National Environmental Policy Act

NEPA LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

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We face major challenges in planning for America's energy future. Compliance with NEPA will help enable the Department to fulfill a priority of the President's National Energy Policy – to strengthen our country's energy independence while lessening energy production's impact on the environment. Moreover, our endeavors to resolve the environmental legacy of the Cold War, provide for permanent disposal of the Nation's high-level radioactive waste, and apply advanced science and nuclear technology to promote our national security also will benefit from NEPA's emphasis on informed decisionmaking.

– Samuel W. Bodman, Secretary of Energy
July 25, 2005, Memorandum for Departmental Elements

Secretary Bodman Encourages Participation In DOE NEPA Observance, November 2–3

To observe the 35th anniversary of the National Environmental Policy Act (NEPA), the Department of Energy's (DOE's) Office of Environment, Safety and Health, with the support of DOE Program Offices and in partnership with the President's Council on Environmental Quality (CEQ), is hosting a conference, *NEPA 35: Spotlight on Environmental Excellence*, to be held November 2–3, 2005, at the Hotel Washington in Washington, DC.

In support of the conference, Secretary of Energy Samuel W. Bodman has asked Departmental Elements to enthusiastically endorse the conference and ensure the participation of DOE's key program and project managers and environmental staff. The conference will bring together Federal, state, local and tribal partners in the NEPA process, distinguished NEPA practitioners from the legal and academic communities, and leaders in energy planning and development.

"Together we can build on NEPA's principles to fulfill our national security, energy, and environmental stewardship missions and improve our standing in affected communities," said Secretary Bodman.

Plenary sessions will focus on improving NEPA implementation, including initiatives in the Energy Policy Act of 2005 and issues discussed at recent Congressional NEPA Task Force hearings (page 14) and being addressed through CEQ's NEPA Modernization Work Groups (page 2). Panels will address public participation and use of NEPA in decisionmaking.

Training for both new and experienced DOE NEPA practitioners will be offered the morning of November 2 on NEPA fundamentals, how to enhance the effectiveness of NEPA Compliance Officers and NEPA Document Managers, and recent guidance (e.g., on the supplement analysis process, page 6). Breakout sessions for all meeting participants the morning of November 3 will cover a broad range of topics, including integrating NEPA with other environmental requirements, lessons learned from NEPA litigation, perspectives from DOE-wide NEPA contractors, and cumulative effects (page 4).

For more information, contact Brian Mills at brian.mills@eh.doe.gov or 202-586-8267.

Register through the DOE NEPA Conference Web site at *www.NEPA35.org*

Inside *LESSONS LEARNED*

Welcome to the 44th quarterly report on lessons learned in the NEPA process. This issue completes our 11th year publishing *LLQR*, and as we go to press, we're preparing to mark an even more impressive milestone – our observance of the 35th anniversary of NEPA. We're busily working on all the details that will make this a great conference. We hope to see YOU there. As always, we welcome your suggestions for continuous improvement.

Carol Borgstrom
Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report.* We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2005. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2005

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2005 (July 1 through September 30, 2005) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at *www.eh.doe.gov/nepa* under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

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

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DOE Supports Interagency NEPA Modernization Work Groups

DOE has responded to the Council on Environmental Quality's (CEQ's) request for Federal agency participation in implementing recommendations from the Task Force report, *Modernizing NEPA Implementation*, 2003. (See *LLQR*, June 2005, page 2.) Of seven broad areas in which CEQ is focusing agency efforts, DOE volunteered to support the development of guidance on categorical exclusions and programmatic analyses. These are areas in which DOE has particular expertise and experience. DOE expects to improve the efficiency of these and other aspects of the DOE NEPA compliance program through its participation in the interagency work.

Office of NEPA Policy and Compliance staff participated in recent kick-off meetings of the Work Groups, which, under CEQ's plan, have 12−18 months to complete guidance development. NEPA Office staff plan to involve those from the DOE NEPA Community that express interest in these efforts. Please indicate your interest if you have not already done so in response to an earlier survey. For programmatic analyses (one Work Group on how and when to address issues raised at the programmatic level and one on how to develop and use programmatic analyses), contact Eric Cohen at eric.cohen@eh.doe.gov or 202-586-7684. For categorical exclusions (one Work Group on developing and revising categorical exclusions and one on applying them), contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596.

CEQ plans an inclusive process for issuing the guidance. It will first coordinate guidance as it is developed with all Federal agencies. It will then issue the draft guidance for public comment and subsequently provide responses to the public before issuing final guidance. Reports in *LLQR* will track the progress of this important work. LL

Energy Policy Act Will Affect DOE NEPA Activities

The Energy Policy Act of 2005, signed into law by President Bush on August 8 during a visit to Sandia National Laboratories in Albuquerque, New Mexico, has NEPA-related implications for DOE.

The impacts on DOE's NEPA program will be both direct and indirect. The law establishes programs or provides for projects (e.g., related to electricity transmission, clean coal, nuclear power, and hydrogen) for which DOE must determine the appropriate level of NEPA review. These determinations will be made during the normal course of DOE decisionmaking, consistent with all applicable regulations. The law also calls for more coordination among Federal agencies in the completion of environmental reviews, and for some projects, a "single environmental review document" is to serve as the basis for Federal decisions.

The law establishes a new office within DOE − the Office of Indian Energy Policy and Programs. The Office's purposes are to promote Indian tribal energy development, efficiency, and use; reduce or stabilize energy costs; enhance Indian tribal infrastructure relating to natural resource development and electrification; and bring electricity to Indian lands and the homes of tribal members. This Office is expected to play a role in future NEPA reviews.

