

LESSONS LEARNED

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Second Quarter FY 2007

Collaborating to Cultivate a Shared Vision

We have all been told to “work together” to accomplish a particular goal. Together Everyone Achieves More illustrates the benefits of “teamwork.” Federal agencies, including the Council on Environmental Quality (CEQ) and Department of Energy (DOE), are focusing on tools to enhance teamwork and collaboration in the NEPA process. This supports the November 28, 2005, memorandum from the White House Office of Management and Budget and CEQ that directs agencies to “build institutional capacity for collaborative problem solving.”

The nature of an agency’s interactions with stakeholders can affect its success in achieving agency missions. The concept of cooperating agencies, at all levels of government, working together to address environmental issues has always been an important element of the NEPA process. Government-to-government consultation between Federal decisionmakers and the leaders of Federally-recognized tribes is an established process that contributes to the NEPA process. Required NEPA public participation activities open communication with the public. Many believe, however, that agencies can do more to build consensus with stakeholders before decisionmaking.

Using the NEPA Process to Build Consensus

How can we gain more from such interactions in the NEPA process? This issue of *Lessons Learned Quarterly Report* features several articles related to collaboration: CEQ’s draft handbook on collaboration, dialogues sponsored by the Department of the Interior,



DOE training in environmental conflict resolution, a government-university partnership in “joint fact finding,” an environmental justice conference, a new cooperating agency relationship for DOE, and extensive public involvement by the U.S. Army Corps of Engineers.

Key lessons in these collaborative efforts include:

- Communicate early and often.
- Get training in public participation tools, and meet stakeholder preferences with the tools used.
- Learn to listen, and be flexible and open to new ideas.
- Tell stakeholders what an agency can and cannot do, what an agency can and cannot disclose.
- Earn and reward trust.
- Address conflict, don’t ignore it.
- Use third party assistance to avoid or resolve conflicts.
- Anticipate a longer process, but more generally accepted decisions through broad-based participation.

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“Seeking agreements at one or more stages of the NEPA process
by cultivating shared vision, trust, and communication.”

CEQ, Collaboration in NEPA – A Handbook for NEPA Practitioners, Draft, March 2007

Inside **LESSONS LEARNED**

Welcome to the 51st quarterly report on lessons learned in the NEPA process. This issue features collaboration as a key element of a successful NEPA process. Related articles discuss approaches to and benefits of collaboration and illustrate various applications. As always, we welcome your suggestions for further improvement.

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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 August 1, 2007. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2007 (April 1 through June 30, 2007) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

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This icon indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a hyperlink to a referenced web page whose URL is too long to be useful when printed.

Abstracts and Award Nominations Due September 16 for NAEP 2008 Conference on “Changing Climates”



The National Association of Environmental Professionals (NAEP) announces that its 2008 Conference will explore the theme of *Changing Climates*, both literally and in the broader sense of ongoing change. Planned for March 25–28 in San Diego, the conference promises to be especially diverse and dynamic, advises Program Chair John Irving (john.irving@inl.gov or 208-526-8745), as it will be held jointly with the California Association of Environmental Professionals.

Mr. Irving invites abstracts for a presentation, panel, or poster session. “NAEP membership is not required,” he said, “just passion for your profession and the environment. Come share your research, work, and ideas with fellow professionals.” At the conference, NAEP will present its National Environmental Excellence Awards to recognize outstanding achievements in eight categories, including NEPA Excellence, Public Involvement/Partnership, Environmental Management, and Environmental Stewardship. Nominations may include self-nominations; the nominator need not be a member of NAEP. Conference information is provided on the NAEP website (www.naep.org), including instructions for submitting abstracts and award nominations, both due September 16, 2007. 

See article on page 14 for highlights of the 2007 NAEP Conference.

Focus on Collaboration

Bringing Agencies Together DOI Dialogues Foster Consultation and Collaboration

To promote consultation and collaboration among Federal agencies, the Department of the Interior's (DOI's) Office of Collaborative Action and Dispute Resolution (CADR) is sponsoring two dialogue series in Washington, DC, and via teleconferencing in field locations across the country. CADR "promotes, coordinates and facilitates greater use of alternative dispute resolution and consensus-building processes throughout" DOI (www.doi.gov/cadr) and welcomes participation in both series by all Federal agencies.

Kathy Binder, Director, DOE Office of Dispute Resolution, hopes to bring more DOE Headquarters and Field Offices into these dialogues. "The approaches of the land management agencies that participate in these dialogues can provide valuable lessons learned for DOE's NEPA community," she advised.

Government-to-Government Consultation

A recent meeting in the "Cross-Federal Government-to-Government Consultation" dialogue series focused participants on the question "Do I Have to Listen to Those Stories Again?! Thoughts and Suggestions from the Field." Previously-expressed concerns about consultation included:

- Impatience at sitting through a history ("story") before being able to get down to the matter at hand
- Feelings of injustice because the listeners are not the ones who created problems and generally do not think they can do anything to fix them
- Insecurity from not knowing how to respond to the stories appropriately

The interactive session on May 16, 2007, was led by Marina Avi Pisolish, MAPPING Change, LLC, who stated three goals:

- Come closer to accepting the need for the stories
- Commit to using the information in the stories effectively
- Recognize our inherent capacity to do so

Building on her work in cross-cultural settings (most recently in Hawaii and the broader Pacific) and on participants' shared experiences, she illustrated how to respond to common challenges with simple techniques, including "active listening." Ms. Pisolish advised that when we do not know how to respond appropriately in a meeting with Native peoples, to fall back on our

shared humanity. Differences and conflicts may indicate that we are communicating. "If we can take the heat, we can cook up something good," she said.

Participants emphasized the importance of making clear what constraints Federal agencies have and what Native peoples can expect as a result of government-to-government consultation. Sarah Palmer, Native American and Alaska Native Environmental Program, U.S. Institute for Environmental Conflict Resolution, participated along with representatives from more than 10 Federal agencies, including the Department of Agriculture, DOE, Environmental Protection Agency, Federal Aviation Administration, Department of Homeland Security, National Oceanic and Atmospheric Administration, and Nuclear Regulatory Commission, in addition to DOI offices.

For information on this dialogue series, contact Shayla Simmons at shayla_simmons@ios.doi.gov or 202-208-7950. See *LLQR*, March 2006, page 12, for information on a previous meeting in this series on "Tribal Involvement in Federal Decisionmaking."

Collaborating in NEPA Analyses

"Collaborative Conservation and Cooperative Resolution" is the second dialogue series that CADR is sponsoring for Federal agencies. A March 28, 2007, meeting on "New Ways to Collaborate in NEPA Analyses" was held in conjunction with the DOI Office of Environmental Policy and Compliance.

"Vision, communication, and trust" are the key characteristics of successful collaborative practices identified by the Council on Environmental Quality (CEQ) NEPA Task Force, noted Horst Greczmiel, Associate Director for NEPA Oversight, CEQ. For example, a shared vision for future land use may be particularly hard to achieve when there are competing land use options. In this regard, he underscored the importance of communication. NEPA calls for just that: communicating with the public in plain English, and communicating early and often. Building and keeping trust should be an ongoing process that transcends any single NEPA review, he emphasized, because once trust is lost, it is difficult to restore. Mr. Greczmiel pointed to the draft CEQ Collaboration Handbook, which acknowledges both the challenges and the opportunities that collaboration presents (text box, next page).



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Focus on Collaboration

DOI Dialogues *(continued from previous page)*

Draft CEQ NEPA Handbook Encourages Collaboration

An interagency Work Group sponsored by CEQ is reviewing comments received from the public on the March 2007 draft *Collaboration in NEPA – A Handbook for NEPA Practitioners*. Defining collaboration as “seeking agreements at one or more stages of the NEPA process by cultivating shared vision, trust, and communication,” the draft Handbook provides strategies, case studies, examples of memoranda of understanding and other resources, information on requirements under the Federal Advisory Committee Act, and tips on attitudes and behaviors that foster successful collaboration.

The draft Handbook distinguishes the effort to collaborate from other, lower levels of potential engagement, which are to inform, consult, and involve. It acknowledges that collaboration often requires hard work, commitment, leadership, different kinds of skills and resources, and a new way of approaching environmental review processes. It also acknowledges that there can be times when collaboration may not work well. To encourage NEPA practitioners to collaborate, the draft Handbook outlines opportunities for collaboration at all stages of the NEPA process and discusses how challenges might be turned into opportunities for a more effective process.

The draft Handbook can be found by selecting “Implementing the Recommendations” of the CEQ NEPA Task Force at www.NEPA.gov. The Office of NEPA Policy and Compliance provided DOE comments to CEQ on an earlier draft in October 2006 (*LLQR*, December, page 9). Development of the draft Handbook responds to a recommendation of the NEPA Task Force, which found that collaborative approaches to engaging the public and assessing the impacts of Federal actions under NEPA can improve the quality of decisionmaking and increase public trust and confidence in agency decisions. Information on the CEQ NEPA Task Force can be found at www.NEPA.gov/ntf.

Provide Training in Public Participation

The importance of clarifying public expectations in the NEPA process was underscored by Dave Emmerson, Natural Resource Program Coordinator in the CADR Office and a member of the Work Group that prepared the draft CEQ Collaboration Handbook. He described the training in public participation that is required of all DOI personnel that hold public meetings. Training in collaborative processes includes meeting facilitation, negotiation, and alternative dispute resolution.

DOI interactive training materials that can help support effective collaboration are available online – see www.doi.gov/partnerships/partnership_tools – and in CD format – *The Principles of Effective Public Participation*, which presents text, video, and a slide show. In addition to advice on addressing the public’s expectations, the training addresses such topics as “Why engage in public participation?” and “Who is the public?” For a copy of the CD, contact Mr. Emmerson at david_emmerson@ios.doi.gov or 202-327-5318.

It takes time to build relationships with stakeholders. You have to earn their trust. We must . . . reward individuals who make this long-term commitment.

– Willie Taylor, Department of the Interior

Follow-up on Guidance Implementation

Willie Taylor, Director, Office of Environmental Policy and Compliance, DOI, explained that the public participation training requirements for DOI personnel and other agency requirements for the NEPA process are in a series of guidance memoranda issued by his office (www.doi.gov/oepec/nrm.html under Quick Links: Environmental Memoranda Series). The requirement for training is in *Procedures for Implementing Public Participation and Community-Based Training*. Requirements concerning alternatives to analyze in a NEPA review are in *Procedures for Implementing Consensus-Based Management in Agency Planning and Operations*.¹ If the community proposes an alternative that is feasible and practicable for DOI, it should be analyzed. Further, if there is consensus support in the community for the alternative and it is consistent with law and DOI policy, then it should be identified as the agency’s preferred alternative.

Although these memoranda are viewed as critical to DOI’s NEPA program, Mr. Taylor said that he had begun to ask – what is the agency really getting for all the paper work? He directed

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¹DOI defines community as those who are directly affected by or whose interests are affected by a proposed action and are represented by elected officials as well as locally-established or commonly recognized groups within the proposed action’s reasonable area of impact.

Focus on Collaboration

DOI Dialogues *(continued from previous page)*

students with the MUSIC (Massachusetts Institute of Technology-U.S. Geological Survey Science Impact Collaborative) program to conduct a survey of some DOI NEPA field staff. (See MUSIC, below.)

Mr. Taylor said that the students learned that field staff had little awareness of recent policy changes and guidance, but their public involvement processes have improved; however, strong early efforts often waned. He said NEPA practitioners wanted flexibility, tool kits, and skill-based training, not rules. Mr. Taylor cautioned that it is difficult to walk the line between collaboration and the Federal responsibility to make decisions. It is important to make your intent clear, manage expectations, and tell people what role they are being asked to assume, he said.

Use a Format that Suits the Stakeholders

Although some members of the public still prefer a hearing format for government meetings, it is often the worst way to go when trying to engage the public in agency planning, said Jacob Hoogland, Chief, Environmental Quality Division, National Park Service. He described the various

ways the Park Service tries to meet public preferences, including holding workshops and open houses (perhaps one in an afternoon and the other in the evening) and also making recordings or notes from discussions.

To build trust, it is important to tell the public what we cannot tell them.

**– Jacob Hoogland
National Park Service**

“Use techniques from alternate dispute resolution,” encouraged Mr. Hoogland, such as joint fact finding (related article, below), and integrate processes under the Federal Advisory Committee Act and NEPA. The National Park Service provides a website – parkplanning.nps.gov – for public access to current plans, environmental impact analyses, and related documents on public review, and by which the public can submit comments on documents available for public review.

The contact for this dialogue series is Susan Goodwin at susan_goodwin@ios.doi.gov or 202-327-5346. 

MUSIC Reduces Tension in Environmental Decisionmaking

The Department of the Interior (DOI), U.S. Geological Survey (USGS), has partnered with Massachusetts Institute of Technology (MIT) to develop, evaluate, teach, promote, and practice collaboration in resource management decisions. A look at the partnership's website (scienceimpact.mit.edu) and publications reveals that they are true believers in collaboration for consensus building and avoiding disputes.

MUSIC – the MIT-USGS Science Impact Collaborative – develops and applies collaborative approaches for incorporating science, social science, and local and indigenous knowledge into environmental decisionmaking, including the NEPA process. Leading diverse stakeholders to reach agreement on science enhances their ability to contribute meaningfully to the decisionmaking dialogue. Furthermore, MUSIC believes, the collaborative process helps defuse the adversarial atmosphere in which stakeholders promote their competing preferred outcomes by disputing scientific details of the environmental review.



In a joint fact finding project, MUSIC interns met in Port Clyde, Maine, with fishermen and a fisheries outreach facilitator from the University of Maine Cooperative Extension.

Joint Fact Finding Builds Consensus

MUSIC's projects for DOI typically apply a consensus building technique called “joint fact finding” to decisionmaking in the arena of resource management. “Joint fact-finding is a process by which interested parties commit to build a mutual understanding of disputed scientific or technical information The goal is to avoid adversarial or partisan science where competing experts magnify small differences, rather than focusing on points of agreement and/or creating a strategy

to provide for a joint conclusion” (National Environmental Conflict Resolution Advisory Committee Final Report, April 2005). 

