NEPA
National Environmental Policy Act
LESSONS LEARNED
U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT
March 1, 2007; Issue No. 50 First Quarter FY 2007

Flexibility of NEPA Process Facilitates Decisions for Strategic Petroleum Reserve Expansion

By: Yardena Mansoor and Carolyn Osborne,
Office of NEPA Policy and Compliance

The Department of Energy (DOE) accommodated new information and changed circumstances throughout preparation of its environmental impact statement (EIS) for expansion of the Strategic Petroleum Reserve. This allowed Secretary of Energy Samuel W. Bodman recently to select a new site for development – at Richton, Mississippi – and two existing sites for expansion – at Bayou Choctaw, Louisiana, and Big Hill, Texas.

As unforeseen situations presented themselves, DOE adapted its process and analysis. A new site was proposed at the end of a scoping period already protracted by the hurricanes of 2005. In the course of EIS preparation, geotechnical studies indicated that one of the candidate new sites was unreasonable, one expansion site was slated for commercial use, and new combinations for expansion of existing sites were identified to better serve the Reserve's mission. Also, DOE made design changes related to the Richton site to protect endangered species and critical habitat. *(continued on page 4)*

Secretary Bodman (right) signs the Record of Decision designating Richton as the new site for the expansion of the Strategic Petroleum Reserve. Signing as witnesses are Mississippi Governor Haley Barbour (center) and Richton Mayor Jimmy White.

GNEP PEIS to Examine Nuclear Fuel Recycling Proposal

The Department of Energy is considering 13 sites as possible locations for one or more of three proposed facilities that would begin recycling spent nuclear fuel from commercial nuclear reactors under the Department's Global Nuclear Energy Partnership (GNEP) initiative. Hundreds of stakeholders participated in scoping meetings for the GNEP Programmatic EIS (PEIS) that DOE held during February in four states. Scoping meetings continue in March.

"We continue to mark significant progress with GNEP, and we look forward to gaining a broader understanding of the environmental conditions under which we will be operating," DOE Assistant Secretary for Nuclear Energy Dennis Spurgeon said in announcing publication of the Notice of Intent (NOI) on January 4, 2007 (72 FR 331). "Our need for nuclear power – a safe, emissions-free and affordable source of energy – has never been greater and GNEP puts us on a path to encourage expansion of domestic and international nuclear energy production while reducing nuclear proliferation risks."

The GNEP PEIS will analyze both programmatic and project-level proposals. Domestically, the "programmatic proposal is to begin to recycle spent fuel and destroy the long-lived radioactive components of that spent fuel," states the NOI. "Recycling spent fuel rather than disposing of it potentially would extend the stock of nuclear fuel available to meet growing electricity demand and reduce waste from the generation of nuclear power."

(continued on page 6)

Inside *LESSONS LEARNED*

Welcome to the 50th quarterly report on lessons learned in the NEPA process. The Office of NEPA Policy and Compliance launched the *Lessons Learned* program in December 1994 to support continuous improvement in the NEPA process. The Office began by presenting cost and time metrics and "What Worked and What Didn't Work." Other features were soon introduced. As always, we hope you read all of *LLQR,* and we welcome your suggestions for further improvement.

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

Quarterly Questionnaires Due May 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2007 (January 1 through March 31, 2007) should be submitted by May 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.

Printed on recycled paper

DOE Report to CEQ Reflects Continuing Cooperating Agency Involvement

Six of the nine EISs that DOE initiated in fiscal year 2006 are being prepared with cooperating agencies, as are seven of the 12 EISs started in fiscal year 2005 and still ongoing, as indicated in DOE's most recent cooperating agency report to the Council on Environmental Quality (CEQ). Two of the ongoing EISs in the recent report added cooperating agencies since the previous fiscal year 2005 report. Three of the 13 environmental assessments (EAs) that DOE completed during fiscal year 2006 were prepared with cooperating agencies.

The January 2007 report is the second annual report in response to a 2004 revision of procedures for reporting on cooperating agency involvement in EISs and EAs. CEQ initiated this reporting in 2002 to measure, through a government-wide database, progress in addressing cooperating status for state, tribal, and local governments, as well as other Federal agencies, in NEPA reviews. Federal agencies are asked, as part of the report, to indicate the reasons for not establishing cooperating agency status for an EIS or EA, or for terminating a cooperating agency relationship before completion of the NEPA review. For the EISs and EAs covered in DOE's recent report, the reasons for not establishing cooperating agency agreements were, in almost all cases, that there was no relevant agency with jurisdiction by law or special expertise with respect to an environmental issue (40 CFR 1501.6), or that the agencies invited to be cooperating agencies instead preferred informal participation in the NEPA process, for example, through consultation.

The CEQ memoranda relating to cooperating agencies are available in the *DOE NEPA Compliance Guide*, Volume 1, Part 4, at *www.eh.doe.gov/nepa* under NEPA Compliance Guide. For further information or copies of DOE's cooperating agency report to CEQ, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326. LL

Comments Identify Additional Alternatives for Complex 2030 Supplemental PEIS

32,000-plus Commentors Provide Input for Scoping Process

In response to public comments, DOE is revising the range of alternatives it will analyze in a Supplemental Programmatic EIS on the future configuration of the nuclear weapons complex. About 975 people attended scoping meetings held in 12 locations across the country during November and December 2006. About 350 people provided comments orally at the meetings, and, in addition, DOE received more than 32,000 written comment documents, most via email. The majority of comments asked DOE to add an alternative that assumes continued reduction in the size of the U.S. nuclear stockpile.

"We're evaluating how best to address these comments in the Supplemental PEIS," said Ted Wyka, NEPA Document Manager. The National Nuclear Security Administration (NNSA) had based its proposed action, the "Transformation Alternative," on planned reductions, which, by 2012, would bring the U.S. nuclear stockpile to its lowest levels since the Eisenhower Administration. The Notice of Intent (71 FR 61731; October 19, 2006) also described a "Reduced Operations and Capability-Based Complex Alternative" that would meet the needs of an even smaller stockpile if national security requirements were to change. (See *LLQR*, December 2006, page 1, for a description of these alternatives.)

New Consolidation Alternatives

In addition, some commentors asked that DOE analyze an alternative that would implement a 2005 recommendation from the Secretary of Energy Advisory Board Task Force on the Nuclear Weapons Complex Infrastructure (contained in the so-called "Overskei Report"). That recommendation was to consolidate most nuclear weapon activities at a single site – a Consolidated Nuclear Production Center (CNPC). After considering these comments, DOE announced in a recent report to Congress that it is "proposing inclusion of the CNPC concept as an alternative to be evaluated" in the Supplemental PEIS (*Report on the Plan for Transformation of the National Nuclear Security Administration Nuclear Weapons Complex*, January 31, 2007).

A CNPC Integrated Project Team has been established to assist in the assessment of reasonable alternatives for the CNPC. The CNPC alternative will include enriched uranium and plutonium processing; weapon component production; production/manufacturing research and development; weapons assembly and disassembly; and storage of plutonium and highly enriched uranium. The CNPC alternative will describe the weapon assembly and disassembly function as a severable piece to allow decisionmakers to consider an alternative that locates the nuclear production facilities portion of the CNPC at a different site than the assembly and disassembly mission. (In the Supplemental PEIS, DOE also is evaluating a CPC, or Consolidated Plutonium Center, which would host only plutonium operations and storage.)

"Changes to the alternatives were the topics most commonly raised in comments, but people addressed many other subjects. Our Integrated Project Teams are reviewing all the comments and developing analytical approaches and compiling data to address them," concluded Mr. Wyka.

The Report to Congress is available on the NNSA website at *www.nnsa.doe.gov/future_of_the_nuclear_weapons_complex.htm*. Additional information on the Complex 2030 Supplemental PEIS is available at *www.Complex2030PEIS.com* or by contacting Ted Wyka at theodore.wyka@nnsa.doe.gov or 202-586-3519. LL

Significant revisions to the Complex 2030 planning scenario may result as public comments are received and as the NEPA process is completed.

– DOE Report to Congress on Plan for Nuclear Weapons Complex Transformation, January 2007

Petroleum Reserve Expansion EIS *(continued from page 1)*

The EIS process allowed us to adapt efficiently and effectively to changes affecting the alternatives, and it facilitated our decisionmaking.

– David Johnson, Director, Planning and Engineering Strategic Petroleum Reserve, Office of Fossil Energy

Energy Policy Act of 2005 Directed Strategic Petroleum Reserve Expansion

The Strategic Petroleum Reserve, a national stockpile of crude oil, was established following the 1973–74 oil embargo to protect the United States from interruption in petroleum supplies that would be detrimental to our energy security, national security, and economy. The current storage capacity is 727 million barrels in underground caverns in rock salt formations at Bayou Choctaw and West Hackberry, Louisiana, and Big Hill and Bryan Mound, Texas.

The Energy Policy Act of 2005 directed DOE to select sites necessary to enable acquisition of the full authorized volume of the Reserve (1 billion barrels). DOE was to select from among sites previously studied, with preference given to the five sites assessed in a 1992 draft EIS, and from other sites proposed by a state where a site has been previously studied by DOE. (In his State of the Union Address on January 23, 2007, the President proposed an expansion of the Reserve to 1.5 billion barrels. Any DOE proposal in this regard is independent of the current expansion to 1 billion barrels and would be subject to a separate NEPA review process.)

In developing the range of reasonable alternatives for the EIS, DOE first considered expanding existing storage sites to capitalize on existing infrastructure and then considered new sites to add 273 million barrels of storage capacity to reach the 1-billion barrel goal.

Storage capacity at new and expansion sites would be created in underground salt domes through solution mining (that is, using water to dissolve the salt) and disposing of the resulting brine by ocean discharge or underground injection. New pipelines, marine terminal facilities, and other infrastructure would be required. Proposed construction and operation activities include clearing and preparing sites; constructing pipelines and facilities for raw water intake, brine disposal, and crude oil distribution; constructing transmission lines to provide electrical power to the sites; and constructing or augmenting support buildings and other facilities.