The law requires that assessments of risks to human health and the environment from energy projects use "sound and objective scientific practices," "consider the best available science (including peer reviewed studies)," and "include a description of the weight of the scientific evidence concerning such risks."

Several provisions of the Energy Policy Act that intersect with DOE's NEPA program are summarized below. The complete text of the law is available on the Government Printing Office Web site at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr190.109.pdf*.

Expanding the Strategic Petroleum Reserve

Within one year, DOE is to complete a proceeding to select sites that would allow acquisition of the full authorized volume (one billion barrels) of the Strategic Petroleum Reserve. DOE is to select from among the sites previously studied, with preference given to the five sites assessed in the *Draft Environmental Impact Statement on the Expansion of the Strategic Petroleum Reserve: Alabama, Louisiana, Mississippi, and Texas* (DOE/EIS-0165, 1992). However, DOE may select other sites as proposed by a state where a site has been previously studied by DOE. (See text box and Section 303 of the Act.)

DOE Moves Quickly to Initiate Strategic Petroleum Reserve Site Selection EIS

In response to Section 303 of the Energy Policy Act of 2005, DOE has published a Notice of Intent (70 FR 52088; September 1, 2005) to prepare an EIS on site selection for the expansion of the Strategic Petroleum Reserve. The current inventory of the Reserve is about 700 million barrels; the current storage capacity is 727 million barrels. To fulfill the Reserve's authorized volume of one billion barrels, DOE proposes to expand storage capacity at existing sites at West Hackberry, Louisiana (up to an additional 15 million barrels), Bayou Choctaw, Louisiana (up to an additional 30 million barrels), and Big Hill, Texas (up to an additional 108 million barrels), and to develop one new storage site with a capacity of up to 160 million barrels at either Clovelly or Chacahoula, Louisiana; Richton, Mississippi; or Stratton Ridge, Texas. At each site, storage would be in caverns in rock salt formations from 1,000 to 6,000 feet below ground surface.

Scoping is planned for early October. Information will be available on the Office of Fossil Energy's Web site at *www.fe.doe.gov* under Petroleum Reserves.

Designating Energy Right-of-Way Corridors on Federal Land

The Departments of Agriculture, Commerce, Defense, Energy, and the Interior are to designate corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land. The purpose is to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver electricity. In making these designations, the agencies are to consult with other interested parties, including the Federal Energy Regulatory Commission (FERC); state, tribal, and local governments; affected utility industries; and other interested persons.

The agencies are to designate such corridors, including performing "any environmental reviews that may be required to complete the designation," within two years in 11 contiguous Western states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The DOE Office of Electricity Delivery and Energy Reliability expects to be the lead for EIS preparation. Within four years, the agencies are to identify such corridors on Federal lands in other states, and each agency has an ongoing responsibility to identify and designate additional corridors as necessary. (See Section 368.)

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CEQ Provides Guidance on Cumulative Effects Analysis

The Council on Environmental Quality (CEQ) has issued guidance on the extent to which Federal agencies are required by NEPA and its implementing regulations to analyze the environmental effects of past actions when describing the cumulative environmental effects of a proposed action and its alternatives. This *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis* was conveyed to Heads of Federal Agencies in a June 24, 2005, memorandum from CEQ Chairman James L. Connaughton.

Analyze Past Actions to Extent Relevant and Useful to Decisionmaking

"The environmental analysis required under NEPA is forward-looking, in that it focuses on the potential impacts of the proposed action that an agency is considering," explains the guidance memorandum. "Thus, review of past actions is required to the extent that this review informs agency decisionmaking regarding the proposed action."

The guidance memorandum emphasizes that, when reviewing past actions, Federal agencies have discretion, informed by scoping, to determine what information is necessary for a cumulative effects analysis, focusing on "the extent to which information is 'relevant to reasonably foreseeable significant adverse impacts,' is 'essential to a reasoned choice among alternatives,' and can be obtained without exorbitant cost." (These factors are discussed in 40 CFR 1502.22 and further below.)

"CEQ interprets NEPA and CEQ's NEPA regulations on cumulative effects," the guidance memorandum continues, "as requiring analysis and a concise description of the identifiable effects of past actions **to the extent they are relevant and useful** [emphasis added] in analyzing whether the reasonably foreseeable effects of the agency proposal for action and its alternatives may have a continuing, additive and significant relationship to those effects." Furthermore, CEQ interprets the definition of cumulative impact in its regulations (text box) "as referring only to the cumulative impact of the direct and indirect effects of the proposed action and its alternatives when added to the **aggregate effects** [emphasis added] of past, present, and reasonably foreseeable future actions."

> **"Cumulative Impact** is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (40 CFR 1508.7)

CEQ Clarifies Legal Requirements

The Ninth Circuit Court of Appeals found in 2004 that the Forest Service had violated NEPA, in part by preparing an insufficient cumulative effects analysis in an EIS for a forestry project. (*The Lands Council et al. v. Powell et al.*, 395 F.3d 1015, 9th Cir. 2005; see *LLQR*, December 2004, page 18.) The appeals court agreed with plaintiffs' contention that the Forest Service's Final EIS

> section on cumulative impacts of past timber harvests is "particularly vague and lacking in any detailed discussion" because the Forest Service did not note in detail past timber harvesting projects and the impact of those projects on the . . . watershed. . . . [The Final EIS contains] no discussion of the environmental impact from past projects on an individual basis which might have informed analysis about alternatives presented for the current project.