Joint fact finding consists of six steps (described in *A Dialogue, not a Diatribe – Effective Integration of Science and Policy through Joint Fact Finding*, Environment, January/February 2007). These steps are preparing, scoping, selecting analysis methods, completing 

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Focus on Collaboration

MUSIC *(continued from previous page)*

the scientific study, interpreting the results, and communicating the results to stakeholders. Convening a joint fact finding team requires selection of representatives by all key stakeholder groups. The convener (usually a Federal agency) and the stakeholder representatives select a professional neutral facilitator or mediator to manage the process, including helping the scientists advise on the policy implications of their findings without recommending particular policy choices. The convener signs a written agreement to give priority to the consensus findings developed by the joint fact finding team to the extent consistent with its statutory authority and responsibilities.

MUSIC Studies DOI's NEPA Public Involvement

At the request of the DOI Office of Environmental Policy and Compliance and Office of Collaborative Action and Dispute Resolution, MIT graduate students affiliated with MUSIC examined how public involvement was conducted for a sample of 12 EIS processes. The purpose of the 2006 study was to better understand how DOI field offices have applied the Department's public involvement policy, directives, and guidance in NEPA reviews, and to identify additional resources for further improving public participation. The report, *Results from NEPA Public Involvement Study* (June 2006), is available at web.mit.edu/dusp/epp/music/pdf/NEPA06.pdf.

The study examined three randomly selected, large-scale planning or resource management EISs from each of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation, and Bureau of Land Management. The MUSIC researchers interviewed the Regional Director in the area preparing the draft EIS, the District Manager with signatory authority for the draft EIS, and the field staff person responsible for draft EIS coordination, and the researchers categorized responses according to five themes: understanding of, and attitudes toward, collaboration and public involvement in general; awareness of, and attitudes toward, new policies regarding public involvement and collaboration; public involvement strategies and tools used; availability and use of public involvement resources and training; and additional resources and assistance that could improve public involvement processes.

The principal findings were that respondents want flexible guidelines and practical recommendations, not additional policies and regulations, for improving public involvement. Public hearings and one-way flows of

communication are viewed as practices of the past, while topical meetings, open houses, horizontal knowledge exchange, simulations, and hands-on practice are better ways to engage the public.

DOI is getting the public involved at earlier stages in the NEPA process, often during or even before the scoping phase, but as the project progresses, innovations in public involvement drop off. In the key findings, the report states, "Good public involvement takes a considerable amount of time – and time is a resource that many respondents feel they need more of."

In addition to identifying the challenges associated with the time and expertise required for conducting effective public involvement, the report identified best practices, such as "listening stations" for one-to-one interaction with staff on specific topics, public input into scientific models, interactive websites, "Refuge Manager for a Day" simulations, and games. To help participants become familiar with joint fact finding as a tool for resolving science-intensive policy disputes and provide technical information (especially on potential environmental impacts), MUSIC provides free downloadable simulation "games" – on offshore wind farms, owls, fisheries, and natural disasters. 

Current MUSIC projects include addressing disputes over water resources in the Western United States, testing collaborative approaches to ecosystem-based management on private and public lands, and supporting the development of renewable and nonrenewable energy resources. In New England, MUSIC is applying joint fact finding techniques to stakeholder involvement in siting and permitting liquefied natural gas terminals and offshore wind farms. This is a response to Section 388 of the Energy Policy Act of 2005, which requires DOI to coordinate and consult with states or local governments that may be affected by such energy actions.

MUSIC is administered by the Environmental Policy and Planning Group in MIT's Department of Urban Studies and Planning. University faculty are joined by Scholars-in-Residence – distinguished scientists appointed each year from Federal agencies and other institutions – who participate on assignments and serve as research advisors. MUSIC projects are staffed also by MIT graduate student interns. MUSIC's co-directors are Lawrence Susskind, Ford Professor of Urban and Environmental Planning, MIT, and Dr. Herman Karl, Chief Scientist, Western Geographic Science Center, USGS. For additional information, contact Dr. Karl at hkarl@mit.edu or 617-324-0262. 

Focus on Collaboration

Create Solutions Together – Environmental Justice Conference



By many measures, the first annual conference on *The State of Environmental Justice in America – Create Solutions Together* was a success. More than 500 people participated in this academic, legal, and policy forum.

Participants were from all sectors of society – local community activist groups, faith-based organizations, nonprofit organizations, businesses and industries, academic institutions, and Federal, state, tribal and local governments. The DOE Office of Legacy Management organized the conference, along with the National Small Town Alliance, the Department of Agriculture, and the Howard University School of Law, in Washington, DC, March 29–31, 2007.

People from all sectors of society are eager to work collaboratively to find practical solutions to environmental justice problems.

**– Melinda Downing
DOE, Legacy Management**

“What is environmental justice and how do you know when you’ve done enough to provide that justice?” asked Ellen Livingston-Behan, partner with the law firm K&L Gates and a former senior environmental advisor to the Secretary of Energy, in opening the Federal session at the Conference along with Melinda Downing, Environmental Justice Program Manager, DOE. Ms. Livingston-Behan advised participants to think of the reverse, think of injustice, where for example populations suffer significant adverse health impacts disproportionately or cannot participate effectively in community planning that affects their living conditions and environment. “We’re here to explore how to counter such injustice,” she said.

“Environmental justice would be achieving the productive harmony described in NEPA Section 101,” said John Cruden, Deputy Assistant Attorney General, Environment and Natural Resources Division, Department of Justice. Environmental justice is extraordinarily important. Our challenge is to think globally but act locally to learn about and get involved in our communities’ issues, he said.

“Environmental justice considerations are being woven into the fabric of everything DOE does,” said Michael W. Owen, Director, Office of Legacy Management. The Department plans to update its environmental justice strategy with a five-year plan under

which the agency will foster environmental justice and economic development in parallel. Mr. Owen emphasized that his Office will work to heighten sensitivity to environmental justice issues throughout the Department, he added, and is working closely with local stakeholder groups.



Environmental Justice and the NEPA Process

In open discussion, participants emphasized the importance of the NEPA process as a vehicle for environmental justice because it invites people into the decisionmaking process. Participants acknowledged that there is work to be done by all involved – agencies must listen more to the issues that communities raise, and communities need to work to understand the NEPA process and their role in it.

In referring to the 1994 Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, said that the Presidential memorandum accompanying the Order directed that, when a NEPA analysis is required, that analysis should consider effects on minority and low-income communities. NEPA requires consideration of economic, social, and health effects; consequently, the NEPA process is well-suited to consider environmental justice and the tradeoffs between economic growth and the human environment. In response to questions from the audience, he emphasized that the NEPA process provides opportunities for community input, and the communities should raise health concerns along with any other environmental concerns they have.

Todd Aagaard, Appellate Attorney, Environment and Natural Resources Division, Department of Justice, discussed how environmental justice issues may arise in NEPA litigation.¹ Federal agencies include environmental justice analyses, as appropriate, in NEPA documents to comply with the Executive Order. Courts will review an agency’s compliance with NEPA, not the Executive Order, to determine whether the agency’s findings are “arbitrary and capricious,” he said.

Conference Proceedings will be available at www.ejconference2007.org. For further information, contact Ms. Downing, who will coordinate Federal participation for next year’s Conference, at melinda.downing@hq.doe.gov or 202-586-7703. 

¹Communities Against Runway Expansion, Inc. v. FAA, 355 F. 3d 678 (D.C. Cir. 2004).

Mission Possible!

How to Tackle Environmental Issues Collaboratively and Effectively

“Fulfilling most of DOE’s missions has an environmental impact,” noted Steve Miller, Office of the Assistant General Counsel for Environment. Kathy Binder, Director, Office of Dispute Resolution, in setting the framework for DOE training in environmental conflict resolution (ECR) added, “We must learn to be more effective in achieving our missions by involving the right people early on. We need to find out what has worked at DOE and elsewhere.”

The DOE Office of the General Counsel and the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) co-sponsored training in ECR during the annual meeting of DOE Field Counsel in April. The aim was two-fold: (1) develop awareness of the range of ECR applications, emphasizing the benefits of “proactive ECR” and early stakeholder involvement, and (2) appreciate the potential for stakeholder contributions in developing environmental protections in fulfilling DOE missions.

Doug Frost, DOE Office of Environmental Management (EM), and Kara Colton, formerly with a National Governors’ Association Task Force and now a private consultant, described the robust infrastructure of collaborative relationships that EM developed over the last decade to try to avoid conflict by involving interested parties early in the development of its policies and programs. The collaborative relationships include cooperative agreements and grants with over half a dozen intergovernmental organizations, such as the National Governors’ Association and the National Association of Attorneys General. In addition, he said that EM encourages citizen participation through citizen advisory boards at seven EM cleanup sites and government-to-government consultation with tribal nations.

The full and frank interaction among the Department, tribal nations, local governments, state regulators, and citizens-at-large creates an atmosphere of trust and candid communication that helps avoid many of the potential conflicts inherent in the mission of cleanup of nuclear waste.

**– Doug Frost
DOE, Environmental Management**

Environmental Conflict Resolution

- The Council on Environmental Quality (CEQ) and Office of Management and Budget (OMB) define ECR as “third party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters relating to energy, transportation, and land use” in their joint November 2005 memorandum on ECR. See *LLQR*, March 2006, page 13.
- DOE has adopted a broader view of ECR to include all types of collaborative problem solving processes used to prevent or resolve an environmental conflict regardless of whether a third party is used (DOE First Annual Report to CEQ and OMB on ECR, December 2006).

Informal DOE NEPA Collaboration Succeeds

“It is critical to embed collaborative processes throughout the NEPA process,” emphasized Dale Keyes, Senior Program Manager, U.S. Institute, and to begin as early as possible. “Invite stakeholders to scoping meetings, be inclusive rather than exclusive in defining your stakeholder groups,” he advised, “and be innovative in ways to engage them – consider focus groups, interactive websites, and facilitated meetings.”

The *Final Report of the National Environmental Conflict Resolution Advisory Committee (LLQR, December 2005, page 9)* stated that DOE’s requirement to report on NEPA lessons learned supports an effective and efficient NEPA process, which in turn promotes the goals of NEPA Section 101 for productive harmony, related Carolyn Osborne, Office of NEPA Policy and Compliance. She said that DOE has not as yet found it necessary to enter into a formal process to resolve differences encountered in its NEPA process.

Ms. Osborne highlighted several case studies, reported in DOE’s *Lessons Learned Quarterly Report*, in which DOE worked with cooperating agencies to present their responsible opposing views in DOE EISs (e.g., Hanford Comprehensive Land Use Plan, March 2000, page 1, and Remediation of the Moab Uranium Mill Tailings, September 2005, page 10). Collaboration through face-to-face meetings and conference calls among DOE and the

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Focus on Collaboration

Mission Possible! *(continued from previous page)*

State of Washington representatives helped resolve a legal dispute regarding the Hanford site (March 2006, page 1). She also noted that DOE benefited from stakeholder input, as comments on a draft site-wide EIS led DOE to implement fire protection measures that proved useful when a fire did occur (June 2000, page 1).

Benefits Gained from Third Party Assistance

“A range of collaborative, non-adversarial processes exists for solving environmental problems,” advised Mr. Keyes. He described the U.S. Institute’s involvement in a number of cases, both remedially to resolve well-developed disputes, but also proactively to help stakeholders reach consensus early, such as facilitation in which a neutral party assists individuals or groups to discuss constructively complex, potentially controversial issues. Details of case assessments can be found on the U.S. Institute’s website at www.ecr.gov.

The dispute resolution organization RESOLVE (www.resolve.org) has facilitated the consensus-based National Wind Coordinating Collaborative formed in 1994 (www.nationalwind.org), explained Brian Connor, DOE Wind and Hydropower Technologies Program, Office of



Referring to LLQR case studies, Carolyn Osborne, Office of NEPA Policy and Compliance, related how DOE has collaborated informally in the NEPA process.

Energy Efficiency and Renewable Energy (EE). Through the Collaborative, EE has been able to have productive dialogue among its key stakeholders and advance the development of commercial markets for wind power while addressing environmental issues. Members of the Collaborative include representatives from electric utilities, state utility commissions, consumer groups, environmental groups, and state and Federal agencies. **LL**

From Section 101 of NEPA:

“ . . . it is the continuing policy of the federal government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

DOE Headquarters Mediation Program

A new brochure available from the Office of Dispute Resolution describes mediation as the type of alternative dispute resolution process that is most commonly used at DOE to resolve workplace disputes. Kathy Binder, Director of the Office, emphasizes, however, that the resources of her Office are available to assist the NEPA Community in any environmental disputes it may encounter.

As the brochure describes, in mediation, a professional non-DOE neutral assists the parties in discussing their conflict in a productive manner. The brochure adds that the mediator does not take sides but rather facilitates the discussion and helps the participants express their concerns and identify options that are workable for all involved. The benefits stated in the brochure are that the process is voluntary, informal, confidential, “no risk,” and quick, and it involves self-determination, preserves relationship and is creative.

Interested? See www.gc.doe.gov or contact the Office of Dispute Resolution at 202-586-4002. **LL**

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“A win-win process that empowers individuals to collaborate and find solutions.”

*Office of Dispute Resolution Brochure
“Headquarters Mediation Program”*



Focus on Collaboration

Nye County Participation as a Cooperating Agency Brings “Special Expertise” to Yucca Repository SEIS

“Nye County is pleased that its request for participation as a cooperating agency on the Supplemental EIS for the Yucca Mountain repository was accepted,” said Robert Gamble, Nye County representative. “The Nye County Board of Commissioners . . . adopted the position that the repository project should be conducted under conditions that ensure the safety of our citizens, protect our environment, and provide for long-term success. . . . [O]ur participation as a cooperating agency and the special expertise we can provide will result in a better document and facilitate achieving our objectives. We look forward to continued interaction with Office of Civilian Radioactive Waste Management”

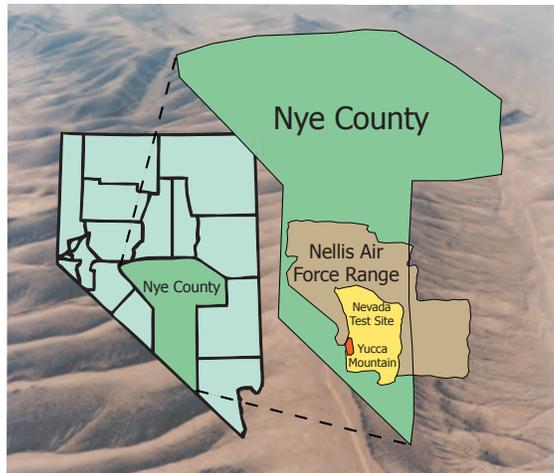
DOE’s Office of Civilian Radioactive Waste Management is in the process of preparing the Supplemental Yucca Mountain Repository Environmental Impact Statement (Repository SEIS) (DOE/EIS-0250-S1). (See *LLQR*, December 2006, page 1.) Under the proposed action for the Repository SEIS, DOE would construct, operate, monitor, and eventually close a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada.