EIS Process Accommodates Hurricane and Additional Alternative Site

In its Notice of Intent to prepare the EIS, DOE proposed to expand storage capacity at existing sites at Bayou Choctaw, Big Hill, and West Hackberry (up to an additional 30, 108, and 15 million barrels, respectively) and to develop one new storage site with a capacity up to 160 million barrels at either Clovelly or Chacahoula, Louisiana; Stratton Ridge, Texas; or Richton. Following the scoping period that was to extend from September 1 to mid-October 2005, DOE planned to issue the draft EIS in early Spring 2006 and complete the EIS process in August 2006 as directed by the Energy Policy Act.

Due to the regional impacts of Hurricane Katrina, DOE extended the scoping period and rescheduled scoping meetings. Near the end of the revised scoping period, the Governor of Mississippi proposed the Bruinsburg site for DOE's consideration, and DOE reopened the scoping period with an additional scoping meeting. DOE adjusted its planned EIS schedule to consider the new site.

Candidate Site Shown Unreasonable Between Draft and Final EIS

After issuing the draft EIS, DOE completed additional geotechnical studies of the suitability of the salt dome at Clovelly. Because of the salt dome's hourglass shape and small size, DOE's conceptual design was to place new caverns below and in between existing commercial caverns at the site. Additional geotechnical studies showed that this configuration would pose risks to the integrity of the existing caverns, infrastructure, and overall operation of the site. DOE concluded that its development for the Reserve is not feasible, and thus not reasonable, and did not analyze it in the final EIS. DOE also deleted from the final EIS the analyses of existing site expansions that had been proposed in combination with Clovelly. One of these combinations included expansion of Bayou Choctaw by 30 million barrels, which DOE later found desirable to reconsider, as discussed below.

Conceptual Design for Water Use Changed in Response to Comments

During the public comment period for the draft EIS, the U.S. Fish and Wildlife Service, Mississippi Natural Heritage Program, Gulf Restoration Network, Sierra Club Mississippi Chapter, and others expressed concern about the proposed withdrawal of water from the Leaf River, which would be used in solution mining to create storage caverns at the Richton site and later for removal of the stored oil from the caverns (drawdown). As commentors

(continued on next page)

Petroleum Reserve Expansion EIS *(continued from previous page)*

emphasized, the river has a highly variable but frequently low flow rate, and water withdrawal during certain low-flow conditions may adversely impact protected species.

DOE consulted with the U.S. Fish and Wildlife Service and the Mississippi Natural Heritage Program to identify other sources of fresh water. When this effort did not succeed, DOE modified the Richton alternatives in the final EIS to reduce dependence on the Leaf River by adding water from the Gulf of Mexico as a secondary water source. To do so, in the final EIS DOE proposed a larger pipeline that would allow transport of sea water to Richton during periods of low flow in the Leaf River for cavern creation, albeit at a slower rate than by use of fresh water.

The final EIS analyzed use of a secondary water source to avoid withdrawal from the Leaf River, near Richton, below the level protective of the endangered Gulf sturgeon (4 to 8 feet at adult size), its critical habitat, and other species. (Photo: © Glenn H. Clemmer)

Changed Circumstances Affected Preferences

The final EIS identified DOE's preferred alternative as developing a new storage facility at Richton and expanding the capacity of three existing sites: Bayou Choctaw, Big Hill, and West Hackberry (by 20, 80, and 15 million barrels, respectively). Following issuance of the final EIS, DOE continued to evaluate the Reserve's distribution capabilities, commercial activities, and other factors. The preferred alternative in the final EIS was no longer preferred by the time of decisionmaking.

To increase storage capacity at West Hackberry, DOE had proposed acquiring three existing commercial caverns. These caverns were purchased, however, by Sempra Pipelines and Storage Corporation in August 2006 as part of its gas storage system. In commenting on the final EIS, Sempra expressed its intention to use the caverns as early as Spring 2009. As a result, DOE concluded that it might not be able to acquire the West Hackberry caverns at a reasonable cost.

In addition, DOE's evaluation of the Reserve's distribution capabilities identified the need for additional oil reserves at Bayou Choctaw to address potential refiner demands in the lower Mississippi River valley and to achieve the Reserve's needed overall drawdown rate. DOE determined that it could meet these needs by increasing expansion at Bayou Choctaw by 33 million barrels (and Big Hill by 80 million barrels).

Supplement Analysis Examined Additional Options for Existing Sites

DOE prepared a supplement analysis (under 10 CFR 1021.314(c) of its NEPA implementing regulations) to analyze the potential environmental impacts at Bayou Choctaw from increasing expansion to 33 million barrels compared to the 20-million barrel expansion analyzed in the final EIS. (As noted above, expansion of Bayou Choctaw by 30 million barrels was analyzed in the draft EIS, but removed from consideration when DOE decided not to consider the Clovelly site further.)

As shown in the supplement analysis, development at Bayou Choctaw of two new caverns of 11.5-million barrel capacity each (instead of 10-million barrel capacity each) would extend the duration of cavern leaching and brine disposal by about 4 months, but would not impact the salinity of the source water nor of the aquifer into which brine would be disposed. Use of these new caverns and an existing 10-million barrel commercial cavern would not substantially change the potential impacts from those analyzed in the final EIS. DOE concluded that the additional expansion at Bayou Choctaw was "not a substantial change to the proposed action that is relevant to environmental concerns" and that a supplement to the final EIS was not needed.

Mitigation Commitments Made

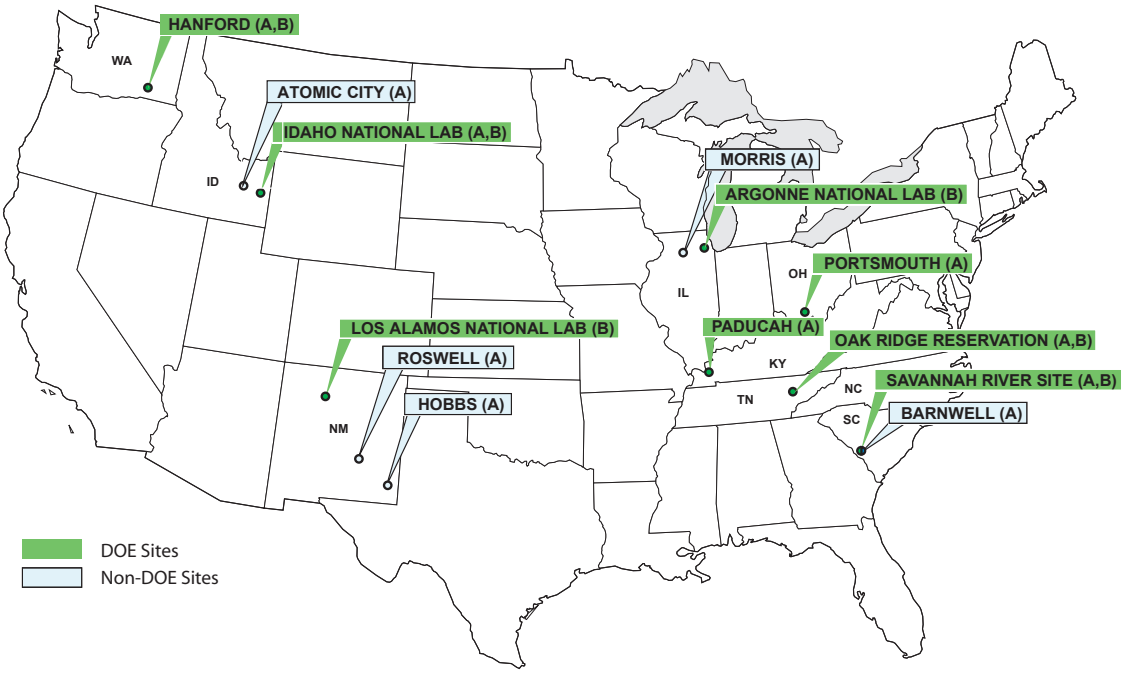
Richton was selected as the new site for development (with Big Hill and Bayou Choctaw as expansion sites) because, in part, it can be developed without impacts to commercial operations at or near the site and without high geotechnical risk, and its inland location provides a significant buffer to potentially damaging effects of hurricanes on surface structures. The Richton alternatives (with Richton as the new site and various combinations of expansions at existing sites) were not identified as environmentally preferable alternatives in the Record of Decision because development of the Richton site would affect several hundred acres of wetlands through more than 200 miles of pipeline and power line rights-of-way and may affect designated critical habitat of a protected species.

(continued on page 7)

GNEP PEIS

(continued from page 1)

The NOI identifies three facilities that would be used to accomplish spent fuel recycling: an advanced fuel cycle research facility, a nuclear fuel recycling center, and an advanced recycling reactor. The GNEP PEIS will analyze the potential environmental impacts associated with proceeding with each facility, either individually or in any combination.



DOE is considering 13 sites as possible locations for one or more of three proposed GNEP facilities. Eleven DOE and non-DOE sites are candidates for a nuclear fuel recycling center and/or an advanced recycling reactor (indicated by "A"), and six DOE sites are candidates for an advanced fuel cycle research facility (indicated by "B").

The PEIS will evaluate two international programmatic initiatives. First, the United States would cooperate with countries that have advanced nuclear programs to supply nuclear fuel services to those countries that refrain from pursuing technologies to enrich uranium or separate plutonium, both of which have application in the production of nuclear weapons. Second, the United States would "promote proliferation-resistant nuclear power reactors suitable for use in developing economies," the NOI states.

