

LESSONS LEARNED

March 1, 2002; Issue No. 30

First Quarter FY 2002

CEQ Guidance Encourages Agency Cooperation DOE Experience Is Generally Positive

Better cooperation and coordination – always a good idea in the NEPA process – is given an extra boost by the Council on Environmental Quality (CEQ) in new guidance.

James Connaughton, CEQ Chair, in a January 30, 2002, letter to Heads of Federal Agencies, underscores the benefits of enhanced cooperating agency involvement in the NEPA process. These benefits, including analytical and process efficiencies, improved trust among stakeholders, and greater likelihood of successful implementation of a proposed action, extend to both the lead agency and cooperating agencies. Moreover, all affected parties stand to share in the benefits of better decisions.

The CEQ guidance aims to ensure that all Federal agencies are actively considering designation of Federal and non-Federal cooperating agencies in the preparation of NEPA analyses and documentation, and that Federal agencies actively participate as cooperating agencies

continued on page 3

Benefits of Enhanced Cooperating Agency Participation Identified by CEQ

- Discloses relevant information early in the analytical process
- Applies available technical expertise and staff support
- Avoids duplication with other Federal, state, tribal, and local procedures
- Establishes a mechanism for addressing inter-governmental issues
- Fosters intra- and inter-governmental trust and a common understanding of and appreciation for various governmental roles in the NEPA process
- Enhances agencies' ability to adopt environmental documents

DOE Embraces Further NEPA Improvements

“There are lessons to be learned by all of DOE’s NEPA Community in the recent Top-to-Bottom Review conducted by the Office of Environmental Management [EM],” said Carol Borgstrom, Director of the Office of NEPA Policy and Compliance. “Improving NEPA is a continuous process, and we’re always interested in both new ideas and reassessing older ones,” she said.

“We’re examining the Review Team’s recommendations and have begun to develop generally applicable guidance. For example, the team was concerned that risks might worsen while an EIS is underway and that DOE has not

always examined a broad enough range of alternatives. We’ve developed guidance in both areas to improve NEPA implementation,” she said. (See pages 6 and 7.)

EM Top-to-Bottom Recommendations

“It is clear that EM’s NEPA process can be enhanced to support decision making more effectively and in a timely and cost-effective manner,” wrote the Top-to-Bottom Review Team in its February 4 report. “This is an

continued on page 5

Inside *LESSONS LEARNED*

Welcome to the 30th quarterly report on lessons learned in the NEPA process. We thank you for your continuing support of the *Lessons Learned* program.

Draft Interim Action Guidance Prepared	6
Mini-guidance: Analyze Alternatives to Provide Flexibility	7
Annual NEPA Planning Summaries	8
Update on Security Issues	9
A NEPA Streamlining Strategy	10
Anthrax Aftermath – Dealing with Mail Delays	12
NRC Seeks Comments on Draft NEPA Guidance	12
DOE-wide NEPA Contracts Update	13
Essential Fish Habitat Final Rule Issued	13
Transitions	14
CEQ Task Force to Modernize NEPA	17
Senior NEPA Liaisons to Meet with CEQ	17
Training Opportunities	18
Litigation Updates	19
EAs and EISs Completed This Quarter	20
Recent EIS-Related Milestones	21
NEPA Document Cost and Time Facts	22

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by May 1, 2002. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2002

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2002 (January 1 through March 31, 2002) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Process Information. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

Printed on recycled paper



Beverly Cook Becomes Assistant Secretary for Environment, Safety and Health

Beverly A. Cook was sworn in as Assistant Secretary for Environment, Safety and Health on February 6, 2002. In this position she advises the Secretary of Energy on national environmental goals and oversees the Department's compliance with environmental laws and regulations, including NEPA. She is also the Secretary's principal advisor for worker and public health and safety at DOE sites.

Ms. Cook has more than 27 years of experience directly related to DOE's environment, safety, and health goals. She earned a bachelor's degree in metallurgical engineering, and performed both nuclear safety

research and development and basic and applied materials research while working as a contractor at the Idaho National Engineering and Environmental Laboratory. After serving on the staff of the Defense Nuclear Facilities Safety Board, she joined DOE's Office of Nuclear Energy (now Nuclear Energy, Science and Technology), where she served in a variety of positions, including Principal Deputy Director. She was appointed Manager of the Department's Idaho Operations Office in 1999, and most recently served as Acting Director, Site Operations, in the Office of Environmental Management. We look forward to working with her on initiatives to improve DOE's NEPA program. 

CEQ Guidance (continued from page 1)

in another agency's NEPA processes. Reluctance to assume the role of a cooperating agency results in inconsistent implementation of NEPA, according to CEQ.

While cooperating agency status is a major component of stakeholder involvement, the guidance notes that this role neither enlarges nor diminishes the responsibilities or decision making authority of any agency involved in the NEPA process.

To assure that the NEPA process proceeds efficiently, CEQ urges agencies to set time limits, identify milestones, assign responsibilities, and establish other appropriate ground rules. Agencies are encouraged to document their expectations, roles, and responsibilities.

Factors to Consider in Initiating or Ending Cooperative Status

CEQ suggests 12 factors that an agency could use in determining, on a case-by-case basis, whether to invite, decline, or end cooperating agency status. These include jurisdiction by law or special expertise, as specified in the CEQ regulations (respectively, 40 CFR 1508.15 and 1508.26); ability to participate in a timely manner in scoping, analysis, and document preparation; and ability to provide resources such as personnel, expertise, funding, models and databases, and facilities and equipment. The factors are not intended to be all-inclusive, nor is it necessary to satisfy all factors.

Under the CEQ regulations (40 CFR 1501.6), upon a lead agency's request, a Federal agency with jurisdiction by law shall be a cooperating agency and one with special expertise may be a cooperating agency. Non-Federal agencies may be cooperating agencies in cases where they have either jurisdiction by law or special expertise (40 CFR 1508.5). It is incumbent on Federal officials to identify as early as practicable in the environmental planning process those Federal, state, tribal, and local government agencies that have jurisdiction by law and special expertise with respect to all reasonable alternatives or significant environmental impacts associated with a proposed action. In that regard, in subsequent letters, the CEQ Chair asked state governors, state and local government entities, and tribal leaders to consider accepting or requesting an invitation to participate in the NEPA process as a cooperating agency.

The guidance reminds an entity invited to participate in a NEPA review as a cooperating agency of its obligation to respond to the request, and if it declines, to provide a copy of its response to CEQ (40 CFR 1501.6).

To measure progress in addressing cooperating agency issues, CEQ directs Federal agencies to report biannually

Determining Whether to Invite, Decline, or End Cooperating Agency Status

1. Does the agency have jurisdiction by law?
2. Does the agency have special expertise?
3. Does the agency understand what cooperating agency status means, and can it legally enter into an agreement to be a cooperating agency?
4. Can the agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet established milestones?
5. Can the agency, in a timely manner, aid in identifying significant environmental issues, eliminating minor issues from further study, identifying issues previously the subject of environmental review, or identifying the proposed action's relationship to the objective of regional, state, and local land use plans, polices, and controls?
6. Can the agency assist in preparing portions of the review and analysis and in resolving significant environmental issues to support scheduling and critical milestones?
7. Can the agency provide resources to support scheduling and critical milestones such as personnel, expertise, funding, models, databases, facilities, equipment, or other services?
8. Does the agency provide adequate lead-time for review and participate in meetings in a timely manner?
9. Can the agency accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action?
10. Is the agency able and willing to provide data and rationale underlying the analyses or assessment of alternatives?
11. Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents?
12. Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

Excerpted from CEQ Guidance

continued on next page

CEQ Guidance (continued from page 3)

on the cooperating agency status of their EAs and EISs started during the previous six months. The first report, due on October 31, 2002, will include EAs and EISs started from March 1 through August 31, 2002. An attachment to the guidance provides a format for this report. The Office of NEPA Policy and Compliance will request this information from DOE's NEPA Compliance Officers and submit a compiled report on behalf of the Department.

DOE Experience with Cooperating Agencies Is Extensive, Generally Positive

Since 1995, DOE has issued 24 final EISs that involved cooperating agencies – 16 Federal agencies and their component organizations, 8 tribes, 5 counties, 2 states, and 1 city. These cooperating agency experiences were largely positive. A few examples are described below.

