

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

March 1, 2001; Issue No. 26

For First Quarter FY 2001

Innovative Field Research Benefits from NEPA Review



By: Paul Bayer, *NEPA Document Manager*,
and Clarence Hickey, *NEPA Compliance Officer, Office of Science*

The high costs and long times frequently needed to clean up contaminated Department of Energy (DOE) sites have created a demand for better and cheaper cleanup technologies. A promising new method for cleaning up subsurface contamination is bioremediation. However, field experience to validate laboratory results is lacking. Preparing an environmental assessment (EA) helped DOE's Office of Science plan an effective field-based research program to better understand bioremediation processes. The EA process also helped ensure that actual field studies would not have significant environmental impacts.



Workers obtain a soil core sample in the Field Research Center contaminated area.

Researchers need small-scale field sites for studies of basic biological and chemical processes associated with bioremediation of subsurface soil and water contaminated with metals and radionuclides. Therefore, the Office of Science needed to add a field component to its existing Natural and Accelerated Bioremediation Research (NABIR, pronounced "neighbor") Program.

Bioremediation – the use of microorganisms to degrade or transform contaminants to environmentally acceptable levels in soils, subsurface sediments, groundwater, surface water, and sludge.

NABIR Primer

Established in 1997, the NABIR Program funds and coordinates research by universities, private industry, and the DOE national laboratories.

EA Process Aids Site Selection and Design of Bioremediation Field Studies

The NABIR Program proposed a Field Research Center to test laboratory results. ("Center" refers to the research location and includes only temporary support structures and equipment, not new construction.) An EA (DOE/EA-1196, April 2000) helped identify and evaluate two alternative sites: an area (under Oak Ridge National Laboratory management) near the West End Tank Farm of the Y-12 National Security Complex at the Oak Ridge Reservation in Tennessee, and the 100-H Area (under Pacific Northwest National Laboratory management) of the Hanford Site near Richland, Washington. These locations met the Office of Science's preferred characteristics, including:

- Availability, at a DOE site, of a contaminated area and an uncontaminated (control) area, with comparable

continued on page 3

Inside *LESSONS LEARNED*

Welcome to the 26th quarterly report on lessons learned in the NEPA process.

Mini-guidance:

Saving \$ on EIS Distribution	4
NEPA Office Needs Fewer Paper Copies of Issued Documents	5
Analyzing All Reasonable Alternatives in an EIS	6
NOAA Issues New Coastal Zone Regulations	7
DOE Solicits Comments on Public Participation Policy	8
More NNSA NEPA Procedures	8
BLM Tool for Better Scoping Comments	9
NEPA Staff Supported CEQ Technology Task Force	10
Transitions	11
When to Provide Cost Estimates in Annual NEPA Planning Summaries	12
Some Considerations in Selecting NEPA Document Preparers	12
DOE-Wide NEPA Contracts Update	12
Litigation Updates	13
Training Opportunities	15
EAs and EISs Completed This Quarter	16
Costs and Times	16
Recent EIS Milestones	17
First Quarter FY 2001 Questionnaire Results	18

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by May 1, 2001. To propose an article for a future issue, contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2001

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2001 (January 1 through March 31, 2001) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

LLQR Index


A cumulative index of the LLQR is provided in the September issue each year.

Printed on recycled paper




Award Nominations Are Due March 15

The deadline for submitting nominations for the National Association of Environmental Professionals (NAEP) Environmental Excellence Awards is March 15, 2001. For the past four years, this organization has recognized projects and programs that serve as models of excellence in environmental professional practice. Awards are given in a range of categories. Both government and private organizations are eligible to nominate their projects.

Award winners will be announced at the 2001 NAEP conference, "Environmental Policy and Process: New Directions or Staying on Course?" to be held June 24 to 28 in Arlington, Virginia. For the award nomination form, more information on the 2001 conference, and additional information about NAEP, visit the NAEP Web site at www.naep.org. 

Mini-guidance Collection Earns EPA Praise

The Environmental Protection Agency's Office of Federal Activities recently distributed *Mini-guidance Articles from Lessons Learned Quarterly Reports* (November 2000), to its Regional Environmental Review Coordinators with the following observation: "If you've seen '*Lessons Learned*' ... you know that this is one of the more helpful NEPA publications. While the compilation is intended primarily for DOE staff who prepare EISs and EAs, many of the interpretations and recommendations are useful to EPA and other agencies."

The collection of mini-guidance articles, compiled from the *Lessons Learned Quarterly Report* from December 1994 to September 2000, is available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Tools or from Yarden Mansoor at yarden.mansoor@eh.doe.gov. 

Innovative Field Research (continued from page 1)

hydrology and geology and of sufficient size to accommodate anticipated research projects for the remainder of the NABIR Program.

- Presence of heavy metals and radionuclides at levels high enough to require eventual cleanup but low enough to pose small risk during research activities.
- Expected stability of any active contamination sources for the remainder of the program.
- Ability to control public access while allowing year-round access for researchers and equipment.

The EA analyzes the potential environmental impacts of the No Action alternative – not establishing a Field Research Center – and the alternatives of locating the Center at Oak Ridge or Hanford. To analyze environmental impacts, the Office of Science had to determine the physical and biological parameters for reasonably foreseeable research activities. After broad consultations in the scientific community, the Office decided that research must meet certain criteria:

- Projects would be small-scale – involving less than 1 acre and a subsurface depth less than 75 feet.
- The NABIR Program would limit the type of research material; injection of genetically engineered microorganisms, human pathogens, and radioactive materials would be excluded.

Given the above constraints, the analysis found no potentially significant environmental impacts. The research activities would not affect environmentally sensitive resources, such as wetlands, floodplains, and endangered species. Contamination levels at each site were low enough to pose no health risks to workers or visiting scientists, even from inadvertent consumption of or contact with soil and groundwater samples.

Based on site visits, scientific and technical peer review of the proposals, and the environmental analysis – which included comment by Federal, State, and local agencies – DOE selected the Oak Ridge location, consisting of a 243-acre contaminated area and a 404-acre background area.

The EA and the finding that there would be no significant impacts apply only to actions that meet specified limitations. To help enforce these constraints on future research activities, the constraints were incorporated in the NABIR Program Management Plan, which was included in the EA as an appendix. The Plan specifies



The background (uncontaminated) area of the Field Research Center contains groundwater-monitoring wellheads.

that before a research project receives funding and may begin field activities, the responsible DOE Operations Office must complete an environmental, safety and health review, including whether the project requires further NEPA review. The Program Plan also requires a Field Research Center Management Plan and tiered plans to address health and safety, waste control, environmental compliance, contingencies for potential offsite migration of contaminants, and site closure.

Authors' Vision: NABIR Serves NEPA's Goals

The NABIR Program's goal – to validate laboratory experiments and test the effectiveness of potential new approaches for safe, efficient cleanup of DOE's legacy waste – is aligned with a broad goal of NEPA: to "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences" (Section 101(b)(3)). Promoting remediation of wastes in-place may reduce the need to excavate and disturb land, and may lessen the risks to workers from construction-related accidents and exposures to radiological and chemical hazards. Through the NABIR Program, DOE is a better trustee of the environment.