GNEP Evolved Following Advance NOI

DOE published an Advance NOI in March 2006 for its then-proposed GNEP Technology Demonstration Program EIS (71 FR 14505; *LLQR*, June 2006, page 10). That Advance NOI described somewhat smaller scale versions of what DOE now refers to as a nuclear fuel recycling center and an advanced recycling reactor. The nuclear fuel recycling center would separate spent nuclear fuel generated at commercial nuclear power plants into potentially reusable components and wastes; the center would manufacture a new type of reactor fuel (called transmutation fuel) containing most of the long-lived radioactive elements, including plutonium, from the separated spent fuel. The advanced recycling reactor would be a fast reactor capable of transmutation (i.e., converting long-lived radioactive elements to stable elements or elements with shorter half-lives) while also generating electricity.

The Advance NOI described a proposal to construct and operate demonstration facilities for these spent fuel recycling operations. After publishing the Advance NOI, DOE determined, partly in response to industry input, that it may be possible to proceed directly to commercial-scale facilities. Consequently, in the NOI for the GNEP PEIS, DOE proposes to evaluate a range of sizes (from small, demonstration-scale to large, commercial-scale) and technologies for these facilities.

Because DOE is considering moving directly to commercial-scale facilities, and in response to public comments on the Advance NOI, DOE decided to prepare a programmatic EIS. In the Advance NOI, DOE had proposed a strategy of preparing an EIS on the demonstration-scale facilities, then later preparing a programmatic EIS "that would address the potential environmental consequences of the widespread deployment" of the spent fuel recycling technologies.

DOE's proposal for a third facility – an advanced fuel cycle research facility – is unchanged from that described in the Advance NOI. This facility would be built on a DOE site to support research and development relating to separation and fabrication of fast reactor transmutation fuel, as well as other aspects of advanced nuclear fuel cycles, the NOI states. DOE identifies six sites in the NOI to screen against criteria for determining reasonable site alternatives for the advanced fuel cycle research facility.

Communities Involved in Site Selection

DOE solicited proposals from communities interested in hosting the nuclear fuel recycling center, advanced recycling reactor, or both facilities. Unlike the advanced fuel cycle research facility, the recycling facilities could be privately owned and operated. On January 30, 2007, DOE

(continued on next page)

GNEP PEIS *(continued from previous page)*

awarded grants worth a total of more than $10 million to 11 commercial and public consortia to conduct detailed siting studies for one or both of the proposed spent fuel recycling facilities.

Each recipient must submit a site characterization report to DOE by May 1, 2007. Data from the siting studies will be used in a screening process to determine reasonable site alternatives to be evaluated in the GNEP PEIS.

More than 200 people attended the GNEP PEIS scoping meeting in Carlsbad, New Mexico, on February 27, 2007. DOE is considering a nearby site in southeastern New Mexico for the proposed nuclear fuel recycling center and advanced recycling reactor.

Public Weighs in at Scoping Meetings

DOE scheduled a dozen scoping meetings that began February 13, 2007, in Oak Ridge, Tennessee. During February, meetings also were held in North Augusta, South Carolina; Joliet, Illinois; and Hobbs, Carlsbad, and Roswell, New Mexico. Participation averaged about 150 people at each meeting, and about a quarter of those attending provided oral comments. Most commentors expressed support for, or opposition to, the overall objectives of the GNEP proposal to recycle spent nuclear fuel and the proposed GNEP facilities. Commentors also addressed such issues as the origin of the spent nuclear fuel, disposal plans for wastes from the recycling processes, transportation, and various potentially affected resources, such as water supplies.

In March, DOE will hold meetings in Los Alamos, New Mexico; Paducah, Kentucky; Piketon, Ohio; Pasco, Washington; Idaho Falls, Idaho; and Washington, DC. The public comment period continues through April 4, 2007.

More information is available on the Web at *gnep.gov* or by contacting Tim Frazier, GNEP PEIS Document Manager, at GNEP-PEIS@nuclear.energy.gov. LL

Petroleum Reserve Expansion EIS *(continued from page 5)*

In its Record of Decision, DOE identified consultations that it will undertake with appropriate Federal, state, and local natural resource agencies to develop and adopt detailed mitigation measures. These consultations include a wetlands permitting process, in which DOE will prepare, among other analyses, a wetlands compensation plan. As expanding the Reserve may cause adverse impacts to cultural resources, DOE has signed Programmatic Agreements with Louisiana, Mississippi, and Texas, the Advisory Council on Historic Preservation, and tribes to ensure that DOE fulfills its responsibilities under the National Historic Preservation Act.

For More Information

LLQR reported on this EIS in an article on the Energy Policy Act of 2005 (September 2005, page 3) and on DOE's extension of public scoping following Hurricane Katrina (December 2005, page 30).

The following documents are available on the DOE NEPA website at *www.eh.doe.gov/nepa/documents.html* and the Strategic Petroleum Reserve website at *www.fossil.energy.gov/programs/reserves/spr/expansion-eis.html*: the Notice of Intent (70 FR 52088; September 1, 2005); *Draft Environmental Impact Statement on the Expansion of the Strategic Petroleum Reserve: Alabama, Louisiana, Mississippi, and Texas* (DOE/EIS-165, 1992); *Site Selection for the Expansion of the Strategic Petroleum Reserve Final Environmental Impact Statement* (DOE/EIS-0385; December 2006); the associated Supplement Analysis (DOE/EIS-0385-SA-1; February 8, 2007); and the Record of Decision, signed on February 14, 2007 (72 FR 7964; February 22, 2007).

For further information, contact the NEPA Document Manager, Don Silawsky, Office of Fossil Energy, at donald.silawsky@hq.doe.gov or 202-586-1892. LL

Supplement to Clean Coal Draft EIS Addresses CO_2 Concern

By: Eric Cohen, *Office of NEPA Policy and Compliance*

To further the purposes of NEPA in response to public comments regarding how the Department had addressed carbon dioxide (CO_2) emissions, DOE issued a *Supplement to the Draft EIS for the Gilberton Coal-to-Clean Fuels and Power Project* (DOE/EIS-0357D-S1) in early January 2007.

The Supplement corrects the value reported in the original Draft EIS for the annual rate of CO_2 emissions, which was understated by a factor of nearly three; explores the feasibility of CO_2 sequestration for the proposed project; and presents additional information on CO_2-related cumulative impacts. The Supplement is about eight pages (plus references and public comments) that respond to comments on CO_2 and related issues, and states that DOE invites comments only on the Supplement.

DOE's experience in issuing the Supplement reinforces the importance of quality assurance – "from bottom to top" – in the NEPA process (*LLQR*, June 2006, page 1) and, in particular, highlights the need to independently verify applicant-supplied information relied upon in a NEPA document (40 CFR 1506.5(a)). Further, issues addressed in preparing the Supplement, such as the appropriate use of relative and global comparisons and the enhanced approach used to analyze cumulative impacts, may be relevant to other DOE NEPA reviews.

Sequestration Not Analyzed in Draft

The Draft EIS, issued in December 2005, analyzes DOE's proposed action to provide cost-shared funding (about $100 million of the total project cost of about $612 million) for construction and operation of facilities near Gilberton, Pennsylvania. The facilities were proposed by an industrial participant to produce 41 megawatts of electricity, steam, and about 5,000 barrels per day of low-sulfur and low-nitrogen liquid diesel fuel and naphtha from culm (anthracite waste coal). The Office of Fossil Energy selected the proposal for further consideration under the Clean Coal Power Initiative (*www.fossil.energy.gov/programs/powersystems/cleancoal/index.html*) to demonstrate the integration at a commercial scale of culm gasification and the synthesis of liquid hydrocarbon fuels using Fischer-Tropsch coal-to-liquid (CTL) technology.

Although CO_2 is not regulated as an air pollutant, the Intergovernmental Panel on Climate Change in 2007 (*ipcc-wg1.ucar.edu*) stated that it is "the most important anthropogenic greenhouse gas" and that "most of the observed increase in globally averaged temperatures since the mid-20th century is *very likely* due to the observed increase in anthropogenic greenhouse gas concentrations." Coal gasification technology has the capability of producing a concentrated CO_2 stream, which would facilitate CO_2 capture and sequestration. However, the industrial participant did not propose to capture and sequester CO_2 and the original Draft EIS did not analyze sequestration options.

The Draft EIS indicates that the proposed project would have several potential benefits, including positive impacts on employment and income in an economically depressed community; environmental benefits from use of previously discarded culm, which would enable reclamation of lands where the material is stockpiled; and the demonstration of CTL technology, which has a potential to reduce the nation's dependence on imported oil.

DOE Responds to Public Comments About Global Climate Change

DOE received written comments from the Natural Resources Defense Council (NRDC) and several other organizations and individuals regarding how the Draft EIS addressed CO_2 emissions. DOE also met with NRDC staff to better understand NRDC's comments and concerns.

NRDC questioned the accuracy of the CO_2 emissions rate in the original Draft EIS (832,000 tons per year) and requested information on the reported quantity. In considering this comment, DOE found that the Draft EIS reported only the total quantity of CO_2 that would be emitted directed by facility operations. The Draft overlooked a concentrated CO_2 stream (1,450,000 tons per year) exiting the gas cleanup system because the stream originally was planned to be sold for commercial use. In reality, the potential commercial use of CO_2 probably would not have resulted in its permanent sequestration. Accordingly, the Supplement corrects the estimated total annual rate of CO_2 emissions, which would be about 2,282,000 tons per year. Recently, the industrial participant informed DOE that commercial sale of CO_2 would not occur in the foreseeable future.

NRDC staff and other commentors stated that DOE should explore potential ways to mitigate CO_2 emissions from the proposed Gilberton facilities by geologic sequestration. In response, DOE analyzed sequestration options in Pennsylvania, concluding in the Supplement that sequestration is not feasible during the demonstration period for the Gilberton proposal, but might become feasible during the 50-year lifetime of the facilities.

NRDC staff and other commentors expressed a sense of urgency in addressing global climate change and opposition to deployment of CTL technology. NRDC staff stated that use of fuel from CTL plants would result in substantially more CO_2 emissions than would

(continued on next page)

Clean Coal Project *(continued from previous page)*

result from use of conventional petroleum-derived liquid transportation fuels when considered on a "wells-to-wheels" basis (that is, considering all greenhouse gases emitted over the entire fuel cycle, from production of the raw materials in a coal mine or oil well through use of the fuel in a vehicle). NRDC staff stated that CTL technology should not be considered without sequestration of CO_2.

