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LESSONS LEARNED
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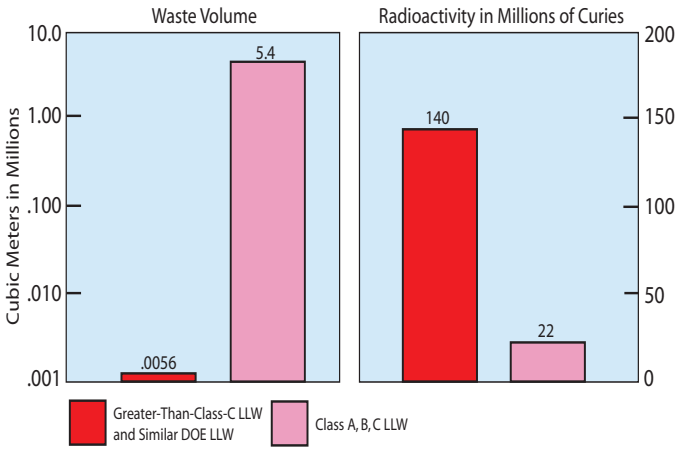
Greater-Than-Class-C Low-Level Radioactive Waste
DOE Studying Paths to Disposal in EIS

The U.S. Department of Energy (DOE) has announced its plan to evaluate eight DOE sites and two generic locations for the proposed disposal of about 5,600 cubic meters (7,300 cubic yards) of current and projected Greater-Than-Class-C low-level waste (LLW) and similar DOE LLW. Greater-Than-Class-C LLW is generated across the country at industrial, medical, and research facilities, including commercial nuclear power reactors, hospitals, and universities. It is generated and stored at many locations and does not have an identified disposal path. This waste accounts for more curies of radioactivity than the substantially larger volume of other LLW projected over the same time period (graphic below) and could be used to make "dirty bombs."

In its Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for this waste (72 FR 40135; July 23, 2007), DOE began a 60-day public scoping period that will end September 21, 2007. The EIS will support national policy and decisionmaking for Greater-Than-Class-C LLW disposal. Based on public reactions to DOE's previous EISs involving radioactive waste management, and public scoping meetings conducted so far for this EIS, DOE anticipates that this EIS may generate substantial interest.



Greater-Than-Class-C LLW and similar DOE LLW (projected through 2062) is the "hottest" type of LLW.

What Is Greater-Than-Class-C LLW?

This waste contains specific radionuclides at levels that exceed those for Class A, B, and C low-level waste (LLW), as defined by the Nuclear Regulatory Commission for commercial waste at 10 CFR Part 61. The classifications determine how the waste is to be managed, including its disposal. Greater-Than-Class-C LLW exists as:

- "sealed sources" (photo, page 4) that are used for medical, research, and other beneficial purposes,
- "activated metals" resulting from commercial nuclear power decommissioning, and
- "other waste" such as contaminated equipment, debris, and scrap metal generated from a variety of activities, including decontamination and decommissioning of industrial manufacturing facilities.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 assigned responsibility for the disposal of Greater-Than-Class-C LLW to the Federal government. Over the years, members of Congress, state regulatory agencies, and the public have expressed concern that there is no facility for safe and secure disposal of this waste. The events of September 11, 2001, heightened concern that nuclear waste such as Greater-Than-Class-C LLW sealed sources could be used for malevolent purposes.

(continued on page 4)

Inside *LESSONS LEARNED*

Welcome to the 52nd quarterly report on lessons learned in the NEPA process. This issue highlights the start of two major DOE EISs and features several guest-written articles. 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 November 1, 2007. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2007 (July 1 through September 30, 2007) should be submitted by November 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.

DOE-wide NEPA Contracts Extended

The Service Center for the National Nuclear Security Administration (NNSA) has extended the DOE-wide NEPA contracts. Those awarded under full and open competition have been extended to **March 23, 2008**, and those awarded to small businesses to **May 4, 2008**. Information on the contracts and how to issue task orders under them is available on the DOE NEPA website at *www.eh.doe.gov/nepa* under DOE-wide NEPA Contracting or by contacting David Nienow, Contract Administrator, NNSA Service Center, at dnienow@doeal.gov or 505-845-6072. An Integrated Project Team, led by the NNSA Service Center and including NEPA Compliance Officers, is working to procure the next set of DOE-wide NEPA contracts.

Tasks issued before the expiration dates need not be completed before the expiration dates.

– David Nienow, NNSA Service Center

DOE Seeking Early Stakeholder Input for a Remediation EIS

In response to a May 2007 court decision, DOE announced in a press release on July 19, 2007, that it would prepare an EIS for remediation of Area IV of the Santa Susana Field Laboratory in Ventura County, California, near Los Angeles. Because the court had found that "DOE did not take a hard look at the evidence offered by commentators" with regard to an environmental assessment (EA) that it had prepared (*LLQR*, June 2007, page 20), the press release explained that DOE will issue an Advance Notice of Intent (Advance NOI) this fall to obtain "extensive input from the local community and public as well as state and federal regulatory officials in the EIS development" (text box page 4). DOE plans to issue a Notice of Intent in early 2008.

DOE plans to invite the Environmental Protection Agency (EPA) Region IX and the State of California Department of Toxic Substances Control to be cooperating agencies in EIS preparation. The Environmental Management Consolidated Business Center has already solicited and received input on a draft statement of work for EIS preparation from EPA and the state.

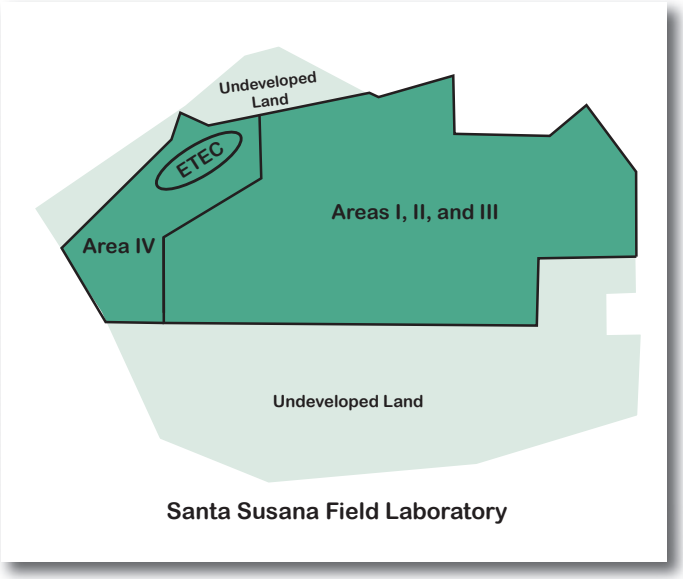
The NEPA Compliance Officer for this project, Pete Yerace, noted that this early interaction is helping DOE define not only the upcoming EIS contractor work but, most importantly, the scope of the EIS to be prepared. "It is my experience that the success of an EIS depends heavily on the emphasis placed on stakeholder involvement. Engaging the regulators in preparation of the draft statement of work was one of our first steps toward accomplishing this goal," he said.

DOE hopes to cultivate a collaborative climate with its stakeholders before this EIS process begins.

– Pete Yerace, NEPA Compliance Officer, Environmental Management Consolidated Business Center

DOE to Offer Early Public Meetings

Through the Advance NOI, DOE will offer to continue to meet with stakeholders in a forum that best suits their needs. Since the court decision, DOE has attended meetings of the EPA-sponsored Santa Susana Field Laboratory Work Group, an ad hoc affiliation of Federal, state, and local regulatory agencies and five representatives of the community. The Work Group is not a decisionmaking body nor an advisory committee, but rather a forum to share information regarding environmental issues related to the Field Laboratory.



DOE conducted nuclear and non-nuclear research and development activities beginning in 1953 at the Energy Technology Engineering Center (ETEC), which occupies about 90 acres of Area IV of the Santa Susana Field Laboratory. All nuclear operations ended in 1988, and DOE decided to close its remaining operations in 1996. The Santa Susana Field Laboratory consists of four areas covering approximately 2,900 acres, which are owned by The Boeing Company and the National Aeronautics and Space Administration (NASA). DOE owns the facilities it used at ETEC.

As part of its early public involvement process, DOE is also collecting updated information to support the EIS analysis in such areas as radiological and hazardous contamination, issues associated with Resource Conservation and Recovery Act constituents, and onsite and offsite groundwater contamination. The NEPA Document Manager for the EIS, Stephanie Jennings, said that "DOE is committed to coordination throughout the EIS process with its stakeholders who have questions and concerns about the EIS and proposed remediation."

For further information on the Area IV EIS process, contact Stephanie Jennings, NEPA Document Manager, at stephanie.jennings@hq.doe.gov or 202-281-5112.

Greater-Than-Class-C LLW EIS (continued from page 1)

As a result, the Energy Policy Act of 2005 (Section 631) required DOE to take several actions regarding Greater-Than-Class-C LLW, including identifying the office to be responsible for preparing an EIS and reporting to Congress before making a final disposal decision.

Early Public Involvement

DOE identified the Office of Environmental Management as the lead organization for preparing the EIS. The Office will work closely with DOE's National Nuclear Security Administration and other DOE offices. DOE invited preliminary public comment on the scope of the EIS in an Advance NOI on May 11, 2005 (70 FR 24775). DOE received comments from the states of Nevada, Oregon, and Washington; the Sacramento Municipal Utility District; the New England Coalition; the Sierra Club; the Nuclear Energy Institute; and the Savannah River Site Citizens Advisory Board. "The comments were substantive and valuable in developing the NOI," said Jamie Joyce, NEPA Document Manager. "They helped in identifying resource areas to include in the EIS, as well as significant issues that need to be considered in developing the disposal strategy for Greater-Than-Class-C LLW."

