

**LESSONS  
LEARNED**

September 1, 2004; Issue No. 40

Third Quarter FY 2004

**DOE's NEPA Process – Getting Better and Better**

“What can we do better?” Participants addressed this question at DOE’s annual NEPA Community Meeting, “Getting Better and Better,” on July 20 and 21, 2004. “For those of us in the NEPA business, getting better and better is not an option, it is a necessity,” challenged keynote speaker Andy Lawrence, Deputy Assistant Secretary for Environment, in his welcome to some 175 participants at the Department’s Headquarters in Washington, DC, and at 19 DOE field sites.

Robert Middleton, Director, White House Task Force on Energy Project Streamlining, said that the key to improving the NEPA process is to ask, “Who needs to be involved in decisionmaking? How can we get their early collaboration and consultation?” Delays in the NEPA



*Robert Middleton, Director, White House Task Force, emphasized implementing NEPA in a business-like manner. “Plan ahead, be clear and concise, and involve the public in a transparent process,” he said.*

process can arise, Mr. Middleton explained, when people with concerns are brought in late and when issues are buried under the day’s short-term priorities.

Also, he urged working with General Counsel to not “short circuit the ability to defend our NEPA process.” It is difficult to go back to put a

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*Establish a memorandum of understanding among relevant agencies to outline the rules of engagement in the NEPA process.*

*– Martin Letourneau,  
White House Task Force*

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document on the right track, he said, adding that agencies are usually sued on process, not on final decisions.

**Better Inter-Agency Communication Needed**

Martin Letourneau, DOE representative to the Task Force on detail from the Office of Environmental Management, said that the Task Force often was able to move stalled projects by helping involved agencies understand each other’s NEPA processes and how to work in parallel. He explained that most energy projects involve multiple agencies with various jurisdictions (e.g., land management, protected species).

He recounted several projects referred to the Task Force by the private sector, which had specific concerns about the NEPA process. He noted, however, that it was often a lack of knowledge about another agency’s NEPA processes or administrative procedures that led to delays, not the NEPA process itself.

A lead agency must show leadership in the NEPA process, to open communication and clarify each agency’s needs, Mr. Letourneau said. He emphasized the need to be creative when working with other agencies but cautioned that there is a fine line between being creative and noncompliant.

*(continued on page 4)*

**Acting Assistant Secretary for Environment, Safety and Health Named, Page 2**

## Inside *LESSONS LEARNED*

Welcome to the 40th quarterly report on lessons learned in the NEPA process. That's 40 issues! Have you read them all? We are pleased to feature the July 2004 NEPA Community Meeting in this issue, as well as our annual update of the cumulative index to *LLQR*. Thank you for your continuing support.

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*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*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2004. Contact Yardena Mansoor at [yardena.mansoor@eh.doe.gov](mailto:yardena.mansoor@eh.doe.gov) or 202-586-9326.

### Quarterly Questionnaires Due November 1, 2004

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2004 (July 1 through September 30, 2004) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at [www.eh.doe.gov/nepa/](http://www.eh.doe.gov/nepa/) under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@eh.doe.gov](mailto: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 site at [www.eh.doe.gov/nepa/](http://www.eh.doe.gov/nepa/). 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.

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# John Spitaleri Shaw Is Acting Assistant Secretary for Office of Environment, Safety and Health

John Spitaleri Shaw, who recently served as DOE's Deputy Chief of Staff and White House Liaison, was named Acting Assistant Secretary for Environment, Safety and Health (EH) on July 22. The President has nominated Mr. Shaw to be the Assistant Secretary, subject to Senate confirmation.

Previously in this Administration, he served as the Principal Deputy Assistant Secretary for EH.

Earlier in his career, Mr. Shaw served as a Majority Counsel for the U.S. Senate Committee on Governmental Affairs and as an attorney for Patton Boggs, LLP, in Washington, DC. He earned his bachelor's degree from Syracuse University and his J.D. from Catholic University of America Law School.

In an August meeting with EH staff, Mr. Shaw said he was glad to be back in EH. He noted that "EH is the hub of the wheel of DOE," explaining that "all other programs in DOE come to EH for advice and guidance at some point."

***Other DOE offices look to EH for the help they need to do their jobs well.***

***— John Spitaleri Shaw***

He said the Secretary looks to EH to ensure that DOE is meeting its mission "in a way that does not endanger workers, the environment, or the communities near DOE facilities."

EH also has a new Principal Deputy Assistant Secretary, Russell Shearer. Early in his career, Mr. Shearer was an environmental attorney at DOE's Savannah River Site. More recently, he served as the Special Assistant to the Assistant Secretary of the Army Installations and Environment. **LL**

## Awards for Contributions to DOE's NEPA Program

In his keynote address, Mr. Andy Lawrence, Deputy Assistant Secretary for Environment, surprised meeting participants by recognizing special contributions to making DOE's NEPA Program better and better.



*Daniel T. Ruge, Acting Assistant General Counsel for Environment, was recognized for his personal commitment and continuing legal support for DOE's NEPA Compliance Program. Mr. Ruge and his staff worked closely with the NEPA Office to draft three new guidance documents and have been responsive to the needs of senior management and the DOE NEPA community. He accepted the award on behalf of his staff.*



*Jay Rose, recently retired NEPA Compliance Officer and NEPA Document Manager for the National Nuclear Security Administration, was recognized for his dedication to excellence and significant contributions to DOE's NEPA Compliance Program. He directed the preparation of several technically-challenging and politically-sensitive EISs, including the Stockpile Stewardship and Management Programmatic EIS.*

**Thank you, DOE's NEPA Community, for all the good you have done to protect the environment.**

**– Carol Borgstrom, Director  
Office of NEPA Policy and Compliance**



*Carol Borgstrom, Director, Office of NEPA Policy and Compliance, was recognized for 30 years of Federal service and received a gold pin, plaque, and book of American landscapes, which was signed by meeting participants (photo at left).*

# Getting Better and Better (continued from page 1)

## What's New/Next at CEQ

“Each administration since NEPA’s enactment has continued to focus on the importance of NEPA’s mandates and objectives and has sought ways to improve the NEPA process,” said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ). Mr. Greczmiel said that the results of the NEPA Task Force recommendations that he will present to CEQ Chair James Connaughton could lead to the next steps on this path of continuous improvement.



*Horst Greczmiel said that “DOE does NEPA better than many other agencies. What’s old for DOE is often new to others.”*

wants the implementation of Task Force recommendations to be transparent to the public, Mr. Greczmiel said, and CEQ probably will rely heavily on electronic media. Roundtable participants urged CEQ to put its energy and resources into guidance, not into establishing a committee under the Federal Advisory Committee Act, he said.

Because of the widespread misunderstanding of the NEPA process among many stakeholders, compounded by the differences among agencies’ NEPA procedures, Mr. Greczmiel expects one recommendation to address new options for NEPA training, including a citizens’ guide, focused on how different parties can participate effectively in the NEPA process. CEQ has been engaged in training with state and county governments and has begun a process to build better understanding among tribes and Federal agencies. (See related article, page 16.)

Mr. Greczmiel said that another recommendation favorably received at the roundtables is that CEQ begin pilot projects focused on

The presentation to the CEQ Chair will be based on the NEPA Task Force recommendations in its report to CEQ, *Modernizing NEPA Implementation (LLQR, December 2003, page 1)*, comments received on the Report, and input received at four regional public roundtables, at which he said participants generally agreed with issues and priorities set forth in the Report. The CEQ Chair

***The DOE Lessons Learned Quarterly Report is an excellent way to build public trust and confidence.***

***– Horst Greczmiel***

preparing NEPA analyses and documents in conjunction with adaptive management and environmental management systems. He also noted wide support for recommendations that CEQ provide guidance on how to establish and apply categorical exclusions, how much public participation to have for an EA, and how best to use a programmatic EIS.

The CEQ NEPA Task Force, Mr. Greczmiel added, is compiling a compendium of “useful practices,” which he envisions as a living document, periodically updated. He commended the DOE NEPA Lessons Learned Program as an excellent example of presenting and disseminating useful practices.

## Public Participation/ Scoping/Tribal Issues

Recent DOE public participation-related activities were discussed by a panel of DOE and Laboratory representatives.

Herb Jones, Deputy Assistant Secretary for Intergovernmental and External Affairs, reminded meeting participants of the need to notify Congressional and Public Affairs Offices three business days before certain upcoming public outreach actions, including issuance of draft and final EISs and records of decision (RODs). This is needed, he explained, so that these Offices can identify issues early and be prepared to answer questions from Congress.

Recent public scoping yielded very different results for nationwide, regional, and site-specific EISs. Lloyd Lorenzi, NEPA Compliance Officer, National Energy Technology Laboratory, described the

*(continued on next page)*



*Herb Jones described a one-page form that is being distributed DOE-wide for use in providing information electronically to Congressional and Public Affairs Offices on upcoming public actions.*



*Lloyd Lorenzi said that commentors who were expected to voice opposition were substantially silent on the scope of Fossil Energy’s Carbon Sequestration Programmatic EIS.*

## Getting Better and Better *(continued from previous page)*

disappointingly low attendance at meetings and the small number of comments received on the scope of the *Programmatic EIS for the Implementation of the Carbon Sequestration Program* (DOE/EIS-0366). Because this program would have activities nationwide, he explained, DOE announced meetings in eight cities across the nation, advertising in newspapers, newsletters, Web sites for the Programmatic EIS and the Laboratory, and the *Federal Register*. Although the EIS Web site has had many visitors, he said there were only eight comments submitted on the scope of the Programmatic EIS.



*Anthony Dvorak observed that the use of Internet technology is one of the biggest changes in the NEPA process that he has observed during his career, noting that it enables participation regardless of location.*

Similarly, there was little public participation at regional scoping meetings held for the Bureau of Land Management's (BLM's) programmatic EIS for wind energy development on that agency's land (*LLQR*, March 2004, page 3), said Anthony Dvorak, Director, Environmental Assessment Division, Argonne National Laboratory. (Argonne is supporting BLM's EIS preparation.) In contrast, about 70 percent of scoping comments for the BLM EIS were submitted online. He said that BLM will not hold public meetings on the draft EIS because Internet use has been so wide-spread for this EIS.

In sharp contrast, Robin Sweeney, NEPA Document Manager, Office of Civilian Radioactive Waste Management (telecast from the Office of Repository Development in Las Vegas, NV), told of high participation in recent scoping meetings in rural communities for the rail corridor to the Yucca Mountain site (DOE/EIS-0369; see *LLQR*, June 2004, page 1). She strongly doubted that the Internet could serve these stakeholders, as many are potentially affected residents in very remote locations, with difficulty getting good telephone service or service at all, much less Internet access. She said she hopes the interactions during the informal scoping meetings for the Repository Rail Alignment EIS had begun to build stronger relationships with stakeholders, including 17 Native American organizations.

Herb Jones described DOE's ongoing Indian Initiative, which began with a Summit in February 2004, at which the

Secretary and Deputy Secretary of Energy and other senior staff met with 150 tribal leaders in Washington, DC, to try to establish a framework for future interactions. Mr. Jones said that the Office of Congressional and Intergovernmental Affairs is reviewing other input from the Summit, including the request from tribal leaders that DOE hold meetings throughout the country. Mr. Jones said that there is a need to better organize DOE's tribal points of contact and that the Department needs to work with the tribal community to address differing perspectives on issues that impair our ability to work together.