Among specific concerns expressed about the original Draft EIS, NRDC staff and other commentors objected to a relative comparison of the potential CO_2 emissions rate to global emissions. The Draft EIS stated: "The proposed facilities would increase global CO_2 emissions by 832,000 tons per year, which is about 0.003% of global CO_2 emissions of 26,713 million tons resulting from fossil fuel combustion in the year 2000. Thus increases from the proposed facilities would be large in terms of number of tons per year but small in comparison with global totals." NRDC stated that this comparison indicates that DOE would always conclude that coal power plant CO_2 emissions would be "small" and that DOE would therefore never mitigate climate impacts by geologic sequestration. The Supplement responds to this concern by stating the emissions in absolute terms, without use of judgmental terms, such as "small." (For guidance on relative and global comparisons, see page 20 of *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (2004), available at *www.eh.doe.gov/nepa* under Selected Guidance Tools.)

In addition, NRDC stated that the analysis of cumulative impacts should be enhanced in several ways. The Supplement responds by providing both annual rates of emissions and total quantities of CO_2 potentially released during 50 years of commercial operation. In addition, the Supplement provides an enhanced analysis of cumulative impacts under several economic scenarios regarding potential wide-scale commercial implementation of CTL technology, which a successful demonstration at Gilberton might encourage. Further, the Supplement provides a "wells-to-wheels" analysis of CTL technology in comparison with the petroleum liquid fuel cycle, with and without CO_2 sequestration. (Based on estimates presented in the Supplement, without sequestration, lifecycle CTL emissions could be 80 percent more than comparable emissions from convention petroleum fuels; CO_2 capture and sequestration could reduce CO_2 emissions to levels ranging from about 8 percent more to perhaps less than those from conventional petroleum-derived fuel production, depending on technology development assumptions.)

Next Steps

The comment period on the Supplement ended on February 27, 2007. DOE will respond to all comments received on the original Draft EIS and the Supplement in the Final EIS. The Draft EIS and the Supplement are available on the DOE NEPA website at *www.eh.doe.gov/nepa* under DOE NEPA Documents. For further information, contact Janice Bell, NEPA Document Manager, at jbell@netl.doe.gov or 412-386-4512.

CEQ's Proposed Citizen's Guide to NEPA Available for Public Comment

The Council on Environmental Quality (CEQ) has published its draft guide, *A Citizen's Guide to the National Environmental Policy Act – Having Your Voice Heard*, for public review (72 FR 7876; February 21, 2007). CEQ invites public comments on the proposed guide, which is available on the NEPA Task Force website at *www.NEPA.gov* in the Current Developments section. The Office of NEPA Policy and Compliance provided DOE comments to CEQ on an earlier draft in August 2006 (*LLQR*, September 2006, page 8).

The guide is intended to help citizens and organizations who are concerned about the environmental effects of a Federal agency's decisionmaking to effectively participate in the agency's environmental review process under NEPA. The guide was developed to explain NEPA and the various types of environmental reviews (i.e., EIS, EA, and categorical exclusion) and to assist citizens in providing effective and timely comments in the NEPA process. The guide recognizes that comments can be the most important contribution from citizens and provides advice on how citizens can get involved in the NEPA process and how their comments can be made effectively. For further information on NEPA Task Force activities, contact Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, at 202-395-5750.

50 Issues of *LLQR* . . .

LLQR has evolved considerably since the 7-page inaugural issue on metrics by adding:

- ✓ Case studies on EISs and EAs
- ✓ Mini-guidance
- ✓ Litigation analyses and updates
- ✓ Analysis of metrics trends
- ✓ Introductions of new NCOs
- ✓ Training opportunities
- ✓ Meeting reports
- ✓ Contract guidance and updates

. . . Golden NEPA Nuggets

LLQR features:

- ✓ Interviews of NEPA leaders
- ✓ CEQ and EPA guidance
- ✓ News from other agencies
- ✓ Conference announcements
- ✓ eNEPA developments
- ✓ Book reviews
- ✓ Cumulative index
- ✓ Web posting with hyperlinks

The National Association of Environmental Professionals presented its highest award, the President's Award for Environmental Excellence, to DOE's NEPA Lessons Learned Program in 2000.

DOE Orders Additional Mitigation at Power Plant, Completes Alternative NEPA Arrangements

In the Emergency Order concerning the continued operation of the Potomac River Generating Station in Alexandria, Virginia, issued January 31, 2007 (Order No. 202-07-2), Secretary of Energy Samuel W. Bodman addressed comments that the Department had received on the Special Environmental Analysis (SEA) issued in November 2006, identified mitigation adopted in issuing the Order, and explained why other mitigation was not adopted.

The SEA was prepared pursuant to 40 CFR 1506.11, the Council on Environmental Quality's (CEQ's) regulations concerning emergencies. DOE's consultation with CEQ and coordination with the Environmental Protection Agency in preparation of the SEA are described in *LLQR*, March 2006, page 1, and December 2006, page 8. With issuance of the Order, DOE has completed the alternative arrangements agreed upon with CEQ for NEPA review of the emergency operations of the coal-fired power plant.

Public Comments Question Analysis

DOE received seven sets of comments on the SEA, including comments from the City of Alexandria, environmental interest groups, and individuals. These stakeholders expressed concern about many issues, but particularly DOE's analysis of health impacts, such as from fine particulate matter and trona (a naturally occurring substance used to manage sulfur dioxide emissions).

In response, the Secretary recognized in the Order that the assumptions and data used in the SEA are not the only way to assess impacts from plant operations. He stated, however, that each of the commentors' suggestions for analysis comes with its own set of uncertainties and that commentors have not demonstrated that their alternative analytical approaches are superior.

Additional Notifications Ordered

The Emergency Order adds the Virginia Attorney General's Office and the City of Alexandria's attorneys to the list of those entities that the Potomac Electric Power Company (PEPCO, which supplies electricity) must notify before planned line outages and in the event of unplanned line outages. DOE believes this is sufficient mitigation to respond to commentors' requests for better notification of such outages, which require emergency operation of the Virginia power plant.

> *The nature of an impact analysis for NEPA purposes is to provide Federal decision makers with an overall understanding of the range of impacts of their actions and to identify appropriate means to mitigate adverse impacts.*
>
> *– Secretary Bodman*
> *Emergency Order, January 31, 2007*

The Order explains that other mitigation, both presented in the SEA and proposed by commentors, is not necessary, justified, or practical in the time frame before the emergency situation is expected to be remedied, that is, by the end of June 2007, when new electric transmission lines planned by PEPCO are to be operating. (The Emergency Order expires July 1, 2007.) Mitigation measures not adopted include ordering the plant to improve operations and pollution controls and to reduce exposure to pollutants. The Order notes that the U.S. Department of Health and Human Services' Agency for Toxic Substances and Disease Registry, writing recently to the City of Alexandria's Health Department, stated that because of modeling uncertainties and data needs, it cannot determine if a public health hazard exists.

For Further Information

The Emergency Order and related materials are on the Office of Electricity Delivery and Energy Reliability website at *www.oe.energy.gov/permitting/372.htm*. For further information on the emergency action or the SEA, contact Tony Como, NEPA Document Manager, Office of Electricity Delivery and Energy Reliability, at anthony.como@hq.doe.gov or 202-586-5935. For further information on the NEPA process for this action, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596.

New Executive Order Echoes NEPA Section 101

A new Executive Order (E.O.) builds upon and replaces earlier "Greening the Government" Orders and promotes sustainable practices. E.O. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (January 24, 2007), states that "it is the policy of the United States that Federal agencies conduct their environmental, transportation, and energy-related activities . . . in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner."

In setting forth agency goals and responsibilities, the E.O. defines "sustainable" to mean "to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generation of Americans," parallel to Section 101 of the National Environmental Policy Act.

Sustainable Practices through EMS

Federal agencies are required to implement sustainable practices consistent with the goals set forth in the E.O. These goals include improving energy efficiency and reducing greenhouse gas emissions through reducing energy intensity (the energy consumption per square foot of building space), reducing water consumption intensity, and maintaining cost-effective waste prevention and recycling programs.

The E.O. requires Federal agencies to establish environmental management systems (EMSs) to use as the primary approach to manage environmental aspects of agency operations, implement the E.O., and collect, analyze, and report information on its implementation. DOE has been recognized by the Council on Environmental Quality (CEQ) as a leader within the Federal government in adopting the EMS approach toward achievement of continuous improvement (*LLQR*, December 2005, page 5).

New Responsibilities Established for CEQ, OMB, Federal Executive

In addition to establishing new agency responsibilities, the E.O. establishes new responsibilities for CEQ, the Office of Management and Budget, and the Office of the Federal Environmental Executive in overseeing implementation of the Order.

- CEQ is to convene a steering committee that will include senior executives designated by the agencies and administer a presidential leadership award program.
- The Office of Management and Budget is to issue instructions to the agencies on agency self-evaluation of E.O. implementation and amend the Federal Acquisition Regulation as needed to implement the E.O.
- The Office of the Federal Environmental Executive, maintained within the Environmental Protection Agency, is to monitor agency performance under the E.O., advise CEQ on progress, and submit a biannual report to the President.