Idaho High-Level Waste (HLW) EIS

The State of Idaho is participating as a cooperating agency in the preparation of the *Idaho HLW and Facilities Disposition EIS* (DOE/EIS-0287). State technical staff participated actively in preparing and reviewing the Draft EIS (January 2000) and the Final EIS, to be issued in 2002. The Draft EIS contains a foreword written by the State that explains its role in the EIS: "By participating in the preparation of this EIS, Idaho hopes it can expedite progress towards the [1995 court] Settlement Agreement's goals to treat and remove HLW from the State." Idaho's foreword further notes that the Settlement Agreement allows DOE to propose changes to the Agreement, provided that they are based on adequate environmental analyses under NEPA, and that Idaho would agree to reasonable changes.

The Memorandum of Agreement establishing the State as a cooperating agency recognizes that Idaho and DOE can "agree to disagree" on issues and that the EIS will reflect both positions. For example, the EIS could reflect different preferred alternatives for DOE and the State. Accordingly, the Draft EIS's foreword identifies four "Key Policy Issues" and the State's views on those issues. This arrangement enables DOE and the State to make progress on the EIS without first resolving every issue.

Experience to date shows that the cooperative process has resulted in a longer document preparation process than preferred. It is expected, however, that the cooperative process will result in an environmental analysis upon which both parties agree and a document that will help meet the goals of the Settlement Agreement.

Hanford Comprehensive Land-Use Plan EIS

To help map out a long-term comprehensive blueprint for the 586-square mile Hanford Site, diverse parties with divergent interests were invited to participate in preparing this EIS. Nine parties accepted DOE's 1997 invitation to participate as either a cooperating agency or, in the case of the Tribal Nations, a consulting government: three Federal organizations, three counties, one city, and two tribes. Together they reached substantial agreement on the framework for environmental analyses, and for the land-use plan's policies and implementing procedures.

Some of the cooperating agencies and consulting tribal governments, however, strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To provide fair opportunities to voice competing interests, these cooperating agencies developed their own alternatives for consideration in the EIS, using guidelines to yield technically parallel information. Although the collaborative process required considerable time, it enabled the Department to create a land-use plan that balances competing needs and interests. Further, in its Record of Decision, DOE established implementing procedures that include the continued participation of the consulting and cooperating agencies in future land use decisions.

Excess Mercury Management Programmatic EIS

The Defense National Stockpile Center (DNSC) – part of the Defense Logistics Agency (DLA) under the Department of Defense – is preparing a programmatic EIS on the disposition of excess mercury that was stockpiled for national defense. DLA invited DOE to participate in the NEPA review as a cooperating agency because: (1) DOE manages an inventory of stockpiled mercury that could be affected by any decision the DLA reaches, (2) approximately 1.5 million pounds of the DNSC-managed mercury are collocated with a like amount of DOE-managed mercury at the Oak Ridge National Laboratory, (3) DOE possesses special expertise associated with mercury in the environment and with long-term storage of mercury, and (4) DOE is undertaking ongoing studies on mercury stabilization. DOE accepted DLA's invitation, and the notice of intent (66 FR 8947; February 5, 2001) identified DOE as a cooperating agency. Other Federal agencies – Environmental Protection Agency, Public Health Service, Geological Survey, and Department of Commerce – agreed to participate in an Interagency Working Group that helps with planning. DOE staff also participated in some of the DNSC-sponsored scoping meetings held near the current

continued on next page

CEQ Guidance (continued from previous page)

mercury storage sites. The Draft EIS is expected to be issued in mid-2002.

Previous issues of *Lessons Learned Quarterly Report* provided guidance on adopting a lead agency's EIS (*LLQR*, June 2000, page 13) and the requirement to list any cooperating agencies on an EIS cover sheet (*LLQR*, December 2000, page 4). A listing of DOE EISs issued between 1995 and 2000 with cooperating agencies is in the December 2000 issue, page 5.

CEQ's guidance is available on NEPA.net at ceq.eh.doe.gov/nepa/nepanet.htm and on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Tools. For further information or questions on DOE implementation of the CEQ guidance, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NEPA Improvements (continued from page 1)

opportune time to undertake improvements since nine EISs are currently being prepared for EM actions. Of these, four ... are particularly important since the associated projects or activities may commit DOE to significant funds or set forth major policies."

Secretary Spencer Abraham quickly accepted the Review Team's recommendations, which cover many aspects of the EM program, and instructed EM Assistant Secretary Jessie Roberson to immediately begin implementing internal reforms.

NEPA-related recommendations advocated by the Review Team include the following:

- The process of preparing an EIS should be a deliberate one managed by senior EM officials.
- Unrealistic concerns about litigation should not receive greater emphasis than the effects of increased, technically based risk analysis.
- NEPA considerations should be initiated earlier in the project-planning process.
- Once the decision has been made to prepare an EIS, EM management needs to oversee the process to ensure adequate scope; necessary technical analysis; and discussion of alternatives based on safety, performance assessments, costs, accelerated risk reduction, and environmental protection.
- EM Headquarters needs to provide assistance to the field in expediting and reducing the associated time requirements.
- DOE's NEPA guidance should be reviewed, in consonance with NEPA and its implementing regulations, with a view toward developing a more streamlined, flexible, cost-effective process.

NEPA Office Actions

While the Top-to-Bottom Review Team focused on the EM program, many of its conclusions have DOE-wide

applicability. For example, the Review Team raised the caution that, "Immediate responses that can mitigate or alleviate defined hazards during completion of the NEPA process are not pursued where appropriate," and that "delays in taking action while NEPA analyses are being prepared may have adverse impacts on human health and the environment and can result in additional program costs."

Regulations and guidance to implement NEPA prepared by both the Council on Environmental Quality and DOE provide for interim actions (40 CFR 1506.1, 10 CFR 1021.211) and emergency actions (40 CFR 1506.11, 10 CFR 1021.343(a)) to ensure that compliance with NEPA does not become the reason that near-term hazards are unmitigated. The NEPA process provides the flexibility necessary to address the concerns raised by the review team, and it continues to be DOE's policy to use that flexibility as appropriate. To underscore this point, the Office of NEPA Policy and Compliance has prepared draft guidance explaining the types of actions that may qualify as interim actions under NEPA. The draft guidance has been circulated within the DOE NEPA community for comment. (See "DOE NEPA Office Prepares Draft Interim Action Guidance," page 6.)

Another caution raised in the Top-to-Bottom review was that, "Many of EM's EISs are too narrowly scoped and do not adequately evaluate the breadth of options to be considered in the decision-making process." As an aid in addressing this concern, the Office of NEPA Policy and Compliance has produced a mini-guidance on the subject that appears in this issue of *Lessons Learned Quarterly Report*. (See "Analyze Alternatives," page 7.)

The NEPA Office will continue working with EM and other DOE program offices in the months ahead to identify opportunities for further improvements in DOE's NEPA process.

The Top-to-Bottom Review is available online at www.em.doe.gov/ttbr.html. 

DOE NEPA Office Prepares Draft Interim Action Guidance

DOE frequently needs to decide whether an action that is within the scope of an ongoing EIS may proceed before the NEPA review is completed (e.g., before a Record of Decision is issued). DOE may want to take such actions, commonly referred to as “interim actions,”

immediately to reduce risk or mitigate adverse impacts to human health and the environment or to reduce program costs. Indeed, interim actions to respond to an immediate need are often

permissible and should be pursued, as appropriate. This issue is especially important with respect to actions that fall within the scope of a programmatic or site-wide document.

To help respond to the concern that compliance with NEPA could become the reason for near-term hazards to go unmitigated, as expressed in the recent EM Top-To-Bottom Review (see “DOE Embraces Further NEPA Improvements,” page 1), the NEPA Office has prepared draft guidance on interim actions. The guidance is based on criteria established by the Council on Environmental Quality in its regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508), DOE’s NEPA implementing regulations (10 CFR 1021), which rely on those criteria, and the DOE NEPA Order, O 451.1B. Examples of the types of actions that may proceed as interim actions, a case study, and a flow diagram summarizing key aspects of the guidance are provided.