Several commentors, for example, underscored the need for DOE to clearly present regulatory issues that may be associated with each proposed disposal location and the extent to which the alternatives analyzed would meet applicable requirements. Comments also indicated concerns about the use of "concentration averaging," in which the radioactivity of one component is averaged over the volume or mass of waste to determine applicable waste classifications. This prompted DOE to clarify in the NOI that it would use guidance established by the Nuclear Regulatory Commission (NRC) for concentration averaging to determine when LLW is Greater-Than-Class-C LLW. Other comments on the Advance NOI prompted DOE to modify the EIS period of analysis based on schedules for nuclear power reactor decommissioning and to update the inventory to be analyzed.

Sealed sources are typically a few inches in diameter and have a number of uses, including medical applications to deliver high, localized radiation doses for treatment.

What Is an Advance NOI?

- An Advance NOI is a notice published in the *Federal Register* to inform interested parties of a pending EIS and invite early public comments (10 CFR 1021.311(b)).
- DOE's Advance NOI process does not require a public scoping period or public meetings.
- An Advance NOI cannot substitute for the NOI required by the Council on Environmental Quality (40 CFR 1501.7). Rather, it can be used effectively to help identify public concerns early and frame issues that should be addressed in the NOI and EIS.
- The Advance NOI and public comments received become part of the Administrative Record for the EIS.
- Although not required, DOE's Office of NEPA Policy and Compliance encourages DOE's EIS preparers to include, in the subsequent NOI, a summary of the comments received, along with DOE's response.

DOE Manages Waste Similar to Greater-Than-Class-C LLW

DOE's nuclear defense and research activities generate waste with characteristics similar to Greater-Than-Class-C LLW, including sealed sources, activated metals, and other waste. DOE manages this waste under its Atomic Energy Act authority and intends to include such waste having no path to disposal in the scope of the EIS. Christine Gelles, Director of DOE's Office of Disposal Operations, Office of Environmental Management, explains that, "For the EIS, DOE has adopted the shorthand term, 'GTCC-like LLW' for the radioactive waste regulated by DOE. However, this term does not have the intent or effect of creating a new classification of radioactive waste. We plan to consider use of the same disposal methods and locations in the EIS for both the NRC-regulated and DOE-regulated waste."

Potential Disposal Methods

NRC regulations at 10 CFR Part 61 require that Greater-Than-Class-C LLW be disposed of in a deep geologic repository, but also recognize that "there may be some instances where waste with concentrations greater than permitted for Class C [waste] would be acceptable for near-surface disposal with special processing or design." DOE plans to evaluate deep geologic disposal for the approximately 5,600 cubic meters of Greater-Than-Class-C LLW and GTCC-like LLW in the EIS inventory. DOE also plans to evaluate intermediate depth borehole disposal and enhanced near-surface disposal of these wastes.

While Greater-Than-Class-C LLW that contains radionuclides with longer half-lives may require greater

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Greater-Than-Class-C LLW EIS *(continued from previous page)*

isolation from the human environment or special measures to protect against intrusion, other types of Greater-Than-Class-C LLW containing radionuclides with shorter half-lives may require less extensive measures. Because similar waste management strategies may be appropriate for GTCC-like LLW, DOE has structured its preliminary range of alternatives to allow for co-location of the commercial and DOE wastes. By evaluating different disposal methods at different locations, the EIS would provide flexibility in developing suitable disposal strategies.

Intermediate depth boreholes are typically drilled to more than 98 feet.

In addition, DOE plans to evaluate generic alternatives for borehole and enhanced near-surface disposal under arid and humid conditions. This would allow DOE to make a programmatic decision regarding a new commercial facility. If vendor interest is sufficient to consider specific designs and locations, DOE will conduct additional NEPA review as appropriate.

Candidate Disposal Methods and Locations

Deep Geologic Disposal

- Waste Isolation Pilot Plant, New Mexico
- Yucca Mountain, Nevada

Intermediate Depth Borehole and Enhanced Near-Surface Disposal

- Hanford Site, Washington
- Idaho National Laboratory, Idaho
- Los Alamos National Laboratory, New Mexico
- Nevada Test Site, Nevada
- Oak Ridge Reservation, Tennessee
- Savannah River Site, South Carolina
- Waste Isolation Pilot Plant Vicinity, New Mexico
- Generic location – arid conditions
- Generic location – humid conditions

Public Scoping Meetings

To date, DOE has held seven public scoping meetings at or near the DOE sites identified as potential disposal locations, with remaining meetings scheduled for September 4 in Las Vegas, Nevada, and September 10 in Washington, DC. So far, comments at the meetings have been largely concerned with the location of the disposal facility. While some commentors favor a proposed candidate location, most have expressed concern about locating such a facility near their communities. Mr. Joyce observes that, "It is important to clearly explain during scoping meetings that, in accordance with NEPA, we must consider the range of reasonable alternatives in this EIS, regardless of whether DOE or stakeholders favor or object to them. We cannot eliminate a reasonable disposal location from the EIS scope based merely on DOE's or stakeholders' preferences."

Next Steps

DOE's National Nuclear Security Administration, which is currently recovering unwanted sealed sources from around the country to prevent potentially destructive uses, has a significant role in preparing the EIS. The Environmental Protection Agency will participate with DOE as a cooperating agency, contributing its technical expertise in radiation protection. NRC will provide comments on the Draft EIS.

DOE will report to Congress on the Final EIS, including its analysis of disposal alternatives, as required by the Energy Policy Act of 2005. The Department will then await Congressional action before issuing a Record of Decision regarding the disposal methods and locations.

For More Information

Visit the EIS website at *www.gtcceis.anl.gov*, which contains background and other information, including forms that can be used to submit EIS scoping comments. Interested individuals may register to receive periodic updates throughout the EIS process. Jamie Joyce, NEPA Document Manager, can be reached at 301-903-2151.

Riddle Elementary School students in Mattoon, Illinois, crafted a banner, on display at the Draft EIS public hearing, to show their support for the FutureGen Project.

Public Hearings Show Overwhelming Support for Clean Coal Project

By: Carrie Moeller, *Dade Moeller & Associates*

Carrie Moeller, a technical support contractor for the Office of NEPA Policy and Compliance, has been learning the ins and outs of the NEPA process from the DOE Headquarters perspective for the past year and a half. This summer, she had her first opportunity to witness NEPA in the field – literally and figuratively – when she attended the FutureGen Draft EIS public hearings in east central Illinois.

Flying into east central Illinois, I looked out the window to see a patchwork of varying shades of green squares as far as the eye could see. East central Illinois, an agricultural center, is home to two of the four proposed sites for the FutureGen Project – Mattoon and Tuscola. On June 26 and 28, 2007, I attended public hearings there on the Project's Draft EIS, conducted by DOE's Office of Fossil Energy through the National Energy Technology Laboratory. What I experienced may be surprising to many NEPA practitioners – public hearings aren't always contentious.

"FutureGen Here"

As I was driving into the town of Tuscola, following signs to the FutureGen meeting from the exit off Interstate 57, I was surprised to get my first taste of the public's enthusiasm for the Project *before* arriving at the Tuscola Community Building, the site of the public hearing. On two separate occasions, I almost ended up in the parking lot of local businesses displaying "FutureGen Here" signs, which apparently didn't mean that the meeting was being held there, but that those businesses supported the Project! This same level of support had been experienced by DOE representatives the previous week in Jewett and Odessa, Texas, the two other proposed FutureGen sites.

Four Sites Compete to Host FutureGen

The FutureGen Project would use advanced clean coal technologies, employing integrated gasification combined cycle technology, which, for the first time, would be combined with carbon dioxide capture and geologic sequestration (*LLQR*, June 2007, page 12). The *Draft Environmental Impact Statement for the FutureGen Project* (DOE/EIS-0394), issued in May 2007 for public comment, details the impacts of DOE's proposed action and alternatives to provide financial assistance to the FutureGen Alliance, Inc., a nonprofit consortium of coal producers and electricity generators, to build the FutureGen plant. Four sites, two in Illinois and two in Texas, are competing to host the Project.

Stations, Posters, and Models

The public hearings began with information sessions during which DOE representatives, FutureGen Alliance members, site proponents (representatives of state and local organizations), and DOE contractors who helped prepare the Draft EIS were available to answer questions and receive informal public comments. A "station" was also available for attendees to submit formal written comments and questions on comment cards.

These sessions also featured poster displays (photo), which were colorful and easy to follow and provided information to the public on the Project's proposed timeline, technology, design, and candidate sites. The results from the FutureGen Risk Assessment, included as part of the Draft EIS, and information on the proposed sites' geologic strata and features were also presented using poster displays.

A geochemist with the Illinois State Geological Survey provided a demonstration of the carbon sequestration technology using a physical model. This sequestration model was a popular feature of the meeting, allowing many attendees to learn more about this major component of the Project, which would sequester more than 1.1 million tons of carbon dioxide per year during the power plant's 50-year lifetime.

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FutureGen Public Hearings *(continued from previous page)*

Having knowledgeable people meet with the public and answer their questions is really helpful in alleviating their fears. Tools such as physical models and poster displays can effectively convey the Project's complex technologies to the public.

– Mark McKoy
National Energy Technology Laboratory

BIMBY!

Both meetings were heavily attended with over 100 people present at the Mattoon meeting and over 200 people at the Tuscola meeting. The majority of oral comments were provided by public officials, including staff representing Illinois U.S. Senators and state representatives, local mayors, and city and county board members. They offered their opinions on the advantages of siting FutureGen in Illinois, and one state representative described the Project's bipartisan support, highlighting the "unprecedented scope of cooperation" among many individuals throughout the state. NEPA Document Manager Mark McKoy implemented an important lesson learned from the FutureGen scoping meetings held in the summer of 2006 by limiting public official comments to five minutes to ensure that members of the public did not have to wait long periods of time before having their voices heard.

A representative of the Chicago-based Environmental Law and Policy Center commented that the organization is usually against coal-fired power plants, but not this one. Several "neighbors" of the proposed FutureGen sites also spoke, most in support of the Project. A few suggested solutions to minimize potential noise, aesthetics, and safety impacts. Only one local resident of Tuscola provided an opposing opinion, expressing preference for turning the FutureGen Project into one that uses renewable energy, such as solar or wind power rather than relying on coal-based energy, which she commented has devastated parts of southern Illinois. Overall, the communities exhibited a BIMBY-attitude (Build It in My Backyard) rather than the NIMBY-attitude (Not In My Backyard) more frequently encountered at environmental hearings.

