

LESSONS LEARNED

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NEPA Efficiency Essential to Recovery Plan

The Department of Energy (DOE) is responsible for more than \$45 billion of the \$787 billion economic stimulus funding contained in the American Recovery and Reinvestment Act (Recovery Act), which President Barack Obama signed into law on February 17, 2009 (Public Law 111-5). The President and Congress have emphasized urgency in getting this money into the economy in order to create jobs.

Secretary of Energy Steven Chu has set a goal to disburse 70 percent of the funds by the end of 2010. Achieving this goal requires the timely completion of all requirements, including compliance with the National Environmental Policy Act (NEPA).

The DOE Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment began working with involved Program Offices before the legislation was passed to identify potential approaches to NEPA compliance. That effort is ongoing.

Recovery Act Calls for Expediting Reviews

The issue of NEPA compliance arose during congressional debate on the Recovery Act. There was discussion of setting time limits for environmental reviews or even



Secretary Chu and President Obama discuss plans to create jobs, change the way we produce and use energy, and address the climate crisis prior to the President's talk to DOE employees on February 5, 2009.

waiving NEPA for some activities. However, the final version of the Recovery Act makes no such exceptions; it directs that adequate resources be devoted to ensuring that applicable NEPA reviews are completed on an expeditious basis and that the shortest existing applicable process under NEPA shall be used. (See Section 1609 of the Recovery Act, reprinted on page 4.)

(continued on page 4)

NEPA Opportunities in a New Era of Openness

by Brian Costner, *Office of NEPA Policy and Compliance*

President Barack Obama began his administration with a call for openness in Government. In his Inaugural Address, the President spoke of the need for public officials to “do our business in the light of day.” He followed this on January 21, 2009, with two memoranda to heads of Federal agencies that challenge public officials to be proactive in incorporating openness into our work. This challenge has particular meaning for DOE’s NEPA Community because openness is one of NEPA’s core principles.

In his memorandum on *Transparency and Open Government*, the President wrote, “My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration” (74 FR 4685; January 26, 2009).

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Inside **LESSONS LEARNED**

Welcome to the 58th quarterly report on lessons learned in the NEPA process. We have been very busy addressing our NEPA responsibilities arising from the Recovery Act as well as the new policies of the Obama Administration. In this issue of the *Lessons Learned Quarterly Report (LLQR)*, we share ideas and experiences that will foster an improved and expedited NEPA compliance process.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 1, 2009. Contact Yarden Mansoor at yarden.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2009

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2009 (January 1 through March 31, 2009) 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.gc.energy.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.gc.energy.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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April 28–29 NEPA Compliance Officers Meeting To Focus on Expediting NEPA for Recovery Actions

The Office of NEPA Policy and Compliance, with support from the Office of the Assistant General Counsel for Environment, is convening a meeting of the DOE NEPA Compliance Officers (NCOs) in Washington, DC, on April 28 and 29, 2009, to discuss pending NEPA priorities, including expediting NEPA compliance for activities undertaken pursuant to the American Recovery and Reinvestment Act. (See related articles.) The first NEPA status report under Section 1609 of the Recovery Act, due to Congress on May 18, will be discussed.

Also on the agenda will be anticipated guidance from the Council on Environmental Quality, and guidance under development by the NEPA Office related to terrorism and greenhouse gas emissions and climate change. An update on the proposed amendment to the DOE NEPA regulations, 10 CFR Part 1021, to add new categorical exclusions will be provided. NCOs may submit additional topics for the agenda to Yarden Mansoor (yarden.mansoor@hq.doe.gov). 

Secretary Chu to DOE Employees: “Help Turn the Ship”

“We are going to, quite literally, help save the world,” said Secretary Steven Chu, during a DOE-wide meeting on his first full day in office, January 22, 2009. “The current use of energy is not sustainable on this planet,” he said.

Secretary Chu drew an analogy between global climate change and the sinking of the Titanic. This time, he said, “most people see the iceberg,” but he cautioned that the United States has never before been asked to respond so substantially to avoid impacts that may be a few decades off. He challenged DOE Federal and contractor employees to “help turn the ship” by using DOE’s science and technology programs to devise responses to global climate change. “We simply cannot fail,” the Secretary said.

Secretary Chu’s path to DOE includes a successful career as a physicist and professor at Bell Laboratories; Stanford University (where he conducted the experiments that would lead to his Nobel Prize in Physics in 1997); and the University of California, Berkeley. But Secretary Chu said it was concern for the environment that led him to join DOE in 2004 as Director of the Lawrence Berkeley National Laboratory, where he re-focused research on the energy and climate change problem.

His goal is for DOE to be the “go-to” organization within the Federal government. We need to “invent new, truly transformative technology,” he said, and move that technology into the market. “The Department of Energy will be the provider of these solutions.”

Secretary Chu addressed other goals as well. He identified economic recovery as the near-term priority and said that DOE will have a vital role through programs such as weatherization assistance to low-income families to improve the energy efficiency of their homes and improved electricity transmission systems. The United States needs a “transmission system that can actually handle more and more renewables,” he said. He spoke of the need to support the future of electricity from nuclear reactors and coal plants, including to “invent a way to capture carbon from coal plants.” Secretary Chu also emphasized the importance of addressing the legacy of past nuclear weapons production, nonproliferation, and the maintenance of the nation’s nuclear weapons stockpile.

Following the meeting, Carol Borgstrom, Director, Office of NEPA Policy and Compliance, reflected on the essential role of DOE’s NEPA Community in accomplishing the Secretary’s priorities. “The Secretary has an ambitious agenda, and an urgent one in terms of addressing both the nation’s economic troubles and the specter of global warming,” she said. “We in the DOE NEPA Community will be called on to support DOE decisionmaking processes with high quality analysis delivered in a timely fashion. We need to apply NEPA lessons learned to meet this challenge.” 

Chu Pledges To Improve DOE Management

Dr. Steven Chu stated during his Senate confirmation hearing on January 13, 2009, that his efforts as Secretary of Energy would be “unified by a common goal: improving management and program implementation. Simply put, if the Department is to meet the challenges ahead, it will have to run more efficiently and effectively.”

He recalled his experience as Director of the Lawrence Berkeley National Laboratory where he challenged some of the laboratory’s best scientists “to turn their attention to the energy and climate change problem and to bridge the

gap between the mission-oriented science that the Office of Science does so well and the applied research that leads to energy innovation.” He also worked to partner with academia and industry. “I want to extend this approach to an even greater extent throughout the Department’s network of National Laboratories where 30,000 scientists and engineers are at work performing cutting-edge research,” he said.

One topic of interest to Senators was the Loan Guarantee Program established by the Energy Policy Act of 2005. In response to questions about the reluctance of some private companies to make use of the program because of perceived obstacles, Dr. Chu committed to take steps to make it a more workable program (related article, page 10).

The hearing before the Senate Committee on Energy and Natural Resources addressed a broad range of energy security and reliability issues, as well as national security and DOE’s environmental management responsibilities. Dr. Chu committed to “provide strong, focused, energetic leadership for the many missions of this Department.” 

I believe in the dynamism of our country and our economy. And as a scientist, I am ever-optimistic about our ability to expand the boundaries of what is possible.

– Dr. Steven Chu
January 13, 2009

NEPA Efficiency *(continued from page 1)*

The Recovery Act also requires the President to report to Congress every 90 days until September 30, 2011, on the status and progress of projects funded by the Act with respect to NEPA compliance. The first report is due in May 2009. The Council on Environmental Quality began meeting with Federal agency NEPA contacts in February about this reporting and, more generally, how best to support efficient implementation of the Recovery Act (related article, page 9).

The reports to Congress are expected to address those activities requiring an environmental impact statement (EIS) or environmental assessment (EA), those for which an existing categorical exclusion applies, and those that do not trigger a NEPA review. Information from these reports will be drawn, in part, from program plans to be developed for tracking all Recovery Act funding. The DOE Office of NEPA Policy and Compliance will continue working with NEPA Compliance Officers in each involved Program Office to assist in compiling information as the details of specific projects become available.

DOE will expend the majority of its Recovery Act funds to state, local, and tribal government agencies and private industry via grants, contracts, and loan guarantees. For example, DOE would award grants for weatherization assistance and other existing energy efficiency and

conservation programs, and to modernize the electric grid under the Smart Grid initiative. DOE will expend other portions of the funding for projects that it manages, including remediation activities carried out by the Office of Environmental Management. (See text box, page 5, for more details on the Recovery Act funds.)

At this point, it seems likely that a large portion of the funding will be for activities that fit within one or more existing categorical exclusions, unless there are extraordinary circumstances that indicate the need to prepare an EA or EIS. For example, DOE's NEPA regulations include a categorical exclusion for many types of activities to conserve energy, demonstrate potential energy conservation, and promote energy efficiency (10 CFR Part 1021, Subpart D, Appendix B5.1). The Office of Energy Efficiency and Renewable Energy has often applied this categorical exclusion to past grant applications, and it is likely the Office will be able to apply it to many future applications.

In other cases, existing NEPA analysis would apply, such as in the case of the Bonneville Power Administration's decision to use a portion of the borrowing authority contained in the Recovery Act to construct a 500-kilovolt transmission line running primarily along the Columbia River. Potential environmental impacts of the project were
(continued on next page)

NEPA and the American Recovery and Reinvestment Act

The following section from the Recovery Act applies to all activities undertaken with recovery funds.

SEC. 1609. (a) FINDINGS.—

- (1) The National Environmental Policy Act protects public health, safety and environmental quality: by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds;
 - (2) When President Nixon signed the National Environmental Policy Act into law on January 1, 1970, he said that the Act provided the "direction" for the country to "regain a productive harmony between man and nature";
 - (3) The National Environmental Policy Act helps to provide an orderly process for considering federal actions and funding decisions and prevents ligation [sic] and delay that would otherwise be inevitable and existed prior to the establishment of the National Environmental Policy Act.
- (b) Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized.
- (c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

NEPA Efficiency (continued from previous page)

analyzed in the *McNary-John Day Transmission Line Project Environmental Impact Statement* (DOE/EIS-0332, 2002).

Recovery.gov

The President committed to implement the Recovery Act with “an unprecedented level of transparency and accountability.” To allow the public to track implementation, the White House has established a website – recovery.gov – and directed each Federal agency to devote a portion of its existing website to Recovery Act activities.

DOE unveiled the Recovery Act portion of its website on February 27, 2009, at www.energy.gov/recovery. A message from Secretary Chu states that, “The Department of Energy will carry out this economic recovery plan with the highest level of speed, transparency, and accountability.” The website provides information on each of the areas where DOE will invest public funds to “put Americans back to work and begin to transform the way we use energy.” Beginning in early March, the website will contain DOE plans and reports on

implementation of Recovery Act funding and provide links to information on how to apply for funding.

The Office of Management and Budget (OMB) issued “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009” on February 18, 2009 (available at recovery.gov). This guidance reminds agencies that Recovery Act funds are to be distributed in accordance with NEPA and related statutes, “including requirements for plans and projects to be reviewed and documented in accordance with those processes.”

In addition, the OMB guidance directs agencies to report the use of Recovery Act funding. First will be a series of weekly reports beginning on March 3, 2009, and continuing through May 12, 2009, that provide “a breakdown of funding, major actions taken to date, and major planned actions.” Agencies are to begin providing Recovery Program Plans to OMB by May 1 that include a description of the status of compliance with NEPA and related statutes, along with funding and other data. Information from these reports and plans will be provided on the Recovery Act websites. 

Recovery Act Funding by DOE Program

- Energy Efficiency and Renewable Energy – \$16.8 billion, including \$3.2 billion for Energy Efficiency and Conservation Block Grants, \$5 billion for Weatherization Assistance, \$3.1 billion for the State Energy Program, \$2 billion for grants for manufacturing advanced batteries and components (e.g., hybrid electrical systems), and \$3.5 billion for applied research, development, and demonstration and deployment activities (including projects related to biomass and geothermal energy).
- Electricity Delivery and Energy Reliability – \$4.5 billion, principally to modernize the electrical grid (i.e., implement Smart Grid technologies).
- Fossil Energy Research and Development – \$3.4 billion, expected to go principally to applicants for carbon sequestration and clean coal projects.
- Science – \$1.6 billion, expected to be used primarily toward work in existing Office of Science research areas.
- Advanced Research Projects Agency – Energy – \$400 million for this new program (created in 2007 but not previously funded) to support transformational energy technology research projects with the goal of enhancing the nation’s economic and energy security.
- Innovative Technology Loan Guarantee Program – \$6 billion creating a temporary loan guarantee program for the rapid deployment of renewable energy and electric power transmission projects that can begin construction by the end of fiscal year 2011.
- Defense Environmental Cleanup – \$5.1 billion, which is expected to be used principally to accelerate implementation of existing plans. Funding also includes almost \$500 million for non-defense environmental cleanup and almost \$400 million for uranium enrichment and decontamination and decommissioning work.
- Power Marketing Administrations – \$3.25 billion in borrowing authority to the Bonneville Power Administration and an equal amount to the Western Area Power Administration. These funds would support expansion and upgrades to electrical transmission systems.