Nye County supports the successful construction and operation of the repository and . . . has a tremendous stake in the process for producing the [Repository] SEIS.



– Gary Hollis
Chairman of the Nye County
Board of Commissioners

In March 2007, DOE invited Nye County to enter into a Memorandum of Understanding (MOU) for participation in the Repository SEIS process as a cooperating agency. In its response, DOE recognized that Nye County has special expertise as defined by the Council on Environmental Quality regulations that implement



NEPA (40 CFR 1508.26), including particular expertise regarding the relationship of DOE’s proposed action to the objectives of regional and local land use plans, policies, and controls; current and planned infrastructure in the county; associated socioeconomic factors (e.g., population, employment); and groundwater quality, flow, and transport.

DOE worked with Nye County to develop the MOU, which both parties signed in

April 2007. In general, Nye County will participate in internal DOE and public meetings in Nevada, provide pertinent information as requested, and review and provide comments on portions of working documents. Nye County’s participation will be directed toward those issues closely related to Nye County’s areas of expertise. As lead agency, DOE will provide timely information (including access to information that DOE considers confidential and/or pre-decisional) and consult with Nye County on relevant issues. DOE will also seek to resolve all issues, concerns, and comments raised by Nye County prior to publication of the Draft and Final SEIS. In the MOU, Nye County agreed to protect from public disclosure all pre-decisional/deliberative process information, including working draft documents.

DOE and Nye County initiated the collaborative effort with a kick-off meeting following the signing of the MOU. Since then, DOE and Nye County have been routinely working together to identify issues, exchange information, and review sections of the preliminary draft Repository SEIS in a timely manner.

Dr. Jane Summerson, NEPA Document Manager for the Repository SEIS, stated, “I’m looking forward to working with Nye County, the location of Yucca Mountain, as a cooperating agency. I believe the county’s expertise and insight will result in a better document, which more fully serves the goals of NEPA, and provides a broader basis of support for the Department’s decisionmaking process.”

DOE plans to issue the Draft SEIS in October 2007. Requests for information about the Repository SEIS should be addressed to Dr. Jane Summerson at jane_summerson@ymp.gov or 702-794-1493. 

Extensive Public Involvement for Hurricane Protection Proposals



The U.S. Army Corps of Engineers (the Corps), New Orleans District, is rebuilding southern Louisiana's hurricane protection system, which failed during Hurricane Katrina in 2005 and caused catastrophic damage. The Corps is invoking the emergency provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.11) and undertaking alternative arrangements for NEPA compliance to expeditiously complete environmental analysis of major portions of a proposed hurricane and storm damage reduction effort.

In announcing the implementation of alternative arrangements (72 FR 11337; March 13, 2007), which include preparation of a series of environmental reports in place of an EIS, the Corps states that the arrangements "will allow decisions on smaller groups of proposed actions to move forward sooner than under the traditional NEPA process." CEQ, in finding that the alternative arrangements are appropriate, commended the Corps for its "open and thorough consultation."

Phased Environmental Reports Planned

Under the alternative arrangements, the Corps will prepare 21 Individual Environmental Reports: 17 for proposed actions in the vicinity of Lake Pontchartrain and the west bank of the Mississippi River, two for fill borrow sites, and two will "analyze alternatives to determine [whether] appropriate mitigation is implemented for unavoidable impacts to the human environment."

The proposed actions involve rebuilding earthen levees and other protections, replacing floodwalls and frontgates, and constructing pump stations. Each Report will document the Corps' decisionmaking process; identify the preferred and all other reasonable alternatives; analyze direct and indirect impacts; describe cumulative impacts, an initial mitigation plan, and any interim decisions; and identify incomplete or unavailable data and areas of potential controversy.

In addition, when sufficient information is available from the Reports, the Corps will prepare a Comprehensive Environmental Document, which will describe the project work completed, the work that remains to be done system-wide, and final mitigation plans. It also will discuss how the individual Reports are integrated into a systematic planning effort and will analyze any

cumulative indirect impacts due to altered hydrology or induced development that may result from the Corps' actions.

Outreach Features Frequent Meetings

During their consultation, the Corps and CEQ co-hosted four public meetings in the New Orleans area on the proposed alternative arrangements. Since then, the Corps held nine public scoping meetings in March and April in potentially affected sub-basins in the New Orleans area. The Corps will continue to hold monthly public meetings to advise stakeholders of developments and provide comment opportunities, and intends to make "its best effort to reach the citizens of New Orleans, including . . . persons who have relocated to other areas."

The Corps established a website for documents and other information regarding the alternative arrangements, where Individual Environmental Reports will be posted for a 30-day public comment period. A draft and final Comprehensive Environmental Document will each have a 60-day public comment period. In addition, the Corps states that it plans to "actively involve the Federal and state agencies, local governments, tribes, and the public in mitigation planning for unavoidable impacts at the onset of the planning process."

For additional information, see the Corps' New Orleans District website or contact Gib Owen, U.S. Army Corps of Engineers, at mvnenvironmentalpd@mvn02.usace.army.mil. 

CEQ Guidance on Emergency Actions

CEQ provided guidance soon after Hurricane Katrina to assist Federal agencies in taking emergency actions. The September 8, 2005, memorandum, *Emergency Actions and NEPA*, provided information on how to comply with NEPA during emergencies, reviewed the relevant CEQ NEPA regulatory provision (40 CFR 1506.11), and advised on how to determine whether NEPA is triggered. The advice emphasized that agencies should not delay immediate actions necessary to secure the lives and safety of citizens, but should consult with CEQ about alternative arrangements for NEPA compliance as soon as feasible. The guidance is available in Volume I of the *DOE NEPA Compliance Guide* (www.eh.doe.gov/nepa/guidance.html) and is summarized in *LLQR*, December 2005, page 30.

Public Input Sought on FutureGen Draft EIS

DOE recently issued for public comment the *Draft Environmental Impact Statement for the FutureGen Project* (DOE/EIS-0394). The FutureGen Project, a Presidential initiative, would be the first commercial-scale integration of a suite of advanced clean coal technologies. (See *LLQR*, March 2006, page 7.) The Office of Fossil Energy (FE), through the National Energy Technology Laboratory (NETL), expects the Project to foster similar power plants worldwide and support environmental improvement in the industry.

As a research facility, the Project would produce 275 megawatts of electric power and hydrogen gas using coal gasification technology integrated with combined-cycle electricity generation. The prototype facility also would serve as a large-scale engineering laboratory for testing cutting-edge technologies for clean coal power generation, carbon capture, and hydrogen gas generation.

A major feature of the FutureGen Project would be the capture and geologic sequestration of carbon dioxide (CO₂) emissions. Because geologic sequestration of CO₂ in deep saline aquifers is a relatively new endeavor, a key objective of the Project is to verify the effectiveness, safety, and permanence of geologically sequestered CO₂, and to advance understanding of the risks and safe practices for storing CO₂ in geologic formations. The analysis of cumulative impacts in the EIS concludes that a successful demonstration of carbon sequestration would have long-term benefits in reducing greenhouse gas emissions in the United States and abroad.

DOE's proposed action is to provide financial assistance for the Project to the FutureGen Alliance, Inc., under a full-scope cooperative agreement that DOE and the Alliance signed in March 2007. The Alliance is a non-profit consortium of some of the

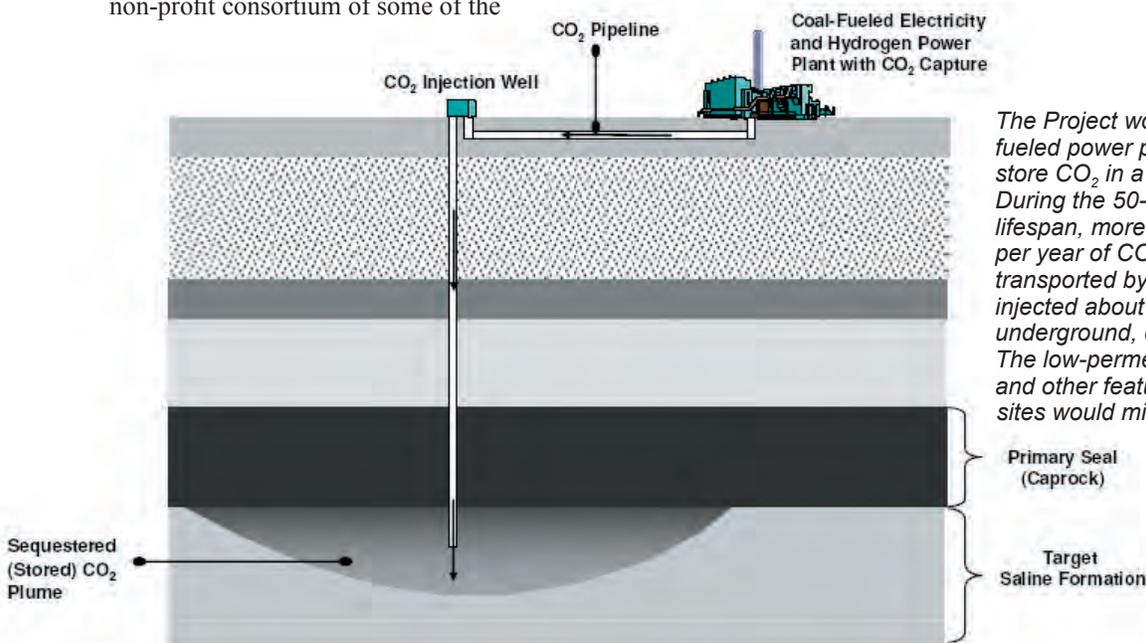
world's largest coal producers and electricity generators. The total net project cost is currently estimated at about \$1.46 billion (higher than previous estimates), of which DOE would provide approximately 74 percent.

DOE identified four reasonable alternative sites from among 12 proposals to the Alliance to host the Project (*LLQR*, June 2006, page 11). The EIS compares potential environmental consequences at each candidate site, including those related to surface and groundwater use, air emissions, aesthetics, noise, and land use. The document also estimates risk from potential releases from the power plant and along the CO₂ pipeline.

Based on the EIS, DOE plans to issue a record of decision (ROD) announcing which site or sites, if any, DOE finds acceptable. If DOE finds more than one site to be acceptable, the Alliance would select a single site and conduct detailed characterization of that site. DOE would then determine whether further NEPA review is required before the Alliance would complete detailed design and construct and operate the proposed facilities.

During the public comment period, which closes July 16, 2007, NETL will conduct a public hearing near each of the four alternative sites: Odessa and Jewett, Texas; and Mattoon and Tuscola, Illinois. FE plans to complete the Final EIS and issue a ROD in Fall 2007.

The Draft EIS is available on the DOE NEPA website (www.eh.doe.gov/nepa). Additional information about the Project is available on FE's website at www.fossil.energy.gov/programs/powersystems/futuregen and on the Alliance website at www.futuregenalliance.org. The NEPA Document Manager, Mark McKoy, can be reached at mmckoy@netl.doe.gov or 304-285-4426. LL



The Project would be the first fossil-fueled power plant to capture and store CO₂ in a deep saline aquifer. During the 50-year power plant lifespan, more than 1.1 million tons per year of CO₂ would be captured, transported by the pipeline, and injected about 0.4 to 1.6 miles underground, depending on the site. The low-permeability of the caprock and other features of the candidate sites would minimize risk of leakage.

Updating an Environmental Information Document Supports NEPA Reviews

By: C. Barry Shedrow and John J. Mayer,
Washington Savannah River Company, Savannah River Site

Reinventing the wheel is more wasteful than keeping a good wheel in shape. The Savannah River Site's NEPA document preparers have found that maintaining a comprehensive site-wide environmental information document significantly improves efficiency.

The Problem

The Savannah River Site frequently needs ecologically-based environmental information to support the preparation of EAs and EISs. The vast majority of its approximately 300 square miles is undeveloped; administrative and industrial landscapes occupy only five percent of this area. The past practice of developing new environmental information documents to support each NEPA review proved to be expensive and time-consuming. For example, *Waste Management Activities for Groundwater Protection, Savannah River Plant* (DOE/EIS-0120, 1987) relied on 16 separate environmental information documents prepared specifically for this EIS.

The Solution

During preparation of an EIS for *Continued Operation of K-, L-, and P-Reactors, Savannah River Site* (DOE/EIS-0147, 1990), Westinghouse Savannah River Company (as then named) decided to prepare a single environmental information document to cover all areas of the Site that could be affected by operation of the subject reactors. After the EIS was completed, the *Reactor Operations Ecology Environmental Information Document* supported the preparation of seven EAs, one project EIS, and two programmatic EISs – and then, in 1993, was updated and expanded to encompass the entire Site, and the name changed to *Savannah River Site Ecology Environmental Information Document*.

The *Savannah River Site Ecology Environmental Information Document* synthesizes ecological research

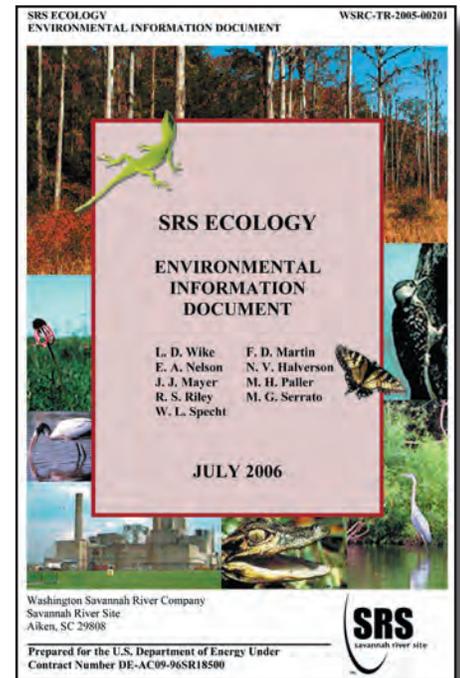
and environmental monitoring data for the Site's three principal ecosystems: terrestrial, wetland, and aquatic. It summarizes available information on flora and fauna, including the seven threatened or endangered species found at the Site.