Next Steps

The public comment period on the Draft EIS closed July 16, 2007. DOE received comments on the Draft EIS from more than 150 individuals and organizations,

Physical models, like the one developed by the Illinois State Geological Survey and demonstrated by the Survey's Sallie Greenberg, showed the public how underground sequestration occurs and how the fluids (carbon dioxide) flow from an injection well into the reservoir of porous and permeable subsurface layers of rock.

which will be considered in the preparation of the Final EIS. Not all of the public comments were positive. Some commentors expressed concerns about the adequacy of the Draft EIS's carbon dioxide plume modeling and presentation of carbon dioxide capture rates, the need for further characterization of candidate sequestration sites, and the Project's nitrogen oxide and mercury emissions.

The Office of Fossil Energy plans to issue the Final EIS and the Record of Decision (ROD) in the fall of 2007. In the ROD, DOE could choose not to fund the Project or it could identify one or more sites that it considers acceptable, from which the Alliance would then select a host site. Thereafter, the Alliance would conduct extensive site characterization and DOE would prepare a supplement analysis to determine whether a supplemental EIS is required (*LLQR*, March 2006, page 7).

Additional information about FutureGen is available on the Office of Fossil Energy website at *www.fossil.energy.gov/programs/powersystems/futuregen* and the Alliance website at *www.futuregenalliance.org*. Mark McKoy can be reached at mmckoy@netl.doe.gov or 304-285-4426.

NRC Supplementing EA to Address Terrorist Acts

The Nuclear Regulatory Commission (NRC) has issued a *Supplement to the Environmental Assessment and Draft Finding of No Significant Impact [FONSI] for the Diablo Canyon Independent Spent Fuel Storage Installation* (ISFSI) (72 FR 30398; May 31, 2007) in response to a June 2006 decision by the U.S. Court of Appeals for the Ninth Circuit holding that NRC must consider the potential impacts of terrorist acts under NEPA. This supplement to the EA addresses the environmental impacts from potential terrorist acts against the Diablo Canyon storage facility, NRC stated in its notice soliciting public comment. The public comment period closed on July 2, 2007, and the NRC schedule is to complete the EA in September 2007.

In the supplement to the EA, NRC describes security requirements for the proposed storage facility, including the continual evaluation of the threat environment, protective measures, robust design of the proposed storage systems, and security assessments of potential consequences of terrorist attacks. In the supplement to the EA, NRC explains its approach: "To provide high assurance that a terrorist act will not lead to significant radiological consequences, NRC has analyzed plausible threat scenarios and required enhanced security measures to protect against the threats, and has developed emergency planning requirements, which could mitigate potential consequences for certain scenarios." These steps have been taken without regard to the probability of an attack, NRC states.

In addition, NRC staff compared the assumptions in prior generic security assessments for spent fuel storage facilities "to the relevant features of the Diablo Canyon ISFSI. Based on this comparison, the staff determined that the assumptions used in these generic security assessments, regarding the storage cask design, the source term (amount of radioactive material released), and the atmospheric dispersion, were representative, and in some cases, conservative, relative to the actual conditions at the Diablo Canyon ISFSI. . . . In many scenarios, the hypothetical dose to an individual in the affected population could be substantially less than 5 rem, or none at all. In some situations, emergency planning actions could provide an additional measure of protection to help mitigate the consequences, in the unlikely event that an attack were attempted at the Diablo Canyon ISFSI."

NRC received about 30 comment documents, including a number of comments critical of the supplement to the EA and proposed FONSI. Among the criticisms is that NRC downplays potential environmental impacts and does not adequately consider cumulative impacts, has not made key documents available to the public, and should consider an alternative storage method known as Hardened On-Site Storage (which provides additional physical barriers compared to dry cask storage).

The EA supplement and draft FONSI are available on the NRC's website at *www.nrc.gov/waste.html* by selecting "Diablo Canyon ISFSI License Application." For further information, contact James (Randy) Hall, NRC, at jrh@nrc.gov or 301-492-3319. *LLQR* reported on the court decision in September 2006 (page 19) and will provide further updates as NRC completes its NEPA process.

NEPA Compliance and NRC Licensing of New Reactors

A final rule for Licenses, Certifications, and Approvals for Nuclear Power Plants (10 CFR Part 52 and other parts) issued by NRC on August 28, 2007 (72 FR 49352) addresses procedural changes, including for NEPA compliance, for five aspects of the licensing process: early site permits, standard design approvals, standard design certifications, combined licenses, and manufacturing licenses. The final rule is based on experience gained by NRC since 1989 when it first proposed an alternative to the two-step (construction and operating) licensing process for reactors, as well as public comments received during the rulemaking process. NRC has so far certified four standard reactor designs and has started receiving license applications to build new reactors according to those designs.

NRC expects the final rule to improve its "regulatory effectiveness and efficiency in implementing its licensing and approval processes." Among several changes affecting the NRC NEPA process are requirements for the submittal of environmental information and the "legal equivalent of a categorical exclusion" for issuance of a standard design certification.

Some of the reactor license applications are being prepared under DOE's Nuclear Power 2010 program (*nuclear.energy.gov/np2010/neNP2010a.html*), which provides for cost sharing with industry in order to demonstrate the combined licensing process. DOE also is involved with some nuclear utilities in demonstrating NRC's Early Site Permit process, which enables completion of the site evaluation component of nuclear power plant licensing before a utility makes a decision to build a plant.

Additional information on NRC's reactor licensing activities is available at *www.nrc.gov/reactors/new-reactor-licensing.html.*

EPA Issues Memorandum on Fine Particulate Rule and NEPA

A new National Ambient Air Quality Standard for fine particulates ($PM_{2.5}$) should be reflected in NEPA evaluations, advised Anne Norton Miller, Director, Office of Federal Activities, Environmental Protection Agency (EPA), in a June 25, 2007, memorandum to EPA regional reviewers of Federal agency NEPA documents. A final rule (71 FR 61144; October 17, 2006), which became effective on December 18, 2006, lowered the 24-hour standard for $PM_{2.5}$ from 65 µg/m^3 (micrograms per cubic meter) to 35 µg/m^3 to better protect the public from short-term fine particulate exposure.

The EPA memorandum states that the new 24-hour standard should be used in addition to the 15.0 µg/m^3 annual standard in modeling air quality, assessing health impacts, determining the significance of impacts, and evaluating potential mitigation measures for all proposed actions for which NEPA decision documents (findings of no significant impact or records of decision) have not yet been issued. The memorandum recommends considering supplementing NEPA reviews that have been completed for proposed actions that have not yet been implemented.

DOE's NEPA Compliance Officers should work with NEPA Document Managers in directing EA and EIS preparers regarding use of the new standard. EISs submitted for approval should appropriately reflect the new standard.

For conformity evaluations, the revised $PM_{2.5}$ standard of 35 µg/m^3 does not apply until one year after the effective date of nonattainment designations that consider that standard (Clean Air Act Section 176(c)(6) and 40 CFR 93.102(d)). However, conformity evaluations must be completed for current nonattainment and maintenance areas designated under the previous standard (Clean Air Act Section 176(c)(5)).

The EPA memorandum is available on the DOE NEPA website under New Guidance Tools, at *www.eh.doe.gov/nepa/new_guidance.html*. DOE guidance on Clean Air Act General Conformity Requirements and the National Environmental Policy Act (April 2000) is at *www.eh.doe.gov/nepa/tools/guidance/volume2/2-7-caaconformity.pdf*. Questions regarding DOE-related Clean Air Act issues should be addressed to Ted Koss, Office of Nuclear Safety and Environmental Assistance, Office of Health, Safety and Security, at theodore.koss@hq.doe.gov or 202-586-7964. Information on the National Ambient Air Quality Standards for particulate matter can be found at *www.epa.gov/air/particlepollution/index.html*.

What is $PM_{2.5}$?

$PM_{2.5}$ is particulate matter, a mixture of solid particles and liquid droplets found in the air, with a diameter of 2.5 micrometers or less. The sources of $PM_{2.5}$ include fuel combustion from automobiles, power plants, wood burning, industrial processes, and diesel-powered vehicles such as buses and trucks. These fine particulates are also formed in the atmosphere when gases such as sulfur dioxide, nitrogen oxides, and volatile organic compounds (all of which are also products of fuel combustion) are transformed in the air by chemical reactions. Fine particulates pose risk to human health and the environment. (Condensed from *www.epa.gov/region4/sesd/pm25/p2.htm*.)

DOE Cooperating Agency in Department of State EIS

With seven cooperating agencies, including DOE, the Department of State has issued its first Draft EIS, *Proposed TransCanada Keystone Pipeline Project* (72 FR 44908; August 9, 2007). During a 45-day comment period, the State Department will hold public hearings in each of the seven states that would be crossed by the pipeline. DOE's Western Area Power Administration (Western) would have connected actions in North and South Dakota to serve pump stations along the proposed route and will participate in the hearings in those states. The public comment period ends September 24, 2007.

The proposed Keystone Pipeline Project would transport crude oil from Alberta, Canada, through North and South Dakota, Nebraska, Kansas, and Missouri to a terminal in Illinois and possibly one in Oklahoma. The U.S. portion of the pipeline would be approximately 1,400 miles long. For further information on the Department of State Draft EIS, contact Elizabeth (Betsy) Orlando at keystoneEIS@state.gov or 202-647-4284, or visit the Keystone EIS website at *www.keystonepipeline.state.gov*. For information on Western's connected action, contact Dirk Shulund at shulund@wapa.gov or 406-247-7402.

Transitions
Reflections of a Retiring NCO
Steve Frank, Formerly of Environmental Management

This 4th of July was truly Independence Day for Steve Frank, who retired the previous day after almost 38 years of Federal service, the last eight of them as the Office of Environmental Management's (EM's) NEPA Compliance Officer (NCO). We asked him to provide LLQR *with his reminiscences and recommendations from a long NEPA career.*

Where I was coming from: I started working with NEPA shortly after the law was signed by President Richard Nixon. At that time I was an activist with several local environmental groups. I was spending many evenings and weekends filing lawsuits under NEPA against various Federal agencies, while working during the day as a government program analyst.