### Are We Getting Better?

The measure of success for NEPA performance is how well implementation enables "the timely accomplishment of DOE missions in a safe and environmentally sound manner," said Eric Cohen, Unit Leader, NEPA Office. The quantitative metrics reported for the NEPA program should be interpreted within this context of meeting DOE's mission needs, he said.

The ten-year trends for costs and completion times for EAs and EISs reflect positively on DOE's performance, Mr. Cohen said. Overall NEPA costs show a downward trend. The median cost of the six EISs completed in the last year is \$1.3 million. Over the past decade, the median cost is \$1.9 million.

DOE continues to demonstrate the appropriate use of flexibility inherent in the NEPA process, Mr. Cohen said, with schedules extended when circumstances demand longer periods for analysis, public participation, or other factors. Yet, when the need for speed arises, he said,

*(continued on next page)*



*Richard Ahern, Ed LeDuc, Angela Foster, and Janet Masters from the Office of General Counsel discuss recent NEPA litigation. See page 18 for details of the cases.*

# Getting Better and Better (continued from previous page)

NEPA reviews can be completed on tight schedules. The median completion time for six EISs finalized in the past year is 22 months, down from the median of 25 months for the past decade.

These statistics for EIS completion time measure the period from publication of DOE's notice of intent to the Environmental Protection Agency's notice of availability of the final EIS. Another important metric is the time from the notice of availability of the final EIS to DOE's issuance of the ROD, he said. The median time from final EIS to the first ROD for almost 100 EISs completed over the past decade is 56 days, or less than four weeks from the end of the minimum 30-day "waiting period" required by regulation (40 CFR 1506.10(b)(2)). Although a few recent ROD delays associated with litigation sensitivities delayed mission implementation, he said, in most cases long ROD issuance times were deliberate, enabling DOE to consider information, public comments, and other factors before making a decision.

Other metrics demonstrate that DOE's NEPA performance remains solid, Mr. Cohen reported. Seventy-five percent of respondents to DOE's Lessons Learned Questionnaire in the past year rated the NEPA process as "effective," in terms of usefulness to decisionmakers and ensuring protection of the environment. DOE's EISs continue to enable mission implementation even in the face of legal challenges, and the analyses help ensure protection of the environment, he said.

### **"Yes, We're Getting Better!"**

"You have accomplished much," Mr. Lawrence assured the DOE NEPA Community, "and your hard work and dedication to excellence are recognized and appreciated." In reviewing NEPA accomplishments since the last DOE NEPA Community Meeting (*LLQR*, September 2003, page 1), he noted 150 completed NEPA documents, new regulations for floodplain and wetland environmental review, the 10th anniversaries of the *Lessons Learned Quarterly Report* and the *Stakeholders Directory*, and a gamut of activities, from evaluating the results of groundwater transport and air dispersion modeling to negotiating within the Department and with stakeholders.

**You have fought to uphold NEPA values while supporting the achievement of DOE missions. I encourage you to continue to perform your duties with care and concern for the environment.**

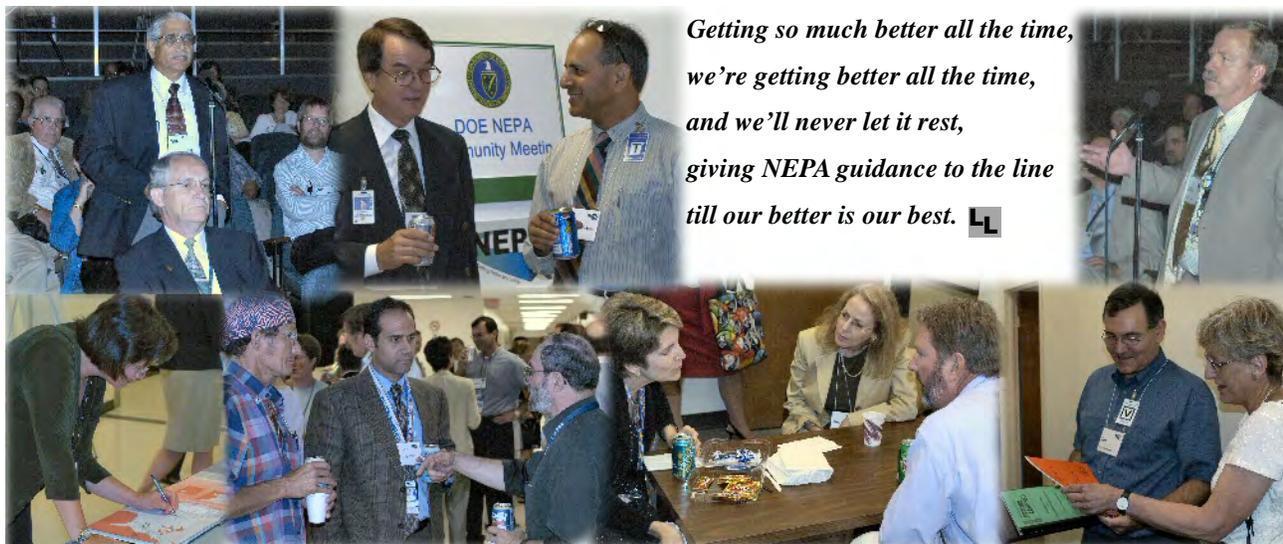
**– Andy Lawrence,  
Deputy Assistant Secretary  
for Environment**

He noted that these and other accomplishments are on the new, 2000–2004, timeline prepared by the NEPA Office, which is provided with this issue of *LLQR* and posted with it

on the DOE NEPA Web site at [www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa) under Lessons Learned Quarterly Reports. A 1990–2000 timeline, first presented at the 2000 NEPA Community Meeting, also is available on the DOE NEPA Web Site with the June 2000 *LLQR*.

Mr. Lawrence said that while he was proud of DOE's accomplishments, we cannot stop now. Using as an anthem the Beatles' song "Getting Better," which played frequently during the meeting, he ended poetically by paraphrasing:

*Getting so much better all the time,  
we're getting better all the time,  
and we'll never let it rest,  
giving NEPA guidance to the line  
till our better is our best. LL*



# Working with Cooperating Agencies



Vivian Bowie led a panel discussion on cooperating agency relationships.

The benefit of cooperation among agencies was one of the common threads throughout this year's NEPA Community Meeting. On the meeting's second day, Vivian Bowie, NEPA Office, introduced a panel of four NEPA practitioners who had worked with cooperating agencies on EISs during the past year. Their practical insights demonstrated the wide variety of circumstances in which it can be helpful to involve cooperating agencies, as well as some of the pitfalls to avoid.

agencies "dovetail" their NEPA procedures with other agency administrative procedures. The Forest Service, for example, tries to have the administrative record for the NEPA review serve other purposes. This affects scheduling and the flow of work, he said. Learn the internal procedures and processes of cooperating agencies "as well as you know your own," he advised, and define working relationships clearly. He recommended MOUs as a vehicle to formalize relationships and expectations.

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*It's not a question of whether we cooperate, but how we do it.*

*– Carol Borgstrom*

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## Hanford High-Level Waste Tank Closure

The State of Washington Department of Ecology is a cooperating agency with DOE in preparation of the *Environmental Impact Statement for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks* (DOE/EIS-0356). Mary Beth Burandt, NEPA Document Manager, Office of River Protection, explained that Ecology's involvement is helping to streamline compliance with the State Environmental Policy Act, providing a foundation for any required modifications to state permits or compliance agreements, and enhancing public credibility in the EIS.

Mid-level managers for DOE and Ecology signed a memorandum of understanding (MOU) that focuses cooperation on technical issues. Under the MOU, Ecology can write a foreword to the EIS to explain its perspective on points of agreement and disagreement. Ecology has actively participated in each stage of the EIS preparation, including a DOE Headquarters review of a preliminary draft in Washington, DC.

## Permits for Electric Transmission Lines

Tony Como, Deputy Director, Electric Power Regulation, Office of Fossil Energy, relayed his experience working with several cooperating agencies on NEPA documents for transmission lines. Cooperating agencies "don't always cooperate," he said. The degree of cooperation can vary markedly based on the interest of the individuals representing the cooperating agency, as well as the agency's available staffing and funding to support the project.

Mr. Como also pointed out the importance of learning the internal procedures of the cooperating agency. Some

## Decommissioning at West Valley, New York

Dan Sullivan, West Valley NEPA Compliance Officer, spoke about the benefits of working with cooperating agencies on the EIS for the *Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Service Center* (DOE/EIS-0337). The New York State Department of Environmental Conservation, the U.S. Environmental Protection Agency, and the Nuclear Regulatory Commission (NRC) are actively participating as cooperating agencies, and the New York State Research and Development Authority is a joint lead agency.

DOE's MOU with NRC has proven to be "very helpful," said Mr. Sullivan. "While an MOU with the other two agencies is not in place, DOE has effectively used other informal approaches to make progress." Periodic workshops with the agencies have proven helpful, he said, as have bi-weekly EIS status calls. Information is exchanged regularly among agencies to help focus resources, and the cooperating agencies have helped develop the EIS schedule. The cooperating agencies also have provided early review of EIS technical support documents and guidance on dose modeling, and they are helping to develop scenarios for the site performance assessment.

## Uranium Mill Tailings Pile in Utah

A dozen agencies from Federal, state, local, and tribal governments are cooperating in preparing the *Remediation of the Moab Uranium Mill Tailings EIS* (DOE/EIS-0355). Don Metzler, Moab Project Manager, Office of Environmental Management, telecast from the Grand Junction Office in Colorado, said that letter agreements, rather than MOUs, define roles for each cooperating agency, such as to provide data on, or review

*(continued on page 12)*

# e-NEPA Improves Access and Efficiency

Several speakers at this year's NEPA Community Meeting highlighted advances in e-NEPA. Across the Federal government, Web-based approaches to document collaboration and interactive information management are changing the face of NEPA. Challenges remain, however, and any implementation of e-NEPA techniques must consider such issues as Internet access, security, privacy, and records management.

### e-NEPA at Other Federal Agencies

Carl Zulick, ePlanning Project Manager at the Bureau of Land Management (BLM), and Jacob Hoogland, Chief of the National Park Service's (NPS's) Environmental Quality Division, presented overviews of their respective agencies' Web-based applications for managing aspects of NEPA document preparation, including the comment-response process.

Mr. Zulick described the BLM online application called ePlanning, which is now being tested using draft EISs for BLM and Forest Service sites. The features available to the EIS preparation team (and any others to whom the team leader grants access) are the ability to draft the document collaboratively; conduct internal review; track and resolve comments; publish to compact disk, print version, and internal and external Web sites; and maintain records of the document's development. BLM expects to achieve significant cost savings with this application, Mr. Zulick noted, by minimizing duplicative information technology efforts, allowing geographically dispersed participants to work together efficiently, and producing documents that have a common "look and feel."

The features that ePlanning makes available to the public are the ability to view and print a document; search by



Carl Zulick, BLM (left), and Jacob Hoogland, NPS, discussed their respective agencies' Web-based applications, which are similar in offering efficient management of the comment-response process.

topic; switch between text and related geographic information system (GIS) information; and submit comments that are linked to subject portions of the text, Mr. Zulick explained. The basic software application is designed to be highly adaptable to a wide variety of BLM projects and easily adoptable by other agencies. Public reaction to BLM's e-NEPA approaches has been very positive, said Mr. Zulick, with over half of the participants in recent NEPA reviews indicating a preference to view a document online or receive it on compact disk.

Mr. Hoogland described the National Park Service's Planning, Environment, and Public Comment system, which is being designed to integrate environmental compliance processes with project management and financial planning. Like the BLM e-NEPA approach, the system provides many resources and tools to the agency, and offers a secure and efficient way for the public to review a document and submit comments. The system is especially helpful in organizing comments and managing their resolution, said Mr. Hoogland, a task that can be overwhelming for EISs that receive extremely large numbers of comments.