As elsewhere, the Site's natural environment continuously changes. To document these changes, the Environmental Information Document has been reissued twice: once in 1997 and most recently in 2006. The current version is available as printed copy and CD and on the Site intranet, and will soon be available on the Savannah River Site's public website, www.srs.gov.

The Payoff

By our count, a total of 51 NEPA documents have been prepared with reliance on the 1993, 1997, and 2006 *Savannah River Site Ecology Environmental Information Document*: 32 EAs and 11 EISs for projects at the Site, and 8 DOE programmatic EISs that involve the Site. We believe that periodically updating a single site-wide ecological document is a far more cost-effective way to support the NEPA process than preparing project-specific ecological documents for each EA or EIS.

For more information, contact Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office, at drew.grainger@srs.gov or 803-952-8001, or John Mayer, Washington Savannah River Company, at john.mayer@srs.gov or 803-208-2952. 



The updated Environmental Information Document is a fundamental reference for Savannah River Site information, both for preparing the Site's NEPA documents and providing information to DOE Offices that are considering the Site as an alternative location for facilities or research programs.

– Drew Grainger, NEPA Compliance Officer

2007 NAEP Conference: Focus on Environmental Leadership, Partnerships



By: Yardena Mansoor, *Office of NEPA Policy and Compliance*

How can environmental professionals contribute effectively to meeting today's most important environmental challenges? Under the banner of *Environmental Leadership: Science, Education, and Alliances*, more than 250 participants at the 32nd annual conference of the National Association of Environmental Professionals (NAEP) explored this question in Orlando, Florida, on April 22–25, 2007.

Presenters were affiliated with diverse Federal, state, county, and city government agencies; American and foreign universities; and private sector entities such as environmental contractors and law firms. In place of a keynote address, on each of three days a speaker made a plenary presentation related to the theme: a Louisiana official leading intergovernmental efforts for hurricane recovery (related article, page 11); the designer of a national network of ecological observatories (page 18); and the developer of an innovative technology for wastewater and industrial effluent treatment.

Highlights of the NEPA Symposium

- *Council on Environmental Quality (CEQ) Updates* – Horst Greczmiel, Associate Director for NEPA Oversight. The CEQ website (www.NEPA.gov) provides a consolidated list of agency NEPA procedures (including, in the “Current Developments” section, those under revision) and postings of all CEQ guidance. Mr. Greczmiel noted that recent major transportation bills for highways and airport projects contain features intended to expedite cooperating agency relationships, including provisions that the cooperating agencies are bound by the lead agency’s statement of purpose and need. He observed that effective interagency collaboration calls for all cooperating agencies, especially those with distinct statutory requirements for permitting or issuing other approvals, to work with the lead agency in crafting the purpose and need as well as the reasonable alternatives. One thing he *hates* to see on page one of an EIS, he confided, is a statement that “this NEPA document is being prepared to comply with NEPA and the CEQ and agency NEPA regulations.” An EIS is prepared to inform the public and decisionmakers of the environmental consequences of proposals, of course.
- *Recent NEPA Cases (2006)* – Lucinda Low Swartz, Battelle Memorial Institute. In 28 substantive decisions involving NEPA, the government prevailed in 16 cases (57 percent). Courts upheld decisions where the agency could demonstrate that it had given potential environmental impacts a “hard look” and invalidated decisions where the agency did not do so. (See for example, *Pit River Tribe v. U.S. Forest Service*, page 23.) Courts also invalidated NEPA documents that were not based on best available science or that used faulty scientific methodologies. Two decisions found that the respective agencies could not demonstrate that they had applied a categorical exclusion or considered extraordinary circumstances at the time the decision was made. Courts invalidated NEPA documents that failed to appropriately consider cumulative impacts, but reiterated that a cumulative impact analysis need not consider future actions that are too speculative.
- *A Survey of Cumulative Effects Analysis in EAs* – Ron Lamb, e²M (engineering - environmental Management, Inc.). Based on an examination of 29 EAs published in 2006 by 10 agencies, he noted that fewer than half were judged to have adequate cumulative effects analysis, about one quarter had inadequate cumulative analysis, and about one quarter had none. The most frequent inadequacies were using an incorrect definition of cumulative effects, providing unsupported conclusory statements, failing to specify the time or geographic scope of the analysis, and overgeneralizing the included actions, such as “past agricultural practices.” Two DOE EAs were among those studied. One was found to have an adequate cumulative effects analysis; the other had none.
- *Twelve Rules to Make the NEPA Process Work* – Nicholas Yost, Sonnenschein Nath & Rosenthal, LLP.  The former General Counsel of CEQ, and lead author of the CEQ NEPA regulations, offered strategic advice for ensuring the best possible (and most legally defensible) NEPA documentation and successful outcome. Using an extended metaphor of a military campaign, Mr. Yost made recommendations directed toward grant or permit applicants, who must coordinate the NEPA process with environmental consultants, environmental counsel, and agency representatives. “Reconnoiter what’s ahead, know the terrain, take the high ground, protect your flanks, and secure the best intelligence,” are five of his rules – all with specific applicability to interactions in the NEPA process. The applicant, the agency, and the public, he reminded listeners, share a common interest in ensuring that requirements are met.
- *Strategies for Improving Legal Sufficiency and NEPA Document Quality* – Bill Malley, Akin Gump Strauss Hauer & Feld, LLP. This presentation was built on initiatives for improving the readability of NEPA documents, such as Washington State Department of

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NAEP Conference *(continued from previous page)*

 Transportation's *Reader-Friendly Tool Kit* and Federal Highway Administration guidance on *Improving the Quality of Environmental Documents (LLQR)*, December 2005, page 16; December 2006, page 11). These initiatives advocate practices such as moving a NEPA document's technical content from the main body to appendices, using a question and answer narrative, and relying less on tables and more on "information rich" figures. Mr. Malley stated that there is nothing intrinsically "risky" about these changes, and many actually enhance legal sufficiency if done well. He provided advice, however, on how to avoid potential pitfalls such as focusing on the main story line and leaving out important "sub-plots," "burying" important issues, or oversimplifying. He advised NEPA document preparers to use the main document as the roadmap to the appendices and the administrative record. "It's not enough to say 'it's in there' – someone unfamiliar with the project actually needs to be able to find it." Translating technical information into concise, readable text is itself a form of expertise; make sure you have that writing expertise on your team, he advised.

NAEP's NEPA Working Group

The Association's NEPA Working Group outlined its plans for the future, in discussions led by Chair Michael D. Smith (Associate Professor, Natural Resources Planning, Humboldt State University, now on detail to the Environmental Protection Agency). Established as a forum for NAEP members, with its mission to improve environmental assessment as performed under NEPA, the Working Group now has about 100 members. Ongoing activities of the Working Group include:

- Preparing the first Annual NEPA Report, to be issued soon, which will summarize significant NEPA news from April 2006 through March 2007.
- Providing a professional organizational voice by commenting on proposals affecting NEPA practice and other proposals of importance to NEPA practitioners.
- Analyzing NEPA litigation to identify trends of strengths and weaknesses in agency NEPA practice.
- Monitoring rulemaking and legislation to identify provisions that weaken NEPA.
- Improving the NAEP website by expanding access to information resources, providing links to agency NEPA documents, and publicizing NEPA "good news" narratives – including developing metrics for speed, efficiency, and environmental benefits.

Environmental Excellence Awards

NAEP conferred seven Environmental Excellence Awards to recognize outstanding achievements in environmental practice. A combined award for excellence in NEPA and Planning Integration was presented to the Cape Cod Water Resources Restoration Project, undertaken by the Department of Agriculture's Natural Resources Conservation Service, in partnership with the Cape Cod Conservation District and the Barnstable County Commissioners. The collaborative partnership – Federal, state, and local agencies and citizens – has inventoried more than 400 storm water discharges, tidal-restricted salt marshes, and fish passages throughout Cape Cod to identify candidates for inclusion in the preferred alternative to improve water quality and protect shellfish beds and other environmental and productive resources.

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New NAEP President Expresses Appreciation for DOE's LLQR

At his installation as NAEP's new President, Jim Melton urged participants to pursue interdisciplinary collaborations to address critical environmental problems.

In addition to his current consulting on land use planning in Montana and the western mountain states, he has served as Resource Area Manager with the Bureau of Land Management and is a former DOE NEPA Compliance Officer and Environmental Program Manager for the Western Area Power Administration (1992–1997). It is not surprising that he is a big fan of *LLQR*; in correspondence with this author following the conference, he observed:

DOE's NEPA Compliance Program has contributed a great deal to the entire NEPA community – by developing guidance we can all use day to day, sharing critical information on NEPA compliance developments, and summarizing litigation findings. As NAEP's President, I especially appreciate the resource that DOE's Lessons Learned Quarterly Report provides for all NEPA practitioners and environmental professionals in general by keeping us informed and providing links to valuable environmental practice information. I look forward to continuing this great relationship.

Mr. Melton can be reached at jmelton@bresnan.net or 406-431-9454.

neon Promises Better Information, Better Predictions

A plenary presentation featured the National Ecological Observatory Network (NEON), a cutting-edge program of research infrastructure being implemented by the National Science Foundation to support the study of ecological systems across North America. James MacMahon (Professor of Biology, Utah State University, and NEON Board of Directors) described NEON as a network of 20 observation stations, whose locations are now being selected to represent distinct ecological settings. Professor MacMahon explained that the stations will collect, store, and disseminate detailed ecological data by integrating instrumentation networks; field and laboratory experiments; natural history archives; and computational, analytical, and modeling capabilities.

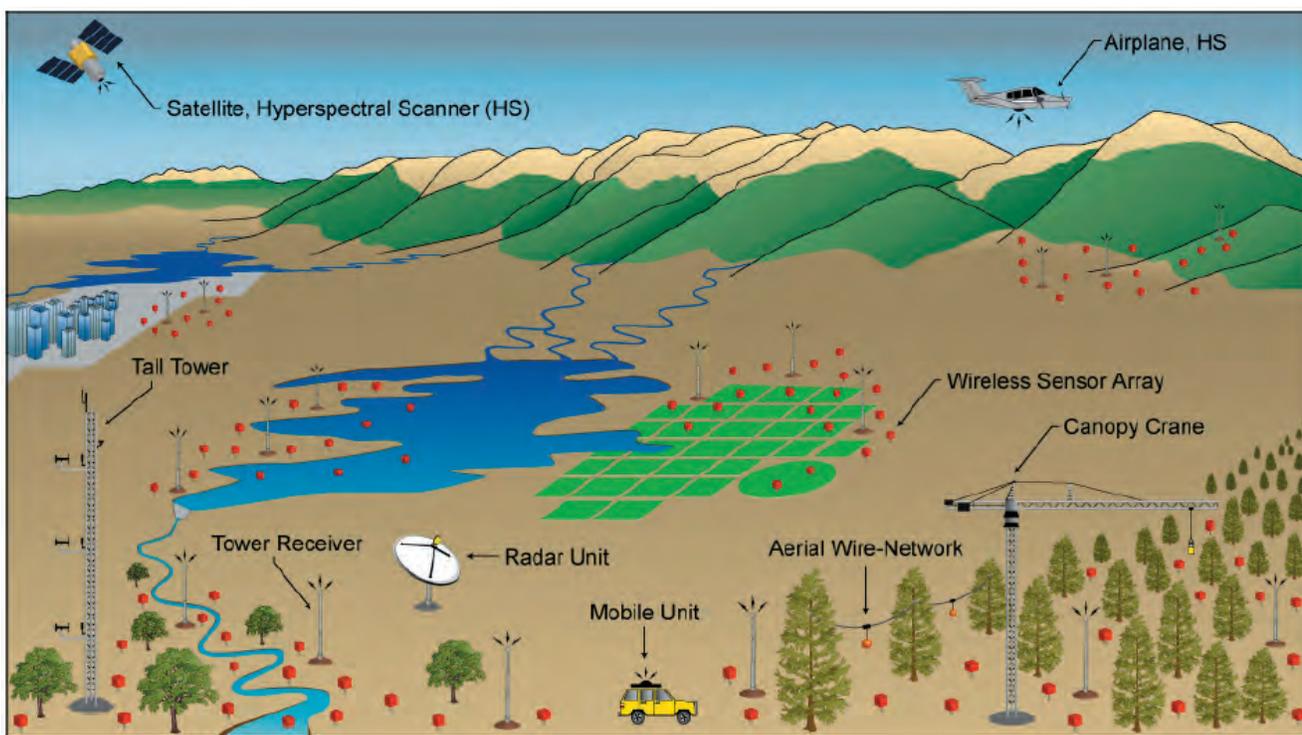
NEON is being designed to address scientific questions about the interactions of ecosystem components as they respond to natural and human-induced changes in, for example, climate, land use, hydroecology, infectious diseases, and invasive species. What is the pace and pattern of changing conditions and responses? NEON will provide the capacity to examine such questions across a greater range of time and space than has previously been possible.

Federal agencies such as the U.S. Geological Survey, Environmental Protection Agency, and DOE are on NEON planning committees. The governments of Canada and Mexico also are coordinating with NEON. Private foundations are participating in NEON design, and NEON will foster partnerships with industries, such as forestry and fisheries.

After commencement of NEON operations in 2013, the National Science Foundation expects to provide ongoing support for NEON research projects and educational activities, and data collected by NEON will become publicly available as it is generated. In addition to providing real-time access to ecological data for analysis of current conditions, NEON is expected to provide unprecedented support for improving the projection of future environmental conditions and impacts.

This presentation stood out as one that best embodied the conference theme on the components of *Environmental Leadership: Science, Education, and Alliances*.

For more information, see www.neoninc.org. 



Each of 20 observatories, to be located across the country, will host a network of fixed and movable instrumentation to measure a wide range of ecological variables. [Graphic courtesy of James MacMahon]

NEPA and EMS: A Winning Combination

CEQ Publishes NEPA-EMS Guide



Combining NEPA's tested framework for assessing the environmental consequences of proposed Federal actions with the practical tool for managing environmental aspects of agency actions through an Environmental Management System (EMS) provides a powerful approach for achieving the goals of NEPA and Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (January 4, 2007).