For further information on the E.O., see *www.ofee.gov*. DOE's website for EMS information is *hss.energy.gov/nuclearsafety/nsea/oepa/ems*. LL

Earlier Executive Orders, Memoranda Consolidated

E.O. 13423 revokes and replaces five earlier E.O.s:

- E.O. 13101, *Greening the Government through Waste Prevention, Recycling, and Federal Acquisition*
- E.O. 13123, *Greening the Government through Energy Efficient Management*
- E.O. 13134, *Developing and Promoting Biobased Products and Bioenergy*
- E.O. 13148, *Greening the Government Through Leadership in Environmental Management*
- E.O. 13149, *Greening the Government Through Federal Fleet and Transportation Efficiency*

The Executive Order also adopts the following two Memoranda of Understanding, to which DOE and several other Federal agencies were signatories:

- *Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding* (2006)
- *Promoting Sustainable Environmental Stewardship of Federal Electronic Assets* (2004)

International "NEPA": Nord Stream and the EU

By: Brian Mills, *Office of NEPA Policy and Compliance*

While perusing a copy of the *Oil and Gas Journal*, I chanced upon an article concerning proposed construction of an international natural gas pipeline crossing northern Europe. *Being a NEPA nerd, my first question was, I wonder if they wrote an EA or an EIS?* Curiosity led me to search the Web for information concerning how European Union (EU) countries evaluate potential environmental impacts of projects and how close their process is to our own NEPA process.

The project called "Nord Stream"[1] is a 1,320-mile natural gas proposal (573 miles in Russia and 747 miles under the Baltic Sea) consisting of two parallel natural gas pipelines with an estimated capacity of around 2 trillion cubic feet (55 billion cubic meters) per year from Russia to Germany. The Nord Stream pipeline project is subject to the EU Environmental Impact Assessment (EIA) Directive[2] and Baltic Marine Environment Protection Commission[3] (HELCOM or Helsinki Commission) recommendations. The members of HELCOM are: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia, and Sweden.

The EIA and HELCOM processes establish a mix of mandatory and discretionary procedures for assessing both the environmental impacts on the marine environment of the Baltic Sea as well as terrestrial impacts to EU member states. The assessment is referred to as an EIA. The Nord Stream EIA process was initiated in November 2006 and is expected to be completed by mid-2007.

EU EIA Process Parallels NEPA

The EU EIA Directive is a legislative act of the EU that requires member states to incorporate environmental considerations into policies, plans, and programs prior to decisionmaking without dictating the means of achieving that result. Member states retain a certain amount of leeway as to the exact rules or procedures to be used in the development of the EIA.

The EU EIA process is based on the following phases:

- Screening, i.e., investigation of whether the plan or program falls under the EIA Directive
- Scoping, i.e., defining the boundaries of investigation, assessment, and assumptions required
- Documenting the state of the environment, i.e., a baseline on which to base judgments
- Determining the likely (non-marginal) environmental impacts, usually in terms of direction of change rather than firm figures
- Informing and consulting the public
- Influencing "decision taking" based on the assessment
- Monitoring of the effects of plans and programs after their implementation

These phases of the EIA process certainly sound familiar.

Baltic Sea Impacts Raise Concerns

An environmental concern raised by HELCOM member countries Lithuania, Poland, and Sweden is that construction of the pipeline may disturb the seabed and dislodge toxic materials, including chemical munitions placed in the Baltic Sea during and after World Wars I and II.[4] Environmental groups also are raising concerns about the impact of the pipeline construction activities on bird and marine life in the Baltic Sea. The World Wildlife Fund[5] and Greenpeace[6] have asked contracting parties to HELCOM to safeguard the Baltic marine habitats, which could be altered by the implementation of the project. These organizations successfully petitioned the International Maritime Organization[7] (IMO) to designate the Baltic Sea as a "Particularly Sensitive Sea Area"[8] (PSSA) in 2005.

A PSSA is an area that needs special protection through action by IMO because of its significance for recognized ecological or socioeconomic or scientific reasons and which may be vulnerable to damage by international maritime activities. Currently, 11 such IMO designations exist world wide, including the sea around the Florida Keys (adopted 2002) here in the United States. The designation of the Baltic Sea as a PSSA enables Baltic Sea coastal states and the IMO to consider the best protective measures to adopt to prevent potential damage to this area.

Hmm, do you suppose that the Trans-Siberian pipeline[9] from Russia through China to the Sea of Japan will also have a NEPA-like analysis?

[1] *www.nord-stream.ru/eng/*
[2] *ec.europa.eu/environment/eia/eia-legalcontext.htm*
[3] *www.helcom.fi*
[4] *www.sweden.se, search "Nord Stream"; see various news articles, e.g., February 20, 2007.*
[5] *takeaction.worldwildlife.org/results/baltic.asp*
[6] *www.greenpeace.org/international/news/baltic-sea-victory*
[7] *www.imo.org/home.asp*
[8] *www.imo.org/Environment/mainframe.asp?topic_id=1357*
[9] *www.pacificenvironment.org/article.php?id=109*

MOU Strengthens Migratory Bird Protection

To enhance collaboration in efforts to protect and conserve migratory birds, DOE and the Department of the Interior's Fish and Wildlife Service (FWS) have entered into a Memorandum of Understanding (MOU) pursuant to the Migratory Bird Treaty Act and Executive Order (E.O.) 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds*. The Migratory Bird Treaty Act (16 U.S.C. 703–712) protects migratory birds by governing the taking, killing, possession, transportation, and importation of such birds, their eggs, parts, and nests. The E.O. (66 FR 3853; January 17, 2001) requires agencies to avoid or minimize the negative impact of their actions on migratory birds and to ensure that environmental analyses under NEPA evaluate the effects of proposed Federal actions on such species.

The MOU identifies specific areas in which cooperation between DOE and FWS will contribute substantially to the conservation of migratory birds and their habitats. The MOU states that DOE will, among other actions, consider migratory bird protection and conservation in NEPA reviews, and integrate migratory bird conservation principles, measures, and practices – such as habitat and population management – into agency activities. FWS will assist DOE by identifying migratory bird habitat "under the stewardship of DOE," providing the most recent information relating to bird conservation that might affect Departmental activities and policies, and developing informational and educational programs on migratory bird conservation for DOE.

The MOU (August 3, 2006) is available at *hss.energy.gov/nuclearsafety/nsea/oepa/data/migratory_bird_mou.pdf*. See *LLQR*, September 2001, page 11, on the E.O., and June 2005, page 16, on voluntary guidelines for protecting birds from electrocution and collisions. For more information, contact John (Larry) Stirling, Office of Nuclear Safety and Environmental Policy, at john.stirling@hq.doe.gov or 202-586-2417. [Artwork: FWS]

Forest Service Issues New Categorical Exclusions for Land Management Plans, Oil and Gas Leasing

The U.S. Forest Service recently established two new categorical exclusions. One is for "development, revision, or amendment of land management plan components . . . except where extraordinary circumstances exist . . ." (71 FR 75481; December 15, 2006). Previously, the Forest Service prepared an EIS for a land management plan, but now has concluded that such plans do not include sufficient information on projects and activities to allow meaningful analysis of impacts (*LLQR*, March 2005, page 6).

The second new categorical exclusion (72 FR 7391; February 15, 2007) is for oil and gas leasing activities on National Forest System lands when there are no extraordinary circumstances. The categorical exclusion allows for approval of a plan for exploration and for initial development of a new oil or gas field when road building, pipeline, and drilling activities do not exceed specified constraints.

Agencies' Approaches Vary

The use of a categorical exclusion must include consideration of "extraordinary circumstances" (40 CFR 1508.4). However, agencies differ in how they apply this concept. The Forest Service *Environmental Policy and Procedures Handbook* (*www.fs.fed.us/emc/nepa/includes/fsh1909links.doc*, Chapter 30.3) identifies resource conditions that should be considered in determining whether extraordinary circumstances are present, including the presence of threatened or endangered species, designated critical habitat, floodplains, wetlands, and archeological sites. The *Handbook* states that the "degree of potential effect on these resource conditions" determines the applicability of the categorical exclusion to a proposal.

DOE's NEPA regulations (10 CFR Part 1021) contain a similar list of "environmentally sensitive resources" that may not be adversely affected for a categorical exclusion to be applied. DOE includes this condition as an integral element of most of its categorical exclusions (Appendix B(4)) rather than as extraordinary circumstances. DOE defines extraordinary circumstances as unique situations presented by specific proposals (§ 1021.410(b)(2)). Agencies' approaches are currently under study by an interagency work group established by the Council on Environmental Quality to develop guidance on categorical exclusions (*LLQR*, December 2006, page 9).

Transitions: New NEPA Compliance Officers

Los Alamos Site Office: George Rael

George Rael has been designated as NCO for the Los Alamos Site Office, replacing Elizabeth Withers, who now serves as the NCO (along with Jeff Robbins) at the NNSA Service Center in Albuquerque. Mr. Rael has been with DOE for approximately 20 years and has worked at a number of DOE facilities, including Pantex, Pinellas, Grand Junction, Los Alamos, and Sandia. Most of his DOE service has been in the area of environmental protection (including NEPA). Previously, he was with the U.S. Army Corps of Engineers for six years. He has a degree in civil engineering, with emphasis in environment. George Rael can be reached at grael@doeal.gov or 505-606-0397.

West Valley Demonstration Project: Cathy Bohan

Cathy Bohan is the new NCO for the West Valley Demonstration Project under its 2006 reorganization and transition from the Ohio Field Office to the Office of Site Support and Small Projects within the Office of Environmental Management. Since joining DOE in 2000, Ms. Bohan has served as a Project Manager for groundwater mitigation actions; facility characterization efforts; main plant, waste tank farm, and laboratory operations; and decontamination and demolition activities. She also has served on details to both the National Energy Technology Laboratory and the Environmental Protection Agency-National Homeland Security Research Center. Cathy Bohan can be reached at catherine.m.bohan@wv.doe.gov or 716-942-4159.

The former NCO, Dan Sullivan, now serves as the Federal Project Director for the West Valley Demonstration Project. He can be reached at daniel.w.sullivan@wv.doe.gov or 716-942-4016.

Western/Sierra Nevada Region: Steve Tuggle

Steve Tuggle, the Natural Resource Manager for the Sierra Nevada Regional Office, Western Area Power Administration, has been designated as the Office's NCO. He has participated in the Office's NEPA activities for more than six years. Previously, he was with the Sacramento Office of the U.S. Army Corps of Engineers for three years, working in the Environmental Planning Department. Steve Tuggle can be reached at tuggle@wapa.gov or 916-353-4549.