Interim Actions for Project-Specific EISs

For project-specific EISs, in general, project managers may proceed with conceptual design and feasibility studies in support of a project. Site characterization activities to support a meaningful analysis of the environmental impacts of the proposed action also generally may be undertaken, as well as small scale corrective actions under the Resource Conservation and Recovery Act.

Although these activities often take place while a more extensive action (e.g., a waste management action) with its associated EIS is being evaluated, they normally benefit the existing environment and are unlikely to involve adverse environmental impacts or limit the choice of reasonable alternatives for the final action. Documentation is not needed for interim actions under project-specific NEPA reviews.

Interim actions to respond to an immediate need are often permissible and should be pursued, as appropriate.

Interim Actions for Programmatic EISs

For programmatic EISs, DOE would first need to determine that the proposed interim action could be undertaken irrespective of whether or how the program goes forward. For example, in most cases in which DOE is obligated by law to carry out the interim action (e.g., usually cases involving compliance with environmental requirements), DOE would be able to demonstrate independent justification by showing that no reasonably foreseeable decision based on the programmatic EIS would affect the interim action.

In cases that involve the continuing operation of an existing facility that is in the scope of a programmatic EIS in preparation, DOE would need to establish that the proposed interim action is needed to allow the facility to fulfill its existing mission before decisions can be made and implemented on the basis of the programmatic EIS. If so, a near-term modification or activity would be permissible because it would be necessary for the ongoing program, regardless of how decisions based on the programmatic EIS may affect the future of the facility.

DOE would also need to determine whether a proposed interim action would tend to determine subsequent programmatic development or limit programmatic alternatives. In general, interim actions of relatively limited scope or scale that have only local utility are unlikely to prejudice programmatic assessment or decisions, and could be taken before a Record of Decision. A number of related interim actions, however, when considered collectively could unduly influence programmatic decisionmaking.

For example, proceeding with a number of decentralized waste treatment projects could prejudice the choice of programmatic options involving centralized treatment. Interim actions for a programmatic EIS need their own NEPA review.

The draft guidance on interim actions was transmitted to NEPA Compliance Officers for review via memorandum of March 1, 2002. Comments are due to the Office of NEPA Policy and Compliance by April 12, 2002. For more information on the draft guidance, contact Brian Mills at brian.mills@eh.doe.gov or 202-586-8267. 

In general, interim actions of relatively limited scope or scale that have only local utility... could be taken before a Record of Decision.

Analyze Alternatives Not Currently Authorized, If Reasonable, to Provide Greater Flexibility

According to the Environmental Management (EM) program's Top-to-Bottom Review, the NEPA process for EM projects and programs "is often time-consuming and costly without providing the sound analysis and rational alternatives to support good decisionmaking." The Review also found that many of EM's EISs are "too narrowly scoped and do not adequately evaluate the breadth of options to be considered in the decisionmaking process.... Initial alternatives may not be adequate to support Departmental goals and decisionmaking; thus reanalysis may be necessary."

Value of Broad Range of Reasonable Alternatives

It is important to evaluate a broad range of alternatives in an EIS or EA to give a decisionmaker flexibility in responding to changing circumstances. By coordinating continually with project planners and engineers, document preparers can ensure that an EIS or EA covers "new ideas" that may be emerging on better, cheaper, and faster ways to accomplish the agency's purpose and need for action.

An earlier article in *Lessons Learned Quarterly Report* dealt with the general topic of analyzing reasonable alternatives and included examples of changed circumstances wherein what was impractical became practical over time. (See "Analyzing All Reasonable Alternatives in an EIS," *LLQR*, March 2001, page 6.) That article did not emphasize, however, the value of analyzing alternatives not currently authorized.

Unauthorized Alternatives Can Be Reasonable Alternatives

The concept of reasonableness is not self-defining – that is, reasonable alternatives for an EIS or EA must be determined on a case-by-case basis. To ensure flexibility in decisionmaking, consider the possibility of change not only in the context of an agency's ongoing activities and compliance framework, but also with an eye toward flexibility should technology advance or new compliance agreements be reached.

In guidance, CEQ has stated that "reasonable alternatives include those that are practicable or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant" (CEQ's Forty Most Asked Questions,

CEQ Regulations and Guidance on Alternatives Outside an Agency's Jurisdiction

- CEQ's regulations implementing NEPA require that an agency "rigorously explore and objectively evaluate all reasonable alternatives" to a proposed action (40 CFR 1502.14(a)).
- The regulations specifically require that the analysis include "reasonable alternatives not within the jurisdiction of the... agency" (40 CFR 1502.14(c)).
- The "Forty Most Asked Questions Concerning CEQ's NEPA Regulations" (46 FR 18026, March 23, 1981) further address the issue of alternatives beyond the agency's jurisdiction (Question 2b):

An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or Federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered (40 CFR 1506.2(d)). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies (40 CFR 1500.1(a)).

Question 2(a), reference provided in Text Box). A common thread that runs throughout the CEQ NEPA implementing regulations and related CEQ guidance is that alternatives must be analyzed if they are "reasonable."

An alternative that is practical, feasible, and consistent with an agency's established mission may be "reasonable" for purposes of NEPA, even if it would require some augmentation of the agency's existing authority or a change in existing legal requirements. Inclusion of these alternatives in NEPA documents may provide useful information to inform decisionmaking.

continued on page 8

Analyze Alternatives (continued from page 7)

Analysis of Unauthorized Alternatives Proves Useful

The EIS preparation team for the *Idaho High-Level Waste and Facilities Disposition EIS* (DOE/EIS-0287) did not apply “regulatory filters” in developing the range of reasonable alternatives. The EIS includes alternatives for managing high-level radioactive waste at the Idaho National Engineering and Environmental Laboratory that would not meet existing regulatory requirements and court ordered agreements. Considering such alternatives provides decisionmakers with a broad range of options to properly manage waste, and the flexibility to consider technology developments and new information on potential new waste management approaches. Further, DOE and the State of Idaho have agreed that the EIS could facilitate negotiations on proposed changes to a court-ordered agreement. (See “CEQ Guidance Encourages Agency Cooperation,” page 1.)

Likewise, in the *Supplemental EIS for the Waste Isolation Pilot Plant (WIPP) Disposal Phase* (DOE/EIS-0026-S-2), three of the four action alternatives would violate the restriction in the WIPP Land Withdrawal Act on the total volume of transuranic waste to be disposed of at WIPP and the Act’s implied ban on disposal of non-defense transuranic waste at WIPP. Further, some of the action alternatives would also violate the limit on the volume of remote-handled transuranic waste imposed by the Cooperation and Consultation Agreement with the State of New Mexico. The analysis of these unauthorized alternatives was useful, however, to examine the environmental impacts of disposing of all of DOE’s transuranic waste at WIPP, because non-defense waste and pre-1970 buried waste could constitute as much as 46 percent of DOE’s transuranic waste volume. The unauthorized alternatives were consistent with the purpose and need for agency action and the CEQ regulations and related guidance. **LL**

Annual NEPA Planning Summaries: Are They Important?

As a NEPA Compliance Officer, you may have wondered why your office must submit an annual NEPA planning summary each year to the Office of Environment, Safety and Health (EH). What is EH doing with these reports?

The purpose of annual planning summaries is *more than* just informing EH’s Office of NEPA Policy and Compliance about EAs and EISs that are being or will be prepared over the next 12 to 24 months, along with estimated costs and schedules. Knowing when EISs are scheduled helps EH plan to have the necessary staff resources available to review and assist in their preparation and approval. Additionally, being aware of all EAs and EISs being prepared throughout the Department helps EH identify cross-cutting issues and trends.

In addition to notifying EH, the annual planning summaries alert the public to upcoming NEPA documents, and ensure that the Secretarial Officers and Heads of Field Organizations are involved early in the NEPA process. Preparation of an annual planning summary provides a vehicle for senior officials to review their NEPA compliance strategies and make any necessary adjustments (e.g., to schedules, resources, alternatives) to reflect program priorities.