Eventually, in 1975, I agreed to a friend's request to do during the day what I had been doing in my spare time – I started running an environmental office for the Federal Energy Administration's fuels conversion program, beginning a 32-year affair with Federal NEPA work. The first thing I did was reread the 1969 statute, which I recommend that the DOE NEPA Community do periodically for renewed NEPA understanding and inspiration. Another worthwhile regular reading is the Council on Environmental Quality's *Forty Most Asked Questions*.

Thus began a long Federal NEPA career that has had a lot more ups than downs, more highs than lows, certainly more interesting than boring work, and a diversity of activities that meshed well with my hyperactive personality. There was a lot of on-the-job-training in the 1970s when NEPA was in its infancy. During my time with the Federal Energy Administration and then with DOE starting in 1977, we prepared most NEPA documents largely internally, including programmatic EISs like the one for the 1978 Fuel Use Act (DOE/EIS-0038, 1979).

Back in the 1970s it seemed to me that Federal government NEPA practitioners generally did not appreciate the subtleties and power of the law. Our "stakeholders" were better informed about NEPA than the Feds and willing to take action to get agencies to meet their NEPA responsibilities. I was frustrated that with most changes in administration, NEPA lessons needed to be taught all over again. But it was very rewarding when someone "saw the light," such as Admiral James Watkins (Secretary of Energy, 1989–1993) becoming a strong advocate of NEPA (*LLQR*, June 2003, page 19).

On managing EM's NEPA activities: At any one time, EM has a huge number of ongoing EISs, EAs, and supplement analyses – mostly at the Field Offices. I helped management keep track of EM's NEPA activities through a bimonthly summary updating the status of the reviews for major proposed actions and the implications of the results of those environmental analyses on aspects of the proposals. I highly recommend this to other NCOs. It provided a focus for my regular discussions with project managers, NEPA Document Managers, and – very importantly – the Field NCOs on whom I relied.

The Headquarters NCO complements the Field NCOs, and is responsible both for overseeing and supporting them and for gathering and distributing information. Serving as NCO in a Program with diverse Field Offices was challenging, but usually greatly appreciated.

On retirement: Retiring was a very difficult decision for me since I continued to really enjoy the work and the community of people I was fortunate enough to work with. However, it was time to do other things and play with other people while I still could.

Let me thank all in the NEPA community so very much for your hard work, support, and friendship. I've known many of you for a bunch of years while together we implemented NEPA at various times, forums, levels, etc. I can truly say that I have enjoyed the work thoroughly (although sometimes more thoroughly than others), and it has been a great pleasure and honor to work with you. I wish you and your families the best of everything.

As Spock would say, "Live long and prosper."

Warm regards to you, my friends,

As NCO, Steve contributed to the success of many DOE NEPA reviews, from the Waste Management Programmatic EIS to many project EISs and EAs. At his retirement celebration, however, NEPA Office Director Carol Borgstrom asked him to refrain from increasing Program workloads by submitting public comments on our NEPA documents. ☺ At that event, many people, including EM Chief Operating Officer Ines Triay, expressed appreciation for his dedicated efforts. In addition to his NEPA duties, Steve was a leader in planning Special Emphasis Programs sponsored by DOE's Office of Economic Impact and Diversity and interagency groups. On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance conveys to Steve Frank best wishes for success and satisfaction in his future endeavors.

(continued on next page)

Transitions *(continued from previous page)*

New NEPA Compliance Officers

Ms. O'Conor recently guided the transfer of a uranium tailings site in Split Rock, Wyoming, to Legacy Management for long-term stewardship.

Environmental Management: Tish O'Conor

Letitia (Tish) O'Conor has been designated NEPA Compliance Officer (NCO) for the Office of Environmental Management (EM), replacing Steve Frank who retired in July. She hails from the Office of Legacy Management, where she worked on site transitions from cleanup activities to land reuse projects and DOE stewardship. Previously, she served for 10 years with EM, where she was project manager for EM's 2001 Long-Term Stewardship Study and worked on regulatory compliance and NEPA-related activities. She also worked briefly for the Office of Environment, Safety and Health, where in 1994 she reviewed compliance issues at the Savannah River Site. Before joining DOE, Ms. O'Conor prepared environmental assessments and worked on waste management and Comprehensive Environmental Response, Compensation, and Liability Act issues for the Environmental Protection Agency and as an environmental consultant. She can be reached at letitia.o'conor@hq.doe.gov or 202-586-6570.

Environmental Management Consolidated Business Center: Pete Yerace

Relocating from the Ohio Field Office to the Environmental Management Consolidated Business Center in Cincinnati, Ohio, Pete Yerace now serves as the Business Center's NCO. Mr. Yerace served as the NEPA project lead for Westinghouse Environmental Management Company for several years before coming to DOE. While working for DOE over the past 15 years in the areas of environmental remediation, waste management, and natural resource restoration, Mr. Yerace held the position of Natural Resource Trustee for the DOE Fernald site for seven years. In this capacity, he was part of numerous NEPA recommendations and environmental reviews. As his first task as the EM Consolidated Business Center NCO, Mr. Yerace will play a major role in the Area IV EIS (related article, page 3). He can be reached at pete.yerace@emcbc.doe.gov or 513-246-0598. LL

Although a new NEPA Compliance Officer, Pete Yerace is not new to the NEPA process.

Who Are Our NCOs?

Former Secretary of Energy Admiral James Watkins established the DOE NEPA Compliance Officer position through Secretary of Energy Notice 15-90 (February 2, 1990). The specific responsibilities of the NCO were first enumerated in the 1991 revision of the DOE NEPA Order, *National Environmental Policy Act Compliance Program*, (DOE O 5440.1D). (The current DOE NEPA Order, DOE O 451.1B, is available on the DOE NEPA website, *www.eh.doe.gov/nepa*, under NEPA and Related Requirements.)

DOE currently has 49 NCOs representing each Program and Field Office across the DOE complex. For a listing of these individuals and their contact information, see Appendix A of the *Directory of Potential Stakeholders for DOE Actions under NEPA* at *www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf* (related article, page 13). To learn more about the NCOs' backgrounds and day-to-day experiences, we recommend reading *A Closer Look at the DOE NEPA Compliance Officers* (*LLQR*, June 2005, page 1).

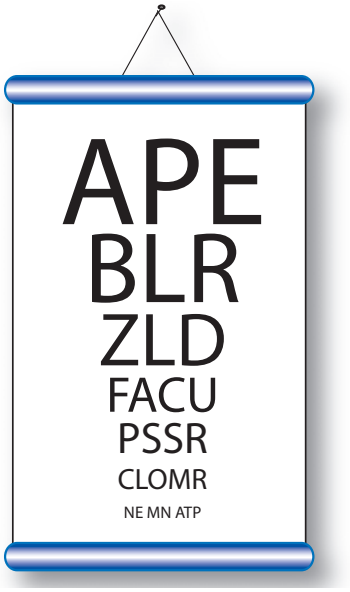
MIETRAU*

It *is* possible to use only a few abbreviations in a large EIS for a complex, technical proposal. This good practice facilitates public understanding of DOE's proposals and associated issues and reduces the reader's need to refer repeatedly to a list of abbreviations.

The preliminary draft supplemental EIS for the Yucca Mountain Rail Corridor and Rail Alignment (*LLQR*, December 2006, page 1) currently under internal review, for example, uses 15 abbreviations for the approximate 3,000-page, 4-volume document, being prepared with 3 cooperating agencies. In contrast, another DOE EIS also under internal review has more than 350 abbreviations.

Below are some suggested strategies for limited but effective use of abbreviations:

- Start with the principle that *no* abbreviations will be used. Then use only abbreviations that make the text significantly more readable.
- Consider abbreviating phrases and names of agencies and statutes that are mentioned many times, such as *DOE* and *NEPA*. Avoid abbreviating names or phrases that appear infrequently.
- Use part of a name or phrase instead of an abbreviation, such as *Commission* as a short version of *Nuclear Regulatory Commission*.
- For abbreviations used in tables, provide definitions in table footnotes.
- Steer clear of abbreviations unique to your project.
- Avoid using an abbreviation as a shortcut for technical phrases. For example, for *secondary maximum contaminant level*, it may be better to repeat this phrase rather than using *SMCL*.
- However, use standard abbreviations for units of measurements if the unit names are cumbersome. For example, *dB(A)* is more workable than repeated use of *decibels as measured on the A-weighted scale*.
- Use abbreviations that are universal, such as *a.m.*, *p.m.*, *AD*, *BC*, and *U.S.*, without identifying them in the abbreviation list. Use judgment.



*Don't let your NEPA document resemble an eye chart!***

Also refer to earlier suggestions that stemmed from another EIS related to the proposed use of Yucca Mountain as a geologic repository (*LLQR*, December 2000, page 8). LL

* *Make it Easy to Read and Understand.*

** *Recently spotted in DOE NEPA documents: Area of Potential Effect; Big Lost River; Zero Liquid Discharge; Facultative Upland Plant Species; Preliminary Site Suitability Report; Conditional Letter of Map Revision; Northeast Minnesota Area Transportation*

Schedule Change: NAEP Award Nominations Due September 30!

The National Association of Environmental Professionals (NAEP) has announced that it has changed the deadline for award nomination submissions to September 30 – earlier than in past years. As stated on the NAEP website, this date better reflects the organization's annual conference planning schedule and will allow more time for nomination reviews, decisions, and notifications.

NAEP National Environmental Excellence Awards will be presented at the 12th annual conference, *Changing Climates*, which will be held in San Diego, California, from March 25–28, 2008. Awards are offered in eight categories, including NEPA Excellence, Public Involvement/Partnership, Educational Excellence, Environmental Management, and Environmental Stewardship. NAEP membership is not required for entry.