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During a lunch break, Amy Hilbert of Aquilent, Inc., demonstrated the NPS's Planning, Environment, and Public Comment system to meeting participants.

### BLM's ePlanning Project

**Pilot projects:** Select from the list of ePlanning Web sites at <https://www.eplanning.blm.gov>

**Contact:** Carl Zulick at [carl\\_zulick@blm.gov](mailto:carl_zulick@blm.gov) or 202-452-5158



### NPS's Planning, Environment, and Public Comment System

**Pilot projects:** Select Plans from the PEPC Web site (<http://parkplanning.nps.gov>) for a list of pilot projects

**Contact:** Jacob Hoogland at [jacob\\_hoogland@nps.gov](mailto:jacob_hoogland@nps.gov) or 202-513-7188



# Getting Better Through Guidance and Case Studies

## **Guidance should be flexible but foster consistency.**

– Carol Borgstrom

The NEPA Community Meeting featured previews of three guidance documents being prepared by the Office of NEPA Policy and Compliance and case studies on issues that the guidance will address. Carol Borgstrom, Director of the NEPA Office, said the goal is to prepare guidance that is clear and generally applicable across DOE. After addressing comments from the DOE NEPA Community, the NEPA Office will request that the Acting Assistant Secretary for Environment, Safety and Health issue the guidance.

## **“GREEN BOOK” REVISIONS**

Carl Sykes, NEPA Office, discussed the ongoing effort to update *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (1993, “Green Book”). “Most of the Green Book remains valid, so why change after 11 years?” asked Mr. Sykes. He went on to explain that the NEPA Office wants to incorporate elements of other DOE guidance published since 1993, including mini-guidance from *LLQR*, as well as DOE’s experience using the Green Book to help implement NEPA. Changes he described include new sections on topics such as Clean Air Act conformity and environmental justice, and updates to existing sections to account for new information, such as revised radiation dose-to-risk conversion factors.

Mr. Sykes pointed out that “the purpose of the Green Book is to function as a quick, brief NEPA reference for widely diverse DOE projects, not to cover everything.” Its focus is the content of NEPA documents, he explained, not the NEPA process.

## **Case Studies: Applying the Sliding Scale**

The Green Book emphasizes application of the sliding-scale principle: ensuring that NEPA documents provide a level of detail and analysis commensurate with the importance of the issue or potential impact, he said. Use of the sliding scale was discussed by three panelists: Steve Blazek, NEPA Compliance Officer, Golden Field Office; Tom Grim, NEPA Document Manager, Livermore Site Office; and Andi Kasarsky, Program Analyst, Office of Defense Science, National Nuclear Security Administration.

Mr. Blazek illustrated application of the sliding scale in the evaluation of mercury releases and potential bioconcentration in the *I’SOT Canby District Heating Project, Modoc County, California Final Environmental*

*Assessment* (DOE/EA-1460, March 2003), a geothermal research and development project, which DOE funded in part. An extensive DOE EA (some 200 pages) was appropriate, he said, even though a review under the California Environmental Quality Act had found no significant issues. During DOE consultation with the U.S. Fish and Wildlife Service, he explained, concerns surfaced about releases of mercury to river water and potential bioconcentration in fish and bald eagles. DOE needed to look closer at potential impacts and mitigation, and as this mercury issue was complicated, over half of the EA focused on it, he said.



Steve Blazek, Tom Grim, and Andi Kasarsky recounted applying the sliding-scale approach when preparing EAs and EISs.

Mr. Grim described how individual projects are evaluated using the sliding scale in the *Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic Environmental Impact Statement* (DOE/EIS-0348/DOE/EIS-0236-S3). The scope of this combined Site-wide and Supplemental Programmatic EIS for the Laboratory includes operation of several facilities, cleanup activities, and several new projects, he said.

The level of analysis differs based on factors such as whether construction would be on a new or already developed site, he explained. Two controversial projects were addressed in separate appendices. Ms. Kasarsky described the evaluation of one of those projects, the National Ignition Facility, a laser facility at the Laboratory. The greater level of detail was driven, in part, she explained, by litigation surrounding the use of plutonium in the Facility.

## **THE EIS COMMENT-RESPONSE PROCESS**

In leading a comment response process, a NEPA Document Manager should obtain early management agreement on major issues, emphasized Carolyn Osborne, Unit Leader, NEPA Office. She said that guidance being prepared on how to respond in a final EIS to comments on a draft EIS will stress such management strategies and provide advice on substance and mechanics, for example,

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# Guidance and Case Studies *(continued from previous page)*

how to respond to the content and volume of comments received from an e-mail campaign. She outlined the guidance, pointing out additions that will address requests from the NEPA Community, such as factors to consider when responding to proposed new alternatives.

## Case Studies: Responding to Comments

DOE files only about two percent of the draft EISs that the Environmental Protection Agency (EPA) must review and rate each year under its Clean Air Act Section 309 responsibilities, explained Kimberley DePaul, Deputy Director of EPA's Office of Federal Activities. She noted that EPA Regions 8, 9, and 10 have half the EIS review load, which might make them less available for early involvement in EISs. Energy projects are high priority however, and the regions will do their best to participate in DOE's NEPA process. She stressed that EPA Headquarters is working with all its Regional Offices to ensure that EPA comments are objective, fact-based, and even-toned.



*Kimberley DePaul said that most EPA ratings of draft EISs are "EC-2" – Environmental Concerns-Insufficient Information. This means some questions remain unanswered, not that EPA views the project as problematic.*

possible, to enable ready feedback on EIS issues. He also advised having a team of Federal employees dedicated to the EIS work.

Jay Rose, NEPA Document Manager for the *Stockpile Stewardship and Management Programmatic EIS* (DOE/EIS-0236) and the *Modern Pit Facility EIS* (DOE/EIS-0236-S2), echoed this advice. He said that most comments are policy-related and Federal employees must provide the difficult responses. He noted, however, that a contractor counterpart to the DOE NEPA Document Manager is vital to driving the NEPA process. Mr. Rose

advised focusing first on responses to comments from likely challengers, which usually present the majority of difficult issues, as these responses can form a blueprint for others. Mr. Rose also advised reading final EISs of similar scope and complexity for ideas on how to conduct the process and present results.

"Make sure EISs and other agency documents are consistent or explain any differences," urged Ms. DePaul, who spoke from her earlier experiences managing the Department of Navy's NEPA program.

Mr. Kimmel agreed, saying that other NEPA documents or documents under the Comprehensive Environmental Response, Compensation, and Liability Act process may have set forth agency policy. With regard to consistency, the panelists also urged early and independent quality control reviews of a final EIS under preparation, to determine if comment categories need to be adjusted, all comments are being captured, and responses and changes to the EIS are consistent.



*Using a small team to initially review comments and prepare draft responses can help attain consistency among parts of a final EIS, advised Richard Kimmel. He also suggested training or a manual to guide an EIS team.*

## PREPARING SUPPLEMENT ANALYSES

Jeanie Loving, NEPA Office, summarized draft guidance for preparing Supplement Analyses (SAs), that had been circulated for review within the NEPA Community. She said that an SA is a useful means to determine whether to issue a supplemental EIS when an agency makes changes relevant to environmental concerns in its proposals, or new circumstances or information arise that are relevant to environmental concerns. DOE regulations require an SA when the need for a supplemental EIS is unclear, and also for the five-year review of site-wide EISs. Many DOE offices have completed major programmatic and other broad EISs, and she noted that an increasing need for SAs related to those EISs may be expected as the Department's missions and needs continue to evolve.

Ms. Loving emphasized that although there is no "one size fits all" set of principles for preparing SAs, the draft guidance describes general elements applicable to most if not all SAs – deciding whether to prepare or not to prepare an SA, the content of an SA, outcomes that can

*(continued on next page)*

# Guidance and Case Studies (continued from previous page)

result from an SA, and DOE's SA process. Ms. Loving urged reviewers to share illustrative case examples, past problems encountered in preparing SAs, and any other comments for use in preparing the final set of recommendations.

## Case Studies: SAs Fit Many Situations

Three experienced NEPA Compliance Officers were on hand to discuss different aspects of the SA process. Drew Grainger, Savannah River Operations Office, highlighted the use of SAs that enabled DOE to prevail in NEPA litigation. Harold Johnson, telecast from the Carlsbad Field Office, discussed the use of technical supporting material to evaluate an action not specifically analyzed in an EIS (the disposal of transuranic (TRU) waste containing polychlorinated biphenyl (PCB) compounds without thermal treatment). Tom McKinney, Bonneville Power Administration (BPA), described BPA's strategic use of SAs to address the large number of project-specific NEPA reviews BPA must conduct each year.

Mr. Grainger's presentation focused on *Hodges v. Abraham* (2002), in which the Governor of South Carolina challenged the adequacy of DOE's NEPA documentation of its evolving decisions on plutonium consolidation and storage. Mr. Grainger described DOE's use of SAs to support determinations that a supplemental EIS was not required in order for DOE to accelerate shipments of surplus plutonium from Rocky Flats to Savannah River or to modify an existing facility for plutonium storage at Savannah River rather than construct a new facility. The Court of Appeals for the Fourth Circuit confirmed the district court's decision to uphold DOE's NEPA documentation, and the Supreme Court declined to review the case. (See *LLQR*, March 2003, page 12.)

The subject of Mr. Johnson's case study was the June 2004 *Supplement Analysis for the Disposal of Polychlorinated Biphenyl-Commingled Transuranic Waste at the Waste Isolation Pilot Plant (WIPP)* (DOE/EIS-0026-SA-02). In the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (WIPP SEIS-II; DOE/EIS-0026-S2, September 1997)*, DOE analyzed the disposal of TRU waste containing residues from thermally-treated PCBs. Because there is no facility capable of thermally treating DOE's PCB-commingled TRU waste, DOE needs to have the capability to dispose of untreated PCBs. The evaluation in this SA referenced a technical study of repository performance with untreated PCBs and included an evaluation of transportation impacts under accident and incident-free conditions. The SA supported a

conclusion that for most impact areas there would be no change in impacts due to the disposal of untreated PCBs. Where a small increase in risk could potentially occur, the increase was too small to change the numerical expression of the impacts as reported in the WIPP SEIS-II. This SA and its associated ROD amendment are the culmination of several years of effort to complete the NEPA review and obtain the necessary regulatory authorities to dispose of DOE's PCB-commingled TRU waste at WIPP.



*Drew Grainger and Jeanie Loving listen as Tom McKinney (right) describes how BPA uses SAs to efficiently manage hundreds of NEPA reviews a year. (Harold Johnson participated by video.)*

Mr. McKinney acknowledged a statistic presented the previous day by Mr. Lawrence: of 122 SAs completed in the past year, all but 2 were prepared by BPA. Mr. McKinney then explained that SAs are part of the NEPA compliance strategy for three discrete BPA programs: Transmission System Vegetation Management, Watershed Management (a fisheries enhancement program), and Wildlife Mitigation. BPA prepared a programmatic EIS for each of these programs and established specific standards and guidelines as part of an environmental management system (EMS), to guide planning and implementation of individual projects. Each program's standards and guidelines are presented in checklist format to assist project proponents in providing evidence sufficient to support a determination whether the project is substantially consistent with the programmatic EIS. If so, preparation of a supplemental EIS for the project is not required.