The authors believe that DOE should strengthen the links between the analysis process for DOE proposals (under NEPA Section 102) and the decisions DOE makes to support the goals NEPA sets for the Nation (under Section 101). Without this connection, in the authors' opinion, the NEPA process is just process.

For more information on the NABIR Program, see "NABIR Primer: Bioremediation of Metals and Radionuclides ... What It Is and How It Works," at www.lbl.gov/NABIR/primer/primer.html, or contact Paul Bayer at paul.bayer@science.doe.gov or 301-903-5324. **LL**

\$aving \$ on EIS Distribution

By: Carl Sykes, Office of NEPA Policy and Compliance

Some members of the public recently criticized DOE's distribution of a major final EIS, complaining that they had received unwanted copies of the six-volume document, which weighs more than 20 pounds and cost \$31.85 to mail. A local newspaper ran articles decrying DOE's expensive distribution. Quoted individuals claimed they had never asked for the EIS and wondered why DOE sent it to them. Although the Program Office had taken appropriate steps to limit distribution costs, this experience prompted the NEPA Office to explore options for reducing such costs in the future. To ensure cost-effective EIS distribution, NEPA Document Managers should maintain up-to-date mailing lists and comparison shop for delivery services.

Mailing Lists

The Council on Environmental Quality's NEPA regulations require Federal agencies to encourage and facilitate public involvement in decisions that affect environmental quality (40 CFR 1500.2(d)). Therefore, a NEPA document mailing list should include individuals and organizations who have identified themselves as interested in the particular subject at issue. A mailing list may also include those parties who are known to have a continuing interest in the activities of a Program or Field Office or who have been interested in the Office's NEPA reviews in the past. Updating the mailing list ensures that all who request a particular EA or EIS are included, and removes those not interested in the document in question.

Because an EIS typically is larger than an EA, costs more both to print and to ship, and deals with issues of broader public interest, cost-effective distribution is much more important for an EIS than for an EA. Whether an addressee is a new interested party or a "legacy" from an earlier mailing list, it is appropriate to determine whether the person wants the entire EIS, only the EIS summary, or nothing at all. To find out, DOE could invite individuals and organizations to specify their wishes on

sign-up sheets at scoping meetings and draft EIS hearings, for example, and through postcard- and Web-based inquiries before draft and final EIS distribution. These techniques were used for the recent EIS cited above, but apparently some EIS recipients did not receive or did not respond to the inquiries.

Finally, it may help recipients' understanding if the EIS cover letter includes an explanation, such as: "This EIS is being mailed to all those who have requested a copy at public meetings concerning this EIS; sent phone, electronic, or written requests; or expressed ongoing interest in receiving DOE NEPA documents concerning this site/project/program."

[Note in this connection that an agency is required to send an entire final EIS to anyone who provided "substantive comments" on the draft EIS (40 CFR 1502.19(d)). For practical advice regarding this and related distribution matters, see "EIS Distribution: Common Sense Approaches," *Lessons Learned Quarterly Report*, March 1996, page 4 (available on the DOE NEPA Web and in the Mini-guidance Collection), and *Effective Public Participation under the NEPA*, pages 8-10.]

Recommendations on Maintaining an EIS Mailing List

- ✓ Beginning with scoping, provide opportunities for persons participating in the EIS process to indicate their preference with respect to receiving the entire document, only the summary, or no documents at all.
- ✓ Identify whether recipients of a previous NEPA review (or other site or program mailing) wish to receive the current EIS and verify addresses.
- ✓ Plan to provide a full final EIS to all who provided substantive comments on the draft EIS.



Mini-guidance from the Office of NEPA Policy and Compliance

Evaluating Alternative Delivery Services

Document Managers should meet distribution needs cost-effectively. Costs may vary widely, especially for a large document; if a longer delivery time is acceptable, the distribution costs can be significantly reduced (see table).

The Environmental Protection Agency (EPA) publishes the Notice of Availability on Friday of the week after an EIS has been distributed and filed, and this starts the comment period (draft EIS) or waiting period (final EIS). As explained in the preamble of the EPA filing guidance (59 FR 9593; March 7, 1989), this assures that interested parties have received their EISs by the time the comment or waiting period begins. EPA procedures suggest that lower cost delivery options may often be adequate. However, document managers should consider other factors, such as holiday mailing delays, that would argue for faster delivery options.

DOE M 573.1-1, Mail Services User's Manual, lists seven courier services that DOE Program and Field Offices may use to deliver documents, in addition to the U.S. Postal Service.

Recommendations on Selecting a Delivery Service

- ✓ In planning for EIS distribution, evaluate delivery time needs and alternative delivery services.
- ✓ If feasible, add a few days to the public review schedule to permit using a lower-cost delivery service. **LL**

Example: Shipping a Document from Washington, DC, to the State of Washington

Carrier	Class of Service	Estimated Time*	Cost: 5 lb	Cost: 20 lb
US Postal Service	Priority Mail	1-3 days	\$7.55	\$28.55
Commercial Courier Service	Ground Delivery	1-5 days	\$5.60	\$12.86
US Postal Service	Book Rate	Up to 7 days	\$3.10	\$7.90

* Delivery times as stated by the Postal Service and example courier service; not guaranteed (in contrast to overnight/express rates)

NEPA Office Needs Fewer Paper Copies of Issued Documents — Three Is Enough

By: Denise Freeman, *Webmaster, Office of NEPA Policy and Compliance*

Electronic copies are taking the place of some paper copies, so now the NEPA Office only needs three copies of issued documents instead of five. DOE Order 451.1B, National Environmental Policy Act Compliance Program, requires that NEPA Compliance Officers provide the Office of NEPA Policy and Compliance promptly – generally, within two weeks of their availability – five paper copies and one electronic file of issued environmental assessments and findings of no significant impact (FONSIs), proposed FONSIs, draft and final environmental impact statements (EISs), records of decision, supplement analyses, and mitigation action plans and corresponding annual reports.

In the past, the Office of NEPA Policy and Compliance sent two of the five copies to the Office of Scientific and Technical Information (OSTI) to fulfill responsibilities under DOE Order 241.1, Scientific and Technical Information Management. However, OSTI, the Department's central repository for scientific and technical information, will no longer accept paper copies.

Accordingly, the NEPA Office now provides documents to OSTI only electronically.

The NEPA Office still needs three paper copies, for its staff, corporate archives, and Web publishing. Except for the reduced number, our internal procedures for submitting these documents have not changed. Upon issuing a document, the NEPA Compliance Officer should transmit three paper copies, an electronic file, and a completed NEPA Document Certification and Transmittal Form to the Office of NEPA Policy and Compliance.

Please note that the Environmental Protection Agency filing requirement for draft, final, and supplemental EISs – five paper copies – has not changed.

For more information regarding this change or Web publishing matters, please contact Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879. **LL**

Note: We are pleased to announce that **Denise Freeman** is our new NEPA Webmaster.