New Era of Openness (continued from page 1)

In the other memorandum, *Freedom of Information Act* (FOIA), the President directed that FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails.” He also directed that “agencies should take affirmative steps to make information public. They should not wait for specific requests from the public” (74 FR 4683; January 26, 2009). The release of information in the NEPA process is pursuant to FOIA (e.g., 40 CFR 1506.6(f)).

NEPA and Openness

How can we in DOE’s NEPA Community further these objectives? NEPA’s principles and practices are, at their core, consistent with open government, and DOE has in place many NEPA tools and much experience to support the President’s goals.

In his *Transparency and Open Government* memorandum, the President highlights three aspects of good government: transparency, participation, and collaboration. All three are integral to NEPA implementation.

“Government should be transparent.

Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.”

The essential role of transparency in the NEPA process is perhaps best expressed in the purpose outlined in the Council on Environmental Quality’s (CEQ’s) implementing regulations. “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken” (40 CFR 1500.1(b)). CEQ’s regulations further establish a policy that EISs “shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses” (40 CFR 1500.2(b)). These broad statements are followed in CEQ’s regulations with procedures to ensure the availability of information by the public.

“Government should be participatory. Public engagement enhances the Government’s effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.”

Public participation is integral to the NEPA process from scoping to commenting on a draft or final EIS or EA. CEQ clearly establishes at the outset of its regulations that “public scrutiny is essential to implementing NEPA” (40 CFR 1500.1(b)) and directs Federal agencies to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment” (40 CFR 1500.2(d)).

“Government should be collaborative.

Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.”

CEQ has long encouraged collaboration among government agencies through its regulations regarding the involvement of cooperating agencies. CEQ’s regulations emphasize “cooperative consultation among agencies” early in the NEPA process (40 CFR 1501.1(b) and 1501.6). More recently, CEQ issued a handbook describing opportunities for collaboration throughout the NEPA process. The handbook “focuses on collaboration in the context of NEPA where an agency engages other governmental entities and/or a balanced set of affected and interested parties in seeking agreements at one or more stages of the NEPA process by cultivating shared vision, trust, and communication” (*Collaboration in NEPA: A Handbook for NEPA Practitioners*).



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New Era of Openness (continued from previous page)

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, “sunlight is said to be the best of disinfectants.”

*– President Barack Obama
January 21, 2009*

First Stop: NEPA Guidance

NEPA guidance issued by CEQ and DOE includes a wealth of recommendations for enhancing the preparation of EAs and EISs. Those recommendations are supportive of the openness and efficiency that the President advocates. To foster collaboration, for example, CEQ has issued guidance on engaging other government agencies at all levels as cooperating agencies and, as noted above, a handbook on collaboration in the NEPA process.

DOE guidance encourages transparency in numerous ways. *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (the *Green Book*) addresses, among many other topics, such fundamental points as the need for clear writing. (“Clear writing makes it easier to review the EA or EIS and understand the analysis presented, which enhances public participation and decisionmaking.”) *Effective Public Participation under the National Environmental Policy Act* provides recommendations for involving the public in each stage of the NEPA process. Another example related to public participation is *The EIS Comment-Response Process*, which emphasizes that the goal of addressing public comments is to “help DOE improve the EIS to support better-informed decisions.” (CEQ and DOE NEPA guidance is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Guidance.)

Moving Toward Greater Openness

Even with such a strong base of existing guidance, the President’s commitment to transparency, public participation, and collaboration provides an impetus to seek new, better ways to inform decisionmaking and, in the words of the CEQ NEPA regulations, “foster excellent action” (40 CFR 1500.1(c)).

Moreover, as DOE seeks ways to enhance openness, it also must continue to strive for improvement in the efficiency of its NEPA practices. This need is driven by the urgency of national priorities – including economic recovery and addressing climate change (related articles, pages 1 and 3) – and, more generally, the need to demonstrate results. Indeed, the President emphasized in his memorandum that, “Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”

DOE has many opportunities for further improvements. In pursuit of transparency, we can do better at making a more comprehensive set of NEPA and related documents readily available to the public (particularly certain past EISs, draft EAs, categorical exclusion determinations, and reference documents that are not consistently available today). (See related article, page 13.) We can prepare documents that are better focused on the impacts with the greatest potential for significance, and we can present information more clearly and creatively (including better visual presentation of data).

Perhaps one of the more important things we can do in terms of presenting information clearly is to always explain the basis for conclusions. “Show your work,” as math teachers are fond of saying. Identify assumptions and methodology used. Explain the reasoning that leads to a conclusion, including associated uncertainty. DOE does this well at times, but the quality is inconsistent.

Build public participation and collaboration into the planning process from the outset and approach decisionmaking with an open mind. Be ready to give thoughtful consideration to disparate views and suggestions for additional alternatives. Be prepared to modify analysis to accommodate new ideas. These are not new concepts, but there are new opportunities with each EA or EIS.

How we go about implementing existing guidance and pursuing innovative approaches is largely dependent on circumstances of particular proposed actions and environmental reviews. DOE’s NEPA Community, working with program and project managers, has the challenge to instill openness in individual review processes while ensuring an efficient process to support timely decisionmaking. 

New DOE-Wide NEPA Support Contracts!

New Contracts Being Issued

DOE has selected new contractor teams to be awarded contracts for NEPA support services to DOE Program and Field Offices, including the Federal Energy Regulatory Commission. These contracts replace the ones that were issued in 2002 and expired in December 2008. These contracts are designed to procure high-quality NEPA document support, promote a faster and more efficient NEPA process, and provide for timely start of work, cost savings, and performance incentives.

Three contracts are being issued under full and open competition and four contracts under a small business set-aside procurement. The contracts are identical in scope and awarded under identical evaluation criteria. To date, three contracts are in place and four are pending final processing and clearances. The contract teams include subcontractors with a range of expertise in disciplines required for DOE NEPA documents.

DOE Contract Administration Moved to NNSA Headquarters

Administration of the DOE-wide NEPA contracts has been transferred from the National Nuclear Security Administration (NNSA) Service Center in Albuquerque, which administered DOE-wide NEPA contracts since they began in 1997, to NNSA's Headquarters Office of Acquisition and Supply Management. The Contracting

Contracts under full and open competition are being awarded to:

HDR: Danny Rakestraw
danny.rakestraw@hdrinc.com, 702-938-6049

SAIC: Patricia (Pat) Wherley
wherleyp@saic.com, 301-353-8346

Tetra Tech, Inc.: James (Jay) Rose
jay.rose@tetrattech.com, 703-931-9301

Small business contracts are being awarded to:

Gonzales-Stoller: Jerome Gonzales
jeromegonzales@jgmsinc.com, 970-254-1354

JAD Environmental: Ernest (Ernie) C. Harr, Jr.
eharr@jason.com, 301-828-7342

Los Alamos Technical Associates: Robert (Bob) Hull
rhull@lata.com, 505-662-1829

Potomac-Hudson Engineering: Fred Carey
fredc@phe.com, 301-907-9078, ext. 3003

Officer for these contracts is Won (Bo) Sim, who can be reached at won.sim@nnsa.doe.gov or 202-586-6556.

Aneesah Vaughn, the new Contracts Administrator, follows in the footsteps of David Ninow and Francis Ting. She has just joined the Office of Acquisition and Supply Management. Ms. Vaughn participated in NNSA's Future Leaders Program after graduating from Prairie View A&M University (Texas) with a Masters in Business Administration in 2006. She was stationed at the Pantex Site Office where she worked with the Contract Administration and Business Management team. Toward the end of her training program, she held a 60-day detail at DOE Headquarters, where she learned contract administration from "cradle to grave." "I am excited to have this opportunity to work on such a unique contracting arrangement and with a wide range of people," said Ms. Vaughn. She can be reached at aneesah.vaughn@nnsa.doe.gov or 202-586-1815.

Thanks for a Job Well Done!

On behalf of DOE's NEPA Community, the Office of NEPA Policy and Compliance expresses appreciation for the work of the NEPA Compliance Officers (NCOs) who served over a two-year period, first as planners, then as members and supporters of the Integrated Project Team that conducted the acquisition. Andrew Grainger (Savannah River Operations Office) made extraordinary efforts as the Team's Lead Technical Evaluator. His leadership ranged from developing the statement of work to evaluating technical proposals. Other NCOs provided assistance at many stages as Technical Advisors: Jack Depperschmidt (Idaho Operations Office), Curtis Roth (Kansas City Site Office), Rajendra Sharma (Nuclear Energy), and Elizabeth Withers (NNSA Service Center). We also thank former NNSA NCO Alice Williams and NCOs Mary Martin (NNSA) and Jeff Robbins (NNSA Service Center) for their support. Thanks, too, to NNSA Service Center's Contracting Officer Eusebio (Sam) Espinosa and Contract Specialist Francis Ting, along with other members of the Service Center, who provided expertise and conducted the procurement process.

Guidance Available, More To Be Developed

Guidance, references, and tools for DOE Offices intending to use these contracts are available on the DOE NEPA Website at www.gc.energy.gov/nepa under NEPA Contracting. Certain of the guidance documents, such as *Brief Guide to the DOE-wide NEPA Contracts* (May 2003), will be revised to reflect the new contracts and the transfer of contract administration. 

Sutley Brings Breadth of Government Experience to CEQ



Nancy H. Sutley, confirmed by the Senate on January 22, 2009, as the Chair of the Council on Environmental Quality (CEQ), said at her confirmation hearing that to fulfill CEQ's responsibilities under NEPA, she aims to proceed in a "straightforward, organized, and efficient way that assures the public that the Federal government understands its environmental responsibilities as it carries out its activities."

Ms. Sutley's experience working on environmental policy at the Federal, state, and local levels has resulted in an appreciation of the role that each level of government plays in protecting public health and the environment and of the coordinating role played by CEQ. She most recently served as Deputy Mayor for Energy and Environment for the City of Los Angeles, and previously as a Deputy Secretary in the California Environmental Protection Agency; Senior Policy Advisor to the U.S. Environmental Protection Agency (EPA) Regional Administrator in San Francisco; and special assistant to the U.S. EPA Administrator in Washington, DC.

CEQ Confers with Agencies on Recovery Act and NEPA

Two days after the President signed the American Recovery and Reinvestment Act (Recovery Act), Ms. Sutley convened policy level representatives from each Federal department and agency to a meeting on how NEPA will affect projects funded by the Act. "I look forward to working with you," she said in the invitation to the February 19, 2009, meeting, "to ensure that conservation and environmental aspects are considered an integral part of development and oversight of our policies, programs and projects."

Also in the invitation, Ms. Sutley asked agencies to provide contact information for the highest ranking senior environmental advisor and/or NEPA contact in the department or agency and its subordinate offices, and a description of the organization's NEPA capacity in terms of personnel resources and locations. (DOE responded that its current NEPA capacity includes approximately 95 full-time equivalents, representing NEPA activities

carried out by approximately 195 Federal employees.) Ms. Sutley stressed that Federal departments and agencies are required to have the resources necessary to meet their responsibility to comply with NEPA, considering the environmental aspects of their proposed actions *before* deciding whether and how to proceed.

Section 1609 of the Recovery Act (text box, page 4) confirms that NEPA applies, said Ms. Sutley at the February 19 meeting. CEQ is ready and happy to help agencies with their NEPA compliance, she said. It is important to get the stimulus money out the door as quickly as possible, she emphasized, consistent with the Office of Management and Budget guidance and in compliance with NEPA (Recovery.gov, page 5).

Horst Greczmiel, CEQ's Associate Director for NEPA Oversight, suggested several tools to expedite NEPA compliance, including preparing a "focused EA" and a programmatic EA.

He also highlighted the use of "tiering" as a means of accomplishing the NEPA requirements in an efficient manner. Mr. Greczmiel added that CEQ will work with agencies to use categorical exclusions for projects where the agency is not directly taking an action, but funding it.