The appeals court referred to a 1999 decision in which it "held that NEPA requires adequate cataloguing of relevant past projects in the area." (*Muckleshoot Indian Tribe v. United States Forest Service*, 177 F.3d 800, 809−10, 9th Cir. 1999.) "Stated differently," the appeals court wrote in Lands Council, "the general rule . . . [is that the EIS] must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how those projects, and differences between the projects, are thought to have impacted the environment."

In contrast, however, at a meeting of Federal Agency NEPA Contacts on August 10, 2005, Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, emphasized that cataloging past actions is not required unless the information is relevant and useful to decisionmakers. The CEQ guidance memorandum, in addressing the level of detail required in the analysis of past actions, states that "Agencies are not required to list or analyze the effects of individual past actions unless such information is necessary to describe the cumulative effect of all past actions combined. . . . Generally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions."

"Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to

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CEQ Guidance on Cumulative Effects Analysis

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predict the cumulative effects of the proposal," states the guidance memorandum. "The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions." The guidance memorandum notes that CEQ's interpretation of NEPA is entitled to legal deference (*Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979)).

Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.

– CEQ Cumulative Effects Guidance Memorandum June 24, 2005

Tools for NEPA Practitioners

The guidance memorandum describes tools that may be helpful to NEPA practitioners.

- **Scoping.** The guidance memorandum explains that "analysts must narrow the focus of the cumulative effects analysis to effects of significance to the proposal for agency action and its alternatives, based on thorough scoping. . . . Proposed actions of limited scope typically do not require as comprehensive an assessment of cumulative impacts as proposed actions that have significant environmental impacts over a large area."
- **Incomplete and Unavailable Information.** "The agency must find that the incomplete information is relevant to a 'reasonably foreseeable' and 'significant' impact before the agency is required to comply with 40 CFR 1502.22. If the incomplete cumulative effects information meets that threshold, the agency must consider the 'overall costs' of obtaining the information. 40 CFR 1502.22(a). The term 'overall costs' encompasses financial costs and other costs such as costs in terms of time (delay), program and personnel commitments. The requirement to determine if the 'overall costs' of obtaining information is exorbitant should not be interpreted as a requirement to weigh the cost of obtaining the information against the severity of the effects, or to perform a cost-benefit analysis. Rather, the agency must assess overall costs in light of agency environmental program needs."
- **Programmatic Evaluations.** Where "several Federal actions are likely to have effects on the same environmental resources," Federal agencies can cooperate to prepare a programmatic NEPA analysis or other study (e.g., a baseline inventory, planning study), and the results, if "reasonably available to the interested public," can be referenced in subsequent NEPA documents.
- **Environmental Management Systems (EMSs).** "By managing information collection on an ongoing basis, an EMS can provide a more systematic approach to agencies' identification and management of environmental conditions and obligations. Agencies can use an EMS to confirm assumptions, track performance, and increase confidence in their assessment of cumulative environmental effects."
- **Direct and Indirect Effects.** In addition to its use in cumulative effects analysis, the guidance memorandum points out that "experience with and information about past direct and indirect effects of individual past actions may also be useful in illuminating or predicting the direct and indirect effects of a proposed action," but that this use of information about the effects of past actions should be clearly distinguished from cumulative effects analysis.

The cumulative effects guidance memorandum is available on CEQ's NEPAnet at *http://ceq.eh.doe.gov/nepa/nepanet.htm* under CEQ Guidance and on the DOE NEPA Web site at *www.eh.doe.gov/nepa* under Guidance. Also available on both Web sites is CEQ's 1997 compendium of past practices, *Considering Cumulative Effects Under the National Environmental Policy Act*. LL

Steps to Analyze Cumulative Effects

- Consider the "direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action."
- Look for "present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives."
- Assess the "extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those [present effects of past actions]."

From CEQ Cumulative Effects Guidance Memorandum, June 24, 2005.

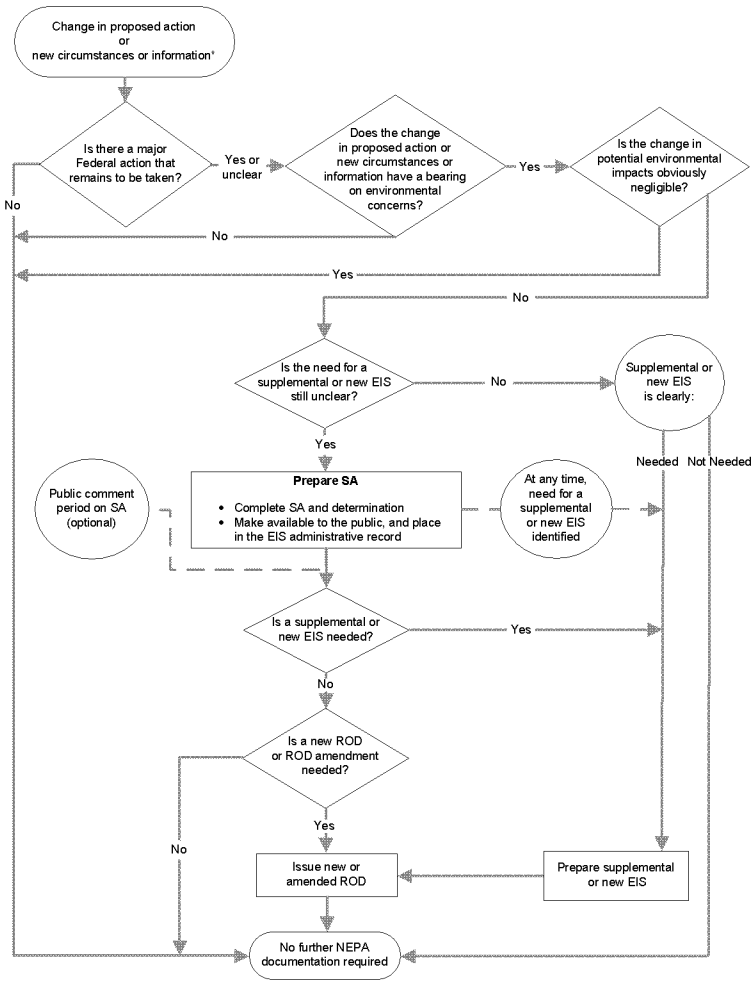
Is There a Supplement Analysis in Your Future?