Based on a preliminary review of the 23 annual planning summaries received to date, approximately 98 EAs and 41 EISs are scheduled in the next 12 to 24 months. **LL**

Update on Security Issues in the DOE NEPA Process

The DOE Office of NEPA Policy and Compliance remains concerned about how best to inform the public about the Department's NEPA process and yet limit access to sensitive information. Although there is some uncertainty within DOE and throughout the Federal government about appropriate security policies for Internet content, and, as a result, inconsistent approaches to the problem, we expect the Administration to provide guidance soon. In the meantime, we are beginning to restore electronic access to DOE's NEPA documents. It should be noted that DOE continues to distribute paper copies of its NEPA documents to the public in accordance with NEPA regulations. What follows is an update to the December 2001 *Lessons Learned Quarterly Report* article, "DOE NEPA Post-9/11."

Broad Federal Government Actions Expected

The Council on Environmental Quality (CEQ) convened a meeting of Federal agency NEPA contacts on December 20, 2001, to discuss security concerns over sensitive information and NEPA. Staff from DOE's Offices of NEPA Policy and Compliance, General Counsel (GC), and Civilian Radioactive Waste Management (RW) participated in the exchange of information.

A CEQ NEPA Task Force plans to work with the Office of Homeland Security to provide policy and guidance on security and the NEPA process for Federal agencies. (See "DOE NEPA Staff to Participate in CEQ Task Force to Modernize NEPA," page 17.)

The Office of Homeland Security is considering proposing new guidance that would allow for the protection and control of specific unclassified information. The guidance would provide a level of protection for sensitive unclassified information that will be disseminated to Federal, state, and local governments, and the private sector. The majority of the information would involve infrastructure vulnerability information and response plans.

Other Federal agencies have taken similar actions and face similar questions as DOE in aiming to limit but not eliminate public access to NEPA analyses. Most agencies have restricted Web access to previously issued EISs and EAs while working to establish criteria for "sensitive information" and reinstating Web access.

Two Agencies, Two Approaches

The Federal Energy Regulatory Commission (FERC) believes that NEPA documents for natural gas facilities

could contain sensitive information and has removed from its Web site all such documents for projects that have received a certificate. To provide opportunities for public involvement for proposed new gas facilities, however, FERC still posts current NEPA documents on its Web site. After issuing a certificate, FERC considers the gas facility to be an existing one and removes the related documents from the publicly accessible Web site. FERC does not believe that NEPA documents for hydroelectric facilities contain sensitive information, and such documents remain available on the FERC Web site.

The Nuclear Regulatory Commission (NRC) disabled its entire Web site soon after the September 11th terrorist attack. Since that time, NRC continues to perform a security sensitivity screening of Web site content, including new information and information that was previously available. After information has undergone the security sensitivity screening and been judged appropriate for public access, NRC is reloading NEPA documents and other information onto the Web site. For example, NRC initially removed from its Web site the final EIS for a proposed independent spent nuclear fuel storage facility on an Indian reservation in Utah (NUREG-1714). NRC subsequently reviewed that document for potential security concerns and made it publicly available via its Web site.

Online Access Follows Operational Security Review of the Yucca Mountain Final EIS

In preparing the *Final EIS for a Geologic Repository for Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0309), RW, in consultation with the NEPA Office, GC, Office of Security, and other entities, reviewed the approximately 5,000-page document for information that might be useful to terrorists. RW determined that, because of the security sensitivity of some information in the Final EIS, portions of it should be segregated in a separate volume (Volume IV, "Additional Information") for limited distribution.

RW will not make Volume IV of the Final EIS available via the Internet or in public reading rooms. That volume contains the entire technical appendix on accident analyses (about 49 pages) and about 10 pages from the technical appendix on transportation risk (which is about 207 pages). Volumes I, II, and III, however, are available on

continued on page 10

Security Issues (continued from page 9)

the Web and in reading rooms, and a person reading these would learn of the existence of Volume IV and receive instructions on how to request it. RW would provide Volume IV to people who give their name and address. RW is reviewing the references for the EIS for potential security concerns and may limit electronic access.

Restoring Access to DOE's NEPA Web Site

Since blocking access to EISs and EAs on the DOE NEPA Web in early November 2001, the Office of NEPA Policy and Compliance has been considering appropriate ways to make information available while protecting homeland security. As a first step, in January 2002, the NEPA Office restored online access to DOE NEPA documents for DOE personnel (i.e., to people with "doe.gov" and similar DOE e-mail addresses).

The NEPA Office is now taking additional steps to increase availability of EISs and EAs online. A password access system for contractors who prepare DOE NEPA documents will be available in mid-March. The system will require these contractors to complete an electronic account application in which they must provide identifying information, including a DOE contact. The Office is also planning to make future NEPA documents for which appropriate operational security reviews have been conducted generally available without restrictions.

In seeking to restore public availability to DOE's EISs and EAs online, the NEPA Office seeks input from the DOE NEPA Community on a range of options:

- Continue to restrict access to the approximately 100 draft and final EISs and 320 EAs on the DOE NEPA Web. (The Office is aware that some DOE EISs and EAs may still be publicly available elsewhere online.)
- Establish a password access system for members of the public who identify themselves (e.g., provide their name and address and need for access).
- Open the Web site without restriction. This could be done without a review of the past documents for sensitive information, as the NEPA Office does not have the resources or expertise to conduct such a review. Alternatively, this could be done after Program or Field Offices conduct such reviews or confirm that such a review is not needed for certain documents.

The NEPA Office continues to solicit information and suggestions from the DOE NEPA Community. For further information or to provide comments, contact Denise Freeman, Webmaster, Office of NEPA Policy and Compliance, at denise.freeman@eh.doe.gov or 202-586-7879. 

A NEPA Streamlining Strategy

By: Roger P. Hansen, J.D., *Environmental Consultant*,
and Theodore A. Wolff, Ph.D., *Sandia National Laboratories/New Mexico*

The authors, whose combined NEPA experience serving Sandia National Laboratories totals over 30 years, propose a ten-element strategy, summarized below, to make NEPA "work better and cost less." A fuller discussion of these concepts is contained in their article "Making NEPA More Effective and Economical for the New Millennium," Federal Facilities Environmental Journal, Autumn 2000.

Efficient and effective implementation is needed for NEPA to fulfill its promise as a great tool for environmental management. Obstacles to achieving this promise remain, in part from the persistence of major compliance problems:

- Avoidance of NEPA compliance at all costs, even if it means stopping the project.
- Documentation procrastination that results in setting impossible schedules for EA or EIS preparation.
- Failure to use NEPA to make better decisions.
- "Encyclopedia mania," which results in producing massive multi-volume, often unreadable NEPA documents.

- Inadequate public and agency involvement, causing delay.
- Atrocious writing, editing, and formatting of documents.
- Preparing an EA where an EIS is required and vice versa.

Our strategy is mostly common sense and it cannot overcome long-held anti-NEPA attitudes. But our approach can make NEPA compliance easier and more helpful to decisionmakers and the public.

continued on next page

A NEPA Streamlining Strategy (continued from previous page)