Mr. McKinney concluded with his view of how an EMS process and a strategic NEPA process are compatible: The EMS steps of (1) planning, (2) implementation and operation, (3) checking and corrective action, and (4) management review may be accomplished, respectively, through the NEPA steps of (1) EIS preparation, (2) action-specific SAs, (3) program monitoring, and (4) adaptive management. **LL**

## Cooperating Agencies *(continued from page 7)*

of, a particular topic. DOE also has defined appeal authorities to handle disagreements and will discuss any disagreements among agencies in the EIS. He said that DOE made an attempt to keep information shared with cooperating agencies confidential, but accepted that shared information could become public. DOE is trying to accommodate the needs of cooperating agencies in the EIS schedule, he said.

Benefits of working with cooperating agencies include building cooperative relationships, reducing the cost of data acquisition, identifying issues early, and facilitating the acceptance of interim actions, Mr. Metzler said. He also said that all but one cooperating agency used a standardized form to comment on a preliminary draft of the EIS, which made it easier to review and respond to their comments. Mr. Metzler also identified drawbacks to working with cooperating agencies, including the amount of management time necessary to establish agreements,



*Mary Beth Burandt, Tony Como, Dan Sullivan, and Don Metzler (not shown) described benefits and challenges of working with cooperating agencies.*

variability in levels of participation, competing priorities for agency attention, and the inability to restrict access by the public and the media at meetings. He said that the involvement of cooperating agencies extended the schedule for issuing the draft EIS. **LL**

## e-NEPA *(continued from page 8)*

Other system features available to the Park Service include the ability to screen projects to help determine the appropriate level of NEPA review; identify environmental issues, such as resources with potential impacts; and conduct administrative overview by “rolling-up” information on compliance activities for multiple projects. Unlike the BLM system, however, the Park Service system does not incorporate a GIS.

### Expanding e-NEPA at DOE

The 21<sup>st</sup> edition of *Directory of Potential Stakeholders for DOE Actions Under NEPA*, July 2004, is the first to be distributed as a database application on compact disk, announced Yardena Mansoor, NEPA Office. This new e-NEPA approach makes the *Directory* of NEPA contacts in Federal agencies, states, and nongovernmental organizations far more useful, she explained. As in the past, the *Directory* is available online ([www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf](http://www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf)) and in print, but the new database application allows the user to more quickly find relevant contact information and then transfer it to another software application (e.g., word processing,

**Maybe we can team together to develop some new e-NEPA initiatives. What other aspects of the NEPA process can we improve through these types of approaches? We welcome your ideas.**

**– Carol Borgstrom**

spreadsheet) to efficiently produce accurate mailing labels or personalized letters. Distributing and updating the *Directory* is easier, too. (See *LLQR*, June 2004, page 14.)

Denise Freeman, NEPA Office, introduced the “CD Library Project,” which entails putting a number of DOE NEPA documents on separate compact disks, which can then be copied as needed. This will enable DOE to be more responsive to requests for documents, especially those that are out of print. In taking this step, the NEPA Office also is addressing the concern that some DOE stakeholders do not have Internet access that allows downloading large files. **LL**

# More Thoughts on Getting Better and Better

By: Clarence Hickey, NEPA Compliance Officer, Office of Science

A real benefit of DOE's NEPA Community Meetings is the chance to network and talk face-to-face about NEPA issues with colleagues from across the Department. After this year's meeting, I found myself thinking that to keep *getting better and better*, the Department and the Federal government in general need to tackle some issues beyond the procedural provisions and compliance aspects of NEPA implementation. I sent my thoughts to the Office of NEPA Policy and Compliance, which asked if I would prepare an article reflecting these ideas. So, here they are for you to mull on.

## Better Environmental Stewardship Requires More Than NEPA Procedures

I would like to see DOE embrace the policy and goals of Section 101 of NEPA as an operating philosophy and in its larger strategic planning. In our Departmental strategic plans we tend to focus the discussion of environmental protection on Integrated Safety Management (ISM) and/or Environmental Management Systems (EMS), plus remediation and waste management commitments. These are useful environmental foci, but they are not complete.

Our strategic plans say that we do EISs and involve the public, but we do not use NEPA's policy and goals as our overarching way of doing business. We do very well at being procedurally compliant with Section 102 of NEPA, but we have always needed more than compliance to fully protect the environment and to demonstrate our environmental stewardship to the public we serve. In some ways it seems like we have short changed the ethical aspects of the Act's policy and goals in our fervor to be compliant with its legal and procedural requirements. We need both compliance and ethics to be proper stewards of the environment, and we need to put as much vigor into ethics as we do into procedural compliance.

## Scope of NEPA and ISM Match

DOE's ISM Systems contain provisions for environmental protection, although ISM's focus is primarily on safety. I believe that an environmental piece of ISM is the NEPA process and its documentation, which provide an environmental framework that is consistent with ISM's

safety focus and its five core functions (bold below). Consider especially the scope and content of an EIS:

- An EIS **defines the scope of work** (i.e., purpose and need, proposed action and alternatives) – ISM core function No. 1.
- An EIS **analyzes the environmental hazards** and consequences – ISM core function No.2.
- An EIS helps to **develop and implement environmental hazard controls** (e.g., through mitigation action plans and records of decision) – ISM core function No. 3.
- An EIS helps to plan the **performance of work within controls** and standards (i.e., requirements and compliance) – ISM core function No. 4.
- The EIS process **provides feedback and continuous improvement** (e.g., mitigation action plans, lessons learned, public and community input) – ISM core function No. 5.

The Office of Science prepared an EIS Quality Assurance Plan in 2002 that attempts to relate how the Plan and NEPA compliance are consistent with the ISM process, and how an EIS is a key environmental application of ISM. (See Chapter 1, Introduction, of the Plan at [www.sc.doe.gov/sc-80/sc-83/qa-eis.shtml](http://www.sc.doe.gov/sc-80/sc-83/qa-eis.shtml).) I believe that ISM should be an aspect of assessing and protecting the human environment in the NEPA process, as Section 101 speaks to health and welfare, risks to health or safety, and to other undesirable and unintended consequences. (This latter aspect always has been for me the "NEPA basis" for such things as accident analysis, and to some degree for cumulative effects assessment.)

## Compliance Should Be the Beginning, Not End Point, of Environmental Review

**The match between ISM core functions and NEPA needs to be better plugged into the DOE mindset on ISM.**

DOE has tended to use a more narrowly focused aspect of ISM as our mantra for "all things environmental and safety." Safety always has been a part of NEPA, and safety issues can have environmental and health consequences. ISM should be part of how we "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of [people]" (NEPA, Section 2, Purpose). I believe we have turned things around in ways that can work against our achieving full

(continued on next page)



*"We need to re-emphasize NEPA's policy and goals as a central mantra or ethic in how the Department functions," says Clarence Hickey.*

# More Thoughts *(continued from previous page)*

stewardship of the human environment. If we could embrace Section 101 as our mantra, ISM would fall under the larger rubric of those lofty goals that Congress passed in 1969.

I would like to see DOE explore ways to formally and publicly connect our NEPA documentation (Section 102 compliance) with its reason for being prepared (Section 101 policy and goals). DOE might explain in a finding of no significant impact or record of decision how its conclusions are consistent with or support the policy and goals in Section 101. Our EAs and EISs state how we are preserving cultural resources or protecting endangered species, for example, but how does creating a new laboratory or proposing a new nuclear program for the nation support the broad goals of NEPA? I suspect they do, and I think we could discuss this in our NEPA documents. I would like to see DOE be the first agency to test this idea of connecting Sections 101 and 102 in our NEPA documents, just as we have jumped into the lead on many other NEPA issues.

I will admit some disappointment in the recent development of DOE Order 450.1, Environmental Protection Program, as it does not draw upon the importance of NEPA's policy for the nation in environmental protection and does not espouse the policy NEPA contains as an operational philosophy and policy for an agency. The Order draws primarily on the use of EMSs as the way to achieve protection. Now, don't misunderstand me. EMSs are magnificent structures for compliance and for building public trust at our sites. We have tended, however, to see compliance as the end point, rather than the beginning. I would rather have seen the two orders better cross referenced.

So, here you have it. A pro-NEPA editorial from a maverick environmental NCO. These are my thoughts solely, and not necessarily those of the Office of Science or the NEPA Office. I'd be glad to read your op-eds in future issues of *LLQR*. If you have questions or comments, send them to me at [clarence.hickey@science.doe.gov](mailto:clarence.hickey@science.doe.gov) or 301-903-2314. **LL**

## DOE NEPA Office Shares Best Practices

In the spirit of sharing DOE lessons learned, staff from the Office of NEPA Policy and Compliance meets regularly with representatives of other agencies and countries. The Office supports the Environmental Protection Agency's (EPA's) "International Capacity Program for Environmental Impact Assessment" and recently also responded to requests for information from the Japanese Environmental Ministry and the Minerals Management Service (U.S. Department of the Interior).

EPA sponsors study tours for representatives from other countries (e.g., China, Ghana, Japan, South Korea, and Russia) that want to develop new or improved environmental impact assessment practices. The study tours include meetings with EPA, the Council on Environmental Quality (CEQ), and other Federal agencies to discuss U.S. environmental impact assessment and environmental protection practices. EPA's Office of Federal Activities asks DOE to support the study tours by providing briefings on case studies and exemplary DOE NEPA practices,

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**Representatives of other agencies appreciate DOE's NEPA Lessons Learned Quarterly Reports because of the value in developing their own programs.**

**— Eric Cohen**

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including DOE's lessons learned program. For example, NEPA staff recently briefed a representative from the University of Tokyo Institute for Environmental Studies, which is particularly interested in DOE's effective practices for fostering public participation and DOE's use of programmatic environmental impact statements.

The Japanese Environmental Ministry is interested in learning how agencies determine the scope of an EIS and how they organize public meetings. On the recommendation of CEQ, a Ministry representative met with NEPA Office staff. The meeting addressed a wide-range of NEPA implementation issues, including management of uncertainty in impact analyses, monitoring of impacts after project implementation, and information management issues (e.g., databases, security). The Ministry representative was particularly impressed by the quality and quantity of NEPA information that DOE makes available on its Web site ([www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa)).

The Minerals Management Service, as part of its multi-year e-Government initiative to improve service to internal and external customers, contacted DOE when benchmarking. In the telephone interview, the NEPA Office staff discussed DOE's NEPA process performance metrics, responsibilities for NEPA compliance within DOE, and the DOE NEPA lessons learned program.

For further information, contact Eric Cohen at [eric.cohen@eh.doe.gov](mailto:eric.cohen@eh.doe.gov) or 202-586-7684. **LL**

# Lessons Learned from *Lessons Learned* Part 4: Getting Better, and Better Still

DOE's NEPA program appears to be on the right track, but needs to continue emphasizing basic tenets such as good communication and early and meaningful involvement of all interested parties. This conclusion is based on a review conducted by the Office of NEPA Policy and Compliance of nearly 1,000 excerpts from responses to DOE's NEPA Lessons Learned Questionnaire published in *LLQR* since December 1994.

Good communication and effective involvement were identified time and again by questionnaire respondents as key factors in the successful completion of EAs and EISs. Good communication is essential throughout the NEPA process – early on to help reduce the time needed for data collection; through regular, internal meetings to keep the entire document preparation team informed and focused; and through continuous, often informal, meetings with external agencies and the public to develop good working relationships and assure that issues are identified and addressed.

