government, the Corps extended the scoping comment period for another 21 days, until November 18, 2013.

In addition to the notice in the *Federal Register*, the Corps also placed public notices in the local newspapers (*East Valley Tribune*, *Arizona Silver Belt*, and *Copper Area News*) on September 4, 11 and 18, 2013. These notices announced the Corp's plans to prepare an EIS for Asarco's proposed new tailings storage facility, along with the time and place for the September public scoping meetings where the public and interested parties could learn more about the project and provide comments to the Corps.

The Corps held two public scoping "open house" meetings to inform the public and interested parties on the proposed project and to solicit comments. These meetings were held on the evening of September 24, 2013, at the Ray Elementary School in Kearny, Arizona, and on the evening of September 25, 2013 at the Performing Arts Center at the Apache Junction High School in Apache Junction, Arizona.

The Corps received twenty two comment letters and emails on the proposed tailings storage facility from the following agencies, organizations, and individuals:

Environmental Protection Agency	Stacy Brimhall
USDA Forest Service	Alice and Bud Bristow
Arizona Game and Fish Department	Ronald Deen, Sr.
Gila River Indian Community	Kai Mikkel Forlie
Tohono O'odham Nation	Douglas Hamilton
White Mountain Apache Tribe	S.K. Middrugh
Arizona Trail Association	Karen Payton
Sierra Club	Jean Public
Peter Else (Friends of the Aravaipa Region)	James Reany
Elna Otter	Robert Spoth
Jody Swingle	

The comments from these letters and emails were used to help identify the issues listed in Chapter 1, Purpose of and Need for Project, of this EIS.

2.2 ANALYSIS ACTIONS

Based on the scoping efforts, the Corps analyzed the nature and significance of the physical, biological, and socioeconomic effects of the proposal and reasonable alternatives.

2.2.1 Collection and Interpretation of Baseline/Background Information

Data collection and interpretation for the project focused on the present and expected physical, biological, and socioeconomic conditions affecting or affected by the proposal. The Corps has reviewed

and analyzed data provided by Asarco and its consultants to ensure adequacy and accuracy. The Corps also requested the collection of additional information where appropriate.

2.2.2 Development of Alternatives

Besides the proposed action, an EIS must address a no action alternative and consider other alternatives.

2.2.2.1 No Action Alternative

NEPA requires that a “no action” alternative be considered in EIS documents. This alternative serves as the baseline for estimating the effects of action alternatives. Under the no-action alternative, the requested Section 404 permit for the proposed new tailings storage facility would not be issued.

2.2.2.2 Action Alternatives

As part of the EIS process, a number of possible alternatives are reviewed. Social and environmental issues, concerns, and opportunities are considered in this review. In developing project alternatives for consideration in the EIS, numerous location, operational methods, and mitigation measures are examined. The type and range of alternatives are determined from public comments and key issues that have been identified during the scoping process, as well as reviewing the purpose of and need for the new tailings storage facility.

The merits of each alternative are carefully weighed. The actual analysis of alternatives is included in the draft EIS and includes a discussion of environmental protection measures, mitigation measures, and operational constraints. Review of possible alternatives and understanding of key issues serve as the foundation to meeting the mandate of NEPA.

In 40 CFR 1500.1(b), it is stated:

NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the actions in question, rather than amassing needless detail.

The Corps gathers both public and government input as part of scoping. The Corps Record of Decision (ROD) on the project must be based on input from the public and numerous federal, state, and local governmental authorities.

2.2.3 Estimate of Effects of Each Alternative

Direct, indirect, and cumulative effects of the proposed actions are considered. Effects are described in terms of changes in the physical, biological, and socioeconomic environment. These changes are also described by the magnitude, duration, frequency, reversibility, and significance of the effects.

2.2.4 Evaluation of Alternatives

Alternatives are compared on the basis of its impacts on the environment and socioeconomic considerations. The evaluation of the impacts of the various alternatives is considered by the action agency in making a decision on the proposed action.. Measures that would mitigate an effect of a proposed action are considered as part of the action agency’s evaluation.

2.3 DOCUMENTATION

The Corps documents the EIS process by maintaining an administrative record. Documentation includes the Notice of Intent to prepare the EIS, scoping information, Notices of Availability for the draft and final EIS, the draft and final EIS documents, the ROD, and supporting reference materials.

2.4 IMPLEMENTATION, MITIGATION AND MONITORING

The Corps reviews input and comments on the draft EIS from the public and interested federal, state, and local government authorities prior to making a final decision on the proposed action.

Based on comments received on the draft EIS, Asarco may elect to modify their proposal before release of the final EIS in order to respond to certain concerns. If an action alternative is approved, the Corps may identify additional measures that would mitigate possible environmental impacts.