- 1. Integrate the NEPA process with other environmental compliance and review procedures.** This provides an opportunity to save time, money, and paperwork. Managers, however, must maintain a proper balance between complying with NEPA and addressing other environmental review requirements, and avoid creating a document that is too long and complex for efficient and effective public review.
- 2. Accelerate the decision time for determining the appropriate level of NEPA documentation.** Contractors and project managers consume time and resources while awaiting agency decisions on whether or how to comply with NEPA. The consequence of a wrong decision (preparing an EA when an EIS is required, or vice versa) is further delay and waste of more resources. Use of internal scoping (see 3 below), and an early determination of whether an EIS is required, can avoid these problems.
- 3. Conduct early and thorough internal NEPA document scoping.** Thorough internal scoping, not to be confused with public scoping, should be completed before document preparation starts. The agency cannot be adequately prepared for a public scoping process when it has not done its own internal homework. When possible, internal scoping should include the document preparer personnel, who otherwise lose time at the front end of a project as they learn the scope and issues of concern.
- 4. Organize and implement public scoping processes that are participatory rather than confrontational.** Public controversy can never be avoided altogether, but its effects can be mitigated if the public and other agencies feel they are being given the opportunity to really participate. An approach that is receiving wider acceptance is to have participants form working groups based on the major issues in the NEPA document.
- 5. Maintain an up-to-date compendium of environmental “baseline” information.** Maintaining current environmental baseline reports can significantly decrease the time and cost of NEPA document preparation, and help preparers avoid “reinventing the wheel” for each affected-environment section in EAs and EISs. Standardizing this information and focusing on what is important helps eliminate encyclopedic discussions and unnecessary details.
- 6. Prepare more broad-scope “umbrella” EAs and EISs that can be used for tiering.** Use a programmatic or site-wide document from which to tier narrower, more project-specific documents. Tiering in the Council on Environmental Quality regulations refers to EISs, but a broad-scope EA can also be used for a tiering document.
- 7. Prepare an annotated outline as a “road map” for EA or EIS preparation.** Annotated outlines provide specific guidance to authors on the desired contents of each section or subsection of the document, the recommended approach to the topic, and data gaps that need to be filled. They are generally organized in a tabular format with four columns: (1) outline element (table of contents); (2) target number of pages for each element; (3) authors responsible; and (4) contents and data needs.
- 8. Decrease the length and complexity of highly technical portions of NEPA documents.** Highly technical data must be presented in a succinct, understandable manner and interpreted for the benefit of both the general public and sophisticated readers. Place detailed technical data in an appendix or in a separate document incorporated by reference.
- 9. Increase and systematize NEPA compliance outreach, training, and organizational support.** One of the major reasons for decision delays, confusion about appropriate levels of NEPA review, writing reiterations, inability to meet schedules, and cost overruns is the lack of NEPA training for project managers, document authors, and others with NEPA compliance responsibilities. Training in the philosophy, purpose, legal requirements, and methods of NEPA compliance is imperative for everyone involved in the NEPA process.
- 10. Work diligently to prepare better organized, shorter, more readable NEPA documents.** None of these streamlining strategies will be effective if EAs and EISs are poorly organized and written in language incomprehensible to public reviewers. NEPA documents that are understandable permit greater public participation, increase credibility and support, and reduce appeals and litigation. Project managers and NEPA professionals must learn to focus at least as much attention on the organization and writing of documents as on their technical content. **LL**

Anthrax Aftermath – Dealing with Mail Delays

In the aftermath of the DC area anthrax scare, DOE continues to be affected by mail delivery delays, primarily in the Washington. Although U.S. Postal Service (USPS) delivery to the DOE Forrestal Building was restored in November, the NEPA Office, as of late February, was still receiving letters that were postmarked in October and November. Even items mailed in January – from the public, other Federal agencies, and other DOE offices – were received more than 30 days later. Such delays affect not only internal DOE operations, but also may affect external participants in the NEPA process.

Consequently, the NEPA Office encourages Program and Field Offices to take steps to accommodate these new circumstances to ensure that the NEPA process is not unduly delayed and that public involvement opportunities are not reduced. For example, NEPA Document Managers should consider allowing additional time beyond identified deadlines for receipt of comments, as appropriate. In general, public comments that are postmarked before the end of a public scoping or comment period, but received by DOE after a deadline date, should be considered, to the extent practicable.

In addition, requests for public comments should offer options to commenters, inviting them to respond by using mail, facsimile, electronic mail, or telephone.

Delays should gradually decrease as the backlog of undelivered mail is reduced, but additional time to process

Federal mail may still be required. Based on an informal survey, it appears that most Federal mail is either inspected and tested in accordance with Centers for Disease Control and Prevention guidelines before distribution (as is done for Germantown mail), or it is sanitized (irradiated) as is done for much of the mail directed to Federal agencies at Washington, DC, zip codes.

According to a USPS representative, all mail destined for Washington, DC, first goes to the “hub” in Landover, MD, where government mail is sorted by hand. All mail bound for Capitol Hill and the White House is sent to New Jersey or Ohio for irradiation. Mail bound for other Federal addresses is also irradiated, unless the sender is known, such as another Federal agency.

Based on the experiences of the NEPA Office, however, much of our mail is sanitized (and therefore delayed), including mail from other DOE offices and Federal agencies. Accordingly, for time-sensitive communication sent to this office, we encourage the use of facsimile or e-mail as a backup to the USPS until the situation improves. Additional options include the use of the United Parcel Service and Federal Express.

For further information contact Jim Sanderson at jim.sanderson@eh.doe.gov or 202-586-1402. 

NRC Seeks Comments on Draft NEPA Guidance

In October 2001, the Nuclear Regulatory Commission (NRC) published for comment and interim use draft environmental review guidance intended to improve the consistency of NEPA implementation throughout the NRC’s Office of Nuclear Material Safety and Safeguards (NMSS). The Office of NEPA Policy and Compliance will compile DOE comments on the draft guidance, which are due to the NRC by September 30, 2002.

Intended for NRC staff, licensees and applicants, and members of the public, the guidance is especially relevant to DOE program elements who prepare environmental documentation for an NRC license (e.g., certain spent nuclear fuel and high-level waste storage or disposal facilities). The guidance covers a broad range of NEPA issues including whether a categorical exclusion, EA, or EIS is appropriate; early planning for an EA or EIS; EIS project planning; using previous environmental analyses related to a proposed action; preparing accident, transportation, and cost-benefit analyses; environmental

justice; consulting other agencies; public meetings; and preparing a Finding of No Significant Impact or a Record of Decision.

The NRC’s draft *Environmental Review Guidance for Licensing Actions Associated with NMSS Programs*, NUREG-1748 (about 150 pages), is available electronically from Mr. Matt Blevins, Project Manager, Environmental and Performance Assessment Branch, NRC, at mxb6@nrc.gov or 301-415-7684. Printed copies may be requested from: NRC, Distribution Services, Washington, DC 20555, or via e-mail at distribution@nrc.gov. The Notice of Availability for the draft NUREG-1748 was published in the October 18, 2001, *Federal Register* (66 FR 52951).

For further information contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771. Please provide any comments on the guidance to Ms. Bowie by July 26. 

DOE-wide NEPA Contracts Update

By: David A. Gallegos, *DOE-Wide NEPA Contract Administrator*

DOE is now preparing a solicitation for new contracts for DOE-wide NEPA support services. Because three of the four existing DOE-wide NEPA contracts (SAIC, Tetra Tech, and Tetra Tech NUS) expire on June 18, 2002, task orders may be issued only through June 17, 2002. Further, since the contracts state that “the contractor is not required to make any deliveries . . . beyond one-year after the contract’s effective period,” these contractors must make any deliveries by June 17, 2003. If new contracts are not in place by June, the existing contracts could be extended. (Similarly, the Battelle contract expires on March 13, 2003, and has similar restrictions on issuing task orders and deliveries.)

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see December 2001, page 9, and the cumulative index (under “Contracting, NEPA”) on page 26 of the September 2001 issue of *Lessons Learned Quarterly Report* or on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Process Information. For questions, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
EA for the Conveyance of DOE-ORO Properties to the City of Oak Ridge, Tennessee	David Allen 865-576-0411 allendr@oro.doe.gov	11/6/01	SAIC
EA for the Proposed Carlsbad, New Mexico, Actinide Chemistry Laboratory	Harold Johnson 505-234-7349 harold.johnson@wipp.ws	12/12/01	Battelle
Site-wide EA for Sandia National Laboratories, California	Susan Lacy 505-845-5542 slacy@doeal.gov	2/13/02	Tetra Tech, Inc.

Essential Fish Habitat Final Rule Issued

The National Marine Fisheries Service (NMFS), an agency of the Department of Commerce’s National Oceanic and Atmospheric Administration (NOAA), has issued its final rule (50 CFR 600, Subparts J and K) implementing the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 *et seq.*). Under the Act, Federal agencies must consult with NMFS regarding proposed actions that may adversely affect designated essential fish habitat, defined as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”

Effective February 19, 2002, the final rule replaced but did not substantively change an interim final rule that had been in effect since January 1998. The final rule reinforces NMFS’s preference for combining essential fish habitat consultations with other environmental reviews (including

NEPA) to promote efficiency. It institutes streamlined procedures for developing “General Concurrences” (which eliminate the need for individual consultations on actions with minimal impacts to essential fish habitat) and clarifies that, for relatively simple actions, the Federal agency’s written assessment of effects to essential fish habitat may be brief.