By Jeanie Loving, *Office of NEPA Policy and Compliance*

If you are faced with preparing a supplement analysis (SA), help has arrived! Read the newest DOE NEPA guidance document, *Recommendations for the Supplement Analysis Process*, issued by the Assistant Secretary for Environment, Safety and Health in July 2005. In response to a priority identified by DOE NEPA Compliance Officers (NCOs), the Office of NEPA Policy and Compliance developed this guidance, in consultation with the Office of the General Counsel. You will find everything you need to know about the SA process – including a helpful flow chart of the process from beginning to end, displayed here.

An SA is the document DOE uses to determine whether a supplement to an EIS should be prepared pursuant to Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1502.9(c)). These regulations require a supplement to an existing draft or final EIS if an agency "makes substantial changes in the proposed action that are relevant to environmental concerns;" or "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

When the need for a supplement to an EIS (also called a "supplemental EIS") is unclear, DOE regulations implementing NEPA require the preparation of an SA (10 CFR 1021.314). An SA provides an analytic basis for determining whether a change in a proposed action is "substantial" and relevant to environmental concerns or whether new circumstances or information are "significant."



Flow chart of the supplement analysis process from Recommendations for the Supplement Analysis Process.

Flexibility maintained: The SA guidance reflects the flexibility inherent in the CEQ and DOE regulations. Situations vary widely and require case-by-case review. At the same time, there are elements that should be common to all SAs. Accordingly, the guidance provides recommendations that are broadly applicable to the entire SA process, including determining when to prepare an SA, when an SA is not required, the general content of an SA, potential outcomes of an SA, and administrative procedures.

Emphasizing that an SA should be brief, the SA guidance does not specify a template; rather, it provides practical advice on "real-life" situations, with illustrations of what may be appropriate. In identifying the need for an SA, for example, the guidance addresses several scenarios: when comments are received during the period between issuance of a final EIS and a Record of Decision (ROD); when a proposed change does not have a bearing on environmental concerns; and when a supplemental or new EIS would likely be needed without the preparation of an SA.

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Despite the similarity of their names, a "Supplement Analysis" is not the same as a supplement to an EIS. An SA is the document DOE prepares to provide the information and analysis to determine whether a supplement to an EIS is necessary to meet the requirements of 40 CFR 1502.9(c).

– Recommendations for the Supplement Analysis Process *July 2005*

Guidance on the Supplement Analysis Process *(continued from previous page)*

SAs for site-wide EISs: In response to comments received from NCOs, the guidance includes a brief discussion of SAs for site-wide EISs. DOE regulations require the evaluation of site-wide EISs at least every five years by means of an SA (10 CFR 1021.330(d)). These analyses should be prospective, focusing on new information and changes at a site since issuance of the most recent site-wide EIS and any related SA, and should include the cumulative impacts of completed actions, as appropriate. The SA guidance regarding process, format, and content apply to these site-wide evaluations, as well as SAs prepared for non-site-wide EISs.

SAs and Environmental Assessments: Also in response to comments received from NCOs, the guidance briefly discusses the relationship of SAs to EAs, pointing out that DOE NEPA regulations do not require the preparation of an SA regarding the need for further NEPA review of an action analyzed in an EA. The regulations do require the evaluation of site-wide EAs every five years by means of an analysis similar to an SA (unless the need for an EIS is clear).

Ongoing actions during SA preparation: DOE regulations do not require the suspension of an ongoing action while new information is being evaluated. Nevertheless, the guidance recommends that this principle be exercised with "prudence and common sense." That is, where it is clear from the nature of the new information that significant adverse impacts could occur, the agency should refrain from taking that action until its review of the new information (i.e., an SA) is completed.

General content of an SA – don't forget the comparisons: In drafting an SA, preparers sometimes initially focus only on the analytic estimates for the particular change in proposed action or new circumstances or information. The SA guidance emphasizes use of comparative presentations, including a clear identification of the alternative(s) and associated impacts in the existing EIS compared to the proposed change or new information. The comparisons can be to more than one alternative analyzed in the EIS or multiple EISs. The analyses should evaluate the differences in an absolute as well as comparative sense.

Findings and conclusions to support the determination: The guidance also contains recommendations for presenting findings or conclusions in an SA. This section should give a clear picture of whether changes in a proposed action are "substantial" and whether new information is "significant." In other words, this section should portray the logical basis for a determination, which can be incorporated into the SA or issued separately. The guidance includes example determinations excerpted from two approved SAs, as well as a reminder that the determination must be made in consultation with counsel.