Meaningful involvement applies to parties within and outside DOE. The NEPA document team needs to have the right skills mix, including NEPA experience, respondents said, and include senior management, as needed. Successful scoping depends on reaching within and outside DOE to assure early involvement of interested parties, emphasizing that a well-scoped EA or EIS is more likely to be completed on time and meet program needs.

Respondents indicated that tools such as Web sites and electronic distribution of documents can enhance both communication and meaningful involvement. By using these tools and good management practices together effectively, respondents said, the NEPA process often leads to better-informed decisions. Moreover, respondents identified numerous discrete actions resulting from NEPA reviews that enhanced environmental protection.

Respondents also identified what didn't work for NEPA implementation. Most often the mistakes involved failing to implement accepted practices. Among the problems identified were not defining alternatives early in the process and not adequately engaging managers or the public.

The observations of respondents were echoed by Martin Letourneau, DOE representative to the White House Task Force on Energy Project Streamlining, at this year's NEPA Community Meeting. He said that the

This article is the fourth of a series examining responses to DOE's NEPA Lessons Learned Questionnaire. Excerpts from the responses are published on the concluding pages of each issue of *LLQR* under the heading: *What Worked and Didn't Work in the NEPA Process*. (See page 29.) The Lessons Learned Questionnaire is available on the DOE NEPA Web site at [www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa) under Lessons Learned Quarterly Reports.

The first three articles discussed scoping and data collection and analysis (*LLQR*, December 2003, page 1), schedule and teamwork (*LLQR*, March 2004, page 6), and public participation, usefulness, and environmental protection (*LLQR*, June 2004, page 4). This article concludes the series.

Task Force saw no unusual issues in its review of NEPA case studies across the Federal government, just the "same mistakes and the same opportunities" to improve NEPA implementation. (See related article, page 1.)

## Transfer Knowledge Gained from Experience

"Communicating lessons learned to new NEPA practitioners is particularly important," said Eric Cohen, Unit Leader, NEPA Office. He recalled that several people at the NEPA meeting commented on how members of DOE's NEPA Community are retiring or moving on. "We're losing corporate knowledge and experienced NEPA practitioners," Mr. Cohen said. "How can we get guidance and other information on NEPA implementation to new people?"

He pointed out that e-NEPA mechanisms such as the DOE NEPA Web site ([www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa)) make guidance documents readily available. Nonetheless, the NEPA Office is looking for ways to expand the use of e-NEPA in this area, support NCOs in efforts to train new people, and develop additional guidance that documents lessons learned.

"Our challenge," Mr. Cohen said, "is to recruit new people to DOE's NEPA Community and to communicate successful practices so that we don't reinvent the wheel, don't repeat the same mistakes. We always welcome suggestions to help us meet this challenge and keep getting better and better." 

# CEQ Work Group Aims to Enhance Tribal Role in NEPA Process



Recognizing that Federal agencies, American Indian tribes, Alaska Native entities, and Native Hawaiian organizations can learn much from one another, and that increasing stakeholder information sharing and cooperation improves the NEPA process, the Council on

Environmental Quality (CEQ) recently announced the establishment, mission, and goals of the Interagency Tribal NEPA Capacity Work Group (Work Group).

The Work Group's mission, provided in a July 30, 2004, memorandum from Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, to Federal Agency NEPA Contacts and Tribal Coordinators, is to "strive to enhance tribal capacity for more effective participation in NEPA analyses and processes to encourage more informed decisionmaking so as to promote the preservation of tribal cultural heritage and cultural identity." The Work Group also will encourage and support tribal efforts to develop tribal-specific NEPA-like processes.

## Goals of the Work Group

One of the six short-term goals is to "aid in developing and evaluating regional training offered to build tribal-agency understanding and working relationships under NEPA at the local levels." The Work Group supported such an education and training session provided by the Tulalip tribes earlier this year. (See *LLQR*, June 2004, page 10.)

Other short-term goals address

- developing and maintaining a training compendium
- creating and supporting an interagency one-stop Web portal
- identifying and making available national and local tribal and Federal agency contact information
- collecting and sharing examples of success stories and related materials
- developing an overall strategy for meeting tribal needs.

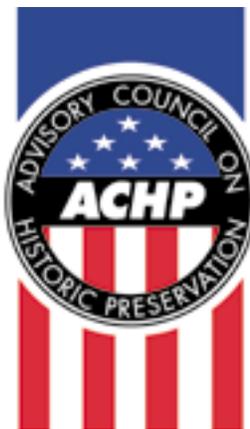
Four long-term goals include one to "enhance access by tribes, federal agencies, and others to capacity building tools, training materials, and contacts for tribes to more effectively and constructively engage in federal decisionmaking." This goal involves sharing lessons learned via the Internet.

Mr. Greczmiel expects the CEQ memorandum to be posted on the NEPAnet Web site (<http://ceq.eh.doe.gov/nepa/nepanet.htm>). Current Federal agency members of the Work Group include representatives from the Advisory Council on Historic Preservation; the Departments of Agriculture, Defense, Energy, Transportation, and the Interior; and the Environmental Protection Agency. The Work Group will periodically request assistance for information and review of materials being developed.

For further information, contact Carolyn Osborne at [carolyn.osborne@eh.doe.gov](mailto:carolyn.osborne@eh.doe.gov) or 202-586-4596. 

# Amendments Clarify Advisory Council Role in NEPA Process and Agency Decisionmaking on Historic Properties

In recent amendments to its regulations implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), the Advisory Council on Historic Preservation clarified that its opinion on an agency's findings regarding effects on historic properties is not binding on the agency. The amendments were effective August 5, 2004 (69 FR 40544; July 6, 2004), and included revisions to 36 CFR 800.8, "Coordination with the National Environmental Policy Act."



Although an agency must take the Council's opinion into account and provide the Council with a summary of the agency's final decision, including its rationale and evidence that it considered the Council's opinion, the

agency is not required to abide by the Council's opinion. The revised regulations make clear that an agency is responsible for the final decision on findings of "no historic properties affected" and "no adverse effects" on historic properties.

Detailed information on the Section 106 process can be found on the ACHP's Web site ([www.achp.gov](http://www.achp.gov)). For specific discussion of coordinating the NEPA and Section 106 processes, see *LLQR* June 2001, page 8, and June 1999, page 3. Summaries of the Section 106 process and the recent amendments, and a copy of the regulation as amended, can be found on the Web site of DOE's Office of Air, Water and Radiation Protection Policy and Guidance at [www.eh.doe.gov/oepa/guidance/cultural/sect106\\_nhpa.pdf](http://www.eh.doe.gov/oepa/guidance/cultural/sect106_nhpa.pdf) (as attachments to a memorandum dated July 27, 2004). For further information on DOE's Section 106 compliance, contact Lois Thompson at [lois.thompson@eh.doe.gov](mailto:lois.thompson@eh.doe.gov) or 202-586-9581. 

# NRC Adopts Environmental Justice Policy Statement



The Nuclear Regulatory Commission (NRC) recently adopted a “Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions” (69 FR 52040; August 24, 2004). The preamble states that while

NRC is “committed to the general goals” of Executive Order 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), the agency “will strive to meet those goals through its normal and traditional NEPA review process.” The Policy Statement further explains NRC’s position that the “basis for admitting EJ contentions in NRC licensing proceedings stems from the agency’s NEPA obligations,” emphasizing that environmental justice “issues are only considered when and to the extent required by NEPA.”

NRC issued a draft Policy Statement for public comment on November 5, 2003 (68 FR 62642). The preamble to the final Policy Statement addresses comments received on the draft, a number of which pertain to NRC’s future decision on whether to adopt DOE’s final EIS on the high-level waste repository at Yucca Mountain, Nevada (DOE/EIS-0250, October 2002), in connection with NRC’s licensing process for the repository.

NRC sets forth eight guidelines regarding the consideration of environmental justice in its NEPA implementation, quoted in part below.

- “The legal basis for the NRC analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898.”
- The goal of the environmental justice portion of a NEPA analysis is to “identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities” and to “identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad-ranging review of racial or economic discrimination.”
- “In developing an EA where a FONSI is expected it is not necessary to undertake an EJ analysis unless special circumstances warrant the review. Special circumstances arise only where the proposed action has a clear potential for off-site impacts to minority and low-income communities associated with the proposed action.”

- Because environmental justice-related issues are location-specific, they “normally are not considered during the preparation of generic or programmatic EISs.”
- “EJ per se is not a litigable issue in NRC proceedings. Rather the NRC’s obligation is to assess the proposed action for significant impacts to the physical or human environment.”
- “The methods used to define the geographic area for assessment and to identify low-income and minority communities should be clear, yet allow for enough flexibility that communities or transient populations that will bear significant adverse effects are not overlooked during the NEPA review.” Use standard distances and population percentages as guidance, “supplemented by the EIS scoping process, to determine the presence of a minority or low-income population.”
- “The assessment of disparate impacts is on minority and low-income populations in general and not to the ‘vaguely defined, shifting subgroups within that community.’”
- “In performing a NEPA analysis for an EIS, published demographic data, community interviews and public input through well-noticed public scoping meetings should be used in identifying minority and low-income communities that may be subject to adverse environmental impacts.”

For further information contact Brooke G. Smith, NRC Office of General Counsel, at [bgs@nrc.gov](mailto:bgs@nrc.gov) or 301-415-2490. 

*Editor’s note: Executive Order 12898 concerning environmental justice and the Council on Environmental Quality’s “Environmental Justice: Guidance Under the National Environmental Policy Act” (December 1997) are available on the DOE NEPA Web site ([www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa)) under Guidance. Also, EPA has issued “Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews” (July 1999, [www.epa.gov/compliance/resources/policies/nepa/enviro\\_justice\\_309review.pdf](http://www.epa.gov/compliance/resources/policies/nepa/enviro_justice_309review.pdf)). DOE is preparing guidance for incorporating environmental justice considerations in its NEPA analyses.*



# Litigation Updates

*Daniel Ruge, Acting Assistant General Counsel for Environment, introduced a panel from DOE's Office of General Counsel at the NEPA Community Meeting. Attorneys Richard Ahern, Ed Le Duc, Angela Foster, and Janet Masters reviewed major cases that could affect DOE's NEPA program. The cases they discussed are summarized below.*

## Court Affirms WIPP SEIS-II Record of Decision

On June 30, 2004, the United States District Court for the District of New Mexico affirmed DOE's Record of Decision (63 FR 3624; January 23, 1998) to implement the preferred alternative analyzed in the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement* (WIPP SEIS-II; DOE/EIS-0026-S2, September 1997). The preferred alternative foresees disposing of up to 175,600 cubic meters of transuranic (TRU) waste in WIPP.

### DOE Addressed Issues in EISs

Citizens for Alternatives to Radioactive Dumping (CARD) claimed that the WIPP SEIS-II is inadequate in its discussion of geology, hydrology, release scenarios, the risk of terrorist attacks or sabotage, the plutonium content of each shipping container, and the potential for roof fall and gas generation within the repository. (See *LLQR*, September 1998, page 11.) The court concluded, however, that plaintiffs had not presented new information that DOE had failed to consider through the NEPA process, and the court identified where these issues are discussed in the WIPP SEIS-II, relying often on DOE's responses to public comments.

Plaintiffs also claimed that the WIPP SEIS-II is inadequate for failing to consider alternative disposal sites, such as long-term storage at sites where TRU waste was generated or use of the proposed high-level waste repository. The court reviewed alternatives evaluated in all WIPP-related EISs and concluded that, through its staged NEPA review process, DOE had adequately evaluated a range of reasonable alternatives. In the case of using the proposed high-level waste repository, for example, the court concluded that it was sufficient to provide a brief discussion of the reasons why the alternative was eliminated from detailed study in the WIPP SEIS-II, in part, because the issue had been addressed in the original WIPP EIS (DOE/EIS-0026, 1980).