Considering essential fish habitat in NEPA reviews was the subject of previous mini-guidance in the *Lessons Learned Quarterly Report* (March 2000, page 12). For additional information on the essential fish habitat final rule, including the associated EA and FONSI, and the *Federal Register* notice (67 FR 2343; January 17, 2002), see the NOAA Fisheries Office of Habitat Conservation Web site at www.nmfs.noaa.gov/habitat. 

Transitions

Retirement Reflections on a Career of NEPA Lessons Learned

By: Stan Lichtman, *formerly Deputy Director, Office of NEPA Policy and Compliance*

Upon my retirement in January 2002, my *Lessons Learned* colleagues appropriately asked me to do what I had asked so many others to do – write an article that would help DOE’s NEPA practitioners to do their work. I am happy to do so, and will take the opportunity for some strictly personal remarks as well.

About NEPA

The NEPA process seems unique and complex. It is neither; rather, it is ordinary and straightforward. The NEPA process simply evaluates the *environmental* consequences of alternative ways to solve a defined problem, something good managers should routinely do for *all* the consequences of solving major business problems. NEPA was enacted because Federal agencies were not viewing environmental protection as part of their mission; if they had, there might be no NEPA.

About DOE’s Application of NEPA

I think NEPA is especially important to DOE, and very much misunderstood and underappreciated. Much of DOE’s work necessarily has been done secretly, which has encouraged public suspicions of its activities and enabled those who oppose its missions to successfully demagogue the issues. NEPA does not have the power to persuade committed people to change their positions, nor is it DOE’s mission to try to change them. NEPA does provide a means to set down facts and viewpoints, however, and, unlike most of its elected and non-elected critics, DOE has a duty to do so fairly and completely. To the degree that a means of providing information and public participation can be useful in addressing controversial issues, NEPA is useful by providing such a means. (One legacy of past secrecy is that DOE has communicated poorly even internally. I believe NEPA is very useful for this purpose too, and I especially think that EISs and their associated Records of Decision have served to bring a degree of management order and accountability to DOE that is at least as important internally as it is to outside stakeholders.)

Does DOE’s application of NEPA actually protect the environment? Most often not directly, but perhaps indirectly. Much of DOE’s work is done under tightly controlled conditions, often on large government-owned reservations. DOE’s NEPA reviews, even those for “major” projects, generally show that the environmental impacts will be small. We should not be surprised that DOE’s engineers, who now incorporate environmental protection into their mission and who understand that the

environmental aspects of their work will be subject to public scrutiny, generally design proposed actions so as to avoid environmental impacts. Moreover, the NEPA process earns its keep if it only occasionally produces a substantial improvement or avoids a significant mistake. (New Production Reactor and Hanford Tanks are examples of high profile and high cost projects that were cancelled in large part because information developed under NEPA showed that they were unnecessary.)

About My NEPA Work

NEPA practitioners mainly deal with matters that are new and currently important to an agency’s mission. DOE often is criticized for its broad diversity of programs, but that diversity only makes NEPA work more interesting. The Office of NEPA Policy and Compliance may be the very best place in DOE – perhaps the only place – where one can get so deeply involved in such a wide variety of interesting and important matters. As a Division Director and then Deputy Director of the Office, I was privileged to deal with the entire scope of DOE’s missions. I also valued meeting and working with a great number and variety of field and program personnel and contractors whose job was straightforwardly to advance specific proposed projects. (My job was to promote and ensure NEPA compliance for those proposed projects; I often functioned as a facilitator and collaborator, however, but primarily was a critic.) I have found these people to be very knowledgeable about and dedicated to their work,

continued on next page



Some 90 “Friends of Stan” gathered on January 29 to wish him a fulfilling and enjoyable retirement. Ray Berube, Deputy Assistant Secretary for Environment, presented a Distinguished Career Service Award to Stan.

Transitions (continued)

and we often have developed mutual respect for and appreciation of our different roles. They have difficult jobs, and I wish them well.

... And the Office of NEPA Policy and Compliance, on behalf of the DOE NEPA Community, wishes Stan well in his retirement. We have all benefited from his dedication to the letter and spirit of NEPA, high standards, and commitment to cooperation. It is fitting that on retiring

after almost 25 years of Federal service, including 14 years with DOE, then-Acting Assistant Secretary for Environment, Safety and Health Steve Cary presented Stan with an Exceptional Service Bronze Medal Award with the following citation: "In recognition of the technical expertise and managerial excellence that you provided to the Department of Energy's NEPA compliance program. Your dedication, outstanding leadership and exemplary service are appreciated." 

Retirement Reflections from a Learned Lawyer

By: Janine M. Sweeney, formerly Deputy Assistant General Counsel
Office of the Assistant General Counsel for Environment

Of all the topics related to NEPA that I could reflect upon in "retirement," I choose one that many might label pedantic. But looking back over my career at DOE, I am struck by how much of my time, and indeed that of my colleagues in the Office of General Counsel and the Office of NEPA Policy and Compliance, was spent rewriting NEPA documents in an effort to make them more understandable. Every NEPA document must "tell the story" of how the need for agency action arose, what alternative means are available for addressing the perceived problem, and what potential environmental impacts may result. But consistently producing NEPA documents that clearly tell that story has proven to be an illusive goal.

Why does it matter that "the story" be clearly written? Obviously, the description of the need for agency action serves as the bedrock for what comes later. Given the nature of DOE proposals, they often are fraught with public controversy, and the potential environmental impacts are not always easy to explain. The cornerstone of any NEPA document is the description of the environmental impacts of the proposed action and alternatives, and if DOE has not clearly articulated the need for agency action and the alternatives being considered, the description of environmental impacts may fail to adequately inform.

In contrast to the myriad NEPA challenges faced by DOE, such as how to define alternatives in ways that adequately illuminate the differences among them while at the same time providing flexibility to program managers, clearly telling the story would appear to be a relatively straightforward and achievable goal. Yet, during my tenure at DOE, draft NEPA documents often were presented for review by GC and EH that were not clearly written. When confronted with such a draft, the reviewer is left to wonder whether the lack of clarity represents "fuzzy" thinking, or whether it is simply a matter of not

having the benefit of a good "storyteller." Often, but not always, it was the latter.

Being a good "storyteller" is not usually among the skill sets required of the engineers and risk assessment scientists who write DOE's NEPA documents and, as the saying goes, *therein lies the rub*. So, where can the program offices responsible for preparing NEPA documents acquire the services of one who can clearly tell the story? Look within. Many federal program employees at headquarters and in the field offices are gifted writers, and are well equipped to undertake such a task if management is willing to make clear writing a program priority.

Whether a storyteller is recruited within DOE or its contractor community, such services admittedly come at a cost, and there are ever fewer dollars available for NEPA document preparation. So, spend money where it must be spent, such as in the preparation of new analyses, and save it where it does not need to be spent, thereby freeing-up money to be devoted to ensuring that the story is clearly told.

Where could money be saved? Don't spend scarce dollars reinventing the wheel. For example, use previously approved descriptions of the "affected environment," updated as appropriate. Incorporate previously approved descriptions of common terms, analytical methods, and environmental impacts, such as transportation radiological accident risk. Don't authorize the preparation of any new descriptions of "applicable laws, regulations, and other requirements" unless there are no current descriptions available. Numerous NEPA documents have been prepared that describe the generally applicable federal and state requirements. The preparers of NEPA documents should use these to the greatest extent possible, modifying the descriptions only to explain the relevancy of any particular requirement to the proposal at hand.

continued on next page 16

Transitions (continued from page 15)

This not only would save money, but also would save the time and effort (and sanity) of the attorneys who have to review the descriptions of legal requirements.

The advantages of submitting clearly written NEPA documents for concurrence in the first instance are self-evident. The time a document spends in the concurrence process would be reduced, as would the costs associated with editing or rewriting draft documents. Most importantly, it would ensure that DOE consistently produces clearly written NEPA documents, regardless of the penchant for rewriting that any particular reviewer may bring to the concurrence process.

During the last decade, DOE has made great strides in producing quality NEPA documents. It is now time that the program offices responsible for preparing NEPA documents extend the same commitment for producing good science to consistently producing documents that

clearly tell the story of DOE problem-solving that is, after all, at the heart of the NEPA process.