The guidance maintains the flexibility inherent in the CEQ and DOE regulations, while providing practical advice and direction for completing the SA process.

– John Spitaleri Shaw
Assistant Secretary for Environment, Safety and Health

SAs and RODs: The SA guidance addresses the relationship of SAs and RODs, whether or not the determination is to supplement the EIS. Even in cases where an SA indicates that a supplemental EIS is not required, DOE may nevertheless need to issue an amended ROD.

Based on questions from the DOE NEPA Community received by the NEPA Office, experience assisting Program and Field Offices with their SAs over many years, feedback on a draft discussed at last summer's DOE NEPA Community Meeting, and additional input from NCOs over the past year, this guidance addresses virtually every aspect of SA preparation.

The guidance has been sent electronically and in hard copy to the DOE NEPA Community and is available on the DOE NEPA Web site at *www.eh.doe.gov/nepa* under Guidance. Additional printed copies can be obtained by contacting Jeanie Loving at jeanie.loving@eh.doe.gov or 202-586-0125.

Training on the DOE Supplement Analysis Process will be offered November 2, 2005, at the NEPA 35 Conference. Additional information is provided on the conference registration Web site, *www.nepa35.org*.

Getting Ready to Distribute a New NEPA Document?

You can recycle your 2004 *Directory of Potential Stakeholders for DOE Actions under NEPA* and use the new and improved 2005 edition, issued on July 29, 2005.

The stakeholder information in the *Directory* is meant to supplement lists of affected or interested parties that DOE Offices compile for particular projects or facilities. The body of the *Directory* contains listings for potential stakeholders in Federal Agencies, State NEPA Points of Contact (with a subsection of State and Local Government Associations), and Nongovernmental Organizations. The appendices present listings for DOE contacts: NEPA Compliance Officers, Departmental and National Laboratory Public Affairs Directors, and Departmental Points of Contact on American Indian Tribal Issues.

A significant addition in the 22nd edition is the inclusion of the Department of the Interior's Regional Environmental Officers for coordination of environmental matters other than review of EISs (e.g., scoping and environmental assessments). This is based on Interior's May 25, 2005, memorandum to Federal NEPA Contacts, restating policies and procedures for coordinating environmental reviews, including format preferences and number of copies requested. EISs should continue to be addressed to Interior's Headquarters Office of Environmental Policy and Compliance. (See text box.)

The *Directory* has been distributed as a pdf file and a database application on compact disk that allows users to select and copy contact information into other applications – such as word processing or a spreadsheet – to produce mailing lists, letters, or labels. Paper copies of the *Directory* are also being distributed, and it is posted on the DOE NEPA Web site (*www.eh.doe.gov/nepa*) under Guidance, then Public Participation. Questions, suggestions for further improvements, and requests for additional disks or paper copies may be addressed to Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Coordinating Environmental Reviews with the Department of the Interior

The Department of the Interior requests that any draft EIS for review or final EIS be sent to its Headquarters Office of Environmental Policy and Compliance, which will provide it to Interior Department bureaus and other offices. For details on the number of copies and format preferences, see the *Directory* or *www.doi.gov/oepc/Environmental_Review_Process.pdf*.

The Interior Department recommends coordination with its Regional Environmental Officers on other environmental matters, such as scoping, preliminary or working draft or final EISs, EAs, findings of no significant impact, reports not accompanied by project planning or design documents, and similar material of a regional nature. For further information, see the *Directory* or *www.doi.gov/oepc/nepacontacts* under Regional Contacts.

DOE-wide NEPA Contracts Update

Mary Henry: New DOE-wide NEPA Contract Administrator

Mary Henry is the new DOE-wide NEPA Contract Administrator, assuming the responsibilities formerly held by Debra Keeling and David Gallegos. (See *LLQR*, June 2005, page 21, and March 2005, page 12.) Ms. Henry is Level III certified as an acquisition professional with the National Nuclear Security Administration (NNSA).

Ms. Henry transferred from the U.S. Army Corps of Engineers, Albuquerque District, to NNSA in November 2004. While working at the Corps of Engineers, Ms. Henry was a contracting officer with an unlimited warrant (i.e., no dollar limit) and the source selection authority on design-build construction projects. She also has held positions as a Realty Specialist and Budget Analyst for the Federal government and has worked in state government and private industry.

The following task has been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded and assistance using these contracts, contact Mary Henry at mhenry@doeal.gov or 505-845-6493. Please provide her with copies of all new awards and modifications as they occur and contractor performance evaluations as they are completed.

Description	DOE Contact	Date Awarded	Contract Team
EA for Divine Strake, A Large-Scale Open-Air Explosive Detonation at the Nevada Test Site	Linda Cohn cohnl@nv.doe.gov 702-295-0077	7/12/2005	Potomac-Hudson

Public Participation Swells for Hearings on RPS Consolidation EIS

The Office of Nuclear Energy, Science and Technology saw a 700 percent increase in attendance from scoping meetings to public hearings on the *Draft Environmental Impact Statement for the Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems* (DOE/EIS-0373, June 2005). DOE estimates that about 110 people attended seven public scoping meetings in December 2004. About 900 people (most of them in Idaho and Wyoming) attended eight hearings on the Draft EIS. (See table.)

"The NEPA process was well served by the increase in the public's participation," said Tim Frazier, NEPA Document Manager.