Edward (Ted) Boling, CEQ General Counsel, outlined the Recovery Act's 90-day reporting requirement on the status and progress of projects with respect to NEPA compliance (related article, page 1). Mr. Greczmiel noted that CEQ will be developing guidance to assist agencies in this reporting effort. Matt Rogers, Senior Advisor to Secretary Chu, noted that DOE will keep a master schedule and track each project's progress on a weekly basis. CEQ held a follow-up meeting with Federal NEPA contacts on February 26 at which the use of "focused EAs" and Recovery Act reporting were discussed in greater detail. LL



As CEQ Chair, Nancy Sutley serves as the principal environmental policy adviser to President Obama.

DOE Advances NEPA Process for Loan Guarantees

Secretary of Energy Steven Chu has announced plans to expedite reviews of loan guarantee applications under the American Recovery and Reinvestment Act (Recovery Act) as well as those under the previous DOE Loan Guarantee Program (Title XVII of the Energy Policy Act of 2005). The Recovery Act adds \$6 billion to DOE's existing authority for loan guarantees, amending the Energy Policy Act of 2005 to create a temporary loan guarantee program for rapid deployment of renewable energy and electric power transmission projects. The goal is "to expedite disbursement of money to begin investments in a new energy economy" (www.energy.gov/news2009/6934.htm; February 19, 2009). Secretary Chu emphasized that "We need to start this work in a matter of months, not years – while insisting on the highest standard of accountability."

NEPA Activities for the 2006 Solicitation

The NEPA process is well underway for several projects that are part of the first loan guarantee solicitation issued in 2006 for which applications were due November 19, 2008 (text box, next page). To date, DOE has completed two EAs and findings of no significant impact (FONSIs), initiated preparation of three other EAs and three EISs, and is participating as a cooperating agency for a fourth EIS.

2008 Loan Guarantee Solicitations

Four additional solicitations were issued in 2008:

- Front-end Nuclear Fuel Cycle Facilities (e.g., uranium enrichment)
- Nuclear Power Facilities
- Renewables (for energy efficiency, renewable energy, and advanced transmission and distribution technologies)
- Fossil Energy (for coal-based power generation and industrial gasification facilities that incorporate carbon capture and sequestration or other beneficial uses of carbon and for advanced coal gasification facilities)

DOE is now reviewing applications for nuclear facilities and certain renewable energy projects. DOE is waiting to receive the second part of applications (due Spring 2009) for the fourth solicitation (fossil energy projects) and also for certain other renewable energy projects (large-scale integration projects).

The Loan Guarantee Program Office continues to work with applicants to ensure that they submit information to enable early determinations regarding the level of NEPA review required and that the information provided will allow DOE to complete any NEPA reviews. An update of each of the Department's 2008 loan guarantee solicitations is outlined below.

Nuclear Solicitations

The application window for the loan guarantee solicitations for both the front-end nuclear and nuclear power facilities closed in December 2008. DOE received two applications for front-end nuclear and 15 applications for nuclear power facilities. For both solicitations, the number of qualified proposals exceeds the amount of loan guarantee resources available, triggering the provisions in DOE NEPA regulations applicable to procurement, financial assistance, and joint ventures (10 CFR 1021.216).

For the two front-end nuclear proposals, DOE has completed an Environmental Critique under 10 CFR 1021.216. DOE expects to select one of the two front-end nuclear proposals by approximately late March, after which DOE will file the Environmental Synopsis with the Environmental Protection Agency and make it publicly available. Additional NEPA review will follow the competitive procurement process.

Fossil Energy and Renewables Solicitations

In December 2008, DOE received the first part of applications for eight projects under the fossil energy solicitation. In February 2009, DOE received over 50 applications for projects under the renewables solicitation. Completed applications for fossil energy projects and large-scale integration renewables projects are due March and April, respectively.

For further information about the NEPA process for DOE's Loan Guarantee Program, contact Matt McMillen, NEPA Compliance Officer, Loan Guarantee Program Office, at matthew.mcmillen@hq.doe.gov or 202-586-8336. The solicitations and other information about the Program are available at www.lgprogram.energy.gov. For earlier descriptions of DOE's Loan Guarantee Program, see *LLQR*, September 2008, page 3, and March 2008, page 11. 

Loan Guarantee Office Seeks NEPA Staff

The DOE Loan Guarantee Program Office announces multiple position openings for Environmental Protection Specialists at the GS-13 or GS-14 level (www.usajobs.gov, HQ-09-DE-05-CF open to all U.S. citizens and HQ-09-MP-05-CF open to current DOE Headquarters employees with competitive status, both closing March 25, 2009). Consider applying if you are interested, or help spread the word!

NEPA Activity under the 2006 Loan Guarantee Solicitation^a

	NEPA Status	Estimated Date of NEPA Completion ^b
Ongoing EISs		
Mesaba Energy Project, Itasca County, MN (DOE/EIS-0382) ^c	DOE anticipates Final EIS approval in April 2009	May 2009
Kemper County Integrated Gasification Combined Cycle Project, MS (DOE/EIS-0409) ^c	DOE anticipates Draft EIS approval in late Spring 2009	November 2009
Federal Guarantee to Support Construction of the TX Energy, LLC, Industrial Gasification Facility near Beaumont, TX (DOE/EIS-0412)	NOI (2/18/09; 74 FR 7596) Scoping meeting March 2009	March 2010
Ivanpah Solar Electric Generating System, CA (DOE/EIS-0416)	BLM is lead agency; DOE is cooperating agency; DOE and BLM Memorandum of Understanding – February 2009	December 2009
Ongoing EAs		
Department of Energy Loan Guarantee for Solyndra, Inc. Construction of Photovoltaic Manufacturing Facility, Fremont, CA (DOE/EA-1638)	Draft EA was provided to the State of California in February 2009	March 2009
Department of Energy Loan Guarantee for Sage Electrochromics for Construction of High Volume Manufacturing Facility, Faribault, MN (DOE/EA-1645)	EA determination 12/8/08	May 2009
Department of Energy Loan Guarantee to G.R. Silicate Nano Fibers and Carbonates, Inc. for Construction of Synthetic Nano Materials Paper Production Facilities, WA and WI (DOE/EA-1653)	EA determination 2/2/09	July 2009
Completed EAs		
POET Project Liberty Proposed Commercial Scale Cellulosic Ethanol Plant, IA ^d (DOE/EA-1628)	EA and mitigated FONSI completed in September 2008	Complete
Department of Energy Loan Guarantee for Beacon Power Corporation Frequency Regulation Facility, Stephentown, NY (DOE/EA-1631)	EA and FONSI completed in February 2009	Complete

^a DOE is in the process of determining the NEPA strategy (EA or EIS) for two remaining applicant proposed projects.

^b The estimated date of NEPA completion indicates the date of an EA/FONSI or EIS determination for EAs, and the date of a Record of Decision for EISs.

^c EIS being prepared by the National Energy Technology Laboratory within DOE's Office of Fossil Energy in response to an earlier request for a grant under the Clean Coal Power Initiative (in addition to a request for loan guarantee funding).

^d EA completed by the Golden Field Office within DOE's Office of Energy Efficiency and Renewable Energy.

For Efficiency, Make Use of Prior NEPA Documents

When preparing a new EIS, EA, or supplement analysis, drawing on information in prior NEPA documents can improve efficiency. DOE regularly references and summarizes its past NEPA documents. Based on this experience, below are several tips to help make effective use of prior NEPA documents by ensuring that such information is relevant and current.

Understand the Scope of the Existing Document –

An important first step is to compare the alternative(s) analyzed in the prior NEPA document to the alternative(s) currently being evaluated. Understanding both similarities and differences between the scope of the prior and new or modified alternatives is necessary to determine whether and how the prior information can be used most effectively. The results of this comparison should be presented in the new NEPA document.

Include the full range of issues relevant to environmental impact analysis in this comparison of scope. For example, ask whether the alternatives involve the same operations, locations, resource requirements, potential for impacts, and mitigation options. Avoid simplistic comparisons, such as suggesting that, solely because of size, past analysis of constructing a larger facility would “bound” a current proposal to construct a smaller facility. In addition to size, consider, for example, whether the smaller facility would entail different functions (with different potential impacts), or present the possibility of different reasonable alternatives (e.g., locations) or mitigation options.

Review Prior Decisions – When referring to an existing NEPA document, distinguish between the analysis associated with an alternative that DOE has decided to implement and the analysis associated with other alternatives. This need is clearest when defining No Action in a new NEPA document, which is encompassed by prior decisions – not the entire set of previously analyzed alternatives.

Consideration of prior decisions also can be important when incorporating analysis of an alternative that DOE did not decide to implement, into a new NEPA document. For example, information in a record of decision about why an alternative was not selected may need to be considered in the new analysis. DOE action taken after issuance of a record of decision (e.g., site preparation, movement of hazardous materials) may have affected conditions that were integral to the existing analysis.

Determine Whether Information Remains Current –

When incorporating information from a prior NEPA document, as with any other information source, ask whether the information is current and represents the best quality data available. Use the best information in the new NEPA

document, and, as appropriate, explain what has changed and the implications for analysis. It also may be appropriate to incorporate information from both the prior NEPA document and the more current source to explain a data trend that may be more meaningful than a single data point. For example, a site-specific EIS prepared a decade ago might have relied on the then-current annual site environmental report. Rather than only updating such data with that in the site’s most recent environmental report, it may be more informative to discuss trends in environmental monitoring data over the past decade.

Determine Whether to Update Analysis – Assess whether the calculations and other analysis in the existing document are consistent with current requirements and guidance. For example, compare modeling assumptions, methodology, and codes used in the prior NEPA document to current best practices. The new NEPA document should identify any differences between the approach used in the prior NEPA document and current best practices. It also should explain the relevance of the differences to estimates of potential impacts. When the differences may affect impact estimates, update the prior analysis, as appropriate.

Ensure that Past NEPA Documents Are Publicly

Available – Documents relied on for NEPA analysis must be reasonably available for public review. For existing NEPA documents, this may require confirming that the documents are on a publicly accessible website, printing and distributing copies, or both. Increasingly, persons interested in DOE NEPA reviews express a preference for accessing documents on the Web, and many of DOE’s NEPA documents are maintained on the DOE NEPA Website (www.gc.energy.gov/nepa). However, most of the documents removed from the Website after September 11, 2001, have not yet been re-posted to the public because Program Offices have yet to complete the necessary security reviews. (See *LLQR*, September 2006, page 9.) In addition, few NEPA documents prepared prior to the mid-1990s are available on the Website. **LL**

An EIS Is Not a Blanket

Avoid NEPA lingo that might mislead readers. One such colloquialism that occasionally shows up in draft documents is a statement that an action is “covered” by an EIS. A clearer and more accurate approach is to explain that the impacts of an action were analyzed as part of a particular alternative (with reference to specific sections of the prior NEPA document) and whether DOE has announced a decision to undertake that action.

Taking the Next Step in Open Government: Posting Draft EAs on the Internet



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

The President has called upon the Federal government to be transparent, open, and collaborative. In his January 21, 2009, memorandum regarding the Freedom of Information Act, the President directed that “All agencies shall use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.”

At DOE we have taken a number of steps to use modern technology to foster public participation in the NEPA process. We were among the first Federal agencies to post completed NEPA documents on the Internet, and we maintain a comprehensive archive of recent NEPA documents on the DOE NEPA Website. For EISs, we now routinely post draft documents and timely announcements on our Website to facilitate public involvement. However, DOE Program and Field Offices do not consistently make draft EAs available on their websites to facilitate public comment during the pre-approval review period.

It’s time to take the next step in promoting open government by using modern technology to support public participation in the EA process, including making draft EAs available on the Internet for public review. Doing so would not only be consistent with the President’s recent directive, but also could be an effective way to comply with Council on Environmental Quality (CEQ) and DOE NEPA regulations and policy regarding public participation. CEQ NEPA regulations require agencies to involve the public in the

EA process “to the extent practicable” (40 CFR 1501.1(b)). DOE NEPA regulations require notifying the host state and tribe of a determination to prepare an EA (10 CFR 1021.301(c)), and making EAs available to the host state and tribe for review and comment at least 14 to 30 days before approval (10 CFR 1021.301(d)). In addition, under DOE’s longstanding NEPA policy, DOE will ordinarily provide an opportunity for interested persons to review EAs concurrent with the state/tribal pre-approval review period. For more information on requirements and policy, see *Effective Public Participation under the National Environmental Policy Act*, available on the DOE NEPA Website at www.gc.energy.gov/nepa under Guidance.