Analyzing All Reasonable Alternatives in an EIS

By: Carl Sykes, Office of NEPA Policy and Compliance

An EIS must analyze all reasonable alternatives (40 CFR 1502.14(a)). In determining what are the reasonable alternatives, an agency could include those alternatives that currently seem impractical from a programmatic perspective. This approach can ultimately be the most efficient path to implement a project, because the decision maker is restricted to alternatives analyzed in an EIS (40 CFR 1502.2(e)).

DOE may revise a record of decision (ROD) at any time if the revised decision is adequately supported by an existing EIS (10 CFR 1021.315(d)). The Office of Environmental Management recently considered changing its earlier decision for disposition of plutonium fluoride residues stored at the Rocky Flats Environmental Technology Site.

Alternatives Analyzed in the EIS

DOE decided (63 FR 66136; December 1, 1998) to ship plutonium fluoride residues from Rocky Flats to the Savannah River Site for processing to separate plutonium, rather than blending them down below the 0.2% plutonium “safeguard” limit for disposal at the Waste Isolation Pilot Plant (WIPP). These were the two action alternatives for these residues analyzed in the EIS for *Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site* (DOE/EIS-0277, August 1998). In that EIS, DOE analyzed a third action alternative for several other categories of residues: blending down only to 10% plutonium and applying a variance to safeguard limits on the concentration of plutonium, so that the partially blended-down residues could be brought to WIPP for disposal. DOE stated that this alternative would be impractical for plutonium fluoride residues and did not analyze it in the EIS. At the time, plutonium was technically relatively easy to recover from fluoride residues at the 10% level. Thus, the residues would not have qualified for a safeguards variance and DOE would be precluded from bringing such residues to WIPP.

Changed Circumstances Made Impractical Alternative Practical

After issuing the 1998 ROD, DOE encountered difficulties in certifying the container for shipping the residues from Rocky Flats to the Savannah River Site. Additional testing was projected to delay shipping for several months, which would have threatened DOE’s ability to close the Rocky Flats Site by 2006.

In the interim, the Rocky Flats Site had developed methods to make plutonium recovery from fluoride residues more difficult, allowing for plutonium fluoride


residues blended down to 10% to be disposed of at WIPP under a variance to safeguard limits.

Before revising the ROD, DOE needed to determine whether the EIS analysis of the alternative to blend down to 0.2% encompassed the activities and impacts of the alternative to blend down to 10% and apply a safeguard variance. Accordingly, Environmental Management prepared a Supplement Analysis, which showed that the activities were very similar and the impacts were similar or lower under the variance. DOE was able to conclude that no further NEPA review was needed to revise the ROD (66 FR 4803; January 18, 2001). Although it seemed when preparing the Residues EIS that material blended down to 10% could never be disposed of at WIPP, analyzing this alternative in the EIS ultimately would have facilitated timely decision making.

Another EIS Analyzed All Alternatives, Allowed Ready Decision Making

In the *Interim Management of Nuclear Materials* EIS (DOE/EIS-0220, October 1995) DOE analyzed modifying Building 235-F at the Savannah River Site for storing nuclear materials, even though it seemed certain at the time that the materials would be stored in a planned Actinide Packaging and Storage Facility (APSF). When unanticipated developments led DOE to want to cancel the APSF project and implement the Building 235-F alternative, a new ROD (66 FR 7888; January 26, 2001) was readily issued accordingly.

Recommendations for EIS Alternatives

- ✓ In determining the range of reasonable alternatives, include alternatives that would achieve DOE’s underlying goal under a variety of foreseeable circumstances. Analyze alternatives that seem impractical only because of current programmatic assumptions, but otherwise would be reasonable.
- ✓ If technical or economic factors suggest that an alternative is infeasible, consider whether there is a reasonable chance that those factors might change, rendering the alternative feasible. 

NOAA Issues New Coastal Zone Regulations

Integration with NEPA Addressed



The National Oceanic and Atmospheric Administration (NOAA) recently revised Coastal Zone Management Act (CZMA) Consistency Regulations (15 CFR Part 930) on the basis of 20 years of implementation experience and 1990 and 1996 changes to the CZMA. The

new consistency regulations (65 FR 77123-77175; December 8, 2000) became effective January 8, 2001. The regulations implement the CZMA requirement that "Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State [coastal zone] management programs" (16 USC 1456 (c)(1)).

The revised regulations incorporate language from the Coastal Zone Act Reauthorization Amendments of 1990 to clarify applicability: "any federal agency activity (regardless of location) is subject to the consistency requirement if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement." Known as the "effects test," this provision requires an agency to consider all reasonably foreseeable direct and indirect effects on any coastal use or resource.

The Federal agency and the State coastal zone agency may agree to exclude proposals with environmentally beneficial effects on the coastal zone from further review, either on a case-by case basis or as a category. A Federal agency may request State concurrence that certain categories of actions with *de minimis* coastal zone effects are exempt from further State review.

Briefly, under the regulations, a Federal agency must determine whether its proposed activity has reasonably foreseeable coastal effects. If there are such effects, then the agency provides a "consistency determination" (that is, how the proposal is consistent with a State coastal zone management program).

If the agency believes there are no reasonably foreseeable coastal effects, then the agency is required to provide a negative determination (that there are no coastal zone impacts) only under three circumstances (new 15 CFR 930.35):


1. If the activity is listed in the State's coastal zone management program document or if not listed, the State notifies the agency on a case-by-case basis that the State believes there are coastal effects,
2. If the activity is similar to ones in the past for which the agency gave the State a consistency determination, or
3. If the agency previously undertook a consistency analysis and developed initial findings on the coastal effects of the action.

If a negative determination is not required, then the Federal agency does not need to notify the State CZMA agency.

A consistency determination or negative determination can be provided in any manner that meets the regulation's requirements. Federal agencies may choose, but are not required, to address consistency requirements in NEPA documents. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the EA or EIS must include the information needed to support the determination.

Recommendations on Coastal Zone Review

- ✓ To facilitate efficient compliance with all regulatory requirements, consider early in project planning whether a proposed action has reasonably foreseeable effects on any land or water uses or natural resources in the coastal zone.
- ✓ If the proposal has reasonably foreseeable coastal effects, coordinate early with the applicable State(s) coastal zone management agency, in part to help determine whether DOE should integrate CZMA consistency review with NEPA review for the proposal and to facilitate State review.

For additional information, see the Office of Ocean and Coastal Resource Management Web site at www.nos.noaa.gov/programs/ocrm.html, or contact David Kaiser, Federal Consistency Coordinator, National Oceanic and Atmospheric Administration, at david.kaiser@noaa.gov or 301-713-3155, extension 144. For questions on DOE compliance with CZMA, contact Lois Thompson, Office of Environmental Policy and Guidance, at lois.thompson@eh.doe.gov or 202-586-9581. 

DOE Solicits Comments on Public Participation Policy

The Office of Congressional and Intergovernmental Affairs announced (66 FR 7898; January 26, 2001) that it is soliciting public comments on proposed revisions to the 1994 DOE Public Participation Policy (DOE P 1210.1). A Task Force of DOE Program and Field Office managers reviewed the 1994 policy and proposed revisions to reflect current practices and lessons from six years of experience. The proposed revisions also incorporate findings of the Openness Advisory Panel of the Secretary of Energy Advisory Board on improving relations between DOE facilities and their host communities. New language in the policy would stress active outreach, good community relations, communication with host communities, and sensitivity to diversity and cultural concerns of stakeholders.