Winners will be invited to present their program or project at a technical session at the conference. Additional information, including instructions and award nomination forms, is provided on the NAEP website (*www.naep.org*).

Updated *Stakeholders Directory* Issued; *Many Contacts Prefer Compact Disks*

A new *Directory of Potential Stakeholders for DOE Actions under NEPA* (24th Edition, July 2007) has been issued. The information in the *Directory*, updated annually, is meant to supplement lists of affected or interested parties that DOE Offices compile for particular projects or facilities. This *Directory* complements the June 2006 guidance on *EIS Distribution* (*www.eh.doe.gov/nepa* under New Guidance Tools).

The 2007 *Directory* identifies some 350 potential NEPA document reviewers in Federal agencies, states, and national and regional nongovernmental organizations. As in the past, the *Directory* lists stakeholder preferences for receiving an EIS as paper copy, compact disk, or a notice of posting online. More stakeholder contacts than ever have indicated their format preferences – 90% in the current *Directory*, compared to 61% last year.

Paper Copies Still Needed

Stakeholders' responses show an increased preference for compact disks over paper copies. Paper copies are still requested by almost half of the stakeholders listed in the *Directory*, however, and should remain a format option for each NEPA document. When multiple formats are available, 56% of the contacts who indicated a preference want to receive a NEPA document only on compact disk (up from 33% in the 2006 edition); 24% want only a paper copy (down from 38%); and 21% want both (down from 29%). Few stakeholders wish to rely only on a notice of the posting of a NEPA document online, but several request fewer paper copies or disks if it is also available online.

Directory a Key Planning, Coordination Tool for Document Managers

With advance planning and use of the *Directory*, a NEPA Document Manager can achieve cost savings while still meeting stakeholder preferences. (See *LLQR*, March 2003, page 9, to learn how appropriate use of compact disks saved DOE $200,000 during distribution of the Yucca Mountain Final Repository EIS.)

For the convenience of NEPA Document Managers, the *Directory* also provides appendices that identify DOE contacts who may be involved in certain aspects of NEPA document coordination and distribution: NEPA Compliance Officers, Departmental and National Laboratory Public Affairs Directors, and points of contact for tribal issues.

For More Information

The *Directory* has been distributed to the DOE NEPA Community and posted on the DOE NEPA website (*www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf*) to allow copying of selected contact information into applications such as word processing to produce mailing lists, letters, or labels. For more information or to suggest additional organizations for the 2008 edition, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326. LL

BLM Issues Categorical Exclusion for Exploratory Actions

The Bureau of Land Management (BLM) recently finalized a new policy that establishes a categorical exclusion for authorizing geophysical (i.e., seismic) exploration activities.

The new categorical exclusion applies to exploration techniques such as seismic waves, which are used to locate oil and natural gas deposits. It is one of several new categorical exclusions created by BLM's revised *NEPA Handbook*, which the agency issued on August 14, 2007.

In its *Federal Register* notice (72 FR 45504; August 14, 2007), BLM responded to concerns that geophysical exploration activities have potentially significant impacts to environmental and cultural resources. BLM stated that it reviewed 244 geophysical exploration projects and concluded that "the data analyzed and reviewed by the BLM validate the assertion that the impacts from geophysical operations would not be significant." The notice further said that BLM had seldom been sued over the exploration projects it allowed, and, when it had been, courts had stopped short of finding that the exploration method should not be used. LL

My Summer Internship at the NEPA Office

By: Kristen Penderghest

As a member of the National Society of Collegiate Scholars' Distinguished Scholars Program, Temple University senior Kristen Penderghest spent her summer in Washington, DC, taking a course at Georgetown University and preparing for a career in environmental policy by interning at the Office of NEPA Policy and Compliance.

It is certainly quite fitting that I am writing for a publication entitled "Lessons Learned," because I have done nothing *but* learn during my summer internship in the Office of NEPA Policy and Compliance. Sure, I have discovered much about the NEPA statute itself, the ins and outs of an office, and what it is like to work for a Federal agency, but most importantly, I have been better able to determine the type of career I want once I walk down that aisle in cap and gown. And that's a good thing, because graduation is right around the corner!

When I was offered my internship at DOE, I have to admit that I had no idea what I was getting into, let alone what "NEPA" stood for. As a political science major, I knew interning in our nation's capital for a Federal agency would be a great opportunity, so I hoped the pieces would fall into place. At first, I was a bit overwhelmed with talk of nuclear energy and waste removal – something we didn't talk about in my very liberal arts education back at Temple University. But I knew that regardless of what I thought initially, it was going to be a learning experience, and that I had to jump in with both feet if I was to get anything valuable from this internship. And I'm certainly glad I did.

On a day-to-day basis, my tasks have run the gamut from simply making copies and printing out files, to attending meetings and listening in on conference calls, to reviewing preliminary draft EISs. At first, I did a lot of listening, as so much of this information was new to me. But I tried to absorb as much as possible, and I think I started piecing things together pretty well. My most frequent task this summer by far was critical reading. Once I learned the basic NEPA process (by reading of course!) I was able to assist in the review and revision of EISs by looking through public comments and noting any inconsistencies in some of DOE's proposed responses. Not only was this a valuable experience in that I was able to learn the format of EISs and how the comment/response process works, but I was able to see how seriously public participation is considered within the NEPA process. It was this latter lesson that I valued most.

My experience at DOE has certainly opened my eyes to the many unique and different career possibilities that exist. I have learned from the career histories of my mentors, the different offices within DOE, and the other agencies, contractors, and organizations that DOE works with that there are almost limitless options. Equally as important, I have determined the road I *do not* want to travel down and learned more about my own likes and dislikes, how my education can apply to the "real world," and how my beliefs and lifestyle can mesh with my career choice. With this in mind, I now know that working in public service and in the field of environmental justice is definitely a career path I hope to follow.

When applying for this intern program, I knew that, regardless of the position, the experience would be invaluable. Working for DOE's NEPA Office has certainly been an excellent opportunity that I will never forget, helping me to better understand the Federal government, the "workaday world," and myself. Before coming to Washington this summer, I was very unsure of what I wanted to do after graduation. Now I can say with confidence that the picture is becoming much clearer.

So often people believe that the government works either above or against them; however, the NEPA process clearly works for and with them, and it was refreshing to be able to see that process in action.

– Kristen Penderghest, Future NCO?

As her supervisor and on behalf of everyone in the NEPA Office, I want to publicly thank Kristen for all her help this summer. She has certainly raised the bar for future summer interns. She is mature, self-confident, intelligent, and hard-working and has a very bright future in whatever field she chooses – we hope it will be NEPA. While completing her last semester, Kristen is participating in another environmental internship, at the Urban Green Partnership, a nonprofit organization that helps community residents and businesses learn how to live more eco-friendly and assists regional organizations with their efforts in environmental education, lifecycle awareness, and local green initiatives. We wish her all the best in her remaining studies and future career.

Jim Daniel, Office of NEPA Policy and Compliance

WorldWideScience.org Opens for Public Access

With a single inquiry, citizens and scientists may now simultaneously search 19 international science portals for information that is not easily accessible through popular commercial search engines. The search is free, the results are ranked in order of relevance, and much of the resulting information is free and in public domain. *WorldWideScience.org*, a partnership between DOE's Office of Scientific and Technical Information (OSTI, within the Office of Science) and the British Library, enables searches of 200 million pages of information (equivalent to a bookcase seven miles long) in fields such as environment, energy, and basic science.

Gateway to 19 Portals

In June and July 2007, the site was used to perform almost 90,000 scientific searches. Although impressive, this number is not entirely representative of the site's use or value, noted Walter Warnick, OSTI Director and DOE's Senior Information Management Executive. *WorldWideScience.org* is different from many other web-based tools, which try to retain customers at their sites, because it is designed as a "gateway," aiming to direct customers to its affiliated databases and resources. For example, a DOE NEPA Document Manager might start a search for cumulative impacts information at *WorldWideScience.org*. Finding that several of the highest-ranked results come from a little-known (in the United States) British database called the Electronic Table of Contents (ETOC), the Document Manager then decides to go to ETOC directly to continue the search. Subsequent ETOC searches do not "count" as web traffic for *WorldWideScience.org*, but redirecting customers is the goal of the site and is considered "a success for everyone concerned," Dr. Warnick explained.

No More "Door-to-Door" Searching

"The world is dotted with large and often isolated web-based collections of scientific information," explained Dr. Warnick. Before *WorldWideScience.org*, a researcher would have to know that these collections existed (unlikely) and then search them each in a "door-to-door" fashion (impractical). *WorldWideScience.org*, however, allows these portals to be searched in parallel, with only one query, thereby saving time and effort. Additionally, much of the information available through *WorldWideScience.org* was only recently made accessible to the public. This includes the information on ETOC, which, Dr. Warnick reports, is considered by many to be the world's best open access tool for cross-publisher searching of journal literature in the physical sciences.

Global Information Sharing

So far, 11 other nations have made their scientific collections searchable through the gateway. To increase and enhance global use of *WorldWideScience.org*, the Office of Science plans to introduce a language translation tool so that English-speaking users can access and understand non-English resources, and non-English speaking customers can access and understand the sources in English. Efforts also are underway to provide access to additional scientific databases, including those that, due to international agreements and other reasons, require special authentication.

For more information, contact Walter Warnick at walter.warnick@science.doe.gov or 301-903-7996.

For U.S. and DOE scientists, researchers, and engineers to accelerate their work, they need access to global scientific knowledge. WorldWideScience.org *provides this access, using pioneering technology to search and find science that is mostly "non-Googleable."*

– Walter Warnick, Office of Scientific and Technical Information

Is This Reasonable?
A Review of NEPA Alternatives Analysis Case Law

By: Michael D. Smith, *Associate Professor, Humboldt State University*

As stated in the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), the analysis of alternatives is the "heart" of the environmental impact statement. Although the regulations are more than 25 years old, litigation continues to address the question of what constitutes a legally-compliant alternatives analysis. A study of challenges to alternatives analyses in NEPA documents in the Federal Courts of Appeals during 1996–2005 showed that agencies were predominantly successful in defending against such challenges, winning 30 of the 37 cases. The study also identified five lessons and some practical steps to prepare an alternatives analysis that will likely prevail in legal challenge.