Loreen McMahon, the former NCO for the Sierra Nevada Region, now works for the Federal Energy Regulatory Commission in Washington, DC.

Y-12 Site Office: Pam Gorman

Pam Gorman has been designated as the NCO for the NNSA's Y-12 Site Office, following the retirement of Robert Hamby. Ms. Gorman has served with the Department for 22 years, including seven years at the Y-12 Site Office and previously at the Oak Ridge National Laboratory Site Office and at the Office of Scientific and Technical Information. She has a degree in chemical engineering and has served in various program management capacities, including information management, technology transfer, and institutional planning. Currently, she is managing activities at the Y-12 Site Office that encompass most of the applied research, development, and deployment of new technologies within the Y-12 National Security Complex. Pam Gorman can be reached at gormanpl@yso.doe.gov or 865-576-9903. LL

For upcoming environmental conferences, see page 22.

Litigation Updates

Supreme Court Denies Request to Review Decision on NEPA Analysis of Terrorist Acts in NRC Case

The Supreme Court on January 16, 2007, declined to review a decision by the U.S. Court of Appeals for the Ninth Circuit (appeals court) that NEPA requires consideration of the environmental impacts of a potential terrorist attack. At issue was the appeals court's June 2, 2006, decision that such an analysis is required for the NEPA review in the Nuclear Regulatory Commission (NRC) licensing process for a proposed dry cask spent nuclear fuel storage facility in California. (See *LLQR*, September 2006, page 19.) The Pacific Gas and Electric (PG&E) Company, which applied for the license to expand dry cask storage at its Diablo Canyon Power Plant, asked the Supreme Court to review the appeals court's decision. As is common for this type of action, the Supreme Court provided no explanation for its denial of PG&E's request. In a February 26, 2007, Memorandum and Order, NRC directed its staff to complete, within 90 days, an EA "addressing the likelihood of a terrorist attack at the Diablo Canyon [storage] site and the potential consequences of such an attack."

The outcome is relevant to DOE because the same appeals court cited the NRC case in a similar, subsequent ruling regarding an EA for a Biosafety Level-3 facility that DOE had proposed for the Lawrence Livermore National Laboratory (DOE/EA-1442, December 2002). (DOE constructed that facility after the Finding of No Significant Impact was issued in December 2002, but has not yet begun operations.) In response to the NRC and Lawrence Livermore National Laboratory decisions, DOE issued interim guidance in December 2006 that all DOE EISs and EAs, whether for nuclear or non-nuclear proposals, should include explicit consideration of the potential environmental impacts of sabotage and terrorism (i.e., intentional destructive acts). (See *LLQR*, December 2006, page 3.)

Solicitor General Criticized Decision, But Recommended Denying Review

The Office of the Solicitor General, within the Department of Justice, represents Federal agencies before the Supreme Court. The Solicitor General stated in its December 2006 response to PG&E's request for Supreme Court review that the appeals court's decision is "wrong" but that Supreme Court review is not warranted at this time.

The Solicitor General faulted the appeals court for failing to consider whether there is a "reasonably close causal relationship" between the potential environmental impact and the alleged cause. A "terrorist's intentional criminal act of mass murder and destruction, not a licensing decision, would proximately cause a terrorist attack's consequences. Moreover, one does not in any sense cause criminal activity simply by providing an object for a criminal act. No one causes his or her watch to be stolen simply by buying a valuable watch," the brief argued.

In addition, the Solicitor General contended, terrorism "poses a threat to the Nation as a whole that is entirely independent of NRC's actions at any particular facility. . . . Adding NEPA analysis of potential terrorist attacks to NRC's already extensive regulatory efforts to address that threat would divert agency resources and make NEPA less manageable without producing any useful new information – and would therefore fail to advance NEPA's goal of protecting the environment." Moreover, the brief added, an analysis of terrorist attacks under NEPA "creates a risk that sensitive information could be disclosed."

Despite these criticisms of the appeals court's decision, the Solicitor General contended that the Supreme Court should not review the decision at this time because there is no direct conflict among the appeals courts and "it is unclear at this time how burdensome the court of appeals' decision will be," given that the decision does not specify how much analysis is required. The Solicitor General noted, however, that, "The Ninth Circuit's decision has the potential to be highly disruptive for NRC (and perhaps other federal agencies), but the extent of any disruption will depend on how the decision is interpreted by the Ninth Circuit."

One purpose of the Supreme Court is to resolve differing legal interpretations among the appeals courts. The Solicitor General summarized three previous appeals court decisions that did not require a NEPA analysis of potential terrorist attack. However, the Solicitor General also pointed to differences among the cases and concluded that there is not a clear split among the appeals courts on the question and so Supreme Court review is not warranted at this time.

The Solicitor General's brief is available on the Web at *www.usdoj.gov/osg/briefs/2006/0responses/2006-0466.resp.pdf*.

(continued on next page)

DOE and BLM Prevail in U.S.-Mexico Transmission Line Case

Legal Challenge Addressed Clean Air Act Conformity and EIS Adequacy

The U.S. District Court for the Southern District of California on November 30, 2006, decided in favor of DOE and the Bureau of Land Management in a suit brought by the Border Power Plant Working Group. The court found that the EIS for the *Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004) was adequate and that the agencies had not violated the Clean Air Act by failing to prepare a conformity determination. At issue were permits for transmission lines to carry electricity into the United States from two new power plants in Mexico. DOE issued permits for transmission lines at the U.S.-Mexico border. The Bureau of Land Management issued permits for the lines to cross land it manages in California.

EPA Clarifies: Conformity Rule Does Not Apply to Emissions Outside of Nonattainment Areas

EPA issued guidance on June 5, 2006, *Revision to General Conformity Applicability Questions and Answers*. This guidance revises 1994 guidance, which was issued prior to the 1995 amendment to the Clean Air Act (42 U.S.C. 7506(c)(5)) that made conformity provisions applicable only to nonattainment and maintenance areas. The revised guidance states that EPA interprets the 1995 amendment to mean that any direct and indirect emissions originating in an attainment or unclassifiable area do not need to be analyzed for general conformity purposes, even if such emissions may transport into a nonattainment or maintenance area. Further information, including the guidance, is available at *www.epa.gov/air/genconform/background.htm*.

Clean Air Act Conformity Issues

The plaintiff alleged that the agencies violated the Clean Air Act by failing to prepare a conformity determination. A conformity determination is a Federal agency assessment of how its actions would conform to applicable state implementation plans for achieving and maintaining the National Ambient Air Quality Standards (NAAQS) for criteria pollutants. Imperial County, California, the location of the transmission lines and an area potentially affected by emissions from the power plants, does not meet the NAAQS for ozone and particulate matter less than 10 microns in diameter.

Based on information in the EIS, the plaintiff alleged that "the Permits will cause emissions in Imperial County that will exceed several of these [Clean Air Act] thresholds" and that these are "indirect emissions" within the meaning of the Act. In addition, the plaintiff claimed that DOE could set conditions in the permits that would control emissions.

In response, DOE argued: (1) a conformity determination is not required for the emissions from the power plants because these emissions occur in Mexico and not in the Imperial County nonattainment area, and (2) issuance of the Presidential permits for the cross-border transmission lines is a "foreign affairs function" exempt from the conformity requirements.

On the first point, the court's opinion referred to the Environmental Protection Agency's June 2006 Clean Air Act guidance, *Revision to General Conformity Applicability Questions and Answers*, finding that DOE did not have to consider emissions from outside Imperial County in a conformity determination. On the second point, the court found that DOE did not need to consider emissions from the power plants in Mexico, sources that are permitted and regulated by a foreign government. The court disagreed, however, with DOE's claim that it was exempt from the requirements because issuance of the permits for the transmission lines in the United States is a "foreign affairs function."

Court Found the EIS Adequate

The plaintiff alleged that the Federal agencies violated NEPA by preparing an EIS that:

- Inadequately evaluated alternative cooling technologies that would minimize environmental impacts, specifically "wet-dry cooling" at the Mexico power plants.

  The court found that the final EIS adequately evaluated this alternative through a detailed response to the comments on this subject submitted on the draft EIS; an "extensive discussion of the advantages, disadvantages, and logistics" of the alternative; and presentation of the environmental impacts of the alternative in a summary chart that considered 12 categories of impacts.

(continued on next page)

Litigation Updates *(continued from previous page)*

- Failed to ensure the scientific accuracy of information in the consideration of alternative cooling technologies.

  The court characterized the challenges to the EIS treatment of alternatives as "a battle of experts," in which "an agency must have discretion to rely on the reasonable opinion of its own qualified experts." The court did not consider challenges to detailed statements in the EIS because it refused to "fly-speck" minor technicalities in the EIS in light of its "comprehensive discussion of the proposed actions and their environmental impacts."

- Inadequately analyzed mitigation measures because the Record of Decision (ROD) does not state why mitigation measures discussed in the EIS were not adopted.

  The court found that the "exhaustive" discussion of mitigation measures in the final EIS satisfied the requirement for discussion of mitigation in the ROD. Further, the court stated that the ROD explains that offsite mitigation measures might not be able to be implemented because of factors beyond the permit applicants' control and that the measures' effectiveness could be diminished by existing agreements.

For background on this EIS and associated litigation, see *LLQR*, September 2003, page 22; December 2003, page 7; September 2005, page 25; and March 2006, page 20, all at *www.eh.doe.gov/nepa/lessons.* Also see DOE guidance, *Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process* (April 2000), in Volume 2 of the *DOE NEPA Compliance Guide*, available on the DOE NEPA website, at *www.eh.doe.gov/nepa/guidance*.