### Court Deferred to Agency Expertise

The court deferred to DOE's "resolution of conflicting evidence concerning issues within its area of expertise." In other words, the court limited its review to the question of whether DOE had considered relevant issues in the NEPA process, and the court did not attempt to resolve differences in the interpretation of scientific opinion.

Similarly, the court accepted DOE's methodology for analyzing environmental justice. Plaintiffs challenged the WIPP SEIS-II for inadequately considering the potential environmental impacts on low-income and minority populations along transportation routes. In particular, plaintiffs offered what the court termed a "hypothesis" for characterizing the population along highways that differed from the methodology used by DOE in the WIPP SEIS-II. The court found that plaintiffs had not provided evidence that their hypothesis was credible, and the court deferred to DOE's choice of methodology for analyzing potential environmental justice impacts.

### DOE Not Required to Use Actual Characterization Data

Plaintiffs criticized the Environmental Protection Agency's (EPA's) process for certifying the acceptability of waste prior to DOE disposing of it in WIPP, claiming that it reflects a "piecemeal" approach and is based on uncertain characterization of waste rather than "actual characterization data describing the complete waste inventory planned for disposal at WIPP." The court determined that it could not review plaintiffs' claims against EPA but did evaluate the implications of plaintiffs' arguments for the WIPP SEIS-II. The court concluded that waste characterization in the WIPP SEIS-II is adequate and that it would "render agency decisionmaking intractable" to require that DOE suspend WIPP operations to further supplement the WIPP SEIS-II "with actual characterization data for each item of waste." The court did clarify, though, that it was not opening the door to "use WIPP for the treatment or disposal of other types of waste not contemplated in the SEIS-II or not permitted by applicable statutes and regulations."  
[Case No.: CIV 99-321 MCA/ACT]

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# Litigation Updates (continued from previous page)

## DOE NEPA Litigation in Brief

**Border Power Plant Working Group v. Abraham et al.** (S.D. Calif.): DOE is preparing an EIS for two electric transmission lines that cross the U.S.-Mexico border. The EIS and record of decision (ROD) are scheduled for completion by December 15, 2004, consistent with the court's order. (See *LLQR*, June 2004, page 16; December 2003, page 7; and September 2003, page 22.) [Case No.: 02-CV-513]

**Columbia Riverkeeper and State of Washington et al. v. Abraham et al.** (E.D. Wash.): Plaintiffs amended their complaint in August 2004 to ask the court to bar shipments of low-level radioactive and low-level mixed waste to the Hanford site. DOE currently is operating under a May 2003 court-ordered injunction that bars the shipment of transuranic waste to the Hanford site. At issue is the adequacy of DOE's NEPA reviews related to waste management and disposal at Hanford, including the recently completed *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and ROD (69 FR 39449; June 30, 2004). [Case Nos: 03-CT-5018 and 03-CT-5044]

**Nuclear Energy Institute, Inc. v. Environmental Protection Agency**<sup>1</sup> (D.C. Cir.): In this case, which combined Nevada's legal challenges to siting a geologic repository at Yucca Mountain, plaintiffs argued that DOE's *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, February 2002) is inadequate to support a site-selection recommendation by the Secretary of Energy or the President. A three-judge panel on July 9, 2004, found this argument moot because Congress has since approved the Yucca Mountain site, thus ending the site-selection process. The court left open the possibility of future challenges of the EIS, however, should DOE or the Nuclear Regulatory Commission (NRC) rely on it for future decisions.

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<sup>1</sup> This case is cited in previous issues of *LLQR* as *State of Nevada et al. v. U.S. Department of Energy et al.*

The court also dismissed or denied all other challenges brought against DOE, the Environmental Protection Agency (EPA), and NRC, with one exception: it vacated the 10,000 year compliance period in the EPA rule and the corresponding section of the NRC rule and remanded the matter to EPA. The court found that the 10,000 year compliance period was not consistent with the requirement of Section 801(a) of the Energy Policy Act that EPA's rule be "based upon and consistent with the findings and recommendations of the National Academy of Sciences" (NAS). NAS had recommended that compliance be measured at the time of peak radiation release, which is estimated to occur after several hundred thousand years. (See *LLQR*, March 2002, page 19, and December 2002, page 22.)

[Case Nos. 01-1516, 02-1036, 02-1077, 02-1179, 02-1196]

**Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al.** (N.D. Calif.): This a NEPA and Freedom of Information Act action brought by two nonprofit organizations and several private citizens alleging deficiencies in the EAs for a proposed Biosafety Level 3 ("BSL-3") facility at Los Alamos National Laboratory (LANL) and another at Lawrence Livermore National Laboratory (LLNL). Based on DOE's January 2004 decision to withdraw the FONSI for the LANL facility and prepare a new EA, the parties agreed in principle to narrow the focus to the adequacy of the LLNL EA and the need for a programmatic EIS. The case is fully briefed, and DOE is awaiting a decision. (See *LLQR*, March 2004, pages 2 and 16; and September 2003, page 23.) [Case No.: CV-03-3926-SBA]

**Touret et al. v. NASA et al.** (D.R.I.): In this action, filed May 21, 2004, plaintiffs challenge the adequacy of the *Environmental Assessment for the Partial Funding of a Proposed Life Sciences Building at Brown University, Providence, Rhode Island* (NASA/03-GSFC-02/DOE/EA-1473, July 2003) and request preparation of an EIS. This EA was prepared by the National Aeronautics and Space Administration, with DOE as a cooperating agency. Both agencies and Brown University are named in the lawsuit. A briefing schedule has not been set. [Case No.: 1:04cv00198]

*(continued on next page)*

# Litigation Updates *(continued from previous page)*

## Other Agency NEPA Cases

**U.S. Department of Transportation et al. v. Public Citizen et al.** (Supreme Court): The Supreme Court on June 7, 2004, reversed a decision by the Ninth Circuit Court of Appeals in a lawsuit over DOT's EA for Mexican trucking safety and inspection rules (*LLQR*, June 2003, page 22). The appeals court had ruled that a Presidential decision to lift a moratorium on the cross-border operation of Mexican-based trucks is a reasonably foreseeable consequence of DOT's rulemaking, and therefore DOT should have considered the overall environmental impact of lifting the moratorium (i.e., potential affects attributable to increased truck traffic from Mexico into the U.S.) as part of its NEPA review.

The Supreme Court, however, ruled unanimously that DOT need not consider these potential impacts because lifting the moratorium is a Presidential decision and DOT has no discretion to prevent the entry of Mexican trucks for environmental reasons. DOT "simply lacks the power to act" on information about potential environmental impacts of increased truck traffic from Mexico, the Court concluded. "We hold that where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect. Hence, under NEPA and the implementing CEQ regulations,

the agency need not consider these effects in its EA when determining whether its action is a 'major Federal action.'"

The Court also ruled that because Public Citizen had not identified additional alternatives in their comments on DOT's EA, they forfeited any objection to the EA on the grounds that it had not adequately discussed potential alternatives to the proposed action. [Case No.: 03-358]

**Norton et al. v. Southern Utah Wilderness Alliance et al.** (Supreme Court): The Supreme Court on June 14, 2004, reversed a decision by the Tenth Circuit Court of Appeals and determined that the Bureau of Land Management need not supplement existing NEPA analyses to address the increased use of off-road vehicles in certain wilderness study areas in Utah. A wilderness study area is public land that might be designated by Congress as a wilderness area. Management of a wilderness study area is guided by a land use plan, which the Court described as a "comprehensive management framework" that reflects the Bureau's priorities but does not commit the agency to specific actions. Because the land use plans in question already had been approved, the Court determined that, "There is no ongoing 'major Federal action' that could require supplementation" of existing NEPA analyses. [Case No.: 03-101] 

## Transitions

### New NCO: Allen Wrigley, Princeton Site Office

Allen Wrigley was recently designated NEPA Compliance Officer (NCO) for the Princeton Site Office, which has new NEPA authorities under the recent reorganization of the Office of Science. An environmental engineer, Mr. Wrigley currently is assigned to environmental compliance and electrical and fire protection safety, in addition to NEPA coordination. His previous experience includes environmental restoration and waste management with private engineering consulting firms, the U.S. Air Force, and his first four years at DOE, as well as environmental management in the chemical manufacturing sector. Mr. Wrigley can be reached at awrigley@pppl.gov or 609-243-3710.

### Other Transitions

**Jay Rose**, recently the Deputy NEPA Compliance Officer for Defense Programs in the National Nuclear Security Administration, has retired from DOE after 14 years of service. (See page 3, and, for his remarks at the 2004 DOE NEPA Community Meeting, see page 10.) During his seven years as NCO he served as Document Manager for several complex and significant EISs, including the *Stockpile Stewardship and Management Programmatic EIS* (DOE/EIS-0236) and its supplement for the proposed Modern Pit Facility (DOE/EIS-0236-S2). For information on Defense Programs NEPA activities, contact NNSA NCO James Mangeno at james.mangeno@nnsa.doe.gov or 202-586-5484.

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*On behalf of the DOE NEPA Community, we wish Jay and Roger well in their future endeavors.*

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**Roger Twitchell** retired from the Idaho Operations Office after 31 years of Federal service. During his 10 years as NCO, he supported several major EISs, including for *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs* (DOE/EIS-0203) and *Idaho High-Level Waste and Facilities Disposition* (DOE/EIS-0287). For information on Idaho Operations Office NEPA activities, contact Jack Depperschmidt, Acting NCO, at depperdj@id.doe.gov or 208-526-5053. 

# Training Opportunities

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

- **Managing and Facilitating Public Meetings**

Portland, OR: September 21-23  
Fee: \$885 (GSA contract: \$795)

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

Logan, UT: September 27-29  
Fee: \$885 (GSA contract: \$795)  
Las Vegas, NV: October 19-22  
Fee: \$1,110 (GSA contract: \$995)

- **Team Building for NEPA Specialists**

Logan, UT: September 30-October 1  
Fee: \$660 (GSA contract: \$595)

- **Clear Writing for NEPA Specialists**

Logan, UT: October 18-20  
Fee: \$885 (GSA contract: \$795)

- **Socio-economic Impact Analysis for NEPA Specialists**

Logan, UT: November 15-16  
Fee: \$660 (GSA contract: \$595)

- **Reviewing NEPA Documents**

Phoenix, AZ: November 16-18  
Logan, UT: December 8-10  
Fee: \$885 (GSA contract: \$795)

The Shipley Group  
888-270-2157 or 801-298-7800  
shipley@shipleygroup.com  
[www.shipleygroup.com](http://www.shipleygroup.com)

- **NEPA Certificate Program**

Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later may be applied toward the certificate. Also requires completion of course exams and a final project.

Fee: \$4,955 (includes tuition, course fees, and all materials)

Natural Resources and  
Environmental Policy Program  
Utah State University  
435-797-0922  
judy.kurtzman@usu.edu  
[www.cnr.usu.edu/policy/nepa.html](http://www.cnr.usu.edu/policy/nepa.html)

- **Implementation of the National Environmental Policy Act**

Durham, NC: October 18-22  
Fee: \$1,050/\$1,150 (by/after September 20)

- **Current and Emerging Issues in NEPA**

Durham, NC: November 17-19  
Fee: \$695/\$775 (by/after October 25)

Nicholas School of the Environment  
and Earth Sciences  
Duke University  
919-613-8082  
del@env.duke.edu  
[www.env.duke.edu/del/shortcourses/courses/upcoming.html](http://www.env.duke.edu/del/shortcourses/courses/upcoming.html)

- **NEPA Certificate Program**

Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate.