“Under this Policy, DOE would actively seek, consider, and incorporate or otherwise respond in a timely manner to the views of its stakeholders and affected communities,” the notice states. “This Policy would function as a framework within which all DOE programs, including programs of the National Nuclear Security Administration, would operate.”

The proposed policy emphasizes that managers are responsible for defining clear access points for public input from the early stages of a decision making process and for providing adequate time for stakeholders and

communities to participate. Under the proposed policy, Federal and contractor employees would share responsibility for promoting public participation and improving community relations. Also, DOE would conduct periodic reviews of its public participation and community relations efforts.


Public participation is a key element of NEPA implementation. *Effective Public Participation under NEPA* (Office of Environment, Safety and Health, 1998) provides guidance for implementing DOE’s Public Participation Policy within the context of NEPA. The Office of NEPA Policy and Compliance will revisit this guidance after the revised DOE Public Participation Policy is issued.

The public comment period extends to April 30, 2001. The draft Public Participation and Community Relations Policy (to be issued as DOE P 141.A) is available at www.ci.doe.gov under “Intergovernmental and External Affairs” and from the Center for Environmental Management Information at 202-863-5084 or 800-736-3282.

For more information, contact Betty Nolan, Office of Congressional and Intergovernmental Affairs, at betty.nolan@hq.doe.gov or 202-586-7328. 

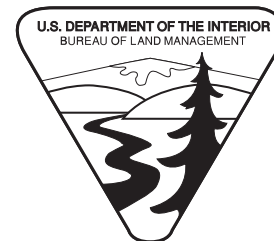
More National Nuclear Security Administration NEPA Procedures Outlined

The Office of NEPA Policy and Compliance continues to work with the National Nuclear Security Administration (NNSA) on day-to-day NEPA implementation issues. In recent discussions, the NEPA Office confirmed with NNSA NEPA staff that the NEPA Office will continue to include NNSA’s NEPA documents in the central, comprehensive DOE NEPA database and document archive that the NEPA Office maintains as a corporate service and which is not available elsewhere.

Under this arrangement, NNSA will continue to request DOE EA document numbers from the NEPA Office, as do all other DOE offices. The NEPA Office similarly will assign DOE numbers to NNSA EISs, and will transmit NNSA EISs to the Environmental Protection Agency for filing. (For more information on NNSA NEPA procedures, see *Lessons Learned Quarterly Report*, December 2000, page 1.) 

BLM Develops Tool to Foster Better EIS Scoping Comments

By: Brian Mills, Office of NEPA Policy and Compliance




Expecting a contentious crowd at your EIS meetings? Looking for comments beyond “I’m for” or “I oppose” the proposal?

To help improve the tone of public meetings and usefulness of comments on an EIS, the Department of the Interior’s Bureau of Land Management (BLM) developed a tool they call an “Ideas Worksheet.” First used during the preparation of the Grand Staircase-Escalante National Monument Management Plan EIS in 1998, the Ideas Worksheet helps stakeholders structure their comments and focus on scoping issues instead of merely expressing preferences among alternatives. Recently, BLM mailed out 2,000 Ideas Worksheets before EIS scoping meetings on grazing permit renewals within the Grand Staircase-Escalante National Monument.

BLM expected the scoping meetings for the EIS on grazing within the National Monument to be polarizing. Grazing issues can provoke conflicts among stakeholders whose livelihoods depend on grazing and those whose priority for public lands is recreation, resource preservation, and other nonconsumptive uses.

To defuse the intimidating atmosphere of typical gatherings of pro- and anti-grazing forces, BLM divided the meeting participants into working groups by handing out copies of the Ideas Worksheet coded with colored dots for assigned discussion groups. These small-group brainstorming sessions followed an opening statement by the BLM EIS team leader, and were facilitated by an EIS team member, assisted by a BLM scribe taking notes on flip charts. The principle guiding the facilitators was that BLM was seeking ideas from the discussion groups, not consensus. This approach reduces tension, elicits greater participation, and avoids a parade of identical prepared speeches.

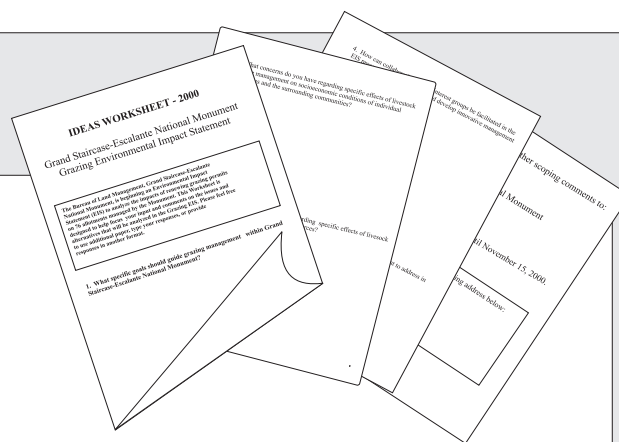
The Ideas Worksheet provided participants with ample space to write responses, an address for submitting comments, and the scoping period closing date, and asked commentors to identify themselves. For more information on the Ideas Worksheet, visit the Monument Web Page at www.ut.blm.gov/monument/ or contact Kezia Nielsen, Bureau of Land Management, Grand Staircase-Escalante National Monument Headquarters, at kezia_nielsen@ut.blm.gov or 435-644-4306. 

IDEAS WORKSHEET – 2000 Grand Staircase-Escalante National Monument Grazing Environmental Impact Statement

The Bureau of Land Management, Grand Staircase-Escalante National Monument, is beginning an Environmental Impact Statement (EIS) to analyze the impacts of renewing grazing permits on 76 allotments managed by the Monument. This Worksheet is designed to help focus your input and comments on the issues and alternatives that will be analyzed in the Grazing EIS. Please feel free to use additional paper, type your responses, or provide responses in another format.

1. What specific goals should guide grazing management within Grand Staircase-Escalante National Monument?
2. What concerns do you have regarding specific effects of livestock grazing management on socioeconomic conditions of individual permittees and the surrounding communities?

3. What concerns do you have regarding specific effects of livestock grazing on cultural and natural resources?
4. How can collaboration among interest groups be facilitated in the EIS process to resolve conflicts and develop innovative management strategies?
5. What other issues or alternatives do you feel are important to address in the EIS and why?



NEPA Staff Supported CEQ Technology Task Force

Lee Jessee has returned to the Office of NEPA Policy and Compliance, after serving as an agency representative to the Council on Environmental Quality (CEQ)

Environmental Technology Task Force during 2000. Ms. Jessee, founder of the DOE NEPA Web and former Webmaster, applied her expertise in Internet communications to help upgrade environmental information systems in the Executive Office of the President. Working at the CEQ office with CEQ and other Federal agency staff, she also gained insights into broader national environmental policy issues.

The Task Force, chartered in 1996, expired in late 2000. During her assignment, Ms. Jessee served as Associate Director of Environmental Information Technology in the Task Force Interagency Environmental Technology Office.