For further information about the EIS, contact Tony Como, NEPA Compliance Officer, Office of Electricity Delivery and Energy Reliability, at anthony.como@hq.doe.gov or 202-586-5935. [Case No.: 02-0513]

Complaint Alleges EIS Needed for Advanced Test Reactor Life Extension Program, Based on Safety Concerns

Keep Yellowstone Nuclear Free et al. v. Department of Energy et al. In a complaint filed January 22, 2007, in U.S. District Court for the District of Idaho, the plaintiffs allege that DOE is in violation of NEPA for undertaking a Life Extension Program to extend operation of the Advanced Test Reactor at the Idaho National Laboratory without first having prepared an EIS. The reactor began operating in 1967. The plaintiffs (two environmental groups and three individuals) allege safety problems regarding the reactor. The plaintiffs seek an order directing DOE to prepare an EIS and a permanent injunction prohibiting DOE from operating the Advanced Test Reactor and from shipping reactor fuel and all special nuclear material to the reactor, until DOE has completed the EIS, issued a ROD, and implemented those components of the Life Extension Program "necessary to ensure that the [reactor] can operate safely."

The *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* (DOE/EIS-0310, December 2000) analyzes operation of the Advanced Test Reactor for the production of plutonium-238, continued production of medical and industrial isotopes, and continued support for civilian nuclear energy research and development. The ROD (66 FR 7877; January 26, 2001) announced DOE's decision to use the Advanced Test Reactor for irradiation of targets for the production of plutonium-238 for radioisotope power systems. In the ROD, DOE also determined that its current nuclear infrastructure (including Advanced Test Reactor operations) would serve the needs of the research and isotope communities for the next 5 to 10 years. Operation of the Advanced Test Reactor for production of plutonium-238 also is analyzed in the draft EIS for the *Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems* (DOE/EIS-0373, July 2005). In comments on the draft EIS, Keep Yellowstone Nuclear Free and others raised concerns regarding reactor safety. [Case No.: 07-36]

Separately, the two environmental groups who are plaintiffs in *Keep Yellowstone Nuclear Free et al. v. Department of Energy et al.* filed a Freedom of Information Act complaint in August 2006 in the U.S. District Court for the District of Wyoming regarding their requests for documents related to the Advanced Test Reactor.

(continued on page 21)

Training Opportunities

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

- **NEPA**
  San Francisco, CA: March 29-30
  Fee: $695 (GSA contract: $595)
  Multiple registration discount available
  Austin, TX: June 7-8
  Fee: $595 (GSA contract: $495)
  Multiple registration discount available

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

- **Scoping, Public Involvement and Environmental Justice**
  Durham, NC: March 28-30
  Fee: $750

  Implementation of the National Environmental Policy Act
  Durham, NC: April 16-20
  Fee: $1,150

  NEPA Certificate Program
  Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.
  Fee: Included in registration for constituent courses

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

- **NEPA Cumulative Effects Analysis and Documentation/Adaptive Management**
  Missoula, MT: March 6-8
  Fee: $885 (GSA contract: $795)
  Baltimore, MD: June 26-28
  Fee: $885 (GSA contract: $795) until 5/12/07

  NEPA Process Management Emphasis on Native American Issues
  Portland, OR: March 27-29
  Fee: $885 (GSA contract: $795)

  How to Manage the NEPA Process and Write Effective NEPA Documents
  San Francisco, CA: April 24-27
  Fee: $1,060 (GSA contract: $945) until 3/12/07

  NEPA Cumulative Effects Analysis and Documentation
  Denver, CO: May 1-3
  Fee: $835 (GSA contract: $745) until 3/30/07

  Advanced Writing for NEPA Specialists
  Atlanta, GA: May 15-17
  Fee: $835 (GSA contract: $745) until 4/2/07

  NEPA Process Management
  Baltimore, MD: May 21-22
  Fee: $620 (GSA contract: $555) until 4/12/07

  NEPA Writing Workshop
  Baltimore, MD: May 23-25
  Fee: $835 (GSA contract: $745) until 4/12/07

  Overview of the NEPA Process/ Reviewing NEPA Documents
  Las Vegas, NV: June 19-22
  Fee: $1,060 (GSA contract: $945) until 5/1/07

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

- **NEPA Certificate Program**
  Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group. Also requires completion of course exams and a final project.
  Fee: $4,955 (includes tuition, course fees, and all course materials)

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

- **NEPA Practice: 2007 Update**
  Portland, OR: March 8-9
  Fee: $450 (GSA contract: $375)

  Oregon Law Institute
  800-222-8213
  www.lclark.edu/org/oli

(continued on next page)

Training Opportunities

(continued from previous page)

- **Comprehensive NEPA**
  Salt Lake City, UT: March 7-9
  Fee: $795

  Advanced Topics in NEPA: Project Management
  Salt Lake City, UT: April 18-19
  Fee: $695

  The Cultural Side of NEPA: Addressing Cultural Resources in NEPA Analysis
  Pasadena, CA: May 16-17
  Fee: $695

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

- **NEPA: Policies, Procedures, and Practices**
  Los Angeles, CA: March 22-23
  Fee: $475

  Jones & Stokes
  916-737-3000
  www.jonesandstokes.com

- **NEPA in Indian Country**
  Denver, CO: March 26-27
  Fee: $495

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

- **International Environmental Law**
  Washington, DC: April 12-13
  Fee: $995

  Wetlands Law and Regulation
  Washington, DC: May 9-11
  Fee: $995

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

Litigation Updates *(continued from page 19)*

DOE NEPA Litigation in Brief

Winnemucca Indian Colony v. U.S. (D. Nev.): The Defense Threat Reduction Agency (DTRA, an agency of the Department of Defense) announced on February 22, 2007, that it had decided to cancel the proposed Divine Strake experiment, which was the subject of this case. The experiment would have involved a detonation of 700 tons of ammonium nitrate and fuel oil at the Nevada Test Site. DOE issued for public comment a *Draft December 2006 Revised EA for a Large-Scale, Open-Air Explosive Detonation, DIVINE STRAKE, at the Nevada Test Site* (DOE/EA-1550-R) on December 22, 2006. DOE extended the public comment period from January 24, 2007, to February 7, 2007, after DOE determined that 10 pages were inadvertently omitted from the initial distribution of the Draft Revised EA. DTRA and DOE held public meetings in Nevada, Utah, and Idaho during the public comment period. (See *LLQR*, September 2006, page 18; and June 2006, page 17.) [Case No.: 06-00497]

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): A hearing is scheduled for May 8, 2007, in this case where the plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Touret et al. v. NASA et al. (D. R.I.): A hearing was held on January 8, 2007. The plaintiffs, individuals living near Brown University, allege that an EA for a proposed life sciences building prepared by NASA, in which DOE was a cooperating agency, is inadequate and that an EIS is required. (See *LLQR*, September 2004, page 19.)
[Case No.: 04-00198] LL

Conferences Highlight Environmental Laws, Leadership, Orders

Conferences provide NEPA practitioners an opportunity to enhance their skills, stay informed of developments in the field, and interact with colleagues from diverse agencies and locations.

The Future of Environmental Protection

The George Washington University Law School will host the 17th Annual National Association of Environmental Law Societies (NAELS) Conference, *The Future of Environmental Protection*, March 15–18, 2007, in Washington, DC. The conference will offer presentations and workshops on contemporary topics in environmental law, with a focus on global climate change, states the conference website. Other topics include international environmental law, water law, and the property rights movement. Former Vice President Al Gore will close the conference on March 18 with a lecture, question-and-answer session, and showing of his Academy Award-winning film, *An Inconvenient Truth*. Additional information is available on the conference website at *www.law.gwu.edu/naels*.

NAEP: Environmental Leadership

The National Association of Environmental Professionals (NAEP) will hold its 32nd Annual Conference, *Environmental Leadership: Science, Education, Alliances*, April 22–25, 2007, in Orlando, Florida. "This year's conference focuses on demonstrating how environmental professionals of all levels are working to solve many of the world's important issues through leadership in the areas of science; education; and the development of world-wide, national, regional, and local alliances," states the conference brochure.

The conference is organized around 13 "tracks" or sets of presentations related by subject area. The "NEPA Symposium" will feature a review by several Federal agencies on "the approaches and methods they use to address their unique NEPA issues and streamline the process," with panel discussions on NEPA legislation and litigation, and emerging practices for improving the quality of environmental documents. In addition, papers will be presented on NEPA's relationship to environmental quality issues, conservation, and management strategy. Representatives from the Council on Environmental Quality (CEQ) will present a discussion of "the underappreciated requirements of NEPA," and Nicholas Yost, a past General Counsel of CEQ and key drafter of the CEQ NEPA regulations, will present "Twelve Rules to Make the NEPA Process Work."

Other tracks at this year's conference include Environmental, Health, and Safety Management Systems (with an emphasis on health), Environmental Study and Research, Homeland Security Issues and the Environment, Public Participation, Sustainability/Smart Growth/Alternative Energy, and Wetlands Restoration/Mitigation.

Also of interest to NEPA practitioners are four training courses, offered the first day of the conference, on "Writing the Perfect EA/FONSI or EIS," "Improving the Quality of Environmental Documents – Tools, Techniques and Challenges," "Integrating NEPA with the ISO 14001 Environmental Management System," and "Essentials of Environmental Law."

Registration remains open through the conference; NAEP membership is not required to attend. Additional information is available on the NAEP website at *www.naep.org* under Annual Conferences.

OFEE: 2007 Federal Environmental Symposium

The Office of the Federal Environmental Executive has announced a conference to be held on June 4–6, 2007, at the National Institutes of Health in Bethesda, Maryland (metropolitan Washington, DC). This year's theme, centering on sustainability, will include subjects covered by the new Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (related article, page 12). The deadline for abstract submissions, through *www.fedcenter.gov/symposium2007-cfp*, is March 9, 2007. There is no registration fee. Additional information is available at *www.fedcenter.gov/announcements/index.cfm?id=6316*. For more information contact Eric Haukdal at eric.haukdal@hhs.gov or 202-690-6551.