The Council on Environmental Quality's (CEQ's) recently issued guide, *Aligning National Environmental Policy Act Processes with Environmental Management Systems – A Guide for NEPA and EMS Practitioners* (April 2007), provides the link between NEPA and EMS: "to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans," as stated in the April 20, 2007, distribution memorandum from James L. Connaughton, Chairman, CEQ.

It is important for Federal agencies to understand the relationship of EMS to NEPA.

– CEQ NEPA-EMS Guide

EMS Can Enhance NEPA Compliance

The Guide states that "Federal agencies have been complying with NEPA environmental review requirements for more than 35 years. The issuance of Executive Order 13423 in January 2007 [*LLQR*, March 2007, page 13], which directs Federal agencies to implement EMSs at all appropriate organizational levels, provides a means to enhance NEPA compliance." Additionally, the Guide was developed to help NEPA practitioners make NEPA implementation more effective and efficient. It is meant to help Federal agencies recognize the complementary relationship of NEPA and EMS and show how this relationship can support the policies set forth in Section 101 of NEPA and the NEPA process. A table in the Guide compares the complementary elements and will be a useful tool for the NEPA community.

The Guide was developed by an interagency Work Group following up on recommendations from *The NEPA Task Force Report to the Council on Environmental Quality – Modernizing NEPA Implementation* (September 2003). "EMS is not going away," said Matthew McMillen (Office of Environment and Energy, Federal Aviation Administration), leader of this Work Group, at a meeting of the Federal NEPA Contacts hosted by CEQ on April 27, 2007. Mr. McMillen advised NEPA practitioners to put "NEPA into EMS and work with EMS practitioners." He noted that there are many possibilities for follow-up actions to the guidance, specifically pointing to guidance that another CEQ Work Group is developing on Adaptive Management.

"As Federal agencies strive to make our operations more sustainable, it's important that we break down the stovepipes that tend to exist – organizational or professional – and take advantage of the ways EMS and NEPA can complement each other," notes Steve Woodbury, DOE's Office of Health, Safety and Security. Mr. Woodbury, an EMS advocate, was an active member of the aforementioned interagency Work Group.

Future Guidance on NEPA, EMS, and Adaptive Management

"EMS helps manage the Adaptive Management process," explained Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, adding that future guidance will have case studies of the interplay among NEPA, EMS, and Adaptive Management. Meanwhile, Mr. Greczmiel emphasized, the NEPA-EMS Guide provides agencies many opportunities to further the interdisciplinary focus fostered by NEPA. He said the recent Guide raises the bar for NEPA contacts to search out their EMS contacts, and in this regard, he promised a meeting soon among agencies' NEPA and EMS practitioners.

The NEPA-EMS Guide and information on other interagency Work Group activities can be found on CEQ's website at www.NEPA.gov. (NEPA Office Contact: Jim Sanderson, jim.sanderson@hq.doe.gov, 202-586-9760; Office of Health, Safety and Security Contact: Steve Woodbury, steven.woodbury@hq.doe.gov, 202-586-4371.) 

Publishing NEPA Documents in an e-World

CEQ Federal NEPA Contacts Meeting



The ability to publish NEPA documents on the Internet and in CD format allows agencies to share environmental information widely and economically. DOE routinely publishes its EAs and EISs and related documents on the NEPA website, www.eh.doe.gov/nepa, and distributes many of its EISs in combinations of paper copies and CDs. While the world of e-NEPA offers many benefits for both agencies and the public, it also poses challenges. Agencies need to accommodate persons without Internet access; they also need to restrict electronic access to certain information. A paper-less NEPA compliance world is not a reality.

At a recent meeting of Federal NEPA Contacts, sponsored by the Council on Environmental Quality (CEQ), participants addressed some of the tradeoffs encountered when deciding how to distribute a NEPA document. In one example, it cost \$44 to print and distribute a paper copy of the complete, 5,000-page Yucca Mountain Repository EIS; in contrast, it cost \$7 to create and distribute a CD and paper summary of that EIS.

Meeting the Needs of Stakeholders

Federal agencies have the responsibility to meet the needs and preferences of stakeholders and in particular to avoid diminished access for stakeholders who do not have Internet access, emphasized Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, with reference to the E-Government Act of 2002 (text box). To assist DOE in meeting this responsibility, Carol Borgstrom, Director, Office of NEPA Policy and Compliance, pointed to the *Directory of Potential Stakeholders for DOE Actions under NEPA* that her Office updates annually. The *Directory*, available on the DOE NEPA website at www.eh.doe.gov/nepa, indicates preferences of Federal, state, and non-governmental agencies for receiving DOE NEPA documents (i.e., number of paper copies, number of CDs, or notification of web availability).

The DOE NEPA guidance document, *EIS Distribution*, prepared in 2006, discusses tradeoffs in cost, timing, and risk of schedule extension an agency must consider when deciding what documentation to provide when recipients' format preferences are unknown. In the study on cost savings realized in distributing the large EIS for the Yucca Mountain Repository in CD format, extra time was allowed before filing the EIS with the Environmental Protection Agency (EPA) so that recipients could request a printed copy if desired; less than 2% did so. (The *EIS Distribution* guidance is available on the DOE NEPA website under New Guidance Tools. A discussion of options and tradeoffs, coordinated with CEQ and EPA, is on pages 5–6 and the Yucca Mountain Repository EIS case study is on page 7.)

Ms. Borgstrom asked participants at the April 27 meeting to consider for future discussion issues that DOE faces in determining how to distribute unclassified, security-sensitive information. DOE occasionally has classified appendices to NEPA documents which are not available to the general public in either paper or electronic format. However, some security-sensitive information is made available, on written request, in paper form, but not in electronic form.

DOI Internet NEPA Guidance Available

Vijai Rai, Team Leader in the Department of the Interior's (DOI's) Office of Environmental Policy and Compliance, described distribution and other NEPA guidance available at www.doi.gov/oepc/nrm.html. Guidance for other Federal agencies with respect to the number of copies of environmental documents and the format (paper copy or CD or website) to provide for DOI review (presented in the DOE NEPA *Stakeholders Directory*) is found under Natural Resources Management Team, then Environmental Review Distribution Requirements.

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Federal Agency Responsibilities under the E-Government Act of 2002 Concerning Internet Publication

Public Law 107-347, E-Government Act of 2002, Section 202(c), Federal Agency Responsibilities. "Avoiding Diminished Access.

When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet, and shall, to the extent practicable —

- (1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and
- (2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet."

Section 202(d) of the Act states that all actions must be in compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) to ensure access by people with disabilities. (For more information on Section 508, see *LLQR*, December 2006, page 13.)



e-World (continued from previous page)

On this website, under Quick Links: Environmental Memoranda Series, is internal DOI guidance that may be of particular interest to DOE's NEPA practitioners. For example, under Environmental Review Memoranda is *Electronic Distribution of Environmental Review Requests* and under Environmental Statement Memoranda are *Standard Checklist for Use in Preparing National Environmental Policy Act (NEPA) Documents and for Complying with NEPA, Council on Environmental Quality, and Departmental Procedures; Other Environmental Review and Consultation Requirements; and Publication and Distribution of Department of the Interior National Environmental Policy Act (NEPA) Compliance Documents via Electronic Methods*.

Paper Copies Still Needed for EPA Filing

EPA remains concerned that future technology changes could render today's CDs or Internet copies of EISs unreadable, explained Anne Norton Miller, Director, Office of Federal Activities, EPA, and therefore EPA still requires five printed copies of an EIS for filing. Ms. Miller emphasized that EPA nonetheless supports e-publication efforts, and reminded NEPA Contacts to include information on web posting or CD availability of an EIS in filing letters so that EPA can announce this in its Notice of Availability for the EIS. EPA has improved its EIS Data website (text box) and by the end of the year will post EPA rating letters, Ms. Miller announced. 



List of EISs Filed with EPA Available Online

EPA is now providing enhanced access to information on filed EISs on its EIS database website, www.epa.gov/compliance/nepa/eisdata.html. The website allows EIS information to be viewed in a number of different formats and also provides search functions.

The website provides updated listings for "Most Recent Weekly Notice of Availability of EISs" and "Most Recent Weekly Notice of Availability of Comments," and a page that lists all "EISs with Open Comment/Wait Period." The website also provides "Search for Specific EISs," to search on a word or phrase in the EIS title or by the preparing agency and/or state where the project was proposed.

EPA's contact for the website is Ken Mittelholtz at mittelholtz.ken@epa.gov or 202-564-7156.



How "Green" Are Your Meetings? EPA Encourages "Green" Meetings through Acquisition Revision

Do you consider the environmental impacts of your NEPA meetings? Environmental Protection Agency (EPA) employees are now required to request information on environmentally-preferable ("green") practices when soliciting offers for meeting and conference space and services, under a revision to EPA's acquisition regulations effective May 1, 2007 (72 FR 18401; April 12, 2007). Environmentally preferable products and services are defined as those "that have a lesser or reduced effect on human health and the environment when compared to competing products or services that serve the same purpose" – such as easy access to public transportation, biobased or biodegradable cafeteriaware, and locally produced food. If a meeting is held in a hotel, paperless check-in and check-out and towel reuse options for guests would be considered environmentally preferable.

Even though this revision does not impose any new requirements on contractors or venues, EPA states that adding this provision to its acquisition regulations will encourage the meeting and conference service industry to adopt more "green" practices in order to do business with the Agency.

The next time you plan a NEPA meeting, check out the following "green" meeting resources by EPA and others:

- *EPA's Green Meeting Initiative* – A "one-stop source for green meetings," this website provides sample contract language and information on environmentally preferable initiatives, programs, products, and services. 
- *It's Easy Being Green! A Guide to Planning and Conducting Environmentally Aware Meetings and Events* – Developed by EPA's Office of Solid Waste and Emergency Response, this Guide promotes integration of waste minimization and meeting planning. 
- *The Green Meeting Tool* – On the Oceans Blue Foundation website and co-funded by EPA, the "Green Meeting Tool" explains how to incorporate "green" principles into every aspect of conference and meeting planning, provides easy tips to "greening" your meeting, and includes an interactive quiz. 
- *The National Recycling Coalition's Green Meeting Policy* – This policy provides information on printed materials, facilities, exhibitors, and food and beverage services useful for planning "green" meetings. 
- *Environment Canada's "Greening Meetings"* – This website offers a series of "green" checklists for meeting preparation, as well as a "Greening Meetings Manual." 



Litigation Updates

Four recent court decisions (summarized below) relate to DOE NEPA documents. In the first, the court found a DOE EA inadequate and ordered preparation of an EIS. The decision contains insight into how the court assesses significance in the context of NEPA. In the second decision, the court upheld the adequacy of a DOE supplemental EIS, highlighting the value of documenting DOE's basis for selecting an analytic approach and maintaining a thorough administrative record. The third decision found that the National Aeronautics and Space Administration's (NASA's) and DOE's financial contribution to, and involvement in, a project was not sufficient to make the proposal a Federal action. In the fourth case, the court invalidated an EIS that DOE had adopted from the U.S. Forest Service and the Bureau of Land Management (BLM). The decision points to the need to take a hard look at the No Action alternative.

Court Orders EIS on Environmental Remediation at ETEC

DOE cannot transfer ownership or possession, or otherwise relinquish control, of any portion of Area IV of the Santa Susana Field Laboratory (SSFL) near Los Angeles, until it completes an EIS and issues a record of decision (ROD) on environmental remediation activities at the site, a court has ruled. The May 2, 2007, decision by the U.S. District Court for the Northern District of California found "overwhelming support" for plaintiffs' claims in *Natural Resources Defense Council et al. v. DOE et al.* (Case No.: 04-04448; *LLQR*, December 2004, page 16) that DOE's decision to issue a finding of no significant impact (FONSI) and conduct remediation on the basis of its *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) was in violation of NEPA.

DOE owns the facilities in the Energy Technology Engineering Center (ETEC), which occupies about 90 acres within Area IV of SSFL. The approximately 2,900-acre SSFL is owned by The Boeing Company and NASA. DOE conducted nuclear and non-nuclear research and development activities at ETEC beginning in 1953. All nuclear operations ended in 1988, and, in 1996, DOE decided to close the remaining ETEC operations. ETEC is not on the National Priorities List, and, at the time the lawsuit was filed, remediation was not being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Rather, remediation was being conducted pursuant to the Atomic Energy Act and the Resource Conservation and Recovery Act. DOE began preparation of the EA in 2000.

In reaching its decision, the court focused on two principal questions: whether cleanup is exempt from the requirement to prepare an EIS, and whether potential impacts could be significant within the meaning of NEPA.

Cleanup Not Exempt from EIS Requirements

First, the court determined that there is a potential impact from remediation on the human environment. Based on

analyses in the EA, the court wrote, "Without question, the remediation of Area IV has the potential to induce changes in the pattern of land use [e.g., a switch from industrial to residential use] and population in the area in a manner which would affect the relationship between people and the natural environment." The court noted that "the Final EA's estimates of potential increased cancer rates are partly based on exposure rates for individuals presumed to be 'residing on the site.'"

"Second, the DOE's belief that the remediation will have, on the whole, a positive effect on the natural environment does not remove it from scrutiny under NEPA," the court continued. The "possibility that the remediation could have some positive impacts on the natural environment of the site does not alleviate the responsibility to determine whether it could also adversely effect [sic] other elements of the human environment."

Remediation Proposal Passes Significance Test

The court considered the EA in light of five of the factors identified by the Council on Environmental Quality for use in determining the significance of potential environmental impacts (40 CFR 1508.27). First, the court concluded that DOE's remediation decision is highly controversial. Based on both the number of comments on the January 2002 draft EA (16 oral and 63 written, including from government agencies, elected officials, members of the local community, and environmental organizations) and their quality ("lengthy, detailed, particular, and based on well-articulated, firm, scientific basis"), the court concluded that "substantial questions were raised by the EA." The court then found that evidence contained in the comments, particularly from the Environmental Protection Agency (EPA) and the California Department of Toxic Substance Control, "casts serious doubt upon the reasonableness" of DOE's conclusions. For example, the court quoted EPA's comments on the Draft EA regarding a 1995 soil study relied upon for the EA's analysis:

(continued on next page)



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[The Draft EA] does not present . . . enough measurements of radioactivity to support remedy evaluations or decision, and many of the existing measurements that did not detect contamination may have used methods that were not sensitive enough to do so. The instruments and methods used . . . were not sensitive enough to detect levels needed to support decisions about the need for cleanup, and not enough measurements were made in enough places to provide a thorough understanding of the location and levels that may be present at the site. Additionally, some of the measurements lack documentation of collection conditions, precision, accuracy, and reproducibility needed to demonstrate its utility and justify its use.