Some final thoughts. As a reviewer, I was guilty of changing “happy” to “glad” in more than a few instances. As H.G. Wells once observed, “no passion in the world is equal to the passion to alter someone else’s draft.” I hope, however, that on the whole my efforts were not misdirected. During my years at DOE, I had the distinct privilege and pleasure of working with many gifted and dedicated professionals, who taught me a great deal about nuclear science and risk assessment. I wish you all well.

The Office of NEPA Policy and Compliance expresses its appreciation, on behalf of the Department, for the many contributions Janine Sweeney made to the DOE NEPA Program. She reviewed NEPA documents, guidance, and, yes, Lessons Learned Quarterly Report articles. Her recommendations always helped DOE tell a better story. LL

Four New NEPA Compliance Officers Designated

National Nuclear Security Administration: James Mangeno

James J. Mangeno now serves as the NEPA Compliance Officer (NCO) as well as Special Environmental, Safety and Health Advisor to the Administrator of the National Nuclear Security Administration (NNSA). He is assisted by Deputy NCO Jay Rose on issues related to Defense Programs and Deputy NCO Hitesh Nigam on issues related to the Materials Disposition Program. Before joining NNSA, Mr. Mangeno worked for 37 years in the Naval Reactors Program, including 17 years as Director of Nuclear Technology with responsibility for all environment, safety, and health matters in Naval Reactors. Mr. Mangeno can be reached at james.mangeno@nnsa.doe.gov or 202-586-8395.

Nevada Operations Office: Michael Skougard

Michael Skougard recently resumed the duties of NCO for the Nevada Operations Office, replacing Kenneth Hoar who served during 2001. Mr. Skougard has been a NEPA Specialist and the Environmental Protection Team Leader in the Nevada Operations Office since 1995 and was first designated as NCO in 1997. For 15 years before that, Mr. Skougard was with the Western Area Power Administration (WAPA) in Billings, Montana, and Salt Lake City, Utah, where he was involved in a broad range of environmental issues, including NEPA. Mr. Skougard can be reached at skougard@nv.doe.gov or 702-295-1759.

National Petroleum Technology Office: David Alleman

David Alleman is now the NCO for the National Energy Technology Laboratory’s National Petroleum Technology Office in Tulsa, Oklahoma. Previously, Mr. Alleman was NCO for the former Bartlesville Project Office and also served on the Fossil Energy NEPA streamlining committee. When he is not doing NEPA work, he manages environmental research related to oil and gas production. Mr. Alleman can be reached at david.alleman@npto.doe.gov or 918-699-2057.

WAPA Sierra Nevada Region: Loreen McMahon

Loreen McMahon has been designated as NCO and Native American Tribal liaison for the Sierra Nevada Region of WAPA. Ms. McMahon has been with the Environmental Division of the Sierra Nevada Region since 1991. Recently, she was the NEPA Document Manager for the Sutter Power Plant and Transmission Line EIS (*LLQR*, December 1999, page 6), the first EIS that WAPA prepared for a merchant powerplant interconnection in California and the first major merchant plant approved by the California Energy Commission since electric industry restructuring legislation passed in 1996. Before joining WAPA, Ms. McMahon worked for California’s Governor and legislature, providing policy support on environmental legislation and regulations. Ms. McMahon can be reached at mcmahon@wapa.gov or 916-353-4460. LL

DOE NEPA Staff to Participate in CEQ Task Force to Modernize NEPA



Responding to rapid advances in technology and heightened concerns about information security, the Council on Environmental Quality (CEQ) is establishing a NEPA Task Force under the direction of Horst Greczmiel, Associate Director for NEPA Oversight, to develop ways to modernize the NEPA process as practiced by Federal agencies in the 21st century. Lee Jessee of the Office of NEPA Policy and Compliance will represent DOE on the Task Force.

The NEPA Task Force will examine how NEPA is implemented by agencies, focusing on making resource management and potentially on making major acquisition decisions. The Task Force will identify opportunities for technology to enhance the NEPA process (e.g., data collection, electronic communication with stakeholders, GIS-based management). Protocols to identify and address information security concerns at various stages of the NEPA process will be considered.

In addition, the NEPA Task Force will address NEPA implementation through governmental collaboration, including cooperating agencies; examine new ways to use programmatic and tiered analyses; and explore applications for “adaptive management” – a structured process of “learning by doing” to promote sustainability. The Task Force will also examine performance-based alternatives to facilitate flexibility in decisionmaking by selecting alternatives that implement performance standards.

The Task Force is expected to complete its work and issue reports in September 2002. For further information on CEQ’s NEPA Task Force, contact Lee Jessee at lee.jessee@eh.doe.gov or 202-586-7600. 

Senior NEPA Liaisons to Meet with CEQ

The first meeting of the Federal agencies’ senior NEPA Liaisons with Jim Connaughton, Chair of the Council on Environmental Quality, will be held on March 5 in Washington, DC. Ray Berube, Deputy Assistant Secretary for Environment, serves as DOE’s senior NEPA liaison and will represent DOE at the meeting. The agenda includes sessions on senior management’s support of NEPA initiatives, the CEQ Task Force (related article, above), the CEQ Chair’s vision and goals for NEPA’s future, and NEPA and technology. *Lessons Learned Quarterly Report* plans to report on this meeting in the June 2002 issue. 

Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement.

- **International Environmental Law**

Washington, DC: April 4-5

Fee: \$795

ALI-ABA CLE-REVIEW
800-253-6397
phunt@ali-aba.org
www.ali-aba.org/aliaba/cg056.htm

- **Preparing and Documenting Environmental Impact Analysis**

Durham, NC: June 3-6

Fee: \$960

Levine Science Research Center
Duke University
919-613-8082
britt@duke.edu
www.env.duke.edu/cee/coursesEIS.html

- **Proponent-Sponsored NEPA Toolbox™ Training**

Proponent-Sponsored Training (PST) is a new program that provides agencies with a flexible schedule for NEPA Toolbox™ workshops, which can be tailored to an agency's specific needs. As a "proponent," the agency determines the course, date, and place. The agency sponsors the course and recruits participants, including from other agencies. Services are available to agencies of the US government through GSA Contract No. GS-10F-0163L (899-3).

Environmental Training & Consulting International, Inc.
720-859-0380
info@envirotrain.com
www.envirotrain.com

- **Overview of the Endangered Species Act and Section 106 of the National Historic Preservation Act**

Salt Lake City, UT: April 11
Oklahoma City, OK: May 16
Phoenix, AZ: September 26
Fee: \$245

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Denver, CO: April 16-19
Atlantic City, NJ: June 18-21
San Francisco, CA: August 13-16
Fee: \$995

- **Clear Writing for NEPA Specialists**

Seattle, WA: May 14-16
Atlantic City, NJ: August 20-22
Fee: \$795

- **Overview of the NEPA Process**

Phoenix, AZ: June 11
Portland, OR: September 17
Fee: \$195

The Shipley Group
888-270-2157 or 801-298-7800
ben@shipleygroup.com
www.shipleygroup.com



Litigation Updates

Secretary's Yucca Mountain Recommendation

Nevada State and local governments filed a lawsuit on February 15, 2002, challenging Secretary of Energy Spencer Abraham's recommendation to President Bush that the President approve the Yucca Mountain site in Nevada for the development of the nation's first geologic repository for spent nuclear fuel and high-level radioactive waste. The State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada, filed the lawsuit in the United States Court of Appeals for the District of Columbia Circuit. The Nevada governments claim the recommendation was made in violation of the Nuclear Waste Policy Act (NWPA) and NEPA. They ask the court to direct the Secretary to withdraw his recommendation to the President or, alternatively, terminate all Yucca Mountain site characterization activities.

The Secretary submitted his recommendation, accompanied by the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250), to the President on February 14. The President accepted the Secretary's recommendation and notified Congress on February 15 that he considers the Yucca Mountain site qualified for a construction permit application.