EAs and EISs Completed October 1 to December 31, 2006

EAs

Savannah River Site/
Office of Environmental Management
DOE/EA-1568 (10/6/06)
Replacement Source of Steam for A Area at the Savannah River Site, South Carolina
Cost: $46,000
Time: 6 months

Western Area Power Administration
DOE/EA-1456 (11/20/06)
Cheyenne - Miracle Mile and Ault - Cheyenne Transmission Line Rebuild Project, Wyoming, Colorado
Cost: $302,000
Time: 50 months

DOE/EA-1559 (9/26/06)*
Xcel Energy Project Buffalo Ridge - White 115 kV Transmission Line Project, Minnesota, South Dakota
Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 8 months

** Not previously reported in* LLQR

EIS

Office of Fossil Energy/
Strategic Petroleum Reserve Office
DOE/EIS-0385 (71 FR 75540, 12/15/06)
(EPA Rating: EC-2)
Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
Cost: $3,640,000
Time: 15 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action
LO – Lack of Objections
EC – Environmental Concerns
EO – Environmental Objections
EU – Environmentally Unsatisfactory

Adequacy of the EIS
Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA website at *www.epa.gov/compliance/nepa/comments/ratings.html*.)

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median and average cost for the preparation of 2 EAs for which cost data were applicable was $174,000.
- Cumulatively, for the 12 months that ended December 31, 2006, the median cost for the preparation of 8 EAs for which cost data were applicable was $94,000; the average was $108,000.
- For this quarter, the median completion time for 3 EAs was 8 months; the average was 21 months.
- Cumulatively, for the 12 months that ended December 31, 2006, the median completion time for 9 EAs was 9 months; the average was 17 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS was $3,640,000.
- Cumulatively, for the 12 months that ended December 31, 2006, the median and average cost for the preparation of 2 EISs was $2,040,000.
- For this quarter, the completion time for one EIS was 15 months.
- Cumulatively, for the 12 months that ended December 31, 2006, the median and average completion time for 2 EISs was 17 months.

Recent EIS-Related Milestones (December 1, 2006, to February 28, 2007)

Notice of Intent

Office of Nuclear Energy
DOE/EIS-0396
Programmatic Environmental Impact Statement for the Global Nuclear Energy Partnership
January 2007 (72 FR 331, 1/4/07)

Notice of Cancellation

Office of Fossil Energy/
National Energy Technology Laboratory
DOE/EIS-0366
Programmatic Environmental Impact Statement for Implementation of the Carbon Sequestration Program
February 2007 (72 FR 8363, 2/26/07)

Draft EISs

Office of Fossil Energy/
National Energy Technology Laboratory
DOE/EIS-0357D-S1
Supplement to the Draft Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project, Gilberton, Pennsylvania
January 2007 (72 FR 1513, 1/12/07)

DOE/EIS-0361
Western Greenbrier Co-Production Demonstration Project, Greenbrier County, West Virginia
December 2006 (71 FR 69563, 12/1/06)

Western Area Power Administration
DOE/EIS-0389
Construction and Operation of the Trinity Public Utility District Direct Interconnection Project, Trinity County, California
February 2007 (72 FR 7652, 2/16/07)

Final EIS

Office of Fossil Energy/
National Energy Technology Laboratory
DOE/EIS-0383
Orlando Gasification Project, Orlando, Florida
January 2007 (72 FR 3846, 1/26/07)

Records of Decision

Bonneville Power Administration
DOE/EIS-0183
Bonneville Power Administration's Business Plan Final Environmental Impact Statement, Klickitat County, Washington
December 2006 (71 FR 70748, 12/6/06)

DOE/EIS-0312
Fish and Wildlife Implementation Plan Final Environmental Impact Statement
February 2007 (72 FR 7972, 2/22/07)

Office of Fossil Energy/
Strategic Petroleum Reserve Office
DOE/EIS-0385
Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
February 2007 (72 FR 7964, 2/22/07)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0265-SA-283*
Barnes Road Diversion Site - Manastash Creek Fish Barrier Removal and Screening Project, Kittitas County, Washington
(Decision: No further NEPA review required)
October 2006

DOE/EIS-0265-SA-284*
Fulton Diversion Dam Fish Passage Project - Phase II, Okanogan County, Washington
(Decision: No further NEPA review required)
September 2006

DOE/EIS-0265-SA-285*
Yakima Tributary Access and Habitat Program - Diversion 31 Fish Screen Project, North Fork Ahtanum Creek, Yakima County, Washington
(Decision: No further NEPA review required)
November 2006

** Not previously reported in* LLQR

(continued on next page)

Recent EIS-Related Milestones (December 1, 2006, to February 28, 2007)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-286
Yakima Tributary Access and Habitat Program - Upper Lust Fish Passage Project, South Fork Cowiche Creek, Yakima County, Washington
(Decision: No further NEPA review required)
December 2006

DOE/EIS-0265-SA-287
Idaho Fish Screening Improvement - Wimpey Creek Projects, Lemhi County, Idaho
(Decision: No further NEPA review required)
December 2006

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

DOE/EIS-0285-SA-319*
Vegetation Management along the Ashe Slatt No. 1 and Ashe - Marion No. 2, 500 kV Transmission Line Corridor, Benton County, Washington
(Decision: No further NEPA review required)
October 2006

DOE/EIS-0285-SA-320*
Vegetation Management along the Albani Falls - Sandcreek No. 1, 115 kV Transmission Line Corridor Right of Way, Bonner County, Idaho
(Decision: No further NEPA review required)
October 2006

DOE/EIS-0285-SA-321*
Vegetation Management along the Shelton - Fairmount No. 4, 230 kV Transmission Line Corridor from Shelton Substation heading North to Fairmount Substation, Mason and Jefferson Counties, Washington
(Decision: No further NEPA review required)
November 2006

DOE/EIS-0285-SA-322*
Vegetation Management Activities along the Right of Way of the Ponderosa - Pilot Butte Transmission Line Corridor from the Ponderosa to the Pilot Butte Substations, Deschutes County, Oregon
(Decision: No further NEPA review required)
November 2006

BP Cherry Point Cogeneration Project Environmental Impact Statement
(DOE/EIS-0349)

DOE/EIS-0349-SA-1*
Proposed Revisions to the Proposed BP Cherry Point Cogeneration Project, Whatcom County, Washington
(Decision: No further NEPA review required)
November 2006

Office of Fossil Energy/ Strategic Petroleum Reserve Office

Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas Environmental Impact Statement
(DOE/EIS-0385)

DOE/EIS-0385-SA-1
Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
(Decision: No further NEPA review required)
February 2007 LL

** Not previously reported in* LLQR

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2006.

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

- *Open communication.* Continuous real-time communication existed between all document preparation team members as information became available.
- *Working directly with commentor.* Prior to the formal comment response process, a stakeholder's concerns were addressed through one-on-one discussion and reflected in the revised EA. This personal interaction saved time and resulted in a better document.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Inclusion of NEPA in project schedule.* Proactive support and close coordination with the line organization to ensure NEPA was integrated into the project schedule facilitated timely completion of the EA. An internal scoping meeting was held with the involved line organizations specifically to develop a NEPA schedule for the total project.
- *Scope definition and project tracking software.* A precise definition of the document scope and use of project tracking software helped to keep the document on schedule.
- *Good document manager.* The EA document manager adeptly managed all activities associated with the EA process.

Factors that Inhibited Timely Completion of Documents

- *Design changes.* Numerous engineering changes to the project caused EA process delays.
- *Administrative issues.* Contractor change of ownership and new operating policies and approval requirements slowed information and response times. Fortunately, there was no major impact to the project schedule.
- *Field survey timing.* Snow and agricultural operations prohibited timely field surveys.

Teamwork

Factors that Facilitated Effective Teamwork

- *Frequent communication.* Regular contact among the DOE NEPA team effectively resolved document completion issues that arose during the document review process.
- *Accommodating schedule.* Having sufficient time in the project schedule prevented impacts to the EA process that could have occurred when there were contractor corporate-level changes.
- *Ensuring comment resolution.* The document manager walked the EA around to team members and ensured that comments were understood and responded to appropriately.

Process

Successful Aspects of the Public Participation Process

- *Public notification and document availability.* Public notifications and electronic availability of the draft and final EAs contributed to the success of the participation process.
- *Effective communication.* Verbal communication between the DOE project manager and a stakeholder was effective in resolving concerns regarding the proposed action.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- *Early scoping.* Early public scoping sessions that included state regulators provided clear information to the public and created positive public perception toward the project.
- *Multiple media notification.* Using multiple media formats for the 30-day public notice was a successful aspect of the public participation process.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Effective comment response.* Comments addressed during the draft EA review process effectively clarified certain project aspects, resulting in a better final EA.

Agency Planning and Decisionmaking: What Didn't Work

- *Decisionmaking not affected.* Even though the NEPA process was required to assess whether environmental issues or impacts would result from the project, it did not affect decisionmaking because a management decision had already been made.

Enhancement/Protection of the Environment

- *Alternative fuels.* This project inherently improved the environment because the bio-fuel and fuel oil will replace coal.
- *Emissions reduction.* The environment was not directly protected or enhanced as a result of the NEPA process; however, the rulemakings will result in reduced emissions.
- *Construction and mitigation measures.* Standard construction practices and project-specific mitigation measures protected the environment.

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 6 questionnaire responses were received for EAs, 5 out of 6 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process enabled the project to evaluate the best solution.
- A respondent who rated the process as "4" stated that the process was helpful in providing the decisionmaker with information on the project and allowed the applicant to analyze the project and commit to mitigation measures.
- Two respondents who rated the process as "3" stated that a management decision already had been made; however, the NEPA review was an effective tool in consolidating all aspects of the project during the planning stages.
- A respondent who rated the process as "3" stated that the project was very straightforward and noncontroversial.
- A respondent who rated the process as "0" stated that the project had already been proposed and discussed with stakeholders who fully supported it. As a result, the information already included in the contractor's proposal was used for the EA. LL