To help meet the letter and spirit of these regulations and policy, the Office of NEPA Policy and Compliance recommends that Program and Field Offices:

- Use their websites to provide public notice of the intent to prepare an EA
- Consider soliciting comments on the proposed scope of an EA through announcements on their websites
- Routinely post draft EAs for public review on their websites and notify the NEPA Office when doing so; the NEPA Office will then publish a link to the draft EA on the DOE NEPA Website. Notifications may be addressed to Denise Freeman at denise.freeman@hq.doe.gov.

Online Availability Statements Should Be Accurate at Time of Signature

Often a notice of intent, distribution letter, notice of availability, or record of decision contains a statement that a NEPA document or informational resource is available online – on the DOE NEPA Website, the issuing office’s website, or the project website. To avoid misleading stakeholders, any such statement should be accurate at the time the announcement is signed. That is, if the document is not already posted, the most appropriate statement is that it “*will soon be available at [URL].*”

If the document is not posted by the time the stakeholders receive the notice, the Department’s credibility can be damaged. Some delays are inevitable – for example, from the time a document is signed until it is posted. Other delays, such as those due to technical difficulties, are typically unforeseen.

Recommendations:

- A PDF file of a document – for example a signed notice – can be posted until the document is published in the *Federal Register*.
- If relying on web availability of an EIS to meet some distribution requirements, ensure that the EIS actually is available on the website before notification. Additional discussion and recommendations are available in DOE guidance on *EIS Distribution* (www.gc.energy.gov/nepa under Guidance).

EIS Summary: The Perils of “Copy and Paste”

The efficiency of word processing using a computer, often combined with scheduling constraints, makes it very easy to fall into the trap of preparing an EIS summary using “copy and paste.” However, the Office of NEPA Policy and Compliance has found that this method usually does not produce good results and recommends that NEPA document preparers give fresh thought when preparing the EIS summary.

While use of “copy and paste” may seem to be efficient, often it results in the need for extensive re-writing. Simply copying text from the main body of the EIS may disrupt the summary’s flow and readability, mask important issues and environmental impacts, add unnecessary length to the document, and lead to quality assurance issues. The advice below builds on DOE’s *Environmental Impact Statement Summary* guidance (September 1998) and cites real examples (or “perils” of copy and paste) from the NEPA Office’s EIS reviews.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives).

– CEQ NEPA Regulations, 40 CFR 1502.12

✓ **Avoid disrupting flow and readability.** The EIS summary must be a cohesive narrative. Copying and pasting may produce a summary that eliminates context that is important for “telling the story.”

Perils of Copy and Paste:

- introduces key elements, phrases, acronyms, and potential impact indicators without definition, description, or explanation
- outlines the alternatives *before* describing existing site facilities and activities, which provide background information and supplement the alternative descriptions

✓ **Avoid masking key issues and impacts.** The summary should focus on the key issues and impacts and distinguish the alternatives, highlighting the major conclusions of the impact analysis.

Perils of Copy and Paste:

- discusses in detail impacts on certain resources when the impacts are negligible under all alternatives (only a brief summary of the key conclusions is necessary)
- ✓ **Aim to be concise, attain high quality.** The overall level of detail warranted in a summary is less than in the main body of the EIS. As a result, new writing is necessary to develop a concise EIS summary that highlights key issues.

Perils of Copy and Paste:

- produces a lengthier summary than is useful and one with excessive detail that distracts from key points (e.g., rewriting one EIS summary originally prepared using copy and paste reduced it by two-thirds)
- describes “Relevant NEPA History” section in “blow by blow” detail (presenting, for example, information on the exact dates and times of EIS scoping meetings that is not needed in a summary)
- includes detailed background information not relevant to the current action (such as activities incorporated within a mitigation action plan for a related EIS prepared *more* than a decade ago)
- leads to careless errors and mistakes, resulting in a quality assurance issue
- copies table and figure (title and number) citations but not the table and figure themselves

Remember that the summary forms the reader’s first (and often last or only) impression of the EIS and should be given the time and consideration it requires. For more information, see *LLQR*, March 1996, page 3, and consult DOE’s *Environmental Impact Statement Summary* guidance available on the DOE NEPA Website at www.gc.energy.gov/nepa under Guidance. 

Merely “copying and pasting” paragraphs from the rest of the EIS is not a good way to draft the summary.

– DOE Environmental Impact Statement Summary guidance

Case Study on Adopting Another Agency's EIS

Adoption of another agency's EIS is a way to avoid duplication and expedite the NEPA process. DOE's Western Area Power Administration (Western) recently took advantage of this option by adopting the Department of State's *Final EIS for the Keystone Oil Pipeline Project*. Western's action – to approve or deny interconnection requests to provide power to four of the pipeline's 23 pumping stations – was a "connected action" and Western had participated as a cooperating agency in the preparation of both the Department of State's Draft and Final EISs.

The Council on Environmental Quality (CEQ) regulations recognize three possible situations in which adoption is appropriate: (1) where the adopting agency participated in the EIS process as a cooperating agency; (2) where the adopting agency was not a cooperating agency, but its proposed action is substantially the same as the action in the original EIS; and (3) where the adopting agency's proposed action is not substantially the same as the action in the original EIS. Western's experience illustrates key aspects of the process by which DOE, as a cooperating agency, may adopt another agency's final EIS (situation #1) and shows that participation as a cooperating agency can expedite the adoption of another agency's final EIS, and ultimately, agency decisionmaking.

Western, without recirculating the document, adopted the Department of State Final EIS on January 21, 2009, and

EPA subsequently noticed Western's adoption in its weekly receipt of EISs (74 FR 6289; February 6, 2009). Western issued a Record of Decision (ROD) (74 FR 7886; February 20, 2009), which announced its decision to modify three existing substations and construct one new transmission line tap to accommodate four power interconnection requests.

Notify EPA of EIS Adoption in Writing

Per EPA's *Filing System Guidance for Implementing 1506.9 and 1506.10 of the CEQ Regulations* (54 FR 9592; March 7, 1989) (EPA Filing Guidance), EPA should be notified in writing of all situations where a Federal agency is adopting an EIS. Accordingly, Western (which had delegated authority for this EIS) sent a letter to EPA formally announcing DOE's adoption of the Keystone Final EIS. Western's request serves as a useful model, containing the following key elements:

- briefly explained the connected action
- identified itself as a cooperating agency
- acknowledged that the Department of State EIS addressed the potential impacts related to its connected action
- included a statement that Western was "hereby adopting" the EIS
- requested that EPA issue an amended notice in its weekly receipt of EISs in the *Federal Register*
- notified EPA that the EIS was subject to ongoing judicial action and listed the applicable actions (CEQ NEPA regulations, 40 CFR 1506.3(d), require that an adopting agency specify if the EIS's adequacy is the subject of pending litigation.)

Note: Under the DOE NEPA Order 451.1, paragraph 5.f.(2)(e), the General Counsel would adopt another agency's EIS for DOE.

Must an Adopted EIS Be Recirculated?

In the case study above, Western did not have to recirculate the EIS, per CEQ NEPA regulations (40 CFR 1506.3(c)), because as a cooperating agency it had completed its independent review, acknowledging that the EIS satisfied its comments and suggestions. As a result, per EPA Filing Guidance, it was not necessary to file the EIS again with EPA. The NEPA Office recommends that when adopting another agency's EIS (and it is not recirculated) that DOE's ROD explain that DOE performed an independent evaluation of the EIS.

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CEQ NEPA Regulations – Excerpts from 40 CFR 1506.3, Adoption

- (a) An agency may adopt a federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.
...
- (c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.
- (d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Cape Wind NEPA Review Nearly Complete



The proposed turbines would be 440 feet tall from the surface of the water to the top of the blades. (Photo: Cape Wind Associates, LLC)

While construction and operation of the Cape Wind Energy Project, a proposed wind farm in Nantucket Sound, remains controversial, the environmental review process drew a step closer to completion in January 2009 with the issuance by the Minerals Management Service (MMS) of the *Cape Wind Energy Project Final Environmental Impact Statement*.

Throughout the environmental review process that started in 2001, many commentors expressed strong support for or opposition to what may become the first offshore wind energy project in U.S. territorial waters. The proposal has received national media attention; several stories focused on a perceived conflict between “green” energy and classic “not-in-my-backyard” attitudes.

Project Details

The proposed project includes the construction, operation, and eventual decommissioning

of a wind energy facility comprised of 130 offshore wind turbine generators, which would occupy about 25 square miles of Horseshoe Shoals in Nantucket Sound, approximately 5.6 miles off Cape Cod, Massachusetts, on the Outer Continental Shelf. The proposed facility could produce 468 megawatts of electrical energy. The average expected production from the proposed wind farm could provide about 75 percent of the electricity demand for Cape Cod and the islands of Martha’s Vineyard and Nantucket. At average expected production, Cape Wind could produce enough energy to power more than 200,000 homes.

Many commentors expressing support for the project stated that it would have few adverse environmental impacts and several beneficial impacts, such as on climate change. On climate change, the Final EIS concludes that the proposed action “would potentially have some beneficial effects” from reduced greenhouse gas emissions from power production in the region because the project would “somewhat reduce” the reliance on fossil fuels. The Final EIS also concludes that the resulting benefits would outweigh the effects of very small greenhouse gas emissions from the project operations.

Commentors stating opposition to the project expressed concerns about a range of potential impacts, including impacts on bird mortality from collisions with turbines, visual and cultural resources related to visibility of the wind turbines from shore, and marine navigation. With regard to birds, the Final EIS concludes that impacts on marine birds would range from “negligible to major” while impacts on coastal and terrestrial birds would range from “negligible to moderate” (impacts on raptors would be “negligible”). Concerning visual resources, the Final EIS concludes that onshore visual resource impacts would be “moderate,” while impacts offshore (close to the project) would be “major.” On cultural resources, although the Final EIS states that MMS has not completed the National Historic Preservation Act Section 106 consultation process, the Final EIS includes a finding of adverse visual effect regarding the viewshed of 28 above-ground historic properties (e.g., the Kennedy Compound and several historic lighthouses and other properties) and the ceremonial practices and traditional cultural properties of two local Native American Tribes. Finally, regarding marine navigation, the Final EIS concludes that most such impacts would range from “negligible” to “moderate” (e.g., “moderate” for radar).

Environmental Review – A Brief History

The applicant, Cape Wind Associates, LLC, initially sought permission to construct and operate a wind farm from the U.S. Army Corps of Engineers in 2001, and the Corps issued its Draft EIS in November 2004 (*LLQR*, December 2004, page 10). Subsequently, the Energy Policy Act of 2005 gave the U.S. Department of the Interior (DOI), in consultation with other relevant Federal agencies, authority for issuing leases, easements, or rights-of-way for alternative energy projects on the Outer Continental Shelf (*LLQR*, December 2005, page 35), and Cape Wind applied for a lease, easement, or right-of-way to enable the proposed project to proceed.

Within the DOI, MMS reviewed the Cape Wind application in 2005 and determined that it needed to prepare a new Draft EIS to meet its own regulatory requirements. MMS built on the Corps’ Draft EIS, treating the approximately 5,000 public comments on that document as scoping comments for the new EIS. In a Notice of Intent issued in May 2005, MMS requested additional written scoping comments and subsequently received more than 1,300 additional scoping comments.

In response to both sets of comments, MMS added two geographic alternatives as well as alternatives based

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Awards Given to Yucca Team and NNSA EIS Manager

At a ceremony in Washington, DC, on January 7, 2009, the Yucca Mountain Team, comprising staff from the Office of Civilian Radioactive Waste Management and the Office of the General Counsel, received the Secretary of Energy's Achievement Award, for successfully completing the *Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F-S1, July 2008), and the associated license application to the Nuclear Regulatory Commission.

The Yucca Mountain team was recognized for its "massive undertaking" in developing a 2,000-page EIS, organizing public hearings on the Draft EIS, and resolving thousands of comments. The Secretary's award citation stated that through exemplary cooperation, the team completed a major step forward in addressing the issue of nuclear waste in the United States and restored confidence in DOE's ability to develop the Yucca Mountain Repository. *LLQR* has featured the Yucca Mountain EISs in a number of articles, most recently, December 2008, page 4.

Theodore (Ted) Wyka received the Secretary of Energy's Excellence Award for managing the *Complex Transformation Supplemental Programmatic EIS* (PEIS), including issuance of a Final Supplemental PEIS in October 2008 and two Records of Decision on December 19, 2008. This award is given to individuals for a "singular accomplishment outside the normal course of duty that demonstrates a high level of performance and outstanding leadership in public service and that significantly benefits the DOE mission and the Nation."