Fee: Included in registration for constituent courses.

del@env.duke.edu  
[www.env.duke.edu/del/certificates/certificates.html](http://www.env.duke.edu/del/certificates/certificates.html)

- **NEPA Toolbox™ Training**

Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including those from other agencies. Services are available through a GSA contract.

*Environmental Training & Consulting  
International, Inc.*  
720-859-0380  
info@envirotrain.com  
[www.envirotrain.com](http://www.envirotrain.com)

# EAs and EISs Completed April 1 to June 30, 2004

## EAs

### Los Alamos Site Office

DOE/EA-1464 (6/14/04)

*Proposed Remediation of Material Disposal Area H within Technical Area 54 at Los Alamos National Laboratory, New Mexico*

Cost: \$195,000

Time: 18 months

### National Energy Technology Laboratory

DOE/EA-1477\* (1/16/04)

*Great River Energy's Lignite Fuel Enhancement Demonstration Project, North Dakota*

Cost: \$39,900

Time: 8 months

### Oak Ridge Operations Office

DOE/EA-1495\* (1/21/04)

*USEC Incorporated America Centrifuge Lead Cascade Facility at Piketon, Ohio*

Cost: \$15,000

Time: 11 months

### Western Area Power Administration

DOE/EA-1411 (9/19/02; FONSI Date 6/2/04)

*East Altamont Energy Center, Alameda County, California*

Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 33 months

\* Not previously reported in LLQR

## EISs

### Environmental Management/

### Oak Ridge Operations Office

DOE/EIS-0359 (69 FR 34161; 6/18/04)

(EPA Rating: EC-1)

*Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Paducah, Kentucky*

Cost: \$1,775,500

Time: 33 months

DOE/EIS-0360 (69 FR 34161; 6/18/04)

(EPA Rating: EC-2)

*Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Portsmouth, Ohio*

Cost: \$1,775,500

Time: 33 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

(For a full explanation of these definitions, see the EPA Web site at: [www.epa.gov/compliance/nepa/comments/ratings.html](http://www.epa.gov/compliance/nepa/comments/ratings.html).)

## NEPA Document Cost and Time Facts

### EA Costs and Completion Times

- For this quarter, the median cost of three EAs for which cost data were applicable was \$39,900; the average was \$83,300.
- Cumulatively, for the 12 months that ended June 30, 2004, the median cost for the preparation of 18 EAs for which cost data were applicable was \$39,900; the average was \$76,852.
- For this quarter, the median completion time of four EAs was 15 months; the average was 18 months.
- Cumulatively, for the 12 months that ended June 30, 2004, the median completion time for 18 EAs was 12 months; the average was 14 months.

### EIS Costs and Completion Times

- For this quarter, the median and average cost of two EISs completed was \$1,775,500.
- Cumulatively, for the 12 months that ended June 30, 2004, the median cost for the preparation of six EISs for which cost data were applicable was \$1,560,250; the average was \$2,726,167.
- For this quarter, the median and average completion time of two EISs was 33 months.
- Cumulatively, for the 12 months that ended June 30, 2004, the median completion time for six EISs was 33 months; the average was 37 months.

# Recent EIS-Related Milestones (June 1 to August 31, 2004)

## Notice of Intent

### Environmental Management/ Richland Operations Office

DOE/EIS-0364

*Disposition of the Fast Flux Test Facility, Richland, Washington*

August 2004 (69 FR 50176, 8/13/04)

### Environmental Management

DOE/EIS-0200

*Revised Record of Decision, Final Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste*

June 2004 (69 FR 39446, 6/30/04)

## Draft EIS

### Bonneville Power Administration

DOE/EIS-0353

*South Fork Flathead Watershed Westslope Cutthroat Trout Conservation Project, Montana*

June 2004 (69 FR 34161, 6/18/04)

### Environmental Management/ Carlsbad Field Office

DOE/EIS-0026-S2

*Revised Record of Decision, Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement, Carlsbad, New Mexico*

June 2004 (69 FR 39456, 6/30/04)

## Final EIS

### Bonneville Power Administration

DOE/EIS-0349

*Cherry Point Co-generation Project, Washington*

August 2004 (69 FR 52668, 8/27/04)

### Environmental Management/ Oak Ridge Operations Office

DOE/EIS-0359

*Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Paducah, Kentucky*

July 2004 (69 FR 44654, 7/27/04)

## Records of Decision

### Bonneville Power Administration

DOE/EIS-0343

*COB Energy Facility*

August 2004 (69 FR 52880, 8/30/04)

DOE/EIS-0360

*Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Portsmouth, Ohio*

July 2004 (69 FR 44649, 7/27/04)

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# DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at [dgallegos@doeal.gov](mailto:dgallegos@doeal.gov) or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at [www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa) under DOE-wide NEPA Contracting.

James Rose is now the Program Manager for the Tetra Tech, Inc., contract team. He can be reached at [james.rose@tetratech.com](mailto:james.rose@tetratech.com) or 703-931-9301. 

Description	DOE Contact	Date Awarded	Contract Team
Supplement Analysis for the Disposal of Fernald Operable Unit 4 11e(2) Byproduct Material at the Nevada Test Site	John Carilli <a href="mailto:carilli@nv.doe.gov">carilli@nv.doe.gov</a> 702-295-0672	7/13/2004	Potomac-Hudson
Sandia National Laboratories (NM) Site-wide EIS Assessment for Sandia Site Office	Susan Lacy <a href="mailto:slacy@doeal.gov">slacy@doeal.gov</a> 505-845-5542	7/14/2004	AGEISS
Fast Flux Test Facility Decommissioning EIS	Doug Chapin <a href="mailto:douglas_h_chapin@rl.gov">douglas_h_chapin@rl.gov</a> 509-373-9396	7/16/2004	Battelle

# Recent EIS-Related Milestones (June 1 to August 31, 2004)

(continued from previous page)

## **Environmental Management/ Richland Operations Office**

DOE/EIS-0286

*Hanford Solid (Radioactive and Hazardous) Waste Program, Richland, Washington*  
June 2004 (69 FR 39449, 6/30/04)

## **Nuclear Energy, Science and Technology**

DOE/EIS-0310

*Amended Record of Decision, Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States including the Role of the Fast Flux Test Facility*  
August 2004 (69 FR 50180, 8/13/04)

## **Supplement Analyses**

### **Bonneville Power Administration**

#### **Yakima Fisheries Project Final Environmental Impact Statement (DOE/EIS-0169)**

DOE/EIS-0169-SA-08\*

*Yakima/Klickitat Fisheries Project, Boone Pond Acclimation Site, Kittitas County, Washington*  
(Decision: No further NEPA review required)  
April 2004

#### **System Operation Review Environmental Impact Statement (DOE/EIS-0170)**

DOE/EIS-0170-SA-2

*2004 Federal Columbia River Power System Juvenile Bypass Operations, Lower Columbia River*  
(Decision: No further NEPA review required)  
July 2004

#### **Business Plan Environmental Impact Statement (DOE/EIS-0183)**

DOE/EIS-0183-SA-06

*Memorandum of Agreement between Bonneville Power Administration (BPA) and Bonneville Environmental Foundation (BEF) to Help Support BEF's Renewable Resource Activities, Pacific Northwest*  
(Decision: No further NEPA review required)  
June 2004

## **Wildlife Mitigation Program Environmental Impact Statement**

(DOE/EIS-0246)

DOE/EIS-0246-SA-40

*Protect and Restore Wildlife Habitat Coeur d' Alene Tribe - Hangman Acquisitions, Benewah County, Idaho*  
(Decision: No further NEPA review required)  
July 2004

## **Watershed Management Program Environmental Impact Statement (DOE/EIS-0265)**

DOE/EIS-0265-SA-142\*

*Idaho Model Watershed Habitat Projects – Goddard Habitat Project, Streambank, Lemhi County, Idaho*  
(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0265-SA-143\*

*Therriault Creek Meadow Restoration Project, Lincoln County, Montana*  
(Decision: No further NEPA review required)  
May 2004

DOE/EIS-0265-SA-144\*

*Salmon River Habitat Enhancement Monitoring and Evaluation, Fencing and Planting, Custer County, Idaho*  
(Decision: No further NEPA review required)  
May 2004

DOE/EIS-0265-SA-145\*

*Hood River Habitat – Baldwin Creek Culvert Replacement 2004, Hood River County, Oregon*  
(Decision: No further NEPA review required)  
May 2004

DOE/EIS-0265-SA-146

*Grande Ronde Model Watershed Project – Catherine Creek Off-Channel Rearing Habitat Improvement, Union County, Oregon*  
(Decision: No further NEPA review required)  
July 2004

DOE/EIS-0265-SA-147

*Grande Ronde Model Watershed Project – Catherine Creek Swackhammer Fish Passage and Erosion Management, Union County, Oregon*  
(Decision: No further NEPA review required)  
July 2004

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\* Not previously reported in LLQR

# Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

- DOE/EIS-0265-SA-148  
*Idaho Model Watershed Habitat Projects – Gydesen-Moen Irrigation Improvement and Riparian Enhancement, Custer County, Idaho*  
(Decision: No further NEPA review required)  
June 2004
- DOE/EIS-0265-SA-149  
*Idaho Model Watershed Habitat Projects – Rocky Mountain Ranch River Fence, Custer County, Idaho*  
(Decision: No further NEPA review required)  
June 2004
- DOE/EIS-0265-SA-150  
*Idaho Model Watershed Habitat Projects – Downton Ellis Creek Riparian Fence, Custer County, Idaho*  
(Decision: No further NEPA review required)  
June 2004
- DOE/EIS-0265-SA-151  
*Idaho Model Watershed Habitat Projects – Arrow A-Jay Neider Ranch River Fence, Custer County, Idaho*  
(Decision: No further NEPA review required)  
June 2004
- DOE/EIS-0265-SA-152  
*Idaho Model Watershed Habitat Projects – Zeigler Riparian Fence Phase II, Custer County, Idaho*  
(Decision: No further NEPA review required)  
June 2004
- DOE/EIS-0265-SA-153  
*Yakima Tributary Access and Habitat Program – Cowiche Creek Pump Screens, Yakima County, Washington*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-154  
*Idaho Model Watershed Habitat Projects – Bauchman (Ives Place) Riparian Fence, Custer County, Idaho*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-155  
*Blind Slough Restoration Project – Clatsop County, Oregon*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-156  
*Upper Salmon River Anadromous Fish Passage Improvement Projects, Lemhi County, Idaho*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-157  
*Protect and Restore the Big Canyon Creek Watershed, Lewiston, Idaho*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-158  
*Idaho Model Watershed Habitat Projects – Twelvemile Creek Pipeline, Lemhi County, Idaho*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-159  
*Pine Hallow Watershed Enhancement – Jackknife Watershed Projects, Sherman County, Oregon*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-160  
*Protect and Restore the Lapwai Creek Watershed, Nez Perce and Lewis Counties, Idaho*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-161  
*Grave Creek Channel Stabilization Project – Phase Two, Eureka, Montana*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-162  
*Libby Creek (Lower Cleveland) Stabilization Project, Libby, Montana*  
(Decision: No further NEPA review required)  
July 2004
- DOE/EIS-0265-SA-163  
*John Day Watershed Restoration Program, Wheeler and Grant Counties, Oregon*  
(Decision: No further NEPA review required)  
August 2004
- DOE/EIS-0265-SA-164  
*Idaho Model Watershed Habitat Projects – L-9 Irrigation Diversion Modification, Lemhi County, Idaho*  
(Decision: No further NEPA review required)  
August 2004
- DOE/EIS-0265-SA-165  
*Idaho Model Watershed Habitat Projects – Welp Riparian Enhancement Fence, Custer County, Idaho*  
(Decision: No further NEPA review required)  
August 2004