“This was a wonderful opportunity to apply innovative ideas to improve the Federal Government’s approach to environmental technology in the Information Age,” according to Ms. Jessee. “We were able to achieve important advances in maintaining an accurate environmental database and disseminating this information broadly. By integrating public and nongovernmental databases, we enhanced the usefulness of this resource for conducting NEPA analyses,” she said.

While at CEQ, Ms. Jessee focused on improving the Council’s environmental information resources:

- *Environmental Statistics.* In June 2000, Ms. Jessee established an Environmental Statistics site in NEPANet (ceq.eh.doe.gov/nepa/nepanet.htm) to facilitate data collection and dissemination. This new site contains updated information from 1997 through 1999, and soon will include 2000 data.
- *Coordination Tools.* CEQ urged agencies to more actively solicit the participation of state, tribal and local governments as cooperating agencies in the environmental impact statement process under NEPA (*Lessons Learned Quarterly Report*, December 2000, page 4). Ms. Jessee worked with the Environmental Protection Agency (EPA) to establish the cooperating agency database that EPA maintains for the CEQ. Ms. Jessee also developed an “Intranet,” which is




George T. Frampton, Jr., then Chair, Council on Environmental Quality, presented a certificate of appreciation to Lee Jessee in December 2000.

available through the NEPANet, to facilitate the NEPA Liaison interagency communication. In the future, this resource will provide information on all NEPA practitioners and contacts in the states, tribes and local governments. On behalf of CEQ, Ms. Jessee presented these new resources at the National Association of Environmental Professionals conference in Portland, Maine, in June 2000.

- *Cumulative Effects Assessment.* During the past year, NEPANet was enhanced to support the data requirements for cumulative effects assessment. In September 2000, Ms. Jessee participated in CEQ’s workshop in Olympia, Washington, where she demonstrated NEPANet’s utility as a information source on cumulative impacts analysis.
- *Accessibility.* In July 2000, all Web sites of the Executive Office of the President were redesigned to meet new guidelines for accessibility by persons with disabilities. Ms. Jessee worked with the White House Director of Internet Communications to ensure that environmental resources were compliant with the guidelines and the White House Disability Initiative.

The major focus of Ms. Jessee’s assignment was to facilitate preparation of a landmark report on how technologies could change the way environmental risks are assessed and national environmental policy is developed in the next 10 to 15 years. With Ms. Jessee’s assistance, the draft report, *Our Future, Our Environment*, was written, reviewed, and revised on the Internet, and is expected to be disseminated on the Web by the Rand Corporation later this month (www.rand.org/scitech/stpi/ourfuture/). “The report combines new ideas – an environmental conversation among domestic and international futurists – with new communication media – Web-based radio and television in addition to text,” Ms. Jessee said.

For further information about *Our Future, Our Environment*, contact: Dr. David W. Rejeski, Flum Scholar, Woodrow Wilson International Center for Scholars, 1300 Pennsylvania Avenue, NW, Washington, DC 20004-3027, phone 202-691-4255, e-mail: rejeskidw@wwic.si.edu. Lee Jessee may be reached at lee.jessee@eh.doe.gov or 202-586-7600. 

Transitions

NEPA Office Welcomes New Staff

The Office of NEPA Policy and Compliance welcomes Jeanie Loving and Brian Mills to DOE.

(Carl Sykes was introduced in the December 2000 *Lessons Learned Quarterly Report*.)

As a contractor, Ms. Loving has assisted DOE's Office of Environmental Management since 1994, and earlier worked at both the Rocky Flats and Fernald sites. Her DOE NEPA experience includes supporting the preparation of the Waste Management Programmatic EIS, the Spent Nuclear Fuel Programmatic EIS, and the Idaho High-level Waste and Facilities Disposition EIS. Ms. Loving has both a policy and technical background, in Federal service at the Environmental Protection



In the DOE NEPA Office, new staff (left to right) Brian Mills, Carl Sykes, and Jeanie Loving get acquainted with their workload.

Agency and as a contractor. She can be reached at jeanie.loving@eh.doe.gov or 202-586-0125.

Mr. Mills joins DOE from the Department of the Interior's Bureau of Land Management, where for 24 years at both headquarters and in the field he prepared and reviewed NEPA documents. As an EIS Interdisciplinary Team member and EIS Team Leader in Utah, New Mexico, Kansas, Oklahoma, and Texas, he

participated in a broad range of NEPA reviews addressing land use plans and resource development projects. He can be reached at brian.mills@eh.doe.gov or 202-586-8267.

Four New NEPA Compliance Officers Designated

Fossil Energy: Don Silawsky

Don Silawsky now serves as Fossil Energy's NEPA Compliance Officer on the retirement of Jim Johnson, one of DOE's original NEPA Compliance Officers. Mr. Silawsky is on detail to the position in Fossil Energy's Office of Environment, Security, Safety and Health from DOE's Naval Petroleum and Oil Shale Reserves program. His NEPA experience dates back to the earliest days of DOE, when he served in a five-person NEPA compliance office that included Carol Borgstrom, now the NEPA Office Director, and Ray Berube, now Deputy Assistant Secretary for Environment. Mr. Silawsky can be reached at donald.silawsky@hq.doe.gov or 202-586-1892.


Strategic Petroleum Reserve: Katherine Batiste

Katherine Batiste was designated NEPA Compliance Officer for the Strategic Petroleum Reserve Project Management Office in December on the retirement of David Brine. Ms. Batiste has been with the Office since 1997. As an Environmental Specialist, she advises the Office on pollution prevention and waste management issues, and evaluates data and programs for Federal and state regulatory compliance at the four Strategic Petroleum Reserve sites in Louisiana and Texas. Ms. Batiste can be reached at katherine.batiste@spr.doe.gov or 504-734-4400.

NNSA Nevada: Kenneth Hoar


Kenneth Hoar has been designated as the NEPA Compliance Officer for the National Nuclear Security Administration, Nevada Operations, through 2001. Mr. Hoar replaces Michael Skougard, who will oversee environmental monitoring and permitting. Mr. Hoar is the Director of the Environment, Safety, and Health Division for the NNSA/Nevada Operations, and has worked in the Federal government since 1995. Mr. Hoar can be contacted at hoar@nv.doe.gov or 702-295-1428.

Ohio Field Office: Robert Grandfield

Robert Grandfield was recently designated NEPA Compliance Officer for the Ohio Field Office following the transfer of Sue Smiley to the Miamisburg Environmental Management Project. Mr. Grandfield, Director of the Compliance Division in the Office for Compliance and Support, has been with the Department since 1977 and with the Ohio Field Office since its inception in 1994. He is responsible for staff support and oversight of a variety of programs, including Environmental Management, Waste Management, Pollution Prevention, and Nuclear Materials Management for the five Ohio sites. Mr. Grandfield can be reached at robert.grandfield@ohio.doe.gov or 937-865-3486. 

When to Provide Cost Estimates in Annual NEPA Planning Summaries


Because budgeting for NEPA reviews is an essential part of effective project planning and management, there is a requirement to report the “planned cost” for each NEPA EA or EIS identified in a Program or Field Office’s Annual NEPA Planning Summary (the NEPA Order, DOE O 451.1B, 4d). So as not to prejudice the

procurement process, however, planned costs should only be reported if needed contracting arrangements are in place. (The 2001 Annual Planning Summaries were due to the Assistant Secretary for Environment, Safety and Health on January 31 and were to be made available to the public.) 