The court also pointed to controversy regarding the appropriate cleanup standard, possible effects of nonradiological contamination in combination with radioactive contamination, and possible radioactive contamination of groundwater. The court found that DOE's responses to these and other comments indicate that "DOE did not take a hard look at the evidence offered by commentators"

Second, the court found that an EIS is required "on the basis of the uncertainty and unknown risks caused by the inadequacy of the data and analyses on which the EA is based." Comments on the EA, and the way the comments

were evaluated, create "high levels of uncertainty regarding what environmental effects the remediation will ultimately have. As a result, it leaves those living, working, and recreating in areas surrounding the site, not to mention the site's potential residential occupants, subject to the possibility of as yet undiscovered, unknown risks," the court wrote.

The court briefly discussed its reasons for concluding that three additional factors for determining significance also support the need for an EIS. The remediation decision has the possibility of negatively affecting "public health or safety" because the site is radiologically contaminated, not far from population centers, and likely to be developed for residential purposes in the future. The "remediation decision regarding radiological contamination potentially will have a 'cumulatively significant impact' in combination with other related actions regarding nonradiological contamination." Finally, citing DOE's statement that the cleanup level chosen for ETEC could set a precedent for other DOE sites, the court concluded that the remediation decision has the potential to "establish a precedent for future actions with significant effects."

Having found DOE in violation of NEPA, the court did not address the plaintiffs' arguments that DOE had also violated CERCLA and the Endangered Species Act. The court left the door open for future claims under these statutes depending upon DOE's future actions.

Court Affirms DOE's NEPA Compliance at WIPP

The U.S. Court of Appeals on May 3, 2007, upheld a decision by the U.S. District Court for the District of New Mexico to dismiss a claim that DOE had not properly complied with NEPA regarding the Waste Isolation Pilot Plant (WIPP), DOE's repository for transuranic (TRU) waste near Carlsbad, New Mexico. The plaintiffs in *Citizens for Alternatives to Radioactive Dumping [CARD] et al. v. Department of Energy et al.* alleged that DOE failed to comply with NEPA in reaching its decision to dispose of its TRU waste in the repository, and sought to enjoin WIPP operations until DOE prepared further NEPA review. (See *LLQR*, September 2004, page 18.)

As part of its NEPA claim before the district court, the plaintiffs sought to use evidence outside the administrative record ("extra-record" evidence) based on research conducted by an expert consultant. The consultant alleged that DOE miscalculated a data point from a test well, thereby underestimating groundwater transmissivity. Based on the consultant's report, the plaintiffs alleged that DOE relied on concealed or false information in arriving at its ROD pursuant to the WIPP Supplemental EIS-II (WIPP SEIS-II) (DOE/EIS-0026-S-2; 1997). The plaintiffs also alleged a number of analytical deficiencies

in the WIPP SEIS-II. The district court dismissed the case based on its conclusion that DOE's ROD was not arbitrary and capricious and that there was no reason to consider the extra-record evidence. The district court acknowledged scientific debate surrounding many of the issues but found that DOE adequately addressed the topics.

In appealing the case, the plaintiffs claimed that (1) the district court should have admitted the extra-record evidence and (2) DOE was arbitrary and capricious in its evaluation of the record by not further investigating allegations raised by the consultant. In upholding the district court's conclusion, the appellate court found that the district court did not abuse its discretion in rejecting the extra-record evidence, and that DOE was not arbitrary and capricious in its environmental review. The appellate court also stated that, contrary to allegations, the SEIS-II did not ignore data regarding hydrologic transmissivity and noted that DOE "provided careful and reasoned explanations" for its technical approach in the SEIS-II. The appellate court also noted the thoroughness of the SEIS-II administrative record and, as stated in its ruling, "The i's were dotted, the t's were crossed, and NEPA requires nothing more." [Case No.: 04-2314]



Litigation Updates

NASA, DOE Prevail in Laboratory Funding Case

The U.S. District Court for the District of Rhode Island found in favor of NASA and DOE on April 26, 2007, in *Touret et al. v. NASA et al.*, a challenge to 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).

Brown University in 2000 announced its intention to construct a new Life Sciences Building to consolidate several existing life sciences departments into one facility with modern, expanded laboratory space. Brown initially planned to finance construction entirely from its own funds, but, when it learned that Federal monies might be available, Brown applied for and received commitments totaling \$10.25 million, about 11% of the project cost, from NASA, the National Institutes of Health, and DOE. NASA prepared an EA with DOE as a cooperating agency. The plaintiffs, citing concerns about possible adverse effects that the laboratory might have on the College Hill Historic District in Providence and the health of nearby residents, filed suit in 2004.

Limited Funding and Involvement Insufficient to “Federalize” Project

The court found that the Federal contributions did not represent a significant portion of the project cost and that none of the funding agencies regulated, exercised any

control over, or had approval authority with respect to construction or operation of the Life Sciences Building. The agencies’ involvement in the project consisted solely of providing limited funding and conditioning payment of approximately half of the funding on a requirement that the building be used as a biomedical facility for at least 20 years. Furthermore, the court found, the University originally planned to build, and would have built, the Life Sciences Building without Federal funds. Under these circumstances, the Federal funding did not make the proposed Life Sciences Building a “federal action,” and therefore, preparation of an EIS could not be required.

The plaintiffs also argued that construction of the Life Sciences Building is a “major federal action” because Federal funds likely would be provided for future research activities. However, the court found that the plaintiffs did not present any evidence that such funding will be provided or that it is linked to construction of the Life Sciences Building.

Despite finding that NEPA does not apply to this project, the court felt “compelled to briefly comment on the plaintiffs’ substantive claims in the hope that its comments might help, in the future, to clarify an agency’s obligations in preparing an EA.” The court suggested that the EA’s analysis of cumulative impacts to air quality and noise may not have been adequate.

Lessons Learned in Litigation

Vicki Prouty, Assistant Chief Counsel, Chicago Office, is eager to share her lessons learned during this litigation with the readers of *Lessons Learned*.

Avoid Implying that a FONSI Is Predetermined

Plaintiffs used emails – in the administrative record and obtained through discovery – as evidence of the Federal agencies’ inappropriate determination to issue a FONSI before completing the environmental analysis. The plaintiffs’ inference was a mischaracterization of the agencies’ early references to the “EA and FONSI” prior to, for example, state review of the pre-approval EA. The agencies would have been prudent to avoid assuming a FONSI early in the project, e.g., by qualifying such phrases with “unless significant impacts are identified.”

Participate Actively as Cooperating Agency

It can be risky for a cooperating agency to be passive. DOE has sophisticated NEPA experience, including extensive guidance and effective control mechanisms through the NEPA Document Manager’s responsibility for direction to contractors. In this case, DOE relied on the lead agency to scrutinize the EA sections on toxic air emissions and regulatory requirements. Later, when this analysis became the subject of litigation, it became clear that as a potential co-defendant, a cooperating agency cannot afford such reliance but must itself review the internal draft NEPA document carefully.

Ms. Prouty can be reached at vicki.prouty@ch.doe.gov or 630-252-2244.



Court Invalidates Geothermal Project Approval for Lack of NEPA Review

A Federal appeals court has set aside leases and the approval process, including an EIS, for a geothermal energy project that would have supplied almost 50 megawatts to DOE's Bonneville Power Administration (BPA) because the court determined that the U.S. Forest Service and BLM failed to comply with NEPA, the National Historic Preservation Act, and their fiduciary responsibility to the Pit River Tribe. BPA was a cooperating agency in preparation of the EIS, which DOE adopted, but was not named in the lawsuit.

At issue was a geothermal power plant proposed in 1995 by the Calpine Corporation at Fourmile Hill near Medicine Lake in Northern California. The plant would be located on Forest Service land and operate under leases originally issued by BLM in 1988. The Forest Service and BLM began preparing an EIS for the proposed plant in 1996. In 1998, BLM extended Calpine's leases by five years before the agencies had completed the *Fourmile Hill Geothermal Development Project Environmental Impact Statement/Environmental Impact Report* (DOE/EIS-0266). A record of decision (ROD) approving the plant was issued by the Forest Service and BLM in May 2000. BPA issued a ROD on December 5, 2000 (65 FR 75929).

The plaintiffs (Pit River Tribe and two regional organizations) challenged the 1998 lease extensions. The U.S. District Court for the Eastern District of California found for the Federal agencies, and the plaintiffs appealed to the Ninth Circuit (*Pit River Tribe et al. v. U.S. Forest Service et al.*, Case No.: 04-15746). The appeals court reviewed both the timing and adequacy of the agencies' NEPA analyses.

EIS Required Before Lease Extension

The court concluded that "the agencies were required to complete an [EIS] before extending the leases" based on two primary reasons. First, the court concluded that extending the leases required affirmative agency action. Second, the court determined that the initial leases and 1998 extensions amounted to an irreversible and

irretrievable commitment of resources because they did not reserve to the government an absolute right to prevent all surface-disturbing activity.

Existing NEPA Documents Inadequate

The court reviewed relevant NEPA documents completed prior to the 1988 leases. The court concluded that these documents – a programmatic EIS completed by the Department of the Interior in 1973 on geothermal development broadly and two EAs completed in 1981 and 1984 on certain related activities in the Medicine Lake area – did not consider the impacts of actual geothermal development in particular places.

The court also reviewed the EIS issued after the 1998 lease extensions were granted and concluded that it did not adequately address "whether the land in question should be leased at all." The purpose and need described in the EIS was "to develop the geothermal resource on Calpine's Federal geothermal leases in order to economically produce and deliver electrical energy" to BPA and others, the court pointed out.

Only the No Action alternative considered not developing the geothermal energy resource. The court found the analysis of that alternative insufficient. "The sole mention of the no action alternative stated that it 'would not meet the purpose and need for the proposed action.' The 1998 EIS failed to take the requisite 'hard look' at whether the leases should have been extended"

"Because the 1998 EIS was premised on the notion that the leases were valid and granted development rights to Calpine, the 1998 EIS cannot substitute for an EIS evaluating the decision to extend the underlying lease rights as an initial matter," the court concluded. "Accordingly, in spite of the 1998 EIS, we hold that the 1998 lease extensions – and the entire Fourmile Hill Plant approval process for development of the invalid lease rights – violated NEPA."



Litigation Updates

DOE NEPA Litigation in Brief

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): A hearing was held May 22, 2007, in this case where the plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit. Plaintiffs allege that DOE segmented its NEPA analysis for the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Keep Yellowstone Nuclear Free et al. v. Department of Energy et al. (D. Idaho): The plaintiffs allege that DOE is in violation of NEPA for undertaking a Life Extension

Program to extend operation of the Advanced Test Reactor at the Idaho National Laboratory without first having prepared an EIS. The plaintiffs seek an order directing DOE to prepare an EIS, and a permanent injunction prohibiting DOE from operating the Advanced Test Reactor and from shipping reactor fuel and all special nuclear material to the reactor until DOE has completed the EIS, issued a record of decision, and implemented those components of the Life Extension Program “necessary to ensure that the [reactor] can operate safely.” (See *LLQR*, March 2007, page 19.) The court has scheduled briefs to be filed by August 24, 2007. [Case No.: 07-36]

CEQ’s NEPA Litigation Survey

DOE recently responded to the Council on Environmental Quality’s (CEQ’s) annual survey of Federal agency NEPA litigation. In the course of 2006, DOE had 11 active cases that involved NEPA claims.

- Six of the 11 cases were resolved by the end of 2006: in two of these cases, DOE’s EISs were judged to be adequate (*LLQR*, September 2006, page 1; March 2007, page 18); in one case, the matter was remanded to DOE to incorporate terrorism analysis into an EA (*LLQR*, December 2006, page 3); one case was resolved through a settlement agreement that DOE would expand the scope of an EIS (*LLQR*, March 2006, page 1); one case was settled with DOE agreeing to help construct a bypass road (*LLQR*, June 2006, page 18); and one case was dismissed due to mootness.
- Five of the 11 cases were still pending at the end of 2006, although four of these were resolved in the first five months of 2007. In one of these cases, DOE’s EIS was determined to be adequate (page 21), and in another, the court determined that there was no Federal action that required preparation of an EIS (page 22). In another case, DOE was ordered to prepare an EIS (page 20), and in the other, the proposed action was cancelled (*LLQR*, March 2007, page 21). The one ongoing case included in the survey response is *Coalition on West Valley Nuclear Wastes et al. v. Department of Energy*, updated above.

The results of CEQ’s NEPA litigation surveys for 2001–2005 are available on CEQ’s website at www.NEPA.gov under NEPA Litigation. 

Heard at the NAEP Conference . . .

- *The environmental movement has matured. The U.S. is now red, white, blue, and green!*
- *We could call this session “Lessons Not Learned” – we still need to keep working on making NEPA documents informative to decisionmakers and the public.*
- *Review your appendices like they’re part of the main document; the more you put in appendices, the more important they become in litigation.*
- *All the wildflowers have not gone . . . [the singing duo of Dale Crider, retired Florida Game and Fresh Water Fish Commissioner, and John Henry Hankinson, former EPA Regional Administrator] At next year’s conference, NAEP is looking to have an in-house band.*



Transitions

NEPA Policy and Compliance: Melanie Pearson

Melanie Pearson, a colleague from DOE's former Office of Environment, Safety and Health, transferred to the Office of NEPA Policy and Compliance as an Environmental Protection Specialist in April 2007 from the Office of Health, Safety and Security.

Working at DOE since 1991, she has helped Field Offices ensure environmental compliance, was instrumental in developing DOE's strategies to implement Environmental Management Systems, and served as Special Assistant to the Deputy Assistant Secretary for Environment.

Ms. Pearson brings a unique perspective to the NEPA Office as she also has worked in local and state government in water quality programs, hazardous waste disposition and recycling, and emergency response teams. She also worked in the private sector supporting the waste minimization activities of the U.S. Army Environmental Office.

She will bring her experience to bear in providing NEPA assistance to the Office of Electricity Delivery and Energy Reliability, the Office of Environmental Management, and the Loan Guarantee Program, and in developing DOE NEPA guidance and regulations.