Attendance at Public Meetings on *Consolidation EIS*

Location	Estimated Number of Participants	
	Scoping	Draft EIS
Washington, DC	8	*
Boise, ID	*	220
Fort Hall Reservation, ID	12	50
Idaho Falls, ID	50	200
Sun Valley, ID	*	150
Twin Falls, ID	12	75
Jackson Hole, WY	8	175
Los Alamos, NM	10	8
Oak Ridge, TN	6	15

* *DOE held a scoping meeting in Washington, DC, but because of low participation did not hold a hearing on the Draft EIS there. DOE did not hold a scoping meeting in Boise or Sun Valley, Idaho.*

DOE proposes to consolidate the nuclear operations related to radioisotope power system (RPS) production at the Idaho National Laboratory (INL). Production operations currently are conducted or planned at INL, Oak Ridge National Laboratory in Tennessee, and Los Alamos National Laboratory in New Mexico. In the late 1980s and early 1990s, part of the production process took place at the Savannah River Site in South Carolina. In 2002, the RPS assembly and testing operations were relocated from the Mound Plant in Ohio to INL.

DOE Responded to Public Interest

DOE's proposal to add a new production mission to INL rekindled public interest in the safety of operations, radioactive waste disposal, and the need to produce plutonium-238. DOE had initially planned to hold hearings in four cities in the INL region, the same four where scoping meetings on the EIS had been held. In response to stakeholder interest, DOE added two hearings in Idaho, increased the time available for questions, and adjusted to the circumstances of each hearing.

The public raised a number of issues at the hearings, including a heightened concern for using a 38-year-old reactor without a containment dome to produce plutonium-238 and questioning why INL was the only consolidation site evaluated. Also, the public expressed a lack of trust in DOE and the classified nature of its national security mission.

The comment period on the Draft EIS ended August 29, 2005. To date, DOE has received approximately 500 comment documents.

In its comments on the Draft EIS, the State of Idaho indicated general support for the project but wants to see "considerable improvement" in the analysis and in communication with the public. Idaho wrote that DOE should provide for "independent, external oversight" and resolve questions about whether transuranic waste generated will be eligible for disposal at the Waste Isolation Pilot Plant in New Mexico.

The U.S. Environmental Protection Agency (EPA) gave the Draft EIS its most favorable rating for environmental impact: LO – Lack of Objections. EPA commended DOE "in the preparation of this comprehensive and well-organized document."

Additional information about the EIS is available on the Web at *http://consolidationeis.doe.gov* or by contacting Tim Frazier at tim.frazier@nuclear.energy.gov or 301-903-9420. LL

What Is a Radioisotope Power System?

An RPS is a power source that uses heat from the decay of plutonium-238 to generate electricity and provide heat in a variety of national security and space exploration missions. For example, RPSs are used in deep-space exploration to keep systems operational. In the past, a smaller version of the power source, referred to as a mini-RPS, was used in nuclear weapons to generate small amounts of electricity. (Plutonium-238 is not fissile, and it is not feasible to make a nuclear weapon using only plutonium-238.)

The three major components of the RPS production process are:

- Production of plutonium-238, including fabricating and irradiating targets made of neptunium-237, then extracting the plutonium-238;
- Purification, pelletization, and encapsulation of plutonium-238 into a usable fuel form; and
- Assembly, testing, and delivery of RPSs to users.

Update on the Moab Uranium Mill Tailings Remedial Action Project

Final EIS Issued Ahead of Schedule and Well-Received

By: Vivian Bowie, *Office of NEPA Policy and Compliance*

DOE received a substantially favorable public response after issuing its *Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Final Environmental Impact Statement* in July 2005 (DOE/EIS-0355). Members of the public, units of state, local, and tribal government, and environmental organizations applauded the Department's preferred alternative to move the approximately 11.9 million ton pile of uranium mill tailings at the Moab site away from the Colorado River. Under the preferred alternative identified in the Final EIS, DOE would transport the mill tailings off-site by rail for disposal at the Crescent Junction, Utah, site and would actively remediate contaminated groundwater at the Moab site.

The positive public reaction to the Final EIS is notable in light of the negative public response to the Draft EIS, issued in November 2004. The Draft EIS did not identify a preferred alternative for surface remediation, prompting many people to express concerns that DOE ultimately would decide to leave the tailings pile in place. The U.S. Environmental Protection Agency (EPA) rated each of the four action alternatives separately, and rated the cap-in-place alternative as "Environmentally Unsatisfactory." (See *LLQR*, June 2005, page 8, for a discussion of EPA's ratings and further details about the Moab EIS.)

The Department of Energy's position in the final EIS is evidence that the DOE has listened to our concerns . . .

– Jerry McNeely, Chairman
Grand County [Utah] Council

The Final EIS also is notable for the extraordinary collaborative efforts among DOE Offices and 12 cooperating agencies to enable the timely issuance of a quality document. In April 2005, when DOE announced its preference for off-site disposal, Secretary of Energy Samuel W. Bodman indicated his desire that the Final EIS be completed by July 1, 2005. This was no easy task.

Issuing the five-volume, 2,550-page Final EIS required responding to approximately 1,600 public comments on the Draft EIS. Among the comments were challenges to key analytical assumptions in the EIS that are highly relevant to the primary decision to be made: whether to move the tailings away from the river or cap the tailings pile in place. Several hundred such comments were from technical experts of the cooperating agencies, including the EPA, State of Utah, U.S. Fish and Wildlife Service, Nuclear Regulatory Commission, and Ute Mountain Ute Tribe. Responding to these and other comments required not only considering the technical issues raised and replying to them in comment-response volumes, but also making conforming changes in the main text of the EIS.