Some Considerations in Selecting NEPA Document Preparers

In making arrangements for EA and EIS preparation, NEPA Document Managers aim for quality documents delivered on time for the lowest available cost. NEPA Document Managers may choose preparers from among Federal personnel, the DOE-wide NEPA task order contractors (indefinite delivery/indefinite quantity) and other private sector entities, management and operating contractors, and Federally Funded Research and Development Centers (“FFRDCs,” such as the DOE National Laboratories). (Note: Because of potential conflict of interest considerations, neither a management and operating contractor nor an FFRDC can prepare an EIS for its own site.)

NEPA Document Managers must keep in mind that management and operating contractors and FFRDCs are prohibited from competing directly with private sector entities (for example, they cannot bid on a request for proposal, or on a task order). A management and operating contractor or FFRDC, however, can be assigned under its existing contract to prepare a NEPA document through DOE’s normal work authorization process, usually based on a special capability not available from the private sector.

For additional information, contact Thomas Brown at thomas.brown@pr.doe.gov or 202-586-9075, or Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

DOE-Wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide contracts. For previously reported tasks, see “Contracting, NEPA” in the *Lessons Learned Quarterly Report* Cumulative Index in the September 2000 issue and page 11 in the December 2000 issue. For questions or comments on the DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. 

Task Description	DOE Contact	Date Awarded	Contract Team
EA for Field Verification of a Small-Scale Geothermal Power Plant Project in Empire, NV	Steve Blazek 303-275-4723 steve_blazek@nrel.gov	09/29/00	Tetra Tech, Inc.
EIS for Sundance Energy Project	John Holt 602-352-2592 holt@wapa.gov	11/17/00	Tetra Tech, Inc.
EA for Raton Basin Pipeline Project	Federal Energy Regulatory Commission	11/21/00	Tetra Tech, Inc.
Programmatic EA for Management of Potentially Reusable Uranium Materials	Carolyn Thomas 865-576-2690 thomascf@oro.doe.gov	01/29/01	SAIC
Supplementary Studies for the Tank Waste Remediation System at the Hanford Site	Gae Neath 509-376-7828 gae_m_neath@rl.gov	02/05/01	Tetra Tech, Inc.



Litigation Updates

DOE Case Dismissed: Issues Not Ripe for NEPA Review

Sierra Club Challenge to Rocky Flats Gravel Mining

The U.S. District Court for Colorado dismissed a Sierra Club suit against DOE and the U.S. Army Corps of Engineers for failing to prepare an EIS for proposed expansion of a gravel mining operation at the DOE Rocky Flats Environmental Technology Site. The judge found that the proposed action is contingent on several

highly speculative circumstances and may not start until 25 years after the gravel mining company obtains all required State and County permits and approvals. Therefore, he ruled, the Sierra Club's challenge is premature (Civil Action 97-B-529; February 2, 2001).

Other Agency NEPA Case

Appeals Court Directs Agencies to Begin EA "Afresh" for Tribe's Whale-Hunting Proposal

The U.S. 9th Circuit Court of Appeals in June 2000 overturned a district court ruling that had allowed the Makah Indian Tribe to resume whale hunting off the northwestern coast of Washington State. The 2-to-1 decision turned on two main NEPA issues: timing and objectivity. The majority found that the involved Federal agencies had made an inappropriate commitment to support the Tribe's whaling proposal before completing the NEPA review, and that this commitment biased the EA.

Tribe Sought to Resume a Tradition

The Makah, who have a 1,500-year tradition of hunting whales – in particular, the California gray whale – voluntarily suspended whaling in the 1920s because commercial whaling had devastated the resource. After the eastern North Pacific stock of the California gray whale was delisted as an endangered species in 1994, however, the Tribe decided to resume hunting. Accordingly, the Tribe sought assistance from the Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) to obtain approval from the International Whaling Commission to hunt an annual quota of up to five gray whales.

NOAA subsequently entered into agreements with the Tribe. In the first, in 1996, NOAA expressed support for the Tribe's proposal, and in a second, in 1997, NOAA agreed to prepare an EA. On the day the finding of no significant impact (FONSI) was issued, the agencies were sued by whaling opponents, including Representative Jack Metcalf (R-Washington), animal rights groups, a Makah Tribe elder opposed to the hunt, whale-watching charter companies, and other parties. In 1998, the district court decided in favor of the agencies; the whaling opponents appealed.

The appeals court found that the agencies had violated NEPA by preparing an EA too late in the decision-making process and by failing to take a "hard look" at potential environmental consequences. The court directed the agencies to set aside the FONSI, suspend implementation of the agreement with the Tribe, begin the NEPA process "afresh," and prepare a new EA.

How Early Is "Early" Under NEPA?

Citing the CEQ NEPA regulations (40 CFR 1501.2 and 1502.5), the appeals court found that the agencies did not begin the NEPA process "at the earliest possible time."

continued on page 14

Other Agency NEPA Case (continued from page 13)

According to the court, the “point of commitment” occurred when NOAA signed the 1996 contract with the Makah Tribe and then worked to effectuate this agreement; this was an “irreversible and irretrievable commitment of resources.” NOAA could have made its commitment contingent on completion of the NEPA process, but did not. “By the time the Federal Defendants completed the final EA in 1997,” the court’s majority opinion states, “the die already had been cast.” By making a firm commitment to support a whale harvest before preparing an EA, the agencies “failed to take a ‘hard look’ at the environmental consequences of their actions and, therefore, violated NEPA.”

A NEPA Review Must Be Objective, But an Agency Nevertheless May Have a Preferred Action

NOAA’s pre-EA commitment to the Tribe’s proposal strongly suggested to the appeals court that “the EA was slanted in favor of finding that the Makah whaling proposal would not significantly affect the environment.” The court’s majority opinion agreed with the plaintiffs that “the EA is demonstrably suspect because the process under which the EA was prepared was fatally defective – i.e., the Federal Defendants were predisposed to finding that the Makah whaling proposal would not significantly affect the environment.” In prescribing its remedy, the court required that a new EA be prepared “under circumstances that ensure an objective evaluation free of the previous taint” and to accomplish the NEPA process “objectively and in good faith.”

The court also noted, however, that “this case does not stand for the general proposition that an agency cannot begin preliminary consideration of an action without first preparing an EA, or that an agency must always prepare an EA before it can lend support to any proposal.” The court pointed out that CEQ regulations actually encourage the identification of a preferred alternative. This holding is “limited to the unusual facts and circumstances of this case where the defendants already had made an ‘irreversible and irretrievable commitment of resources’ – i.e., by entering into a contract with the Makah before they considered its environmental consequences and prepared the EA.”


The dissenting judge disagreed with the majority’s definition of objectivity, their interpretation of when an EA should be prepared, and their requirement that a new EA should be prepared “without finding anything wrong with the old one.” *Metcalf v. Daley*, 214 F.3d 1135 (9th Cir. 2000).