Melanie joins the Eastern Energy and Waste Management Unit and can be reached at melanie.pearson@hq.doe.gov or 202-586-0939.



NEPA comes at you fast, Melanie found, as she became acquainted with her first EIS to review.

Electricity Delivery and Energy Reliability: Brian Mills, New NCO



The NEPA Office is happy to have "one of our own" as an NCO, and still close enough to listen to his fish stories.

DOE Power Marketing Administrations; serving on the White House Task Force on Energy Project Streamlining; and writing for LLQR, most recently as a "NEPA nerd" in the March 2007 issue. **LL**

Brian Mills, a veteran of 7 years of service with the Office of NEPA Policy and Compliance and 24 years with the Bureau of Land Management, recently transferred to the Office of Electricity Delivery and Energy Reliability (OE). He has taken over the responsibilities of NEPA Compliance Officer (NCO) from Tony Como, who continues to support that Office's permit process for international transmission lines. Mr. Mills is an expert in Federal agency land management and NEPA issues related to implementation of the Energy Policy Act of 2005 (EPAAct). In his new assignment, Brian will assist OE in coordinating NEPA reviews for proposed energy corridors and Presidential permits for transboundary power lines, and will continue to address EPAAct implementation issues. Mr. Mills can be reached at brian.mills@hq.doe.gov or 202-586-8267.

The NEPA Office appreciates Brian's many contributions: supporting NEPA reviews for OE, the Office of Environmental Management, and

DOE-wide NEPA Contracts Update

The following task has been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Nienow at dnieow@doeal.gov or 505-845-6072. Information and resources for potential users of these contracts are available on the DOE NEPA website. **LL**

Description	DOE Contact	Date Awarded	Contract Team
Evaluation of Site-wide EIS for the Nevada Test Site and Offsite Locations in the State of Nevada	Michael Skougard 702-295-1759 skougard@nv.doe.gov	3/23/2007	SAIC

Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- **NEPA and Environmental Law and Regulations (PGM04)**

DOE-Project Management
Career Development Program
Richland, WA: June 19-21

Fee: DOE personnel should contact their training coordinator for registration information.

- **Environmental Litigation**

Boulder, CO: June 27-30

Fee: \$1,095

American Law Institute -
American Bar Association
800-CLE-NEWS
www.ali-aba.org

- **NEPA**

Austin, TX: June 7-8

Fee: \$595 (GSA contract: \$495)

Multiple registration discount available

National Wetlands

Las Vegas, NV: June 7-8

Fee: \$595 (GSA contract: \$495)

Multiple registration discount available

Continuing Legal Education (CLE)
800-873-7130
www.cle.com

- **Clear Writing for NEPA Specialists**

Las Vegas, NV: June 12-14

Fee: \$885 (GSA contract: \$795)

**Cultural and Natural Resource Management
Endangered Species Act Overview**

Salt Lake City, UT: June 12-15

Fee: \$1,110 (GSA contract: \$995)

Phoenix, AZ: September 25-27

Fee: \$845 (GSA contract: \$755) until 8/8/07

**Overview of the NEPA Process/
Reviewing NEPA Documents**

Las Vegas, NV: June 19-22

Fee: \$1,110 (GSA contract: \$995)

**NEPA Cumulative Effects Analysis and
Documentation/Adaptive Management**

Baltimore, MD: June 26-28

Fee: \$885 (GSA contract: \$795)

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

Salt Lake City, UT: July 17-20

Fee: \$1,070

Olympia, WA: September 25-28

Fee: \$1,070 (GSA contract: \$955) until 8/6/07

NEPA Writing Workshop

Las Vegas, NV: July 31-Aug 2

Fee: \$845 (GSA contract: \$755) until 6/11/07

NEPA Process Management

Las Vegas, NV: Aug 7-8

Fee: \$645 (GSA contract: \$555) until 7/16/07

Natural Resource Policy and Economics

Salt Lake City, UT: Aug 14-16

Fee: \$845 (GSA contract: \$755) until 7/2/07

**NEPA Cumulative Effects Analysis
and Documentation**

San Francisco, CA: September 18-20

Fee: \$845 (GSA contract: \$755) until 8/1/07

**Integrating Federal Environmental Laws
into NEPA**

Las Vegas, NV: September 25-27

Fee: \$845 (GSA contract: \$755) until 8/8/07

The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
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. Also requires completion of course exams and a final project.

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

Natural Resources and
Environmental Policy Program
Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/policy

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Training Opportunities

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- **NEPA in Indian Country**

Denver, CO: September 25-26

Fee: \$495

International Institute for Indigenous
Resource Management
303-733-0481
iiirm@iiirm.org
www.iiirm.org

- **Environmental (NEPA) Boot Camp
for Engineers**

New Orleans, LA: September 13-14

Fee: \$1,255

American Society of Civil Engineers
800-548-2723
www.asce.org/conted/seminars

- **NEPA Certificate Program**

Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

Nicholas School of the Environment
and Earth Sciences – Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuing/
certificates.html

Telling a NEPA Story



When asked at cocktail parties, “What do you do?” “Storyteller” is not likely to be the response of most NEPA practitioners. But Dr. Larry Freeman, a senior consultant at The Shipley Group, suggests in his online article, *Telling a NEPA Story*, that NEPA writers would be wise to learn key features of the storyteller’s craft. “Storytellers were originally oral performers,” Freeman notes, and “participating listeners were, and still are, essential to a storyteller’s craft.”

To engage the reader, for example, Dr. Freeman suggests that NEPA writers ask themselves questions during the document preparation process, such as “What are my readers’ main concerns or worries about our proposed project?” and then adjust the content appropriately. To establish credibility, he recommends using a “chain of evidence” to support professional opinions, rather than “retreating to thin or unsupported assertions of professional judgment” where information gaps exist and methodologies are imperfect, and gives examples of effective phrases.

Telling a NEPA Story (January 2007) is available at www.shipleygroup.com/news/0701.html. 

Being a good “storyteller” is not usually among the skill sets required of the engineers and risk assessment scientists who write DOE’s NEPA documents and . . . therein lies the rub.

– Reflections from a Learned Lawyer
Janine M. Sweeney, *LLQR*, March 2002

NEPA Metrics: EIS Completion Times and Cost

By: Vivian Bowie, Office of NEPA Policy and Compliance

To gauge DOE's efficiency in the NEPA process and to develop recommendations for improvement, the Office of NEPA Policy and Compliance periodically examines and reports on NEPA performance metrics. In March 2006, we reported that management attention appeared warranted to ensure that EIS schedules, which appeared to be lengthening, meet program needs; EIS preparation costs over 10 years had remained about the same (*LLQR*, March 2006, page 32). A recent examination of EIS completion time and cost data over the past 10 years (January 1997 through May 2007) suggests improvement has occurred in preparation time, but continued attention is warranted. Costs have remained generally the same, but recent information suggests that costs may increase and that greater attention to costs is warranted.

EIS Completion Times

We measure EIS completion times from DOE's Notice of Intent to the Environmental Protection Agency's Notice of Availability of the Final EIS. In 1994, DOE set a median EIS completion time goal of 15 months. DOE Order 451.1B, *National Environmental Policy Act Compliance Program*, directs the development of EIS schedules that, absent extraordinary circumstances, will provide for completion within 15 months.

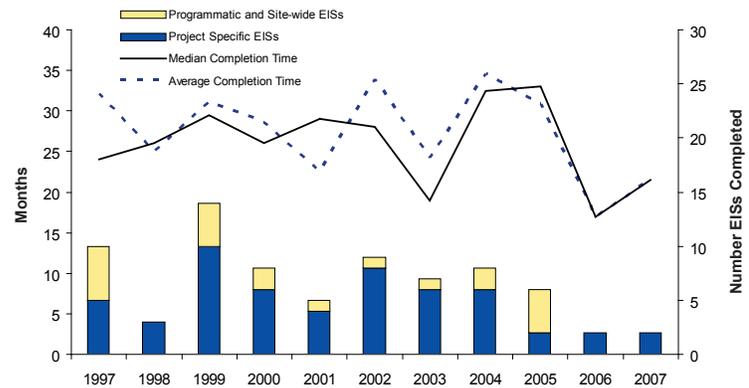
Data for the past 10 years (Figure 1) show that DOE has not met its 15-month median completion time goal. The median completion time was 28 months for the 74 EISs completed during this period. The median completion time was less than 20 months for documents completed in 2003, increased to more than 30 months for documents completed in 2004 and 2005, and dropped to less than 20 months in 2006.

We attribute the decrease in median completion times in 2006 to the absence of programmatic EISs. In 2004 and 2005, several programmatic and site-wide EISs were completed, which typically take longer to complete than project-specific EISs (median of 34 versus 22 months, respectively). As always, we caution that these time trend data must be interpreted with care because, given the relatively few number of EISs and wide range of completion times, even one or two documents can significantly influence the statistics for a given year.

Although the recent decrease in completion time is promising, meeting DOE's 15-month median completion time goal remains a challenge. DOE is now preparing several programmatic and site-wide EISs, which will likely extend the average and median completion times.

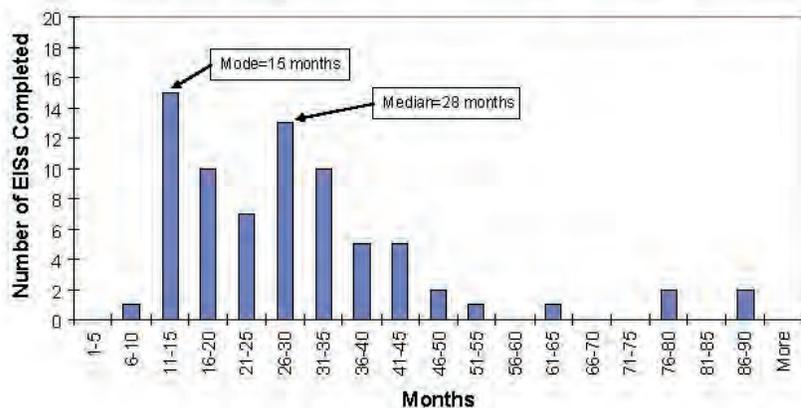
Figure 2 shows the distribution of all EIS completion times for documents completed during the past 10 years. The data show that about 21 percent of the EISs were completed in 15 months or less, and that the most frequent completion time (mode) was 15 months.

Figure 1: EIS Completion Times and Number of EISs, 1997–2007



EIS Type	Number of EISs	Average Time (months)	Median Time (months)	Min/Max (months)
Project-Specific EISs	54	26	22	9/76
Programmatic and Site-wide EISs	20	40	34	15/86
Overall	74	30	28	9/86

Figure 2: Completion Times for 74 EISs from 1997–2007



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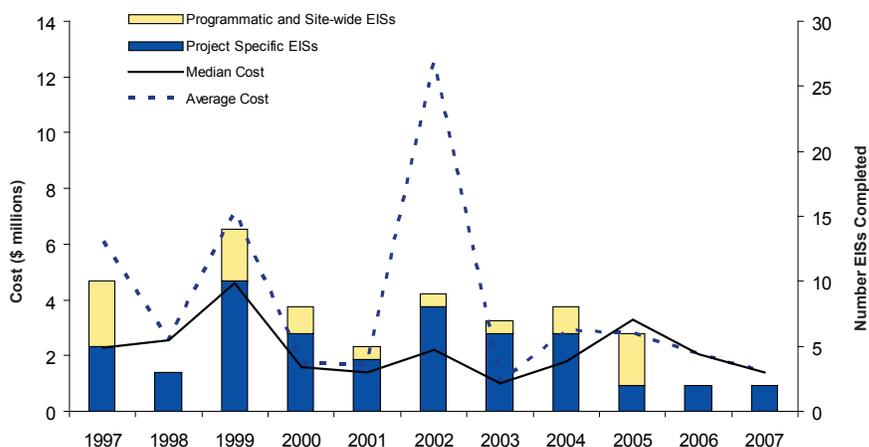
NEPA Metrics *(continued from previous page)*

EIS Costs

EIS costs decreased substantially in the mid-to-late 1990s, after DOE completed a relatively large number of programmatic and site-wide EISs. Data for 1994–1996 (not shown) indicate that the cost per document has decreased for all types of EISs (programmatic/site-wide and project specific) from mid-to-late 1990 levels. The cost to prepare an EIS has remained about the same over the past 10 years.

Looking forward, however, the Office of NEPA Policy and Compliance is aware of several in-process EISs (including project-specific and programmatic/site-wide documents) that apparently will be quite costly (significantly above average) to complete. The Office of NEPA Policy and Compliance plans to study these documents and report on factors that may be contributing to higher costs. We conclude that greater attention to EIS preparation costs is warranted. 

Figure 3: EIS Cost and Number of EISs, 1997–2007



EIS Type	Number of EISs with Cost Data	Average Cost (\$M)	Median Cost (\$M)	Min/Max (\$M)
Project-Specific EISs	34	\$2.5	\$1.4	\$0.44/\$15
Programmatic and Site-wide EISs	19	\$8.5	\$4.0	\$0.056/\$44
Overall	53	\$4.6	\$1.8	\$0.056/\$44

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$75,000; the average cost was \$127,000.
- Cumulatively, for the 12 months that ended March 31, 2007, the median cost for the preparation of 11 EAs for which cost data were applicable was \$79,000; the average was \$128,000.
- For this quarter, the median completion time for 7 EAs was 11 months; the average was 18 months.
- Cumulatively, for the 12 months that ended March 31, 2007, the median completion time for 12 EAs was 9 months; the average was 17 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS was \$1,378,000.
- Cumulatively, for the 12 months that ended March 31, 2007, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1,378,000; the average was \$1,819,000.
- For this quarter, the completion time for one EIS was 17 months.
- Cumulatively, for the 12 months that ended March 31, 2007, the median and average completion times for 3 EISs were 17 months.