Mr. Wyka was recognized for his work in defining a strategy that will result in a smaller, safer, more secure, and less expensive nuclear weapons complex. He planned and directed the environmental, technical, and business case analyses associated with the Supplemental PEIS, which the award citation called "one of the most comprehensive and visible NEPA analyses conducted by any Federal agency." *LLQR* has featured the *Complex Transformation Supplemental PEIS* (March 2008, page 1, and June 2008, page 17). [LL](#)

Status of Yucca Mountain License Application/EISs

DOE is preparing a supplemental EIS on the Yucca Mountain repository to address concerns raised by the Nuclear Regulatory Commission (NRC) staff regarding ensuring that impacts on groundwater, or from surface discharges of groundwater, from the proposed action are adequately addressed (*LLQR*, December 2008, page 23). Under the Nuclear Waste Policy Act of 1982, as amended (NWSA), NRC shall adopt, to the extent practicable, any EIS prepared by DOE in connection with the proposed repository. In September 2008, in its Notice of Acceptance for Docketing of DOE's License Application, NRC informed DOE that NRC staff had reviewed DOE's Repository EIS and its supplements and determined that it is practicable to adopt these EISs with further supplementation.

In the meantime, NRC is continuing to review the license application for authorization to construct a geologic repository at Yucca Mountain that DOE submitted in June 2008. As part of the license application review process, NRC issued a "Notice of Hearing and Opportunity to Petition for Leave to Intervene" (73 FR 63029; October 22, 2008). Subsequently,

12 entities¹ submitted petitions for leave to intervene, containing more than 300 contentions; approximately 60 of these contentions were NEPA-related. Among the contentions were challenges to the adequacy of the analysis of groundwater-related impacts, which is the issue DOE is addressing in the supplemental EIS. On January 15–16, 2009, DOE filed its answers to the petitions that had been submitted to NRC, providing several reasons why each contention should not be admitted. On February 9, 2009, the NRC staff filed its answers to petitions to intervene.

What Will Happen Next?

In formally docketing DOE's license application in September 2008, NRC triggered a three-year timeframe (with a possible one-year extension), established by the NWSA for NRC to decide whether to grant construction authorization for the Yucca Mountain repository. Further details about the license application process are available on NRC's website at: www.nrc.gov/waste/hlw-disposal/yucca-lic-app.html. [LL](#)

¹ Caliente Hot Springs Resort, LLC; Clark County, Nevada; State of California; Inyo County, California; Native Community Action Council; State of Nevada; Nevada Counties of Churchill, Esmeralda, Lander, and Mineral (filed jointly); Nuclear Energy Institute; Nye County, Nevada; Timbisha Shoshone Tribe; Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation; and White Pine County, Nevada.

Interior and Agriculture Designate Energy Corridors



The Department of the Interior (DOI) and the Department of Agriculture each issued a Record of Decision (ROD) on January 14, 2009, amending, respectively, 92 Bureau of Land Management (BLM) land use plans and 38 Forest Service land management plans to designate more than 6,000 miles of energy transport corridors in 11 western states. Neither ROD authorizes any “ground disturbing activities,” but each

adopted a number of “interagency operating procedures” and related mitigation measures that would help “avoid or minimize environmental harm from future project development that may occur within the designated corridors.” Each agency will apply the measures to individual projects proposed for these corridors in project-specific environmental analysis.

The RODs are based on the Programmatic EIS (PEIS) for the *Designation of Energy Corridors on Federal Lands in 11 Western States* (DOE/EIS-0386, November 2008), prepared in response to Section 368 of the Energy Policy Act of 2005 (*LLQR*, December 2007, page 12; December 2008, page 24). Each ROD contains an appendix that lists each agency’s specific land use plan amendments, including among other things corridor width, energy transport modes that would be allowed (e.g., oil, natural gas, and hydrogen pipeline, electricity transmission

and distribution facilities), and, where appropriate, the rationale for specific designations. The RODs are available on the PEIS website at www.corridoreis.anl.gov.

“The designation of these corridors represents a significant step in addressing some of the critical energy infrastructure issues in the West,” said James Caswell, then Director, BLM. “The cooperative efforts of the involved agencies to establish pathways for future pipelines and long-distance electrical transmission lines will help relieve congestion, improve reliability, and enhance the national electric grid,” he said. “By identifying these corridors we can minimize haphazard impacts to NFS [National Forest Systems] lands and ensure that the energy future of America is well served by its forests,” said Mark Rey, then Undersecretary, Department of Agriculture.

Together, BLM and Forest Service manage approximately 98 percent of the land on which the Federal energy corridors are located. The remaining land is managed by the DOI’s Bureau of Reclamation or National Park Service, or by the Department of Defense. These agencies are expected to designate corridors on their lands in the process of project-specific decisionmaking. DOE, although a co-lead agency for the PEIS, will not issue a ROD, as none of the proposed corridors crosses DOE land. For information on the PEIS, contact LaVerne Kyriss, DOE NEPA Document Manager, at kyriss@wapa.gov or 720-962-7170.

Protect Sensitive Cultural Resource Information

FOIA

An information brief recently issued by the Office of Nuclear Safety, Quality Assurance, and Environment advises DOE cultural

resource and environmental professionals on constraints in disseminating sensitive historical and archaeological resource information under the Freedom of Information Act (FOIA). The National Historic Preservation Act and

the Archaeological Resources Protection Act restrict the disclosure of certain information – such as the location and ownership of the protected site or resources – to prevent looting, desecration, or other harm to the historical and archeological resources protected under their implementing regulations.

A DOE EIS or EA may include the evaluation of potential impacts to cultural resources regulated under those statutes. Generally, the supporting information for an impact analysis under NEPA becomes part of the administrative record and is available to the public. DOE’s NEPA regulations provide for exceptions, however, to the public disclosure of classified or confidential information or information the DOE otherwise would not disclose pursuant to FOIA. DOE NEPA regulations (10 CFR 1021.340) mandate the segregation of such exempt information into an appendix (that is not publicly available) to allow public review of the remainder of the NEPA document.

Information brief HS-22-IB-2008-13, *The Freedom of Information Act and Confidentiality of Cultural Resources*, is available at www.hss.doe.gov/environment.html under Environmental Guidance. For additional information, contact Beverly Whitehead, at beverly.whitehead@hq.doe.gov or 202-586-6073.

What are Cultural Resources?

Cultural resources include, but are not limited to:

- Archeological materials (i.e., artifacts) and sites dating to the prehistoric, historic, and ethnohistoric periods that are located on the ground surface or are buried beneath it
- Standing structures that are over 50 years of age or are important because they represent a major historical theme or era
- Cultural and natural places, select natural resources, and sacred objects that have importance for Native Americans and ethnic groups
- American folk-life traditions and arts

Making the NEPA Process Work Again at West Valley

by Cathy Bohan, NEPA Compliance Officer and Document Manager

Imagine facing the following situation as a new NEPA Compliance Officer (NCO) and EIS Document Manager at a field site:

Decisions on site decommissioning and/or long-term stewardship were urgently needed. To resolve a legal dispute with a local environmental coalition in the mid-1980s, DOE had agreed to begin preparation of an EIS for site decommissioning earlier than originally planned. A Draft of that EIS was issued in 1996 with no preferred alternative identified. No Final EIS was ever issued. Instead, a complex political, legal, and regulatory framework choked the NEPA process. DOE's attempt to restart the process in 2003 – with a State joint lead agency that owns the site property, the New York State Energy Research and Development Authority (NYSERDA), and the participation of four other Federal and state agencies – appeared to have failed. The other agencies were the U.S. Environmental Protection Agency (EPA), U.S. Nuclear Regulatory Commission (NRC), and New York State Department of Environmental Conservation (NYSDEC) (cooperating agencies); and the New York State Department of Health (NYSDOH), an involved agency under the State Environmental Quality Review Act.

Progress was stymied. Over 1,700 comments had been received from the five state and Federal agencies on

a new internal draft of the EIS, revealing different goals and expectations for the document. Tensions and mistrust of DOE ran high. The State joint lead agency for the document threatened to withdraw from the EIS process. This agency was already at odds with the Department over financial and long-term stewardship responsibilities. The citizens advisory group that was formed to help in the development of the preferred alternative had grown impatient and frustrated. Without site decommissioning decisions, site workers could run out of substantive work to do.

Your task? Ensure all comments are resolved, issue a revised Draft EIS for public comment, and then issue a Final EIS as soon as possible.

Such was the situation in early 2006 when I assumed the duties of NCO and Document Manager at the West Valley Demonstration Project. In December 2008, DOE issued the *Revised Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center* (DOE/EIS-0226-D (Revised)) for public review and comment. The document contained a Preferred Alternative shared by both DOE and NYSERDA, the joint lead State agency. So, what happened in the intervening 2½ years to break the impasse?

(continued on next page)

Background:

The largest of the “Small Sites” in DOE’s Environmental Management Program, the West Valley Demonstration Project is located approximately 35 miles south of Buffalo, New York. The site is the location of the only commercial nuclear fuel reprocessing facility to have ever operated in the United States. Nuclear Fuel Services, Inc. (NFS) operated the site from 1966–1972, leasing the property from the State of New York, and under license from the Atomic Energy Commission. NFS shut down the plant for modifications and expansion in 1972, never to reopen due to increasing safety requirements that affected the ability of the plant to be profitable, later relinquishing responsibility for the site back to the State of New York. In 1980, Congress passed the West Valley Demonstration Project Act, which directed DOE to:

- Solidify the high-level radioactive waste at the Western New York Nuclear Service Center
- Develop containers suitable for permanent disposal of the waste
- Transport the solidified waste to a Federal repository for permanent disposal
- Dispose of low-level radioactive waste and transuranic waste generated by the solidification activities
- Decontaminate and decommission the underground high-level waste tanks, facilities, and the material and hardware used in connection with the Project

West Valley (continued from previous page)



No Action Alternative. No decommissioning actions would be taken; continued management and oversight of all facilities on the property would occur.



Preferred Alternative. The Main Plant Process Building, Vitrification Facility, and several contaminant sources would be removed over an 8-year period.

Core Team Process Started

In June 2006, DOE convened an Interagency Roundtable with the five agencies participating in the EIS process. Senior officials and staff from each agency assembled in this forum to discuss the technical concerns with the internal Draft EIS that had generated so many comments, and the potential path forward. As a result of the Roundtable, DOE proposed to use the *Core Team Process* to address the issues in the EIS.

The *Core Team Process* is a consensus-building process that DOE and EPA had used successfully at several DOE sites to determine appropriate cleanup actions. This application at West Valley was the first time DOE has used the process in the NEPA context. After securing a contractor to serve as a facilitator, DOE invited each agency to participate in this process to resolve technical issues impeding progress on the EIS. Knowledgeable staff and managers with authority to represent their agency's positions and expertise would participate in monthly meetings. DOE also proposed periodic Interagency Roundtables with senior officials from each agency to report progress and receive authorization to continue.

Initially, only three of the other agencies (NRC, NYSDEC, and NYSDOH) participated. At monthly meetings, the agencies discussed site conditions, regulatory requirements, and technical and analytical challenges, as well as possible solutions. After only three months, the concept for a new alternative for the document was developed. It would represent a unique, phased approach to decommissioning that could allow important actions to proceed in the near-term to reduce real potential risks for certain portions of the site, while allowing time for development of technologies to support decisionmaking on the remaining portions and establishment of disposal facilities for "orphan" waste streams (waste streams without a clear path to disposal) that could be generated from those later activities. This new alternative was later identified as the Preferred Alternative.

Progress Accelerates

After a few more months of Core Team meetings and another Interagency Roundtable, NYSERDA and EPA agreed to participate in the monthly Core Team meetings. Within the year, production of new draft chapters and appendices began in earnest on a rolling production schedule for review by all of the agencies.

Through the *Core Team Process*, a number of key areas of disagreement that had impeded progress on the EIS were resolved, including:

- **Level of Detail** – The agencies agreed that the EIS should provide not only the environmental information required for an adequate EIS, but also should contain some additional detailed information to meet certain regulatory agency information needs. However, other complex regulatory documents, such as those required under the Resource Conservation and Recovery Act or to demonstrate detailed compliance with the NRC Decommissioning Criteria, would be tiered from the EIS, instead of being made a part of it.
- **Preferred Alternative** – The agencies jointly developed and identified a preferred alternative to be included in the document for the first time in the almost 20-year history of the EIS process.
- **Agreeing to Disagree** – Several areas of technical disagreement between DOE and NYSERDA were discussed regarding analytical methodology and the handling of incomplete and unavailable information. This open exchange ultimately led DOE and NYSERDA to agree to document their opposing points of view on certain elements of the analyses in a foreword to the document.