Subsequent Cases Refer to This Decision

As of this writing (late February 2001) three decisions, all issued from courts in the Ninth Circuit, have cited the *Metcalf v. Daley* decision.

The same Court of Appeals determined that the Forest Service’s use of supplemental reports instead of a supplemental EA or an EIS to correct an existing EA was improper. The court noted that “NEPA is a procedural statute,” and that “agency action taken without observance of the procedure required by law will be set aside.” *Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562 (9th Cir. 2000).

The Washington District Court quoted *Metcalf v. Daley* in deciding a suit against the National Marine Fisheries Service for permitting fishing pending an agency’s completion of its review under the Endangered Species Act. In refusing to consider evidence outside of the administrative record, the Court noted that environmental reviews “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.” *Greenpeace v. National Marine Fisheries Service*, 106 F.Supp. 2d 1066 (W.D. Wash. 2000).

The Hawaii District Court, in refusing to reopen an action against the Navy’s testing of sonar off the coast of Hawaii, distinguished that case from *Metcalf v. Daley*. The plaintiff argued that the Navy had irretrievably committed its resources to the sonar program and that, therefore, any eventual NEPA document would be procedurally invalid. The court rejected this argument, holding that in *Metcalf v. Daley*, the contract bound the government to take certain irreversible positions before an EA was prepared; in contrast, the contracts the Navy signed for shipbuilding and software development left the Navy free to decide not to deploy the sonar. Because the money spent by the Navy did not constitute an irretrievable and irreversible commitment to deployment, it did not “mark the consummation of [the Agency’s] decision making process.” *Hawaii County Green Party v. Clinton*, 124 F. Supp. 1173 (D. Haw. 2000). 

The NOAA draft EA on “Issuing a Quota to the Makah Indian Tribe for a Subsistence Hunt on Gray Whales for the Years 2001 and 2002” is available at www.nmfs.noaa.gov/prot_res/PR2/Conservation_and_Recovery_Program/makah_DEA.html. The public comment period on the draft EA closed on February 16, 2001, and a final EA is in preparation.

Training Opportunities

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

- **Environmental Laws and Regulations**

San Antonio, TX: April 18-19, 2001

Fee: \$675

An Overview of Environmental Laws and Regulations for Citizens Advisory Boards

Atlanta, GA: May 23, 2001

Fee: \$349

An Overview of Environmental Laws and Regulations for Managers

Las Vegas, NV: June 1, 2001

Fee: \$349

USDA Graduate School/

DOE National Environmental Training Office

Phone: 803-725-0818

E-mail: NETO@srs.gov

Internet: www.em.doe.gov/neto/

- **Cumulative Effects Assessment**

Irving, TX: May 15-17, 2001

Fee: \$695

Environmental Impact Training

Dr. Larry Canter, University of Oklahoma

Phone: 830-596-8804

E-mail: info@eiatraining.com

Internet: www.eiatraining.com

- **Introduction to Section 106 Review**

Washington, DC: March 20-21, 2001

Denver, CO: March 27-28, 2001

Oklahoma City, OK: April 5-6, 2001

Cleveland, OH: April 24-25, 2001

Omaha, NE: May 8-9, 2001

Albuquerque, NM: May 30-31, 2001

Fee: \$440

Heritage Resources Management

Phone: 800-233-8928

E-mail: crystalm@unr.edu

Internet: www.dce.unr.edu/hrm

- **Mastering NEPA**

Portland, OR: April 5 and 6, 2001

Fee: \$325 (by March 30, then \$355 for government employees)

Oregon Law Institute, Northwestern School of Law of Lewis and Clark College

Ron Bass, Jones and Stokes

Owen Schmidt, U.S. Department of Agriculture

Phone: 800-222-8213

E-mail: oli@llark.edu

Internet: www.lclark.edu/~oli

- **Clear Writing for NEPA Specialists**

Anchorage, AK: March 13-15, 2001

Orlando, FL: May 1-3, 2001

Fee: \$795

How to Manage the NEPA Process and Write Effective NEPA Documents

Albuquerque, NM: March 27-30, 2001

San Diego, CA: May 15-18, 2001

Fee: \$995

Reviewing NEPA Documents

Denver, CO: April 18-20, 2001

Fee: \$795

The Shipley Group

Phone: 800-270-2157 or 801-298-7800

E-mail: ben@shipleygroup.com

Internet: www.shipelygroup.com

15th Edition of NEPA Stakeholders Directory Issued

The Office of NEPA Policy and Compliance issued the *Directory of Potential Stakeholders for DOE Actions under NEPA* in January 2001. The Directory is available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Tools or from Katherine Nakata at katherine.nakata@eh.doe.gov.

EAs and EISs Completed (October 1 to December 31, 2000)

EAs

**Albuquerque Operations Office/Defense Programs –
National Nuclear Security Administration**
DOE/EA-1335 (10/16/00)

*Construction and Operation of the Microsystems and
Engineering Sciences Application (MESA) Complex at
Sandia National Laboratories, NM*

Cost: \$60,000

Time: 9 months

Bonneville Power Administration

DOE/EA-1301 (10/12/00)

*Idaho Department of Fish and Game Captive Rearing
Initiative for Salmon River Chinook Salmon*

Cost: \$10,000

Time: 18 months

Chicago Operations Office

DOE/EA-1295 (9/29/00) *

*Decontamination and Decommissioning (D&D) of the Hot
Cells in Building 301 at Argonne National Laboratory*

Cost: \$30,000

Time: 18 months

Golden Field Office

DOE/EA-1280 (11/8/00)

Nome, Alaska Wind Turbine Demonstration Project

Cost: \$68,000

Time: 26 months

National Energy Technology Laboratory

DOE/EA-1347 (11/16/00)

*Georgia-Pacific Corporation Demonstration of a Black
Liquor Gasification System, Big Island,
Bedford County, VA*

Cost: \$45,000

Time: 6 months

**Oakland Operations Office/Environmental
Management**

DOE/EA-1348 (11/3/00)

*Remediation of Environmental Contaminants at Lawrence
Livermore National Laboratory Experimental Test Facility,
Site 300, CA*

Cost: \$43,000

Time: 8 months

**Savannah River Operations Office/Environmental
Management**

DOE/EA-1322 (11/3/00)

*Construction and Operation of the Highly Enriched
Uranium Blend-Down Facilities at the Savannah River
Site, Aiken, SC*

Cost: \$31,000

Time: 14 months

*Not previously reported in Lessons Learned.

EIS

Nuclear Energy, Science and Technology

DOE/EIS-0310 (65 FR 78485; 12/15/00)

(EPA Rating: EC-2)

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

Cost: \$4.0 million

Time: 15 months

NEPA Document Costs and Completion Times

Costs

EAs

- For this quarter, the median cost of 6 EAs (not counting EA-1295, which was completed in the previous quarter) was \$44,000; the average was \$43,000.
- Cumulatively, for the 12 months that ended December 31, 2000, the median cost for the preparation of 20 EAs was \$53,000; the average was \$80,000.

EISs

- Cumulatively, for the 12 months that ended December 31, 2000, the median cost for the preparation of 6 EISs was \$1.3 million; the average was \$1.7 million.