Lesson #1 – An agency should explain its reasoning in regard to its determination of the range of reasonable alternatives analyzed.

In nearly every case that challenged an agency's exclusion of an alternative from detailed analysis, the agency prevailed if it had explained its reasoning and lost if it was silent. The most legally-sound reason is that the alternative does not meet the stated purpose and need for agency action. Many of the court decisions noted that there is no set minimum number of alternatives required to be analyzed in a NEPA document.

Lesson #2 – An agency should carefully consider a request from another agency, individual, or organization to consider an alternative in detail because it is reasonable.

The courts make it clear that agencies are not obligated to fully analyze every alternative suggested to them, but if a suggested alternative can be construed as "reasonable," it must be analyzed unless a well-reasoned explanation is provided. In all seven cases lost by Federal agencies, they did not adequately explain their decisions not to fully analyze suggested additional alternatives.

Lesson #3 – An agency should explain its statement of purpose and need.

The courts deferred to an agency's statement, except when the agency did not provide a valid reason for constructing its statement as it did, or narrowed the statement so much that only one alternative was reasonable. In several cases, the courts indicated that Federal agencies could give substantial weight to the purpose and need of private applicants when considering requests from them. In other words, this can be a permissible justification for an agency to narrow its range of reasonable alternatives.

The most common claims were failure to consider the full range of reasonable alternatives and an improperly narrow statement of purpose and need, which limited the alternatives considered reasonable.

– A Review of NEPA Alternatives Analysis Case Law

Lesson #4 – The no-action alternative does not appear to be a legal vulnerability.

Agencies were challenged on construction of the no-action alternative five times during the 10-year period, and prevailed in all five cases.

Lesson #5 – Analysis of only two alternatives in an EA may be appropriate under certain circumstances.

In the three cases that addressed this issue, the court found in favor of the agency and noted that where analysis of the proposed action revealed no potential for significant impacts, developing additional alternatives was not required by NEPA or the CEQ regulations. One decision noted that several courts have agreed that "the obligation to consider alternatives in an EA is a lesser one than under an EIS."

These court decisions indicate that when Federal agencies construct an appropriate statement of purpose and need, analyze in detail the range of reasonable alternatives that meet the stated purpose and need, and provide rationale for dismissing other alternatives from detailed analysis, they will nearly always be successful if they face future litigation on the analysis of alternatives.

LLQR *thanks Michael D. Smith, Associate Professor, Department of Environmental and Natural Resource Sciences, Humboldt State University, for this contributed article. Professor Smith is currently an American Association for the Advancement of Science (AAAS) Science & Technology Policy Fellow at the Environmental Protection Agency and serves as Chair of the National Association of Environmental Professionals (NAEP) NEPA Working Group. This article is a summary of a paper of the same title presented at the April 2006 NAEP Conference. A revised version of the article was published in the March 2007 issue of* Environmental Impact Assessment Review. *Professor Smith can be reached at michael.smith@humboldt.edu.*

Litigation Updates

Other Agency NEPA Litigation

While DOE is involved in several lawsuits involving NEPA issues, there are no significant recent developments in these cases.

With this issue, LLQR *introduces a new format for summarizing the outcomes of NEPA litigation involving agencies other than DOE. Case summaries draw heavily from the language of the court's opinion, signified by the computer icon (💻), which in* LLQR *online (*www.eh.doe.gov/nepa/lessons.html*) links to the full opinion.* ***We encourage readers to examine the full opinion for cases of interest.***

Five recent case opinions are summarized below, listed alphabetically by lead plaintiff.[1] These are cases with opinions published since early 2006 that involve issues of potential interest to NEPA practitioners and that were not previously covered in LLQR.

- *In* Center for Food Safety*, the court found no evidence that an agency had invoked a categorical exclusion at the time it decided to take an action.*
- *In* Citizens for Better Forestry*, the court found that promulgation of a final rule for land management planning could not be categorically excluded because the rule established an approach to planning that differed significantly from the agency's previous approach and had the potential for environmental impacts.*
- *The NEPA finding in* Environmental Protection Information Center *focused on an overly narrow statement of purpose and need, which limited the range of reasonable alternatives to just the preferred alternative.*
- *In* Navajo Nation*, the court found that an EIS did not adequately address potential impacts to human health, although it was adequate with respect to the range of reasonable alternatives, response to a responsible opposing scientific viewpoint, and other impact analyses.*
- *In* State of California*, the court found that a rulemaking with potential for significant environmental impacts could not be categorically excluded as "strictly procedural" and could not rely on earlier NEPA review for a previous, significantly different version of the rule.*

Center for Food Safety v. USDA Animal and Plant Health Inspection Service

- ***Agency Action:*** The U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), issued permits to four companies to plant genetically-engineered pharmaceutical-producing corn and sugarcane in Hawaii for limited field testing.
- ***NEPA Issues:*** APHIS did not prepare an EA or EIS for the permit issuance, but claimed during litigation that a categorical exclusion applied. The court found that the agency violated NEPA, stating that it could find nothing in the administrative record to indicate that APHIS had considered, when deciding to issue the permits, whether the action fit the category and whether there were extraordinary circumstances. Although a categorical exclusion might have applied, the court did not accept APHIS's post hoc reasoning, stating that ***"At a bare minimum, an agency must state – at the time it engages in the action in question (and not just when engaged in subsequent litigation) – that it is invoking a categorical exclusion."***
- ***Other Issues:*** The court found that APHIS violated the Endangered Species Act by not obtaining information from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service about listed species and critical habitats before taking action.
- U.S. District Court, District of Hawaii.
  Case No.: 03-00621; August 10, 2006. 💻

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[1] Many cases have multiple plaintiffs and defendants, which can change over the duration of litigation. In LLQR *Litigation Updates, cases are referred to by the lead plaintiff and first defendant agency as identified in the opinion (but omitting "et al."). Thus, the defendant in cases involving the USDA Forest Service, for example, may be identified as USDA or USDA Forest Service in* LLQR*, and in the broader literature as the name of the Secretary of Agriculture or the Chief of the Forest Service.*

Litigation Updates (continued from previous page)

Citizens for Better Forestry v. USDA Forest Service

- ***Agency Action:*** When USDA Forest Service issued a rule that modified its process for land and resource management planning in January 2005 (*LLQR,* March 2005, page 6), the agency applied a categorical exclusion for "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions" although it had prepared EAs for previous planning rules in 1982 and 2000. The Forest Service based its new planning rule on its experience, stating that land management plans are comprised of strategic components that do not have specific impacts that can be analyzed. The Forest Service reasoned that land management plans themselves could be categorically excluded, and the new planning rule eliminated the requirement for an EIS for each plan, a requirement that had been in the forest planning procedures since established in 1979.
- ***NEPA Issues:*** The court found that the categorical exclusion used for the 2005 rule had never been invoked to justify projects of the scope or magnitude of a "wholesale adoption of nationwide rules" with broad revisions in planning practices. In defending its use of a categorical exclusion for the planning rule, the Forest Service argued that, given the broad nature of the rule, it does not change the physical environment in any way, and that an EA or EIS was not feasible until future site-specific actions are proposed. The court found this argument unpersuasive, given that such analysis had been undertaken previously for programmatic rules and actions. ***The court agreed with the Forest Service that evaluating the environmental effects of programmatic actions is difficult. "However," the court noted, "this does not mean that environmental analysis regarding broad programmatic changes cannot take place."***

  The court said that no record exists of any environmental analysis for the 2005 rule and as a result it had no basis upon which to find an absence of significant effects. The court identified three considerations under the CEQ regulations why the 2005 rule may have significant effects: its effects are controversial, it may establish a precedent for further actions with significant effects, and it may be related to other actions with cumulatively significant impacts. ***Because the rule may have significant environmental impacts, the court found, the use of a categorical exclusion was inappropriate.***
- ***Other Issues:*** The court found that the Forest Service had violated the Administrative Procedure Act in not providing for public review of the 2005 rule; the new rule constituted a "paradigm shift" from a 2002 proposal and earlier rules – as the agency noted in its rulemaking notice (70 FR 1024; January 5, 2005) – and substantive changes (such as elimination of resource protection standards and public involvement in monitoring of logging operations) were neither "logical outgrowths" of the 2002 proposed rule nor "natural drafting evolutions." The court found that the Forest Service had violated the Endangered Species Act; because the agency did not initiate consultation with the U.S. Fish and Wildlife Service and had no documentation to support its determination that there would be "no effect" on listed species and their critical habitats, the failure to consult and prepare a biological analysis was arbitrary and capricious.
- U.S. District Court, Northern District of California. Case No.: 04-04512; March 30, 2007. This case was consolidated with *Defenders of Wildlife v. USDA*.

  In response to the court decision, USDA Forest Service has re-issued the proposed National Forest System Land Management Planning Rule (72 FR 48514; August 23, 2007) and prepared an EIS for it (72 FR 50368; August 31, 2007). Comments on both are due October 22, 2007. The proposed rule, draft EIS, and related documents are available at www.fs.fed.us/emc/nfma/2007_planning_rule.html. *The Forest Service also proposed NEPA regulations on August 16, 2007, (72 FR 45998), with comments due October 15, 2007.*

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Environmental Protection Information Center v. USDA Forest Service

- ***Agency Action:*** The USDA Forest Service prepared an EA for a forest-thinning project in the Shasta-Trinity National Forest in California. The Forest Service evaluated only the preferred alternative and the no action alternative.
- ***NEPA Issues:*** The court upheld a claim by the Environmental Protection Information Center that the Forest Service's EA did not meet NEPA's requirement to study, develop, and describe appropriate alternatives. The court found that the Forest Service did not propose any action alternatives of its own, and did not analyze the reasonable alternative proposed by the Center.