You are to be congratulated on the careful consideration and thoughtful responses you gave to the large volume of comments received.

– Jean Binyon, Utah Chapter Sierra Club

Many of the approaches discussed below are recommended in *The EIS Comment-Response Process*, October 2004, available on the DOE NEPA Web site at *www.eh.doe.gov/nepa* under Guidance.

Responsible Opposing Views Reflected

DOE and the cooperating agencies disagreed on several important technical issues, such as the potential for catastrophic failure of the tailings pile, potential for river migration, the appropriate groundwater cleanup standard, the expected performance of a cap-in-place remedy, and whether contaminants have migrated to the other side of the Colorado River. The Final EIS reflects these "responsible opposing views" by separately presenting the opposing views, DOE's views, and an objective discussion of the implications if the opposing views were correct. This practice not only enhanced the Department's credibility by ensuring that DOE took a hard look at all relevant views in the EIS, but also resolved an impasse, enabling the cooperating agencies to support timely issuance of the document.

Schedule and Cooperation Keep EIS on Track

"The EIS team prepared a Moab Plan of Action and Milestones to manage the many activities that needed to be coordinated and completed to ensure the July target was met," said Donald Metzler, Moab Federal Project Director and NEPA Document Manager. "This schedule allowed the multitude of key players to be on the same page."

In addition, the following measures were highly effective in meeting the schedule challenge:

- **Conducted Weekly Meetings.** The document preparation team, including staff from the Grand Junction Office (GJO) and the DOE Headquarters Offices of Environmental Management, Environment, Safety and Health, and General Counsel, met at least once a week (by teleconference) to address issues and discuss document revisions.

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Moab Uranium Mill Tailings Remedial Action Project

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- **Prioritized Comment Responses.** The document preparation team prepared and discussed draft responses to the technical comments from the cooperating agencies first. This practice ensured that the most challenging comments were considered early, and it allowed time to provide the draft responses to the cooperating agencies and accommodate their further comments.
- **Coordinated with Cooperating Agencies.** In addition to providing draft responses to their comments, GJO staff consulted with the cooperating agencies to ensure that their views were adequately reflected in the Final EIS. GJO staff believe that the announcement of DOE's preferred alternatives motivated the cooperating agency staff to provide timely comments and support the aggressive Final EIS schedule.
- **Prepared Issue Summaries.** The document preparation team identified and summarized the major and most-frequently submitted comments and issues. Preparing responses to these issue summaries streamlined the overall process of responding to comments by fostering consistency among the staff preparing responses to the many individual comments.

Final EIS Completed

The Assistant Secretary for Environment, Safety and Health approved the Final EIS on June 29, 2005 − two days ahead of schedule. EPA's Notice of Availability was published in the *Federal Register* (70 FR 45389) on August 5, 2005, enabling DOE to issue a Record of Decision on or after September 6, 2005.

Additional information on the Moab project can be found on the Web at *http://gj.em.doe.gov/moab* or by contacting Donald Metzler at dmetzler@gjo.doe.gov or 970-248-7612.

DOE Issues Draft Yucca Rail EA

DOE is accepting comments through September 28, 2005, on the draft *Environmental Assessment for the Proposed Withdrawal of Public Lands Within and Surrounding the Caliente Rail Corridor, Nevada* (DOE/EA-1545; 70 FR 51029, August 29, 2005). The Bureau of Land Management (BLM) is a cooperating agency in preparation of the EA, which supports DOE's request to BLM to withdraw for 20 years approximately 308,600 acres of public land from surface entry (entering public land for the purpose of mineral exploration and development) and new mining claims while DOE evaluates the land for the potential construction, operation, and maintenance of a branch rail line. The rail line would be used for the transporation of spent nuclear fuel and high-level radioactive waste to the geologic repository proposed for Yucca Mountain in Nevada. (See *LLQR*, June 2004, pages 1 and 12, for articles on a related EIS.)

DOE will hold three public meetings in Nevada on the Draft EA: September 12 in Amargosa Valley, September 13 in Goldfield, and September 15 in Caliente. The Draft EA is available on the Office of Civilian Radioactive Waste Management's Web site at *www.ocrwm.doe.gov*. For additional information, contact Lee Bishop, EA Document Manager, at 800-225-6972.

BLM Issues Wind Energy PEIS with DOE as Cooperating Agency

The Bureau of Land Management (BLM), an agency of the Department of the Interior, issued its *Final Programmatic Environmental Impact Statement on Wind Energy Development on BLM-Administered Lands in the Western United States* on June 24, 2005 (PEIS; 70 FR 36651). BLM's preferred alternative is to implement a Wind Energy Development Program in 11 western states, establish policies and best management practices for wind energy right-of-way authorizations, and amend 52 BLM land use plans. The land use plan amendments would incorporate programmatic wind energy development policies and identify specific areas where wind energy development would not be allowed.

Through the Office of Energy Efficiency and Renewable Energy, DOE provided partial funding for preparation of the PEIS and technical analysis and modeling. The Western Area Power Administration assisted BLM in responding to comments on transmission issues. (See *LLQR*, March 2004, page 3.)