Completion Times

EAs

- For this quarter, the median completion time of 6 EAs was 11.5 months; the average was 13.5 months.
- Cumulatively, for the 12 months that ended December 31, 2000, the median completion time for 21 EAs was 11 months; the average was 14 months.

EISs

- Cumulatively, for the 12 months that ended December 31, 2000, the median completion time for 6 EISs was 24.5 months; the average was 26 months.

Recent EIS-Related Milestones (December 1, 2000 to February 28, 2001)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0325

Schultz-Hanford Area Transmission Line Project, WA
12/1/00 (65 FR 77352; 12/11/00)

DOE/EIS-0324

Umatilla Generating Project, Umatilla County, OR
12/27/00 (66 FR 1332; 1/8/01)

Draft EIS

National Nuclear Security Administration/Defense Programs

DOE/EIS-0309

Site-Wide EIS for the Oak Ridge Y-12 Plant
December 2000 (65 FR 80856; 12/22/00)

Final EIS

National Nuclear Security Administration/Defense Programs

DOE/EIS-0236-S1

National Ignition Facility Final Supplemental EIS
February 2001 (66 FR 11288; 2/23/01)

Records of Decision

Bonneville Power Administration

DOE/EIS-0266

Fourmile Hill Geothermal Development Project
11/20/00 (65 FR 75929; 12/5/00)

Environmental Management

DOE/EIS-0200

Waste Management Programmatic Environmental Impact Statement; Revision to Record of Decision for Treatment and Storage of Transuranic Waste
12/19/00 (65 FR 82985; 12/29/00)

Environmental Management/Rocky Flats Office

DOE/EIS-0277

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site; Amended Record of Decision
1/11/01 (66 FR 4803; 1/18/01)

Environmental Management/Savannah River Operations Office

DOE/EIS-0220

Interim Management of Nuclear Materials; Amended Record of Decision
1/12/01 (66 FR 7888; 1/26/01)

Fossil Energy

DOE/EIS-0289

JEA Circulating Fluidized Bed Combustor Project, Jacksonville, Duval County, FL
11/29/00 (65 FR 76613; 12/7/00)

Nuclear Energy, Science and Technology

DOE/EIS-0310

Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility
1/19/01 (66 FR 7877; 1/26/01)

Supplement Analyses

Environmental Management/Carlsbad Field Office

DOE/EIS-0200/SA-01

Proposed Characterization for Disposal of Contact-Handled Transuranic Waste at the Waste Isolation Pilot Plant

(Decision: No further NEPA review required)
December 2000

National Nuclear Security Administration/Defense Programs

DOE/EIS-0238/SA-01 *

Modification of Management Methods for Certain Unwanted Radioactive Sealed Sources at Los Alamos National Laboratory

(Decision: No further NEPA review required)
August 2000

* Not previously reported in Lessons Learned

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

First Quarter FY 2001 Questionnaire Results

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 October 1 and December 31, 2000. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping and Public Participation

What Worked

- *Making use of existing public outreach programs.* The applicant had an existing program of public outreach and effective community relations. Community relations activities sponsored by the applicant were made part of the NEPA process to assess the views of potentially affected parties.

Data Collection/Analysis

What Worked

- *Using permit information.* We used an application for an Endangered Species Act Section 10 permit, and the permit itself, to back up some of our analysis.
- *Open and direct communication.* Communication must be open and direct. If individuals gathering the information are not able to ask questions or understand the need for information, miscommunication is often the result.
- *Direct communication between analysts and the applicant.* Data collection was facilitated by maintaining a direct link between the NEPA analysts and the applicant with no intermediary.

What Didn't Work

- *Problems getting timely information.* The information received to support the document was not always considered credible when first received. At times it was necessary to go through several iterations of the information to ensure its correctness.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Flexibility.* The team early on made the schedule flexible enough to handle changes.
- *Frequent progress reviews.* Weekly reviews of document progress and schedule status facilitated timely completion of the document.
- *Discrete interim deliverables.* The development of a reasonable schedule with discrete interim deliverables facilitated timely completion of the document by making progress measurable.
- *Secretarial involvement.* The Secretary determined that the document would be completed before the change in administrations.

Factors that Inhibited Timely Completion of Documents

- *Inexperienced staff.* A relatively new document manager and writer team produced an inadequate preliminary EA. A senior manager with competing priorities had to educate the writer about how to prepare NEPA documents.
- *Delayed DOE line review.* Due to higher priority issues, the DOE line organization delayed review of the draft NEPA documents, causing a lengthy NEPA process.
- *Scope changes.* The project scope changed frequently during the latter half of the document completion process.
- *Coordination with state review.* Coordination with the state environmental quality act review was more time consuming than anticipated during the initial scoping.

First Quarter FY 2001 Questionnaire Results

- *Document complexity and size.* The complexity and size of the document, combined with the volume of public comments received during scoping and draft document review, made timely completion difficult.

Factors that Facilitated Effective Teamwork

- *Open and honest communication.* Open and honest communication among DOE and contractor staff made the process effective and enjoyable.
- *Open access to applicant facilities.* The applicant allowed DOE's NEPA personnel open access to its facilities, aiding the flow of information.
- *Team experience.* The document manager had worked before with the preparers, who became an extension of DOE.

Factors that Inhibited Effective Teamwork

- *Limited DOE employee involvement.* Most of the team members were state employees and a contract writer. The only DOE employee was the document manager.
- *An unrealistic schedule.* The unrealistic schedule made effective teamwork impossible.

Process

Successful Aspects of the Public Participation Process

- *A lottery system for speaker order.* Many supporters and opponents of a highly controversial alternative considered in the document registered to speak at the public meeting. To assure fairness, the organizers used a lottery system to determine the order of speakers.

Unsuccessful Aspects of the Public Participation Process

- *Problems with meeting formats.* The public did not seem satisfied by the format for public meetings, which were not interactive. Project team members listened to commenters, but did not answer their questions. The public did not understand the process at all.

Usefulness

Agency Planning and Decision Making – What Worked

- *Defining project scope.* The NEPA process made the project team think more specifically about the project scope.

Agency Planning and Decision Making – What Didn't Work


- *Predetermined decision.* The decision was already made before the NEPA process started, and was not influenced at all by environmental issues or public input.

Enhancement/Protection of the Environment

- *Focusing attention on the proposed action.* Although the NEPA process provided no additional environmental benefits, it served as an important tool for focusing DOE and state agency attention on the proposed action and its implications.
- *Ensuring compliance.* The NEPA process helped ensure that environmental regulations would not be violated.

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 decision making.

- For this quarter, in which there were 6 EAs and 1 EIS, 3 out of 9 respondents rated the NEPA process as “effective.”
- One respondent who rated the process as “0” explained that “the decisions were already made before this EA was finished.”
- Another respondent who rated the process as “0” believed that the NEPA process did not influence a politically driven decision.
- A respondent who rated the process as “3” wrote that “The NEPA process served as a good tool for DOE to gain assurance that the proposed action would not create significant adverse impacts . . . the relatively swift and problem-free NEPA process (in this case) also served to demonstrate that NEPA compliance should not be viewed as a hindrance to achievement of organizational missions.” 



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