(continued on next page)

West Valley *(continued from previous page)*

Other Factors

Application of project management techniques and other factors were critical to accelerating issuance of the Draft EIS:

- Rolling production of 27 EIS chapters and supporting appendices on an aggressive schedule, followed by internal review by DOE and NYSERDA, revision, review by the cooperating agencies, and resolution of comments was completed in eight months. This effort led to a new preliminary “concurrence draft” being distributed to all the agencies about one month prior to a planned one-week concurrence review meeting.
- All of the agencies participated collaboratively in the intensive one-week concurrence review, working effectively as a team. Senior officials and staff from each agency supported the meetings.
- The EIS schedule was coordinated with production of a separate Decommissioning Plan to be submitted to NRC concurrent with issuance of the Draft EIS, as well as with completion of an independent analysis being conducted by NYSERDA for incorporation into the EIS.

- Through dedicated attention to project management, and a hefty desire to succeed, the document preparation team was able to forecast or overcome challenges, such as snags in modeling efforts, comments being received later than scheduled, and life events that affected the availability of key production team members.

Overall, the success of this effort was due to the dedication and support of senior officials and staff from each agency involved, the open exchange and cooperative spirit ultimately established through the *Core Team Process* to resolve technical concerns where possible, agreement to discuss opposing views clearly in the Draft EIS as necessary, and an intensive project management effort.

Next Steps

DOE plans to conduct three public hearings in late March and early April 2009. The six-month public comment period (required to comply with a settlement of a previous lawsuit) ends June 8, 2009. After 20 years, we expect to issue the Final EIS in 2009. For more information on the revised Draft EIS, please contact Cathy Bohan at catherine.m.bohan@wv.doe.gov or 716-942-4159. 

Cape Wind Review *(continued from page 16)*

on a smaller project (65 turbines), a condensed array of 130 turbines, and a phased development approach. MMS published its Draft EIS in January 2008 (*LLQR*, March 2008, page 14) and received more than 42,000 comments.

In preparing the Final EIS, MMS amended the Draft EIS based on comments received. The changes included the addition of a final bird and bat monitoring plan, a finding of adverse visual effect to historic properties, updated mitigation measures, and proposed new mitigation measures to ensure navigation safety in response to a 2008 U.S. Coast Guard report regarding shipboard radar. Although MMS concluded that providing this new information did not result in a significant change to the analysis in the Draft EIS, in its Notice of Availability for the Final EIS (74 FR 3635; January 21, 2009), MMS invited comments on these issues, which MMS will consider in preparing its Record of Decision (ROD). MMS will accept comments through its Public Connect online commenting system through March 21, 2009.

What's Next?

In its ROD, MMS will announce a decision whether to authorize the proposed project. Any lease, easement,

or right-of-way that MMS may issue to Cape Wind would be conditional on the applicant obtaining all necessary permits and meeting all other requirements of Federal and state agencies.

In January 2009, shortly after the Final EIS was issued, the Massachusetts Office of Coastal Zone Management determined that the project is consistent with all state policies. Other state permit approvals remain pending. Cape Wind has applied to the Massachusetts Energy Facilities Siting Board to issue a “Certificate of Environment Impact and Public Interest,” a composite permit that covers all necessary state and local permits. Other Federal approvals are also pending, including those from the Federal Aviation Administration and Coast Guard. Cape Wind officials stated on their website (www.capewind.org) that they expect to complete the entire permitting process by Spring 2009 and construction could begin in 2010.

Additional information on the Cape Wind Energy Project, including electronic copies of the Final EIS and related documents, are available at the MMS website or by contacting James F. Bennett, MMS Environmental Assessment Branch, at 703-787-1656. 



Most DOE EISs Being Prepared with Cooperating Agencies

About three-quarters of the EISs listed in DOE's 2008 Cooperating Agency Report to the Council on Environmental Quality (CEQ) – 24 out of 33 – were or are being prepared with cooperating agencies. The report, submitted to CEQ on December 22, 2008, covers EISs for which DOE issued a notice of intent on or after October 1, 2005, and that were completed during fiscal year 2008 or were still ongoing as of September 30, 2008. Four of the seven EISs started in fiscal year 2008 (and therefore included in the report for the first time) are being prepared with cooperating agencies. In addition, five of the 27 EAs that DOE completed during fiscal year 2008 were prepared with cooperating agencies.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating agency status or for terminating an established cooperating agency relationship before completion of a NEPA review. The reasons most frequently cited by NEPA Document

Managers for DOE EISs without cooperating agencies were that no candidates were identified with special expertise or jurisdiction by law (40 CFR 1501.6) and that the agencies invited as potential cooperating agencies preferred other ways to participate in the NEPA process, for example, through consulting or commenting.

The annual reporting requirement is part of CEQ's ongoing efforts to encourage Federal agencies to involve other Federal, state, tribal, and local governmental organizations as cooperating agencies in NEPA reviews, promote early involvement of cooperating agencies, and track such involvement. The CEQ memoranda relating to cooperating agencies may be found in the *DOE NEPA Compliance Guide*, Volume 1, Section 4-13, on the DOE NEPA Website, at www.gc.energy.gov/nepa under Guidance. For further information, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326. 

Cooperating Agency Questions Under Consideration for Addition to Lessons Learned Questionnaire

The Office of NEPA Policy and Compliance is considering adding questions on cooperating agencies to the Lessons Learned Questionnaire that NEPA Compliance Officers (NCOs) and NEPA Document Managers are responsible for completing after an EIS or EA is prepared – the source for the metrics and “What Worked and Didn't Work in the NEPA Process” in every issue of *LLQR*. These draft questions, which are intended to elicit further lessons learned and to facilitate preparation of the annual Cooperating Agency Report to CEQ, will be tested on the NCOs and Document Managers of the recently completed EISs and EAs listed on page 29. We welcome additional suggestions.

Draft Questions on Cooperating Agencies: (if any answer is “yes,” name each agency)

- For this EIS or EA, did DOE identify other agencies having special expertise or jurisdiction by law?
 - Was each such agency invited to become a cooperating agency?
 - Did any invited agency accept cooperating agency status?
 - Did any invited agency decline cooperating agency status? Why (from reasons below)?
- Did any agency request cooperating agency status?
 - Did DOE grant any requesting agency cooperating agency status?
 - Did DOE deny any agency's request for cooperating agency status? Why (from reasons below)?
- If this EIS or EA had any cooperating agencies, was a memorandum of understanding developed? What role did the cooperating agencies have?
- Did any established cooperating agency end its participation before the completion of the EIS or EA process? Why (from reasons below)?
- Do you have lessons learned (i.e., what worked, what didn't work) regarding your experience in working with cooperating agencies?

Reasons cooperating agency status was not established or why it ended:

1. Candidate agency lacked special expertise or jurisdiction by law
2. Candidate agency lacked authority to enter into an agreement to be a cooperating agency
3. Potential or active cooperating agency lacked agreement with the lead agency
4. Potential or active cooperating agency lacked capacity to participate
5. Other (specify) – for example, agency preferred consulting relationship

Transitions

Office of NEPA Policy and Compliance: Welcome to Carrie Moeller



Carrie Moeller joined the Office of NEPA Policy and Compliance as an Environmental Protection Specialist in September 2008.

Working for the NEPA Office since 2005 as a technical support contractor, Ms. Moeller supported a number of EIS reviews including the Complex Transformation Supplemental Programmatic EIS, the Global Nuclear Energy Partnership Programmatic EIS, and several clean coal EISs, including the FutureGen, Mesaba Energy, and Western Greenbrier projects. In addition, she helped prepare several issues of *LLQR*, drafting many articles and developing the layout.

Since joining the NEPA Office, Ms. Moeller has spent much of her time reviewing the preliminary draft Tank Closure and Waste Management EIS for the Hanford Site. She will provide NEPA assistance to the Office of Energy Efficiency and

Renewable Energy, the Office of Environmental Management, and the Loan Guarantee Program Office, and assist in developing DOE NEPA guidance and regulations.

Carrie joins the Eastern Energy and Waste Management Unit and can be reached at carrie.moeller@hq.doe.gov or 202-586-8397.

Farewell to Melanie Pearson

Melanie Pearson, who had served as an Environmental Protection Specialist in the Office of NEPA Policy and Compliance since April 2007, became a Program Manager in the Office of Small Site Projects within the Office of Environmental Management (EM) in January 2009. While part of the NEPA Office, she worked closely with Program Office staff on EISs for Presidential permits and energy transmission corridors, as well as the Santa Susana Field Laboratory Area IV EIS and the Solar Energy Programmatic EIS. In her new role, Ms. Pearson will be responsible for day-to-day coordination between EM Headquarters and assigned Field Offices to ensure that site closure project activities are conducted in accordance with the letter and spirit of applicable requirements and policies at all levels of government. Ms. Pearson can be reached at melanie.pearson@hq.doe.gov or at 202-586-0939.

Although Melanie joined the NEPA Office quite recently, she had a long and close association with the Office while serving as the Special Assistant to the Deputy Assistant Secretary for Environment in the former Office of Environment, Safety and Health. The NEPA Office appreciates her contributions and looks forward to continuing to work closely with her.

Argonne Site Office: Pete Siebach (Acting NCO)

Pete Siebach, NCO for the Chicago Office, now also serves as the Acting NCO for the Argonne Site Office. He can be reached at peter.siebach@ch.doe.gov or 630-252-2007. The former NCO for Argonne Site Office, Donna Green, now is a Team Leader for Facility Engineering in the Office of Environmental Management and can be reached at donna.green@em.doe.gov or 202-586-1467.



Litigation Updates

These articles are not intended to be comprehensive legal summaries, but rather emphasize the lessons that may be of broadest use to DOE's NEPA practitioners. The links to opinions or, in some cases, the full docket in the online version of LLQR are provided so the interested reader can gain a more complete understanding.

DOE Litigation

Preliminary Injunction Denied for LLNL Biosafety Laboratory

A Federal district court has denied a request to halt operation of a DOE biosafety level 3 (BSL-3) laboratory while it considers a challenge to a revised EA for the facility. At issue in *Tri-Valley CAREs et al. v. DOE et al.* is the Revised EA for the Proposed Construction and Operation of a BSL-3 Facility at Lawrence Livermore National Laboratory, Alameda County, California (DOE/EA-1442-R, 2008). DOE prepared this Revised EA following an order by the United States Court of Appeals for the Ninth Circuit in response to a challenge against the original EA (DOE/EA-1442, 2002). The appeals court concluded that the original EA did not consider potential impacts associated with intentional destructive acts, such as terrorism, and required "DOE to consider whether the threat of terrorist activity necessitates the preparation of an Environmental Impact Statement." (See *LLQR*, December 2006, page 3.) The Revised EA included an analysis of intentional destructive acts, but the plaintiffs challenged its adequacy.

The United States District Court for the Northern District of California concluded in its February 9, 2009, order that the plaintiffs had not met the standard to compel DOE to halt operation during the pendency of the litigation. This conclusion hinged on consideration of four allegations made by the plaintiffs. First, the court addressed the plaintiffs' allegation that the Revised EA is inadequate and, therefore, DOE had no authority to issue a finding of no significant impact (FONSI). The court reviewed several challenges to the analysis presented in the EA and concluded that DOE had, in fact, taken a "hard look at the potential environmental impact of an intentional destructive act on the BSL-3 facility." One aspect of the Revised EA considered in detail by the court was DOE's reference to accident analysis as bounding the potential impacts of an intentional destructive act. The court accepted DOE's determination that "the *destructive forces* generated by the unintentional and intentional incidents were similar. The DOE clearly took a 'hard look' at the issue of whether and how to use bounding analyses and whether and how to use the Release Scenario to analyze the impact of potential terrorist attacks."

Second, the court considered the plaintiffs' allegation that DOE should have prepared an EIS. After considering several discrete claims by the plaintiffs, the court concluded that the plaintiffs were unlikely to prevail because some issues had been decided in litigation regarding the original 2002 EA and, for other issues, the plaintiffs failed to "demonstrate that they would likely prevail on either the context or intensity components of the 'significance' concept" under NEPA, among other reasons.