  The court held that the Forest Service improperly defined the goals of its project so narrowly that only its preferred alternative would serve those goals.
- ***Other Issues:*** The court found that the Forest Service violated the National Forest Management Act because it failed to "sufficiently analyze by proxy whether a diverse population of wildlife, one that includes the Pacific fisher, will remain in the planning area after [the Forest Service] implements its forest-thinning project."
- U.S. Court of Appeals, 9th Circuit. Case No.: 05-17093; May 9, 2007.

Navajo Nation v. USDA Forest Service

- ***Agency Action:*** The USDA Forest Service prepared an EIS in 2005 for a proposal to enhance recreational uses through snowmaking at the Arizona Snowbowl ski area, located in an area of high religious significance to Native Americans. The proposal included producing artificial snow with recycled sewage effluent from the City of Flagstaff.
- ***NEPA Issues:*** The court reviewed five NEPA issues. On the claim of inadequate impact analysis, the court found for the Navajo Nation: that ***the EIS did not adequately assess the risks posed by possible human ingestion of artificial snow made from treated sewage effluent***. The court found the EIS to be adequate with respect to the four other NEPA challenges regarding:
  - ✓ The range of reasonable alternatives – Although the Forest Service's argument in the EIS was brief, "logistical and economic considerations and water availability research" and "environmental and political issues" are sufficient for not analyzing fresh water drilling in the Arizona desert as a reasonable alternative.
  - ✓ Response to a responsible opposing scientific viewpoint – The EIS adequately discloses, discusses, and responds to the substance of comments on endocrine disruptors in treated sewage effluent, even though the Forest Service's responses differ from the commentor's position.
  - ✓ Impact of diverting wastewater on the regional aquifer – The EIS stated that this factor was out of scope and would not be considered in selecting an alternative because the city, not the Forest Service, had the authority to designate uses of wastewater; nevertheless, the EIS contained brief discussion to support a finding that the impact would be negligible.
  - ✓ Social and cultural impacts – The EIS describes the religious beliefs and practices of the Hopi and Navajo, and the "irretrievable impact" the proposal would likely have, satisfying the NEPA obligation to discuss effects on the human environment.
- ***Other Issues:*** The court found that the Forest Service proposal violated the Religious Freedom Restoration Act because it "would impose a substantial burden on their [the plaintiffs'] exercise of religion." The court found, however, that the Forest Service meaningfully consulted with the Hopi and therefore did not violate the National Historic Preservation Act.
- U.S. Court of Appeals, 9th Circuit. Case No.: 06-15455; March 12, 2007.

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State of California v. USDA Forest Service

- ***Agency Action:*** The USDA Forest Service in May 2005 adopted the State Petitions for Inventoried Roadless Area Management Rule (State Petitions Rule). The State Petitions Rule eliminated the uniform national protections of roadless areas under the 2001 Roadless Area Conservation Rule (36 CFR Part 294, also known as the Roadless Rule), which essentially prohibited, with limited exceptions, road construction and reconstruction and timber harvesting in relatively unspoiled areas of national forests. The State Petitions Rule reverted to the previous regime of managing such areas under individual forest plans but with an added, optional, state-by-state petitioning process, which could alter the level of protection of roadless areas within individual state borders from that afforded by the forest plans.
- ***NEPA Issues:*** Although the Forest Service prepared an EIS and consulted with the Fish and Wildlife Service and the National Marine Fisheries Service while promulgating the 2001 Roadless Rule, the Forest Service claimed that the 2005 State Petitions Rule by itself was strictly procedural and could be categorically excluded, and that it would undertake further environmental review and endangered species consultations when considering state petitions and project proposals. The court found for the plaintiffs on all NEPA claims, setting aside the State Petitions Rule and reinstating the Roadless Rule. It held that:
  - ✓ ***The State Petitions Rule did not fit within the categorical exclusion invoked by the Forest Service because the Rule changed the scheme for managing roadless areas in a way that raised substantial questions regarding environmental impacts.*** Specifically, the Forest Service's regulations require consideration of a proposed action's potential impact on seven "resource conditions" in deciding whether extraordinary circumstances bar the use of the categorical exclusion; one of these resource conditions is "inventoried roadless areas."
  - ✓ ***The EIS for the earlier Roadless Rule did not constitute adequate environmental analysis of the State Petitions Rule.*** Specifically, the no action alternative of the Roadless Rule EIS did not adequately represent the environmental baseline of the State Petitions Rule due to revision of 65 land management plans since the Roadless Rule EIS was issued. Further, unlike the Roadless Rule, the State Petitions Rule did not recognize the cumulative national significance of individual local decisions concerning inventoried roadless areas. Finally, the Roadless Rule EIS did not address alternatives that would have been reasonable to the State Petitions Rule, such as expanding the exceptions in the Roadless Rule or permitting states to opt out, both of which had been proposed by the plaintiffs.
  - ✓ ***The prospect of future environmental analysis did not obviate the need for programmatic review under NEPA at the time the less protective State Petitions Rule was adopted.***
- ***Other Issues:*** The court found that the Forest Service's determination that the State Petitions Rule did not trigger the Endangered Species Act consultation process was "arbitrary and capricious."
- U.S. District Court, Northern District of California. Case No.: 05-03508; October 11, 2006. This case was consolidated with *Wilderness Society v. USDA Forest Service*, Case No.: 05-04038.

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.*

- Environmental Protection Agency
  Office of Federal Activities
  202-564-7164
  totten.arthur@epa.gov
  www.netionline.com

  Cumulative Impacts Assessment (FED 104)
  San Francisco, CA: September 10-12
  Washington, DC: October 9-11
  Atlanta, GA: October 23-25
  No Fee

  NEPA and Adaptive Management (FED 110)
  Seattle, WA: September 18-20
  Washington, DC: December 11-13
  No Fee

  NEPA and Air Impacts (FED 111)
  San Francisco, CA: September 25-27
  Chicago, IL: October 2-4
  Washington, DC: November 6-8
  No Fee

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

  Environmental Impact Assessment (NEPA)
  Washington, DC: December 12-14
  (Live and Webcast)
  Fee: $1,095 ($100 online registration discount available)

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

  NEPA
  Phoenix, AZ: October 18-19
  Fee: $695 (GSA contract: $595)
  Multiple registration discount available
  Denver, CO: December 13-14
  Fee: $695 (GSA contract: $595)
  Multiple registration discount available

- Environmental Training & Consulting International, Inc.
  503-274-1790
  www.envirotrain.com

  Environmental Impact Assessment
  Stillwater, OK: December 17-21
  Fee: $950

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

  NEPA in Indian Country
  Denver, CO: September 25-26
  Fee: $495

- Northwest Environmental Training Center
  206-762-1976
  rsobol@nwetc.org
  www.nwetc.org

  NEPA Compliance: Writing the Perfect EA/FONSI or EIS
  Seattle, WA: September 12-13
  Fee: $495 ($395 for government employees)
  Las Vegas, NV: October 24-25
  Fee: $495 ($395 for government employees)

- SWCA Environmental Consultants
  800-828-7991
  training@swca.com
  www.swca.com/jsps/training/training.htm

  Section 106 Compliance: An Introduction to Professional Practice under Section 106 of the National Historic Preservation Act
  Portland, OR: September 11-13
  Fee: $795
  Orange County, CA: November 6-8
  Fee: $795

  Comprehensive NEPA
  Phoenix, AZ: October 2-4
  Fee: $795
  Sacramento, CA: November 6-8
  Fee: $795

  Reaching and Writing Agreements under Section 106
  Sacramento, CA: October 23-25
  Fee: $795

- Tetra Tech, Inc.
  877-468-3872
  www.tetratechNEPA.com

  NEPA Workshop
  Reno, NV: September 20-21
  Fee: $600 ($500 for government employees) until 9/6/07

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Training Opportunities

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- The Shipley Group
  888-270-2157
  shipley@shipleygroup.com
  www.shipleygroup.com

  NEPA Cumulative Effects Analysis and Documentation
  San Francisco, CA: September 18-20
  Fee: $885 (GSA contract: $795)
  Atlanta, GA: October 18-19
  Fee: $685 (GSA contract: $595)
  Dallas/Fort Worth, TX: November 27-29
  Fee: $845 (GSA contract: $755) until 10/3/07

  Integrating Federal Environmental Laws into NEPA
  Las Vegas, NV: September 25-27
  Fee: $885 (GSA contract: $795)

  How to Manage the NEPA Process and Write Effective NEPA Documents
  Olympia, WA: September 25-28
  Fee: $1,110 (GSA contract: $955)
  San Antonio, TX: December 4-7
  Fee: $1,070 (GSA contract: $955) until 10/17/07

  How to Manage the NEPA Process
  Salt Lake City, UT: October 1-3
  Fee: $885 (GSA contract: $795)
  Atlanta, GA: October 15-17
  Fee: $885 (GSA contract: $795)

  Clear Writing for NEPA Specialists
  Denver, CO: October 2-4
  Fee: $885 (GSA contract: $795)

  Managing NEPA Projects and Teams
  Salt Lake City, UT: October 4-5
  Fee: $685 (GSA contract: $595)

  Reviewing NEPA Documents
  Salt Lake City/Park City, UT: October 23-25
  Fee: $845 (GSA contract: $755) until 9/5/07

  Climate Change and Cumulative Effects Analysis
  Denver, CO: November 6-8
  Fee: $845 (GSA contract: $755) until 9/19/07

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

  NEPA Certificate Program
  Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later maybe applied toward the certificate. Also requires completion of course exams and a final project.
  Fee: $4,955 (includes tuition, course fees, and all materials)

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

  Implementation of the National Environmental Policy Act
  Durham, NC: November 5-9
  Fee: $1,150

  Accounting for Cumulative Effects in the NEPA Process
  Durham, NC: December 5-7
  Fee: $750

  Certificate in the National Environmental Policy Act
  Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by the Council on Environmental Quality.
  Fee: Included in registration for constituent courses.

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Customized NEPA Training

- Environmental Impact Training
  830-596-8804
  info@eiatraining.com
  www.eiatraining.com

  Environmental Impact Training
  Courses cover topics such as environmental impact assessment, cumulative effects, environmental justice, reviewing NEPA documents, and adaptive management. Topics can be combined to meet the specific training needs of clients.