Recent EIS-Related Milestones (March 1 to May 31, 2007)

Notice of Intent

**Office of Environmental Management/
Savannah River Operations Office**
DOE/EIS-0283-S2
*Supplemental Environmental Impact Statement for
Surplus Plutonium Disposition at the Savannah River
Site, Aiken, South Carolina*
March 2007 (72 FR 14543, 3/28/07)

Extension of Scoping Period

Office of Nuclear Energy
DOE/EIS-0396
*Programmatic Environmental Impact Statement
for the Global Nuclear Energy Partnership*
April 2007 (72 FR 15871, 4/3/07)

Draft EISs

Bonneville Power Administration
DOE/EIS-0384
*Chief Joseph Hatchery Program, Okanogan County,
Washington*
May 2007 (72 FR 25302, 5/4/07)

**Bonneville Power Administration/
Office of Electricity Delivery and Energy Reliability**
DOE/EIS-0378
*Port Angeles - Juan de Fuca Transmission Project,
Clallam County, Washington*
March 2007 (72 FR 10749, 3/9/07)

Final EIS

Western Area Power Administration
DOE/EIS-0376
*White Wind Farm Project, Construct a Large
Utility-Scale Wind-Powered Electric Energy
Generating Facility, Brookings County, South Dakota*
April 2007 (72 FR 18644, 4/13/07)

Record of Decision

**Office of Fossil Energy/
National Energy Technology Laboratory**
DOE/EIS-0383
Orlando Gasification Project, Orlando, Florida
April 2007 (72 FR 17143, 4/6/07)

Draft Supplement Analysis

**Office of Environmental Management/
Portsmouth/Paducah Project Office**
DOE/EIS-0359-SA-01 and DOE/EIS-0360-SA-01
*Disposal of Depleted Uranium Oxide Conversion
Product Generated from DOE's Inventory of
Depleted Uranium Hexafluoride*
April 2007 (72 FR 15869, 4/3/07)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0285-SA-323*
*Lower Columbia River Transmission Line Project,
Columbia and Clatsop Counties, Oregon, and
Wahkiakum County, Washington*
(Decision: No further NEPA review required)
December 2006

DOE/EIS-0285-SA-324*
*Danger Tree Management along the Port Angeles -
Sappho No. 1, 115 kV Transmission Line Corridor
from Port Angeles Substation Heading West
to Sappho Substation, Clallam County, Washington*
(Decision: No further NEPA review required)
December 2006

DOE/EIS-0285-SA-325*
*Vegetation Management along the Naselle - Tarlet
No. 1 and No. 2 Transmission Line Corridors,
Pacific County, Washington*
(Decision: No further NEPA review required)
January 2007

DOE/EIS-0285-SA-326*
*Vegetation Management along the Benton - Franklin
No. 1 and No. 2, 115 kV Transmission Line Corridor,
Franklin County, Washington*
(Decision: No further NEPA review required)
January 2007

DOE/EIS-0285-SA-327*
*Malin - Hilltop and Hilltop - Warner Transmission
Line Project, Klamath County, Oregon, and Modoc
County, California*
(Decision: No further NEPA review required)
January 2007

* Not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (March 1 to May 31, 2007)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-328*

Vegetation Management along the Olympia - Satsop No. 3 Transmission Line Corridor, Thurston County, Washington

(Decision: No further NEPA review required)
January 2007

DOE/EIS-0285-SA-329*

Vegetation Management along the McNary - Coyote Springs No. 1, 500 kV Transmission Line Corridor, and along the Coyote Springs - Slatt No. 1, 500 kV Transmission Line Corridor, Morrow County, Oregon

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-330*

Vegetation Management along the Sandcreek - Bonners Ferry #1 and #2 115 and 230 kV Transmission Lines from Structures 1/1 to 27/6, Bonner and Boundary Counties, Idaho

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-331*

Vegetation Management along the Box Canyon Tap to Colville - Boundary No. 1, 115 kV Transmission Line Corridor Right of Way, Pend Oreille County, Washington

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-332*

Vegetation Management along the Salem - Grande Ronde No. 1 and Grande Ronde - Boyer #1 Transmission Lines, Polk County, Oregon

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-333

Marion - Alvey No. 1 and Marion - Lane No. 1 Transmission Line Vegetation Management Project, Marion, Linn, and Lane Counties, Oregon

(Decision: No further NEPA review required)
March 2007

DOE/EIS-0285-SA-334

Covington - Creston No. 1 and Covington - Duwamish No. 1 Transmission Line Vegetation Management Project, King County, Washington

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-335

Vegetation Management along the Grizzly - Captain Jack Transmission Line Corridor from Grizzly Substation to Captain Jack Substation, Jefferson, Crook, Deschutes, Lake, and Klamath Counties, Oregon

(Decision: No further NEPA review required)
March 2007

DOE/EIS-0285-SA-336

Palisades - Goshen Transmission Line Project, Bonneville and Bingham Counties, Idaho

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-337

Vegetation Management along the Echo Lake - Monroe No. 1, 500 kV Transmission Line Corridor; the Echo Lake - Maple Valley No. 1 and No. 2, 500 kV Transmission Line Corridor; and the Covington - Maple Valley No. 2, 230 kV Transmission Line Corridor, King and Snohomish Counties, Washington

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-338

Vegetation Management along the Priest River Tap to Albeni Falls - Sand Creek No. 1, 115 kV Transmission Line Corridor Right of Way, Bonner County, Idaho

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-339

Vegetation Management along the Chehalis - Covington No. 1 Transmission Line Corridor, Lewis and Thurston Counties, Washington

(Decision: No further NEPA review required)
April 2007

* Not previously reported in LLQR

EAs and EISs Completed January 1 to March 31, 2007

EAs

Chicago Office/Office of Science

DOE/EA-1585 (3/27/07)

Proposed Decontamination and Demolition of Building 301 at Argonne National Laboratory, Chicago, Illinois

Cost: \$38,000

Time: 2 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

DOE/EA-1571 (12/28/06)*

Ohio State University 4-H Center with Green Building Technologies, Franklin County, Ohio

Cost: \$48,000

Time: 6 months

Idaho Operations Office/Office of Nuclear Energy

DOE/EA-1555 (3/13/07)

Consolidation and Expansion of Idaho National Laboratory Research and Development at a Science and Technology Campus, Idaho Falls, Idaho

Cost: \$80,000

Time: 14 months

Oak Ridge Operations Office/ Office of Environmental Management

DOE/EA-1574 (3/9/07)

Uranium-233 Stabilization and Building 3019 Complex Shutdown at the Oak Ridge National Laboratory, Oak Ridge, Tennessee

Cost: \$41,000

Time: 6 months

Oak Ridge Operations Office/Office of Science

DOE/EA-1415 (3/26/07)

Proposed Conveyance of the American Museum of Science and Energy, Parcel G, and Parcel 279.01 to the City of Oak Ridge, Tennessee

Cost: \$75,000

Time: 65 months

Pacific Northwest Site Office/Office of Science

DOE/EA-1562 (1/29/07)

Construction and Operation of a Physical Sciences Facility at the Pacific Northwest National Laboratory, Richland, Washington

Cost: \$507,000

Time: 11 months

Thomas Jefferson National Accelerator Facility Site Office/Office of Science

DOE/EA-1534 (1/30/07)

Proposed Upgrade and Operation of the CEBAF and FEL Accelerators and Construction and Use of Buildings Associated with the 2005 Ten-Year Site Plan at the Thomas Jefferson National Accelerator Facility, Newport News, Virginia

Cost: \$100,000

Time: 21 months

EIS

Office of Fossil Energy/ National Energy Technology Laboratory

DOE/EIS-0383 (72 FR 3846, 1/26/07)

(EPA Rating: EC-1)

Orlando Gasification Project, Orlando, Florida

Cost: \$1,378,000

Time: 17 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 website at www.epa.gov/compliance/nepa/comments/ratings.html.)

* Not previously reported in LLQR

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 January 1 and March 31, 2007.

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 NEPA Policy and Compliance.

Scoping

What Worked

- *Broad bounding assumptions.* In the internal scoping meeting, the EA preparation team decided to make broad bounding assumptions in order to have operational flexibility during the execution of the project.
- *State assists with notification.* The state regulator used its public relations department to help inform the public of EIS scoping meetings.
- *Preparatory work.* After first doing much research up front, the internal scoping process was completed with one meeting and some follow up document reviews.
- *Internal scoping facilitator.* A professional facilitator led the internal EA scoping meeting, which helped the group make decisions and stay on schedule and topic.

What Didn't Work

- *No scoping meeting.* Stakeholders did not understand the EA's scope and objectives because no public scoping meeting was held.

Data Collection/Analysis

What Worked

- *Use of modeling.* A radiation dispersion model was used successfully to calculate potential radiation dose to non-involved workers during open demolition proposed in the EA.
- *Use of existing data.* Current data from a nearby category 2 nuclear facility were used in data collection for the radiological impacts of a category 3 facility.

What Didn't Work

- *Insufficient information.* Information needed on alternatives was either outdated or lacked sufficient detail to adequately assess applicability.

- *Inadequate knowledge.* The public commentators may have been more knowledgeable than the preparers about the viable options for the EA.
- *Accident analyses.* During internal scoping, it was difficult to determine the appropriate types of accident scenarios needed for the EA, which differed from scenarios for the preliminary and final hazard analysis for a nuclear facility.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Management involvement.* The project director helped push the EA to completion.
- *Headquarters support.* Open communications with and timely support from the DOE Headquarters Program Office facilitated timely completion of the EA.
- *Open communication.* The EA preparer, project manager, and reviewers maintained open communication.
- *Document manager communication.* The document manager was in constant communication with all parties to ensure that issues were resolved quickly.
- *Responsiveness.* The industrial proponent and state regulator were responsive to information needs during the EIS review and approval process.
- *Frequent communication.* Weekly conference calls with project participants facilitated timely completion of the EIS.
- *Flexibility.* The NEPA project team maintained flexibility in the EA process to handle various options and scope changes.

(continued on next page)

What Worked and Didn't Work *(continued from previous page)*

Factors that Inhibited Timely Completion of Documents

- *Resistance and disagreement.* Resistance to revising an old EA and months-long disagreement among EA team members inhibited timely completion of the EA.
- *Late identification of alternatives.* Alternatives to the preferred path forward were identified late in the process, causing delays in finalizing the EA.
- *Inattention to comments.* Not enough attention was paid to ensure that DOE reviewers' comments were addressed in the EA.
- *Pressure to finish EA.* The sense that the document had to be "done yesterday" proved counterproductive.
- *Lack of technical editing.* Technical editing support was deficient.
- *Changing project direction.* Changes to the scope of the project required additional analyses for the EA.
- *Confusion on NEPA initiation.* Confusion as to when the NEPA process can and should begin caused some internal discussion; however, all participants were involved in the decision to begin the EA.
- *Scope uncertainty.* Uncertainty in the scope of the project, which was primarily tied to funding, delayed the EA schedule.
- *EA placed on hold.* The EA was essentially complete in early 2003, placed on hold, and resurrected and updated in 2006.
- *Limited DOE staff.* There was only one DOE staff member helping to prepare the EA, which made it difficult to complete the EA on schedule.

Teamwork

Factors that Facilitated Effective Teamwork

- *Schedule adherence.* The EA manager ensured that internal DOE reviewers followed the established EA preparation schedule.
- *Communication.* Open communication between DOE and the contractor helped resolve issues.
- *Conference calls.* Frequent conference calls were vital because the NEPA Compliance Officer, legal counsel, and the rest of the EA team were in separate locations.

- *Role of Document Manager.* Direction to the EA preparation contractor was only given through the Document Manager.
- *Planning.* A defined EA statement of work, quality assurance plan, and analysis plan were prepared.
- *NEPA understanding.* Good interaction among technical team members, and their understanding of the EIS process assisted them in obtaining information needed from the industrial participant.

Factors that Inhibited Effective Teamwork

- *Over-reliance on one team member.* The EIS preparation team did not have intimate knowledge of all issues during an unexpected absence of a key team member.
- *Team disagreement.* There was internal debate over whether or not a new EA was needed.

Process

Successful Aspects of the Public Participation Process

- *State cooperation.* The state's NEPA contact was cooperative and provided comments on the EA quickly, expressing no objection or issue with the project.
- *Public affairs involvement.* The program's public affairs office was involved early on and did an excellent job of responding to media inquiries. The public was generally appreciative of DOE's efforts to keep them informed and involved in the EIS process.
- *Local rapport.* The host site had already established good relations with the local public.
- *Outreach.* There was very little public response to the EA process, mainly due to the thorough analysis and public outreach from the project office.

Unsuccessful Aspects of the Public Participation Process

- *Public discontent.* Former site workers' concerns were not addressed sufficiently in the EA and their comments were not handled well.
- *Reorganization.* DOE reorganization made interaction with the tribes on the EA more difficult because the tribes were unfamiliar with the new players and communication processes. *(continued on next page)*

What Worked and Didn't Work *(continued from previous page)*

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Alternatives assessment.* The EA process forced DOE to consider all potential alternatives.
- *Boundaries established.* The EA established bounding assumptions for the proposed actions, which the project manager understands could not be exceeded during project execution unless further NEPA review is done.
- *Construction decisions.* The NEPA process helped in determining potential locations for construction at the site as well as the need for a buffer area.

Enhancement/Protection of the Environment

- *Risk avoidance.* A major security risk was possibly eliminated.
- *Understanding of effects.* The NEPA process enhanced the understanding of the potential environmental effects of each alternative and helped in selecting the preferred option.
- *Permitting coverage.* The NEPA process did not enhance the environment; the mitigation measures identified in the EIS were already covered by the permitting requirements.
- *Environmental considerations.* The environment was carefully considered during the EA process. Issues were identified that would have otherwise been ignored, such as avoiding the site during nesting season.

Other Issues

Cost-Effectiveness

- *DOE-led preparation.* The EA was prepared in-house with very little contractor support.
- *Estimated budget.* Budgeting prior to each phase in the EIS process provided an accurate estimate.

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 7 questionnaire responses were received for EAs and EISs, 6 out of 7 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “4” stated stakeholder comments were instrumental in finalizing the EA and finding of no significant impact.
- A respondent who rated the process as “4” stated that, if the NEPA process is appropriately applied and followed, it will always result in the selection of the most appropriate alternative.
- A respondent who rated the process as “4” stated that incorporation of stakeholder comments contributed to the effectiveness of the NEPA process.
- A respondent who rated the process as “3” stated that, due to the NEPA process, DOE listened to the public.
- A respondent who rated the process as “3” stated that, although the project decision was made beforehand, the EA established environmental protection boundaries and analyzed the environmental impacts.
- A respondent who rated the process as “3” stated that the potential impacts to the human environment were carefully considered in the preliminary design process as a result of the EIS process.
- A respondent who rated the process as “2” stated that the EA process allowed identification of public and tribal concerns and how best to proceed to make all parties amenable to the action. 