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# Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-166

*Idaho Model Watershed Habitat Projects – Coleman Creek Fish Passage Restoration, Kittitas County, Washington*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0265-SA-167

*Klickitat Watershed Enhancement Project – Klickitat Meadows Restoration, Yakima County, Washington*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0265-SA-168

*Protect and Restore Lolo Creek Watershed – Jim Brown Creek Streambank Stabilization, Clearwater County, Idaho*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0265-SA-169

*Idaho Model Watershed Habitat Projects – Pahsimeroi Fence Crossing, Lemhi County, Idaho*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0265-SA-171

*Wallowa River/McDaniel Habitat Rehabilitation, Wallowa County, Oregon*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0265-SA-172

*Gravel Push-Up Dam Removal, Lower North Fork John Day – Portable Pump Intake Screens, Grant County, Oregon*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0265-SA-173

*Tapteal Bend Riparian Corridor Restoration Project, Benton County, Washington*

(Decision: No further NEPA review required)  
August 2004

## **Vegetation Management Program Environmental Impact Statement (DOE/EIS-0285)**

DOE/EIS-0285-SA-198\*

*Vegetation Management for the Bell-Boundary #1 230 kV Transmission Line Corridor, Spokane and Pend Orielle Counties, Washington*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-199\*

*Vegetation Management on the Paul Satsop (Reference line) 500 kV Transmission Line Corridor, Structures 10/4 –21/5, Thurston County, Washington*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-200\*

*Vegetation Management for the John Day-Grizzly 500 kV Transmission Line Corridor, Sherman, Wasco, and Jefferson Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-201\*

*Vegetation Management for the Big Eddy-Chemawa 230 kV Transmission Line Corridor, Clackamas and Marion Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-202\*

*Vegetation Management for the Santiam-Chemawa 230 kV Transmission Line Corridor, Marion County, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-203\*

*Vegetation Management for the Garrison-Taft 500 kV Transmission Line Corridor, Powell, Granite, Missoula, and Mineral Counties, Montana*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-204\*

*Vegetation Management for the Forest Grove-McMinnville 115 kV and Associated Transmission Line Corridors, Washington and Yamhill Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

\* Not previously reported in LLQR

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# Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-205\*

*Vegetation Management on the 500 kV Pearl-Keeler No. 1 (Structures 1/1 to 19/3) and the 230 kV Pearl-Sherwood No. 1 and 2 (Structures 1/1 to 5/6) Transmission Line Corridors, Clackamas and Washington Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-206\*

*Vegetation Management for Blue Ridge, Leneve and Kenyon Mt. Microwave Sites, Coos and Lane Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-207\*

*Vegetation Management for the Hanford-Ostrander 500 kV Transmission Line Corridor, Structures 78/1 to 126/1, Klickitat County, Washington*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-208\*

*Vegetation Management for the Coburg, Hall Ridge, Noti, Prospect Hill, and Scott Mountain Microwave Sites, Yamhill, Lane, Marion, and Douglas Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-209\*

*Vegetation Management on the Toledo-Wendson #1 230 kV Transmission Line Corridor, Toledo Substation to Wendson Substation, Lincoln and Lane Counties, Oregon*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-210\*

*Vegetation Management for the Carson Tap 115 kV Transmission Line Corridor, Skamania County, Washington*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-211\*

*Vegetation Management for the McNary-Ross 345 kV Transmission Line Corridor between Tower Structures 138/6 and 144/1, Skamania County, Washington*

(Decision: No further NEPA review required)  
April 2004

DOE/EIS-0285-SA-212\*

*Vegetation Management along the Raymond-Willapa River No. 1, 115 kV and Raymond-Henkle St. 115 kV Transmission Line Corridors, Pacific County, Washington*

(Decision: No further NEPA review required)  
May 2004

DOE/EIS-0285-SA-213

*Vegetation Management along the Pilot Butte-La Pine, 230 kV Transmission Line Corridor, Deschutes County, Oregon*

(Decision: No further NEPA review required)  
June 2004

DOE/EIS-0285-SA-214

*Vegetation Management for the Cougar-Thurston #1 and Thurston-Willakenzie #1 115 kV Transmission Line Corridors, Lane County, Oregon*

(Decision: No further NEPA review required)  
June 2004

DOE/EIS-0285-SA-215\*

*Vegetation Management along the St. Helens-Allston 115 kV Transmission Line Corridor from 1/1 to Allston Substation, Columbia County, Oregon*

(Decision: No further NEPA review required)  
May 2004

DOE/EIS-0285-SA-216

*Vegetation Management in Selected ROW Sections of the Creston-Bell Corridor, Lincoln and Spokane, Washington*

(Decision: No further NEPA review required)  
June 2004

DOE/EIS-0285-SA-217

*Vegetation Management for the Mt. Hebo Microwave Site, Yamhill County, Oregon*

(Decision: No further NEPA review required)  
June 2004

DOE/EIS-0285-SA-218

*Vegetation Management along the Bonners Ferry-Troy 1/1 to 18/8 Transmission Line Right of Way (ROW), Boundary County, Idaho and Lincoln County, Montana*

(Decision: No further NEPA review required)  
June 2004

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\* Not previously reported in LLQR

# Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-219

*Vegetation Management at Selected Transmission Line Structures Located along the Libby-Bonnars Ferry Transmission Line Right of Way (ROW), Lincoln County, Montana*

(Decision: No further NEPA review required)  
June 2004

DOE/EIS-0285-SA-221

*Vegetation Management along the Right-of-Way of the Paul Allston No. 1 and 2- 500 kV Transmission Line Corridor, Columbia County, Oregon and Cowlitz County, Washington*

(Decision: No further NEPA review required)  
July 2004

DOE/EIS-0285-SA-222

*Vegetation Management along the St. John's-Keeler 115 kV Transmission Line Corridor, Washington County, Oregon*

(Decision: No further NEPA review required)  
July 2004

DOE/EIS-0285-SA 223

*Vegetation Management along the Schultz-Raver 1 and Schultz-Echo Lake 1 (43/5 to 49/3), Schultz-Raver 2 and 3 (44/1 to 49/3), Covington-Columbia 1 (39/5 to 44/2, and Olympia-Grand Coulee 1 (84/5 to 88/2) Transmission Line Corridors, King County, Washington*

(Decision: No further NEPA review required)  
August 2004

DOE/EIS-0285-SA-224

*Vegetation Management along the Paul-Allston No. 2, 500 kV, Napavine-Allston No. 1 500 kV, and the Longview-Chehalis No. 1 230 kV Transmission Line Corridor, Lewis and Cowlitz Counties, Washington*

(Decision: No further NEPA review required)  
August 2004

\* Not previously reported in LLQR

## **Environmental Management/ Carlsbad Field Office**

### **Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (DOE/EIS-0026-S2)**

DOE/EIS-0026-SA-02

*Disposal of Polychlorinated Biphenyl-Commingled Transuranic Waste at the Waste Isolation Pilot Plant, Carlsbad, New Mexico*

(Decision: Issued Revised ROD; 69 FR 39456, 6/30/04)  
June 2004

## **Nuclear Energy, Science and Technology**

### **Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility**

DOE/EIS-0310-SA-01

*Supplement Analysis for the Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility*

(Decision: Issued Amended ROD; 69 FR 50180, 8/13/04)  
August 2004

## **Strategic Petroleum Reserve**

### **Site-Specific and Programmatic Environmental Impact Statements**

DOE/SPR-EIS-0075-SA-01\*

*Operational and Engineering Modifications, Regulatory Review, and Socioeconomic Variation*

(Decision: No further NEPA review required)  
March 2004 

# What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 2004.

*The material presented here reflects the personal views of individual questionnaire respondents, which (appropriately) may be inconsistent. Unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.*

## Scoping

### What Worked

- *Joint scoping.* Public scoping was conducted jointly with the State's Energy Commission, in the State's workshop format.

## Data Collection/Analysis

### What Worked

- *State certification process.* The process that the State's Energy Commission requires for power plant certification focused on avoiding significant impacts.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Good EIS contractor.* The contractor was competent and experienced; its online comment-response system was especially helpful in meeting the schedule.
- *Delayed documentation.* The FONSI and mitigation action plan were delayed due to expiration of agreement between DOE and the applicant.

### Factors that Inhibited Timely Completion of Documents

- *Related historical preservation work.* An ethnographic overview based on interviews with local tribes needed to be completed before starting a required consultation under the National Historic Preservation Act.
- *Scoping meeting cancellation.* The DOE program office cancelled scoping meetings and shortly thereafter requested that they be rescheduled "as soon as possible," which posed logistical difficulties.

- *Congressional action.* Enactment of the Appropriations Act for Further Recovery from the Response to Terrorist Attacks on the United States (Public Law 107-206) required DOE to reassess the need for and scope of the EISs. Additionally, a classified appendix needed to be prepared.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Communication.* Frequent communication with our EA contractor and use of Web-available documents facilitated teamwork, as did good interaction with the State and the applicant's consultants.
- *Conference calls.* Weekly calls among the project staff, EIS contractor, and DOE headquarters program and review offices personnel were effective in resolving issues and keeping focused.

## Process

### Successful Aspects of the Public Participation Process

- *Working together.* A few members of the public did not recognize the distinct differences between the State Energy Commission's public process and DOE's NEPA process. As a result, some filed comments on the NEPA document with the State. However, the State provided copies of all filed documents to DOE.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Identified mitigations.* The NEPA process identified mitigations that needed to be implemented.

*(continued on next page)*

# What Worked and Didn't Work

(continued from previous page)

- *Siting decisions.* The EISs were useful in deciding the specific locations for depleted uranium hexafluoride conversion plants at Paducah, Kentucky and Portsmouth, Ohio, after Public Law 107-206 effectively eliminated consideration of alternatives for a much broader scope of decisionmaking.

- *Comprehensive approach.* Although the proposed action concerned only a pilot scale project, the EA included elements of licensing, building modifications, and decontamination and decommissioning that would be needed in a later demonstration phase, thus avoiding piecemeal consideration of impacts.

## Enhancement/Protection of the Environment

- Mitigation commitments from the EA process will provide adequate protections for sensitive resources.

- The overall effect of converting depleted uranium hexafluoride to more stable chemical forms is positive, but the NEPA process (which Congress required in this case to focus on site-specific facility locations) likely had no substantive effect.

- The EA appropriately addressed all emissions and wastes, including using site data to evaluate dose rates to nearest members of the public.

## Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

For the past quarter, in which 2 questionnaire responses were received for EAs and 2 responses were received for EISs, 1 out of 4 respondents rated the NEPA process as “effective.” That respondent rated the process as “4,” even though DOE was not a cooperating agency in the sense of CEQ’s regulations and was not the lead Federal agency.

- A respondent who rated the process as “2” stated that power plant’s certification was based on State jurisdiction, and the process was structured to support the State’s decisionmaking. DOE’s joint environmental review with the State ensured that all environmental consequences of the project were addressed.

- A respondent who rated the process as “1” for two EISs stated that by passing Public Law 107-206, which dictated that DOE would construct and operate facilities at two specific sites, Congress effectively narrowed consideration of reasonable alternatives only to location alternatives at each designated site. LL

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