Many of Nevada's NWPA claims center around DOE reliance upon engineered barriers in addition to geologic isolation to protect public health and safety and the environment. The Nevada governments argue that the

NWPA requires DOE to rely primarily on geologic isolation, but that DOE's site suitability guidelines allow primary reliance on engineered barriers such as waste packages. Because "extensive studies of Yucca Mountain have conclusively demonstrated that the site is incapable of geologically isolating radioactive wastes for any significant period," Nevada claims that the Secretary's site suitability recommendation is contrary to the NWPA. Nevada also asserts that the Secretary did not follow procedural requirements set forth in the NWPA to include the comments of the Nevada Governor and legislature and the Secretary's response to those comments along with the recommendation to the President. Nevada further claims that the President's recommendation to Congress is itself inconsistent with the NWPA because the President's decision was based on "the same unlawful siting criteria as those employed by the Secretary."

The NEPA claims focus on the fact that DOE did not make the Final EIS available to the public or issue a Record of Decision prior to the Secretary's site recommendation. Nevada also argues that DOE's "failure to observe the 30-day circulation rules" means that "the Secretary's decision was made without enabling the EPA Administrator in accordance with Clean Air Act Section 309, or other federal agencies, to refer the Yucca Mountain Final EIS to CEQ pursuant to 40 CFR 1504.1," and in violation of the NWPA, prevented any opportunity for the Secretary of the Interior, CEQ, EPA Administrator, or the Nuclear Regulatory Commission to provide comments on the Final EIS. LL

Planned Shipments of Plutonium Composite Parts

A lawsuit challenging the planned shipments of plutonium composite parts from the Rocky Flats Environmental Technology Site to the Lawrence Livermore National Laboratory (LLNL) was filed by Tri-Valley CARES (Communities Against a Radioactive Environment) in the United States District Court of Northern California on February 13, 2002.

Plutonium composite parts are weapons components made of plutonium bonded to other metals. DOE plans to ship the parts to LLNL, which has unique capabilities to separate the plutonium from the other metals. The separated plutonium would then be available for the surplus plutonium disposition program; other metals would be appropriately managed. DOE would use the

DT-22, a 45-gallon shipping container large enough to accommodate the composite parts. This container is not fully certified for transporting the quantities of plutonium contained in the parts, however, and DOE granted itself a national security exemption to allow use of the DT-22.

In its complaint, Tri-Valley CARES maintains that DOE did not properly follow the NEPA process for the planned shipments, violated the Administrative Procedure Act by granting the national security exemption, and failed to respond to Tri-Valley CARES' Freedom of Information Act requests for related documents. They ask the Court to issue an injunction barring the shipments until DOE fully complies with NEPA by preparing an EIS to analyze alternatives for shipping and processing the composite parts. LL

EAs and EISs Completed (October 1 to December 31, 2001)

EAs

Albuquerque Operations Office

DOE/EA-1388 (11/20/01)

Construction of the Sandia Underground Reactor Facility (SURF) at Sandia National Laboratories, NM

Cost: \$ 62,000

Time: 9 months

Fossil Energy

DOE/EA-1391 (12/5/01)

Presidential Permit Applications for Baja Power, Inc. and SEMPRA Energy Resources, CA

Time: 9 months

[**Note:** The cost for the EA was paid by the applicant; therefore, cost information does not apply to DOE.]

Grand Junction Project Office/Environmental Management

DOE/EA-1388 (10/26/01)

Groundwater Compliance at the Shiprock Uranium Mill Tailings Site, NM

Cost: \$96,000

Time: 10 months

Richland Operations Office/Environmental Management

DOE/EA-1403 (10/10/01)

Use of Sand and Gravel Borrow Areas, Hanford Site, Richland, WA

Cost: \$ 40,000

Time: 2 months

EIS

Oak Ridge Operations Office /

National Nuclear Security Administration - Defense Programs

DOE/EIS-0309 (66 FR 55658; 11/2/01)

(EPA Rating: EC-2)

Site-Wide for the Y-12 National Security Complex, TN

Cost: \$ 3.4 million

Time: 31 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(See the EPA Web site es.epa.gov/oeca/ofa/rating.html for a full explanation of these definitions.)

Final EIS for Yucca Mountain

The *Final EIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250) accompanied the Secretary of Energy's February 14, 2002, recommendation to the President that the Yucca Mountain site be approved for development as a geological repository for spent nuclear fuel and high-level radioactive waste. The Final EIS is available online at www.ymp.gov and in DOE public reading rooms (see 67 FR 9048, February 27, 2002).

Recent EIS-Related Milestones (December 1, 2001 to February 28, 2002)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0343

COB Energy Facility, Klamath County, OR
12/21/01 (67 FR 576; 1/4/02)

DOE/EIS-0344

Grand Coulee – Bell 500-kV Transmission Line Project, WA
1/4/02 (67 FR 1746; 1/14/02)

DOE/EIS-0345

Plymouth Generating Facility Project, Benton County, WA
1/11/02 (67 FR 2868; 1/22/02)

DOE/EIS-0346

Salmon Creek Project, Okanogan County, WA
1/22/02 (67 FR 5099; 2/4/02)

Fossil Energy

DOE/EIS-0339

Presidential Permit Application, GenPower 500 kV Submarine Electric Transmission Cable from Nova Scotia to New York
1/31/02 (67 FR 5572; 2/6/02)

Draft EIS

Bonneville Power Administration

DOE/EIS-0325

Schultz-Hanford Area Transmission Line Project, WA
February 2002 (67 FR 6021; 2/8/02)

Final EISs

Bonneville Power Administration

DOE/EIS-0324

Umatilla Generating Project, OR
February 2002 (67 FR 4959; 2/1/02)

DOE/EIS-0330

Wallula Power Project and Wallula-McNary Transmission Line Project, Walla Walla County, WA and Umatilla County, OR
February 2002 (67 FR 8243; 2/22/02)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Mint Farm Generation Project
2/15/02 (67 FR 8948; 2/27/02)

Western Area Power Administration

DOE/EIS-0128

Los Banos – Gates Transmission Project
12/18/01 (66 FR 65699; 12/20/01)

Supplement Analyses

Bonneville Power Administration

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265/SA-69

Improvement of Anadromous Fish Habitat and Passage in Omak Creek

(Decision: No further NEPA review required)

November 2001*

Transmission System Vegetation Management Program (DOE/EIS-0285)

DOE/EIS-0285/SA-31

Vegetation Management Along the Fairmont-Port Angeles No. 1 and 2 Transmission Line from Structure 1/1 to Structure 27/8

(Decision: No further NEPA review required)

July 2001*

DOE/EIS-0285/SA-32

Re-vegetation Plot Study Along the Lower Monumental McNary Transmission Line Right-of-Way

(Decision: No further NEPA review required)

November 2001*

Condon Wind Project

(DOE/EIS-0321)

DOE/EIS-0321/SA-1

Additional Work at DeMoss Substation and Interconnection Agreement with SeaWest on the DeMoss - Fossil Transmission Line

(Decision: No further NEPA review required)

November 2001*

*Not previously reported in Lessons Learned

What Worked and Didn't Work in the NEPA Process

“What Worked and Didn't Work in the NEPA Process” does not appear in this issue of *Lessons Learned Quarterly Report* because of the small number of documents and questionnaires completed for the quarter. This feature will return in the June 2002 issue and will include observations from all questionnaires submitted for the first half of FY 2002. We remind all involved in the preparation and review of NEPA documents of their important responsibility to report NEPA lessons learned. **LL**

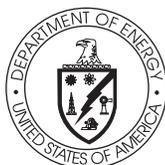
NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost of three EAs, excluding one EA that was paid for by the applicant, was \$62,000; the average cost was \$66,000.
- Cumulatively, for the 12 months that ended December 31, 2001, the median cost for the preparation of 27 EAs was \$96,000; the average was \$92,000.
- For this quarter, the median completion time of four EAs was 9 months; the average was 8 months.
- Cumulatively, for the 12 months that ended December 31, 2001, the median completion time for 27 EAs was 8 months; the average was 9 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended December 31, 2001, the median cost for the preparation of 4 EISs, excluding one EIS that was paid for by the applicant, was for \$1.4 million. The average cost was \$1.7 million.
- Cumulatively, for the 12 months that ended December 31, 2001, the median completion time for 5 EISs was 29 months; the average was 23 months.



Office of NEPA Policy and Compliance, EH-42
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0119