Third, the court considered the plaintiffs' contention that DOE should have supplemented the Draft Revised EA to allow opportunity for public review of additional information. On most counts, the court found that the information in question would not provide significant new information relevant to environmental concerns. However, the court agreed with the plaintiffs that DOE should have included detailed information about two 2005 shipping incidents in its 2007 Draft Revised EA. Moreover, the court stated that inclusion of detailed information on these incidents in the Final Revised EA "does not excuse or explain its initial failure" to include the information in the draft and "plaintiffs have reasonably concluded the DOE may have attempted to avoid public comment on these incidents." Though the court concluded that the plaintiffs demonstrated probable success on the merits of this issue, the court also concluded that the plaintiffs had not shown any irreparable injury. When agencies fail to provide sufficient environmental information to permit the public to provide their views, the court wrote, "there is an added risk to the environment that they will act without the benefit of public comment regarding the likely effect of their decision upon the environment." But the court noted that other than this lost opportunity, "there is no evidence that this deprivation substantively harmed plaintiffs. That is, they have not indicated what comments they would have provided to [DOE] . . . or how their comments might have altered [DOE's] conclusions."

Fourth, the court considered the plaintiffs' allegation that DOE should have circulated a proposed FONSI pursuant to DOE and Council on Environmental Quality regulations

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(10 CFR 1021.322 and 40 CFR 1501.4(e)(2), respectively). These regulations provide two limited circumstances in which a proposed FONSI shall be made available for 30 days of public review. The first of these is when the proposed action is, or is closely similar to, one that normally requires preparation of an EIS pursuant to agency regulations. The court determined that this circumstance is inapplicable. The court then looked closer at the second limited circumstance, which is when “the nature of the proposed action is one without precedent.” The plaintiffs contended that this circumstance applied because DOE had not previously operated a BSL-3 laboratory. The

court, however, found more persuasive a prior decision by the First Circuit Court of Appeals that “expressly interpreted the terms ‘without precedent’ . . . as focusing on whether the *environmental impact* of the action is without precedent, not whether the actor has *performed* the proposed action before.” In this regard, the court found that with more than 1,350 BSL-3 laboratories in operation, the DOE facility is not “without precedent” in the context of NEPA regulations and DOE was not required to circulate a proposed FONSI for public comment. (LLQR, June 2008, page 20) (Case No.: 08-01372) 

Other Agency NEPA Litigation

Settlement Agreements in Climate Change Case

A lawsuit that raised global climate change concerns relating to U.S. government-sponsored or financed projects in other countries was settled on February 6, 2009. Although the settlement agreements filed with the U.S. District Court for the Northern District of California state that the case shall not be cited as precedent in other litigation, the settlement agreements indicate the advisability of considering global climate change and environmental reviews.

The plaintiffs, led by Friends of the Earth, alleged that two U.S. government corporations, the U.S. Overseas Private Investment Corporation (OPIC) and the Export-Import Bank of the United States (Ex-Im), provided assistance to projects without evaluating those projects’ contributions to climate change. OPIC offers insurance and loan guarantees for projects in developing countries; Ex-Im provides financing support for exports from the United States.

Because of the distinct activities of the two government corporations, and Ex-Im’s existing NEPA rules, the terms of the settlement agreements differ.

Under its settlement agreement, OPIC is required to:

- Identify any project that emits more than 100,000 tons of carbon dioxide (CO₂) equivalent per year as requiring an Environmental Impact Assessment (EIA)¹ and subject it to post-construction auditing to confirm project compliance with environmental expectations.
- Report annual greenhouse gas emissions from projects in its active portfolio that emit more than 100,000 tons of CO₂ equivalent per year.
- Formalize an existing policy that aims to reduce greenhouse gas emissions by 20 percent over the next 10 years from currently active projects that emit more than 100,000 tons of CO₂ equivalent annually and limit future investment to projects that meet this policy.

- Propose revisions to its Environmental Handbook that introduce energy efficiency requirements for project facilities and encourage loan applicants to include renewable energy sources in project design.

Under its settlement agreement, Ex-Im is required to:

- Produce a written directive that requires staff to provide information about CO₂ emissions to its Board of Directors as part of all financial applications related to fossil fuel projects.
- Propose a carbon policy that includes incentives to reduce project CO₂ emissions, including financing incentives that encourage energy efficiency as part of project design.
- Promote consideration of climate change issues as a delegate to the Organisation for Economic Co-operation and Development and among export credit agencies.

In addition, both agencies will commit to financing renewable energy projects. Each agency will provide funding of \$250 million to projects that promote renewable energy: OPIC by establishing a revolving investment fund that includes preferential financing terms to renewable energy projects, and Ex-Im by establishing a renewable energy loan guarantee facility. The settlement agreements are available at www.foe.org/climatelawsuit/. *Friends of the Earth, Inc., et al. v. Spinelli et al.* (N.D. California) Case No.: 02-4106. 

¹ EIA is the general international term for the environmental review that is called an environmental impact statement in the United States.

Mark Your Calendars: Upcoming Conferences



NEPA at 40: How a Visionary Statute Confronts 21st Century Environmental Impacts

The Council on Environmental Quality (CEQ) is cosponsoring a conference with the Environmental Law Institute and George Washington University on March 23–24 in Washington, DC. The conference will address the opportunities and challenges NEPA presents in addressing issues such as climate change, alternative energy development, sustainable development, environmental equity, and transborder resource and pollution problems. See www.eli.org/Seminars/event.cfm?eventid=445.

NAEP Conference to Highlight Sustainability

The National Association of Environmental Professionals (NAEP) will hold its 2009 annual conference on May 2–6 in Scottsdale, Arizona. This year's theme is "*Making Sustainability Happen: Goals, Practices and Challenges*." Topics include NEPA and Climate Change; NEPA Analysis of Energy Projects; NEPA Case Law and Legislative Update; Improving the Quality of NEPA Documents; Streamlining NEPA Documents; Strategies for Improving NEPA Comment Analysis; and Developing Significance Criteria. The CEQ Associate Director for NEPA Oversight, Horst Greczmiel, will provide the CEQ annual NEPA update. See www.naep.org under Annual Conferences.



State of Environmental Justice in America



DOE, the National Small Town Alliance, Howard University School of Law, the U.S. Environmental Protection Agency, and the U.S. Department of Agriculture are co-sponsoring this conference on the State of Environmental Justice in America, to be held in Arlington, Virginia, May 27–29, 2009. Topics will include assuring justice for communities, land use decisionmaking, emergency planning and homeland security. See www.ejconference.net/2009conference.html or contact John Rosenthal at ejinamerica@hotmail.com.



2009 Federal Environmental Symposia

The Office of the Federal Environmental Executive will hold a Symposium West in Grand Mound, Washington, June 2–4, and a Symposium East in Bethesda, Maryland, June 16–18. This year's theme – Progress and Transition – focuses on agencies' sustainability accomplishments during the past year and on additional initiatives of the new Administration. See www.fedcenter.gov/calendar/conferences/symposia2009/. For more information contact Katie Miller, Office of the Federal Environmental Executive, at miller.katie@epa.gov or 202-343-9841.

International Interdisciplinary Conference on the Environment

The Interdisciplinary Environmental Association will hold its 2009 conference July 7–10 in Daytona Beach, Florida. Conference topics include coastal resource impacts and management, environmental ethics, regional water resources and pollution issues, climate change and coastal areas, and the economics of sustainability. Abstracts are due May 17; see www.ieaonline.org/.



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.

- DOE Project Management Career Development Program
505-245-2112
Register through CHRIS
For DOE employees only
Environmental Laws, Regulations, and NEPA
Albuquerque, NM: April 7-9
No fee
- ICF Jones & Stokes
916-737-3000
ee@jsanet.com
www.jonesandstokes.com
Common NEPA Mistakes and How to Avoid Them
Teleconference: March 13
\$229
- International Association for Public Participation
703-837-1197
iap2training@theperspectivesgroup.com
www.iap2.org
Planning for Effective Public Participation
Dallas, TX: March 9-10
Trenton, NJ: April 6-7
Austin, TX: April 20-21
Nashville, TN: April 27-28
Los Angeles, CA: May 4-5
Houston, TX: May 11-12
Columbus, OH: June 1-5
\$700
- Nicholas School of the Environment and Earth Sciences
Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuinged/courses.html
Scoping, Public Involvement, and Environmental Justice
Durham, NC: April 1-3
\$800 (\$875 after 3/11/09)
Preparing and Documenting Environmental Impact Analyses
Durham, NC: May 18-20
\$800 (\$875 after 4/27/09)
Implementation of NEPA
Durham, NC: June 15-19
\$1,200 (\$1,275 after 5/25/09)
Certificate in the National Environmental Policy Act
Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by the Council on Environmental Quality.
Fee: Included in registration for constituent courses.
- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org
NEPA: Writing the Perfect EA/FONSI or EIS
Chicago, IL: April 22-23
Portland, OR: May 28-29
Philadelphia, PA: June 18-19
\$495 (\$395 reduced tuition is available, see website)

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Training Opportunities

(continued from previous page)

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

Writing for Technical Specialists

Salt Lake City/Park City, UT: March 10-12
\$985 (GSA contract: \$895)

NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation

San Francisco, CA: March 24-27

2-day, individual course registration:

\$785 (GSA contract: \$695)

4-day, two course registration:

\$1185 (GSA contract: \$1095)

Las Vegas, NV: May 12-15

2-day, individual course registration:

\$745 (GSA contract: \$655) until 4/3/09

4-day, two course registration:

\$1145 (GSA contract: \$1055) until 4/3/09

Integrating Federal Environmental Laws into NEPA

Jackson Hole, WY: March 31-April 2
\$945

Applying the NEPA Process and Writing Effective NEPA Documents

Salt Lake City/Park City, UT: April 7-10

San Antonio, TX: June 2-5

\$1145 (GSA contract: \$1055) see website for registration deadlines

Clear Writing for NEPA Specialists

Phoenix, AZ: April 21-23

Portland, OR: May 5-7

\$945 (GSA contract: \$855) see website for registration deadlines

Overview of the NEPA Process and Overview of the Endangered Species Act and Overview of Section 106 of the National Historic Preservation Act

Missoula, MT: May 5-7

\$945 (GSA contract: \$855) until 3/27/09

Reviewing NEPA Documents

Las Vegas, NV: June 16-18

\$945 (GSA contract: \$855) until 4/22/09

Cultural and Natural Resource Management and Overview of the Endangered Species Act

San Antonio, TX: June 23-25

\$945 (GSA contract: \$855) until 4/22/09

NEPA Certificate Program

Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.

Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922

judy.kurtzman@usu.edu

www.cnr.usu.edu/policy/

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

Comprehensive NEPA

Tuscon, AZ: March 11-13

\$795

The Cultural Side of NEPA: Addressing Cultural Resources in NEPA Analysis

Salt Lake City, UT: May 18-19

\$695

- US Institute for Environmental Conflict Resolution
(520) 901-8501
usiecr@ecr.gov
www.ecr.gov/Training/training.aspx

Introduction to Managing Environmental Conflict

Washington, DC: March 10-11

Atlanta, GA: May 12-13

\$995

Advanced Multi-Party Negotiation of Environmental Disputes

Washington, DC: April 7-9

\$1,245

Interest-based Negotiation of Environmental Issues

Portland, OR: April 22-23

\$995

EAs and EISs Completed October 1 to December 31, 2008

EAs

**Rocky Mountain Oilfield Testing Center/
Office of Fossil Energy**
DOE/EA-1583 (10/1/08)
*Rocky Mountain Oilfield Testing Center/Naval
Petroleum Reserve No.3 Site-wide Environmental
Assessment, Natrona County, Wyoming*
Cost: \$415,000
Time: 23 months

DOE/EA-1604 (10/8/08)
*Construction and Operation of a Potable Water Line
at the Rocky Mountain Oilfield Testing Center/Naval
Petroleum Reserve No.3, Natrona County, Wyoming*
Cost: \$39,000
Time: 13 months

**National Energy Technology Laboratory/
Office of Fossil Energy**
DOE/EA-1624 (12/29/08)
*Auburn Landfill Gas Electric Generators
and Anaerobic Digester Energy Facilities, New York*
Cost: \$47,000
Time: 6 months

DOE/EA-1626 (11/28/08)
*Midwest Geological Carbon Sequestration
Phase III Large-Scale Field Test, Illinois*
Cost: \$103,000
Time: 4 months

**Office of Energy Efficiency and Renewable
Energy**
DOE/EA-1637 (10/7/08; FONSI 11/7/08)
*Energy Conservation Program for Commercial
and Industrial Equipment: Packaged Terminal Air
Conditioner and Packaged Terminal Heat Pump
Energy Conservation Standards*
Cost: \$50,000
Time: 32 months

DOE/EA-1643 (12/31/08)
*Energy Conservation Program for Commercial
and Industrial Equipment: Commercial Refrigeration
Equipment Energy Conservation Standard*
Cost: \$50,000
Time: 4 months

EISs

Bonneville Power Administration
DOE/EIS-0397 (73 FR 74171, 12/5/08)
(EPA Rating: LO)
*Lyle Falls Fish Passage Project, Klickitat County,
Washington*
Cost: \$459,000
Time: 30 months

National Nuclear Security Administration
DOE/EIS-0236-S4 (73 FR 63470, 10/24/08)
(EPA Rating: LO)
*Complex Transformation Supplemental
Programmatic Environmental Impact Statement*
Cost: \$4,000,000
Time: 24 months

**Office of Electricity Delivery and Energy
Reliability**
DOE/EIS-0386 (73 FR 72477, 11/28/08)
(EPA Rating: EC-2)
*Designation of Energy Corridors on Federal Land
in the 11 Western States (co-lead: BLM)*
Cost: \$2,200,000
Time: 38 months
[The total cost for preparing the EIS was \$6.6 million,
which was equally shared by the Bureau of Land
Management, the Forest Service, and DOE.]