In addition, based on findings of the EIS, environmental monitoring programs may be developed and/or stipulated to respond to site- specific conditions. However, tailings storage facilities and operations are monitored by various federal and state agencies to ensure that environmental safeguards are implemented and maintained.

3.0 PUBLIC'S ROLE IN THE PROCESS

Public involvement and scrutiny are important parts of the scoping and the environmental analysis process. A key component of NEPA is the opportunity for the public to actively participate in the decision-making process and communicate concerns so they can be addressed in the EIS. This public involvement is typically focused during the scoping process and during the review of the draft EIS.

4.0 ROLE OF GOVERNMENT AGENCIES AND PRIVATE ENTITIES

The organization of the EIS development is based on legal requirements and the involvement of the Corps in the analysis and preparation of the EIS documents. EIS responsibilities are characterized by the following interrelated entities:

- Lead Agency;
- Cooperating Agencies;
- Project Proponent;
- Independent Third-Party Contractor; and,
- Interested Agencies.

4.1 LEAD AGENCY

For the preparation of EIS regarding the proposed tailings storage facility, the Corps is the federal lead agency.

The Corps assigned Mr. Michael Langley as the EIS Coordinator to oversee the various aspects of the EIS effort including study design, public involvement, review of data collection and analysis, and the final content of the EIS. Mr. Langley is serving as the primary liaison among the Corps, Asarco, cooperating and interested agencies, and the third-party contractor.

4.2 COOPERATING AGENCIES

The Environmental Protection Agency (EPA), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs' San Carlos Irrigation Project (SCIP) are formal NEPA cooperating agencies on this EIS.

The EPA has "special expertise" (40 CFR 1508.26) in the review of EIS documents and accepted the Corps' invitation to be a cooperating agency.

A 1,500-foot segment of the tailings delivery and return water pipelines for the Proposed Action would cross lands managed by the BLM, so this federal agency was asked and decided to serve as a formal cooperating agency for the EIS preparation. In addition, a portion of the proposed realigned Arizona Trail is located on BLM-administered lands, as well as a portion of the Hackberry Gulch TSF action alternative. The BLM must consider and disclose potential impacts to (1) project components involving BLM-administered resources and (2) BLM decision space, both of which may include non-BLM surface as connected actions.

An existing 69 kV transmission line, owned and managed by the SCIP (part of the Bureau of Indian Affairs) crosses Ripsey Wash and would have to be relocated if the proposed action is implemented; therefore, SCIP has decided to be a cooperating agency for this EIS preparation.

4.3 PROJECT PROPONENT

Asarco is the project proponent.

Asarco owns and operates the Ray Mine, which is an existing open pit copper mine in Pinal County, Arizona. Asarco has proposed the construction and operation of a new tailings storage facility in Ripsey Wash to replace an existing tailings storage facility, which is nearing the end of its useful life.

Given their role as project proponent, Asarco has been responsible for preparation of plans for the facility. In addition, Asarco is providing the Corps and other appropriate regulatory agencies with environmental information and data required to address the environmental impacts of the proposed tailings storage facility.

Asarco is also responsible for funding an independent consulting firm to prepare the EIS and related documents, although the Corps maintains direct control and supervision of that third-party contractor.

4.4 INDEPENDENT THIRD-PARTY CONTRACTOR

The independent third-party contractor for the project is Czarnowsky Inc. (Czar), and this firm assists the Corps in the preparation of the EIS. The contractor obtains data, assists in alternative development, analyzes alternatives, and documents the conclusions leading to the final EIS. A Czar project manager acts as the liaison with the Corps. This manager oversees a group of resource and technical specialists who are assisting the Corps and its EIS project manager in analyzing data, estimating effects, formulating mitigation measures, and developing the technical sections of the draft and final EIS documents.

4.5 INTERESTED AGENCIES

The Corps has contacted the following federal, state, and local agencies regarding this project:

- Environmental Protection Agency;
- U.S. Fish and Wildlife Service;
- U.S.D.A. Forest Service;

- U.S. Bureau of Indian Affairs – San Carlos Irrigation Project;
- Arizona Department of Environmental Quality;
- Arizona Game and Fish Department;
- Arizona State Land Department;
- Arizona State Historic Preservation Office;
- City of Kearny; and,
- Pinal County.

The participation of these agencies on the EIS is based upon their interest, their legal requirements involved with potential future permitting responsibilities, and their expertise. As stated in Section 4.2, Cooperating Agencies, the EPA, BLM and SCIP are serving as formal NEPA cooperating agencies. The Corps is working with other agencies as part of the EIS process and will submit a draft EIS to these agencies to solicit their comments and to ensure that relevant issues are addressed.