- Environmental Planning Strategies, Inc.
  563-332-6870
  jleeeps@mchsi.com
  www.jlee-eps.com

  Powerful Planning Using NEPA and the Facilitated Planning Approach
  3-5 days

  NEPA Document Review under Section 309 of the Clean Air Act
  3-4 days

  Conducting Effective NEPA Document Reviews for NEPA Practitioners and Managers
  3-4 days

  Conducting Quality Cumulative Impact Analyses under NEPA
  2-3 days

  NEPA: A Dialogue of Understanding for Quality Planning
  Length tailored to need

  NEPA: Powerful Planning Focusing on Purpose and Need
  3-4 days

  Developing and Implementing Effective NEPA Planning Strategies
  Length tailored to need

- Environmental Training & Consulting International, Inc.
  503-274-1790
  info@envirotrain.com
  www.envirotrain.com

  NEPA Toolbox™ Training
  Courses are custom-designed to meet specific needs and are conducted at the requestor's facility. Example course content includes essentials, cumulative impacts, public participation, and EA and EIS preparation. A specialized DOE NEPA Document Manager course also is available. Services are available through a GSA contract.

- Jones & Stokes
  916-737-3000
  sgorajewski@jsanet.com
  www.jonesandstokes.com

  Environmental Education
  Workshops and seminars are conducted through training organizations and university continuing education programs. Courses can be customized to meet specific needs, focusing on environmental topics, including NEPA.

EAs and EISs Completed* April 1 to June 30, 2007

EAs

Idaho National Laboratory/
Office of Nuclear Energy
DOE/EA-1557 (4/12/07)
National Security Test Range, Butte, Bingham, Bonneville, Clark, and Jefferson Counties, Idaho
Cost: $50,000
Time: 14 months

Livermore Site Office/
National Nuclear Security Administration
DOE/EA-1569 (1/29/07) **
Proposed Environmental Remediation at the Lawrence Livermore National Laboratory Site 300 Pit 7 Complex, Livermore, California
Cost: $98,000
Time: 10 months

Oak Ridge Office/Office of Science
DOE/EA-1514 (5/9/07)
U.S. Department of Energy Conveyance of Parcel ED-6 to the City of Oak Ridge, Tennessee, Oak Ridge, Tennessee
Cost: $161,000
Time: 30 months

Pantex Site Office/
National Nuclear Security Administration
DOE/EA-1579 (6/19/07)
Proposed Perched Groundwater Corrective Measure, Amarillo, Texas
Cost: $353,000
Time: 25 months

Savannah River Operations Office/
Office of Environmental Management
DOE/EA-1563 (6/26/07)
National Pollutant Discharge Elimination System Stormwater Compliance Alternatives at the Savannah River Site, South Carolina
Cost: $77,000
Time: 16 months

Western Area Power Administration
DOE/EA-1424 (6/15/07)
Havre-Rainbow Transmission Line Rebuild, Great Falls, Montana
Cost: $633,000
Time: 66 months

** No EISs completed this quarter*
*** Not previously reported in* LLQR

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 6 EAs for which cost data were applicable was $129,000; the average cost was $229,000.
- Cumulatively, for the 12 months that ended June 30, 2007, the median cost for the preparation of 17 EAs for which cost data were applicable was $80,000; the average was $163,000.
- For this quarter, the median completion time for 6 EAs was 21 months; the average was 27 months.
- Cumulatively, for the 12 months that ended June 30, 2007, the median completion time for 18 EAs was 13 months; the average was 20 months.

EIS Costs and Completion Times

- No EISs were completed during this quarter.
- Cumulatively, for the 12 months that ended June 30, 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.
- Cumulatively, for the 12 months that ended June 30, 2007, the median and average completion times for 3 EISs were 17 months.

Recent EIS-Related Milestones (June 1 to August 31, 2007)

Notices of Intent

Office of Electricity Delivery and Energy Reliability
DOE/EIS-0399
The Montana Alberta Tie, Ltd. (MATL) 230 kV Transmission Line, Montana
June 2007 (72 FR 31569, 6/7/07)

Office of Environmental Management
DOE/EIS-0375
Disposal of Greater-Than-Class-C Low-Level Radioactive Waste
July 2007 (72 FR 40135, 7/23/07)
[Correction: 72 FR 41819, 7/31/07]

Western Area Power Administration
DOE/EIS-0401
Construction and Operation of the Proposed NextGen Energy Facility, South Dakota
July 2007 (72 FR 41307, 7/27/07)

DOE/EIS-0400
Granby Pumping Plant-Windy Gap Transmission Line Rebuild Project, Grand County, Colorado
August 2007 (72 FR 45040, 8/10/07)

Notice of Additional Meeting

Western Area Power Administration
DOE/EIS-0390
Eastern Plains Transmission Project, Colorado and Kansas
June 2007 (72 FR 30792, 6/4/07)

Draft EISs

Bonneville Power Administration
DOE/EIS-0379
Rebuild of the Libby (FEC) to Troy Section of Bonneville Power Administration's Libby to Bonner's Ferry 115 kV Transmission Line Project, Lincoln County, Montana
July 2007 (72 FR 39808, 7/20/07)

Office of Fossil Energy/ National Energy Technology Laboratory
DOE/EIS-0394
FutureGen Project
June 2007 (72 FR 30589, 6/1/07)

Western Area Power Administration
DOE/EIS-0323-S1
Construction and Operation of the Sacramento Area Voltage Support Project, Sacramento, Sutter, and Placer Counties, California
July 2007 (72 FR 38576, 7/13/07)

Final EIS

Western Area Power Administration
DOE/EIS-0395
San Luis Rio Colorado Project, Yuma County, Arizona
August 2007 (72 FR 43271, 8/3/07)

Records of Decision

Bonneville Power Administration
DOE/EIS-0183
Long-Term Dialogue Regional Policy, Portland, Oregon
July 2007 (72 FR 41307, 7/27/07)

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
July 2007 (72 FR 37525, 7/10/07)

Supplement Analysis

Bonneville Power Administration

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

DOE/EIS-0169-SA-13
Implement Phase II of the Yakima Coho Reintroduction Feasibility Study, Benton, Yakima, and Kittitas Counties, Washington
(Decision: No further NEPA review required)
August 2007

What Worked and Didn't Work in the NEPA Process

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

- *Storyboard process.* A storyboard work planning process was used to initiate the EA. This was beneficial in planning integration of the technical and NEPA compliance effort.

Data Collection/Analysis

What Worked

- *Modeling.* Single layer modeling was used to focus the EA's impact analysis on the most promising alternatives for groundwater cleanup and protection of an underlying aquifer.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Close coordination.* Effective communication and establishment of a project team consisting of technical and NEPA subject matter experts contributed to timely completion of the EA.
- *Experienced contractor.* The use of an experienced DOE contractor was effective in preparing the EA's corrective measure study/feasibility study. *See* ***Editor's Note*** *next page.*

Factors that Inhibited Timely Completion of Documents

- *Consultation.* Extended informal consultation with the U.S. Fish and Wildlife Service regarding completion of the Biological Assessment inhibited timely completion of the EA.
- *NEPA before the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).* The EA process was not integrated with the CERCLA process; the EA was completed prior to remedy selection by state and federal regulatory agencies. *See* ***Editor's Note*** *next page.*
- *Forethought during budgeting.* Big picture items, such as project location relative to floodplains, should be considered during budget planning. A floodplain assessment was needed for the EA but not anticipated during the budgeting process.

Teamwork

Factors that Facilitated Effective Teamwork

- *Communication.* Frequent and effective communication with the site DOE/NNSA representatives and the NEPA Compliance Officer facilitated completion of the EA.

Process

Successful Aspects of the Public Participation Process

- *Response to stakeholder questions.* Concerns raised by an adjacent landowner resulted in an improved EA impact analysis.
- *Feedback from neighbors.* The public participation process provided an important opportunity for neighbors to consider the remedies proposed and the anticipated impacts of several alternatives. Feedback received was beneficial to finalizing the EA.

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What Worked and Didn't Work

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Usefulness

Agency Planning and Decisionmaking: What Worked

- *Stakeholder involvement.* Careful consideration of stakeholder comments on the EA resulted in reduction of the acreage proposed for conveyance.
- *Development of corrective measure alternatives.* The EA process facilitated development of thorough corrective measure alternatives. These alternatives aided impact analysis and ultimately contributed to an informed decision on the preferred remedy recommended to EPA for selection under CERCLA. *See* ***Editor's Note*** *below.*

Enhancement/Protection of the Environment

- *Identification of impacts.* The EA process identified anticipated impacts that will be considered during construction planning to protect the environment.

Other Issues

Guidance Needs

- *Remedy selection prior to analysis.* Guidance should indicate that NEPA analysis would be more efficient and more straightforward if the CERCLA process is completed before the EA.

Editor's Note: *The comments presented here concern an EA that was prepared as a companion to a Corrective Measures Study/Feasibility Study that DOE presented to regulators. Under DOE policy, to streamline cleanup actions, corrective measures actions under the Resource Conservation and Recovery Act and CERCLA actions generally do not require a separate NEPA analysis. Under DOE's CERCLA/NEPA Policy, established in 1994, DOE relies on the CERCLA process for review of actions to be taken under CERCLA (no separate NEPA document or NEPA process is ordinarily required). Also, for sites on the National Priorities List, DOE may be able to rely on the CERCLA process for RCRA corrective measures. See "DOE Policies on Application of NEPA to CERCLA and RCRA Cleanup Actions" (July 2002) at* www.eh.doe.gov/nepa *under Compliance Guide, Volume 2, Part 5-2.*

Effectiveness of the NEPA Process

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

For the past quarter, in which 2 questionnaire responses were received for EAs, both respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that stakeholder input was instrumental in reducing the acreage proposed for conveyance and resulted in protection of additional interior forest habitat.
- A respondent who rated the process as "3" stated that the EA process helped identify potential impacts that would be important to mitigate during construction, but it did not significantly change the original plan.