DOE/EIS-0399 (73 FR 57620, 10/3/08)
(EPA Rating: EC-2)
*Montana Alberta Tie Ltd. (MATL) 230-kV
Transmission Line, Great Falls, Montana
(co-lead: State of Montana)*
Cost: The cost for this EIS was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 16 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 cost for the preparation of 6 EAs for which cost data were applicable was \$50,000; the average cost was \$117,000.
- Cumulatively, for the 12 months that ended December 31, 2008, the median cost for the preparation of 25 EAs for which cost data were applicable was \$85,000; the average cost was \$122,000.
- For this quarter, the median completion time for 6 EAs was 10 months; the average was 14 months.
- Cumulatively, for the 12 months that ended December 31, 2008, the median completion time for 28 EAs was 12 months; the average was 17 months.

EIS Cost and Completion Times

- For this quarter, the median cost of 3 EISs for which cost data were applicable was \$2,200,000; the average cost was \$2,220,000.
- Cumulatively, for the 12 months that ended December 31, 2008, the median cost for the preparation of 7 EISs for which cost data were applicable was \$4,000,000; the average cost was \$7,240,000.
- For this quarter, the median and average completion times for 4 EISs were 27 months.
- Cumulatively, for the 12 months that ended December 31, 2008, the median completion time for 11 EISs was 24 months; the average was 29 months.

Recent EIS-Related Milestones (December 1, 2008 to February 28, 2009)

Notices of Intent

Office of the Chief Financial Officer

DOE/EIS-0412

Proposed Federal Loan Guarantee to Support Construction of the TX Energy, LLC, Industrial Gasification Facility near Beaumont, Texas
February 2009 (74 FR 7596, 2/18/09)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0414

Energia Sierra Juarez Transmission Line, California

February 2009 (74 FR 8517, 2/25/09)

Western Area Power Administration

DOE/EIS-0411

Construction and Operation of the Proposed Transmission Agency of Northern California Transmission Project, California

February 2009 (74 FR 8086, 2/23/09)

[Advance Notice of Intent: 74 FR 707, 1/7/09]

DOE/EIS-0415

Interconnection of the Proposed Deer Creek Station Energy Facility Project, South Dakota

February 2009 (74 FR 6284, 2/6/09)

Draft EIS

Office of Environmental Management

DOE/EIS-0226-D (Revised)

Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, New York (Revised)

December 2008 (73 FR 74171, 12/5/08)

Final EIS

Western Area Power Administration

DOE/EIS-0410

Keystone Oil Pipeline Project

February 2009 (74 FR 6289, 2/6/09)

[Notice of DOE's adoption of the Department of State EIS 1/4/08]

(continued on next page)

Recent EIS-Related Milestones *(continued from previous page)*

Records of Decision

National Nuclear Security Administration

DOE/EIS-0236-S4

Complex Transformation Supplemental Programmatic Environmental Impact Statement/ Operations Involving Plutonium, Uranium, and the Assembly and Disassembly of Nuclear Weapons.
December 2008 (73 FR 77644, 12/19/08)

DOE/EIS-0236-S4

Complex Transformation Supplemental Programmatic Environmental Impact Statement/Tritium Research and Development, Flight Test Operations, and Major Environmental Test Facilities
December 2008 (73 FR 77656, 12/19/08)

Western Area Power Administration

DOE/EIS-0410

Interconnection for the Keystone Oil Pipeline Project
February 2009 (74 FR 7886, 2/20/09)

DOE/EIS-0218

Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

January 2009 (74 FR 4173, 1/23/09)

Supplement Analyses

Bonneville Power Administration

DOE/EIS-0332-SA-1

McNary-John Day Transmission Line Project, Washington

(Decision: No further NEPA review required)
February 2009

National Nuclear Security Administration

DOE/EIS-0218-SA-4

U.S. Disposition of Gap Material – Spent Nuclear Fuel

(Decision: No further NEPA review required)
January 2009

Amended Records of Decision

National Nuclear Security Administration

DOE/EIS-0283

Surplus Plutonium Disposition Environmental Impact Statement

December 2008 (73 FR 75088, 12/10/08)

National Nuclear Security Administration/ Pantex Site Office

DOE/EIS-0225-SA-4*

Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapons Components, Texas

(Decision: No further NEPA review required)
October 2008

*Not previously reported in LLQR

EIS Adoption *(continued from page 15)*

What should an adopting agency do if it is not satisfied with the adequacy of the EIS it plans to adopt?

Question 30 of CEQ's *Forty Most Asked Questions* addresses this issue (available on the DOE NEPA Website at www.gc.energy.gov/nepa under Guidance). CEQ points to 40 CFR 1506.3(a) which says, if necessary, an agency may adopt only a portion of the lead agency's EIS, and that an agency may reject the part of the EIS with which it disagrees and should state publicly why it did so.

In Question 30, CEQ emphasizes that a cooperating agency with "jurisdiction by law" (i.e., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. If the agency is not satisfied with the adequacy of the EIS, including resolution of its comments and suggestions, CEQ says the cooperating agency "must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the statement as a draft for public and agency review and comment."

The adopted portions of the lead agency EIS should be circulated with the supplement. Also, a final supplemental EIS would be required before the agency could take action. CEQ states that a cooperating agency with "jurisdiction by law" must prepare its own ROD, explaining how it reached its conclusions, and also explain why its conclusions differ (if that is the case) from those of other agencies (e.g., the lead agency), which issued their ROD(s) earlier.

More Information

For other information on adoption of EISs (or EAs), refer to CEQ's *Guidance Regarding NEPA Regulations* (Adoption Procedures), DOE's *Mini-guidance Articles from Lessons Learned Quarterly Reports, December 1994 to September 2005* (specifically, Section 8 – Adoption of NEPA Documents), and *Frequently Asked Questions on the Department of Energy's National Environmental Policy Act Regulations* (Question 15) available on the DOE NEPA Website at www.gc.energy.gov/nepa under Guidance. 

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.

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

- *EA scoping announcements.* Multiple announcements for the EA public scoping process, including notices in the local papers and on the project website, with a specific Internet page for the EA, added to the success of the scoping process.
- *Scoping individual projects.* Reviewing the scoping needs for each project assigned to the EA independently, and then collectively, allowed for more effective scoping.
- *Project-specific scoping.* The scoping process was enhanced by completing scoping on two levels, for an individual project task and for the program.
- *Informing public of scoping meetings.* Public information on the scoping process was effectively distributed through public and media notification.

Data Collection/Analysis

What Didn't Work

- *Software incompatibility.* Poor coordination internally and with external team members and agencies, and incompatibility of software among team members created challenges for data analysis.
- *Changes in scope of work.* Weekly changes to the scope of work impeded progress.
- *Delays in data entry.* Data entry was consistently lagging and data could not be effectively shared among team members.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Project-specific characterization of alternatives.* Characterization of specific projects under the preferred alternative, such as biotreatment, enhanced oil recovery/carbon dioxide injection, wind turbines, a flow loop project, and a geothermal project, allowed for efficient completion of the site-wide EA.

Factors that Inhibited Timely Completion of Documents

- *Insufficient time allotted to cultural resource evaluation.* The schedule did not correctly anticipate the time needed to complete a Class III Cultural Resource Site Evaluation, which was conducted along the entire length of the project site.
- *Project-management software not effective.* Required use of project management scheduling software by the contractor resulted in unrealistic deadlines. The contractor lacked incentive to complete the project on schedule.
- *Facility mission changed.* The facility, which was originally scheduled for remediation and closure, was redirected to become a testing and evaluation facility. The change in proposed action delayed the NEPA process.
- *Time for cooperating agency reviews.* The additional time needed for reviews by cooperating agencies and subsequent internal reviews led to schedule delays.
- *Competing NEPA and rulemaking demands.* Completing a NEPA analysis for a rulemaking with a court-ordered deadline added significant time to an already time-constrained rulemaking process.

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Questionnaire Results

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

Teamwork

Factors that Facilitated Effective Teamwork

- *Team member technical skills mix.* The teamwork was enhanced by involving the right set of technically-skilled people from the site office and contractor support services.
- *Designating responsible individuals.* Identifying individuals who work well together to direct discrete aspects of the work facilitated EA completion.
- *Encouraging reviewer comments.* Comments from team members during the draft and final reviews of the EIS were encouraged and improved teamwork.

Factors that Inhibited Effective Teamwork

- *Project management difficulties.* Competition among management priorities made it difficult to effectively lead the team and personnel conflicts hindered teamwork.
- *Contract mechanism not effective for NEPA process.* The contract commingled two EAs, which were completed concurrently. The contract requirements complicated the team arrangements on each EA.

Process

Successful Aspects of the Public Participation Process

- *Stakeholder involvement.* The process of involving the tribal council and archeologists enhanced public participation. The site's remote location required several announcements to engage the public.
- *State and local involvement.* State and local government comments regarding regulations, wildlife, and cultural resources enhanced the EA process.
- *Public involvement in scoping.* Positive comments were received regarding the public scoping process and the involvement of affected parties in identifying relevant issues and possible alternatives.
- *Public involvement in document development.* The public appreciated the opportunity to participate in analysis and document development.

- *Development of comprehensive mailing list.* Establishing a comprehensive mailing list allowed for efficient public distribution of project information.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *NEPA process helped decisionmaking.* Commentors indicated that the NEPA process results in better, more informed decisionmaking.

Enhancement/Protection of the Environment

- *Mitigation Action Plan will protect the environment.* A Mitigation Action Plan, which included a list of appropriate measures and conditions to be addressed prior to, during, and after construction, was developed during the NEPA process. These measures focused on the affected resources/conditions and protecting environmental resources.
- *NEPA process raised environmental awareness.* Improved tribal relationships, the development of raptor and endangered species studies, and increased environmental awareness were beneficial consequences of the NEPA process.

Other Issues

Guidance Needs Identified

- *Document review instructions.* DOE instructions for reviewers at all levels are needed to better support project managers and environmental coordinators and to reinforce review timelines.
- *Information on Cultural Resource and Tribal reviews.* Guidance is needed to address the process of contracting for Class III Cultural Resource Evaluations and Consultation with Tribal Councils.

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

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 5 questionnaire responses were received for EAs and 1 response was received for an EIS, 2 out of 5 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that the environmental processes established by the agencies (DOE, BPA, and CEQ), along with supplemental guidance and directives, provided a systematic process that fundamentally encouraged public participation, provided for orderly organization of documentation and presentations, and established an Administrative Record. The standard processes assisted in organizing the EIS to assist in decisionmaking.
- A respondent who rated the process as “4” stated that NEPA implementation leads to better environmental decisions. The habitats for endangered species, wetlands, and other natural resources were better protected through on-site decisions and mitigation, and cultural and historic resources that were identified through the NEPA process were also protected. Pollution prevention and waste reduction plans assessed through the EA ultimately allowed for improvements in the environmental performance of projects. An enhanced awareness of environmental issues associated with DOE activities resulted from the NEPA process.
- A respondent who rated the process as “1” stated that the NEPA process was required by legislative mandate.
- Two respondents who rated the process as “1” stated that the rulemaking was beneficial to the environment and the NEPA process did not provide further improvements.