At the request of Assistant Secretary for Environment, Safety and Health John Spitaleri Shaw, DOE became a cooperating agency in preparation of the PEIS in April 2005. As stated in the PEIS, DOE "anticipates [that] it will be involved in future wind energy development projects on BLM-administered lands, particularly with respect to transmission system interconnects and related issues."

Prompted by DOE's participation in the preparation of this EIS, the Office of NEPA Policy and Compliance created a new section within the DOE NEPA Web site, *www.eh.doe.gov/nepa* under Other Agency NEPA Documents. The BLM Wind Energy PEIS is available in this new section and on its own Web site at *http://windeis.anl.gov*.

Inspector General Finds Idaho EIS Process Compliant

The DOE Inspector General (IG), on August 11, 2005, issued an audit report (*www.ig.doe.gov/reports.htm*) addressed to the Manager, Idaho Operations Office (ID), on *Management Controls over the National Environmental Policy Act Decisions at the Idaho Operations Office* (OAS-M-05-08).

Performed from July 8, 2004, through May 26, 2005, the audit scope was limited to NEPA activities at ID since 1997. After an initial broad review of NEPA and related documents, the IG focused on the October 2002 *Idaho High Level Waste and Facilities Disposition Final EIS* (DOE/EIS-0287) ". . . to determine whether the Idaho Operations Office (Office) has complied with NEPA in evaluating its approach to treating high-level waste . . . ." Specifically, the IG examined whether the Department's expression of its preferred waste processing alternative in the Final EIS provided adequate information to the public, and whether there was sufficient public participation.

The Final EIS analyzed a proposed action containing two sets of alternatives: (1) waste processing alternatives for treating, storing, and disposing of liquid sodium-bearing waste (SBW) and newly-generated liquid waste stored in below-grade tanks, and solid high-level waste (HLW) calcine stored in bin sets at the Idaho Nuclear Technology and Engineering Center at the Idaho National Laboratory (INL) (for each waste processing alternative, the EIS analyzed multiple implementation options and technologies), and (2) disposition alternatives for HLW management facilities after their missions are complete.

The Final EIS identified a broad preferred alternative for waste processing: "DOE's preferred waste processing alternative is to implement the proposed action by selecting from among the action alternatives, options and technologies analyzed in the EIS . . . . The selection of any one of, or a combination of, technologies or options used to implement the proposed action would be based on performance criteria that include risk, cost, time, and compliance factors." DOE did not identify a specific preferred SBW treatment technology preference.

Phased EIS Decision Strategy

Under a phased approach to decisionmaking, DOE's first Record of Decision (ROD) would address SBW treatment and facilities disposition. Subsequent RODs would address tank farm facility closure and HLW calcine treatment.

To implement this decision strategy, after issuing the Final EIS, ID conducted four workshops to inform the public about five technologies that DOE was considering to treat SBW. Subsequently, contractors were asked to bid on cleanup work at INL and to propose specific SBW treatment technologies. The selected contractor proposed a technology known as "steam reforming."

ID prepared a Supplement Analysis (related article page 6) that examined the proposed steam reforming technology and other new information, and concluded that the technology had been adequately evaluated and a supplement to the EIS is not required. On August 3, 2005, DOE issued a Notice of Preferred Sodium Bearing Waste Treatment Technology in the *Federal Register* (70 FR 44598), which informed the public of DOE's preference for using steam reforming to treat SBW and provided a 30-day public comment opportunity. In response to a public request, DOE extended the public comment opportunity by 19 days until September 21, 2005. DOE plans to issue a ROD shortly thereafter.

IG Conclusions

The IG report states, "The Office complied with NEPA in evaluating how to treat high-level waste and dispose of related facilities. Specifically, the Office followed guidance provided by the Council [on Environmental Quality] in implementing a NEPA strategy that required additional work and more public involvement than normally required . . . ."

In reaching this conclusion, the IG noted that the Council on Environmental Quality's Associate Director for NEPA Oversight "agreed that DOE's preferred alternative and phased decision making do meet the objectives of NEPA so long as DOE provides opportunities for public input when evaluating alternative technologies and the environmental impact of those technologies remains within the range of impacts analyzed in the Final EIS."

The IG also noted, "The public had an opportunity to comment on steam reforming and the other technologies, which were fully analyzed in the Final EIS. However, the public has not been able to comment on the selection of steam reforming as the preferred alternative." To address this concern, the IG recommended that DOE's *Federal Register* notice "clearly:

1. Describe the basis for preferring the proposed technology over alternative technologies;
2. Explain how the impacts of the proposed technology are within the ranges of impacts assessed in the Final EIS; and
3. Request stakeholder comments on the preferred alternative and state that this information will be considered prior to issuance of the Record of Decision."

ID concurred with the recommendations, which are reflected in the August 3, 2005, *Federal Register* notice.

Energy Policy Act *(continued from page 3)*

In addition, within six months, DOE is to enter into a memorandum of understanding with the Departments of Agriculture, Defense, and the Interior for the purpose of coordinating all applicable Federal authorizations and environmental reviews for any facility to transport oil, natural gas, synthetic liquid fuel, or gaseous fuel, as well as related storage, or for the generation, transmission, and distribution of electricity. The memorandum of understanding is to include a provision to prepare a single environmental review document to be used as the basis for all Federal authorization decisions. (See Section 372.)

Disposing of Greater-Than-Class-C Radioactive Waste

Within one year, the Secretary of Energy is to provide a schedule and cost for completing the *Disposal of Greater-Than-Class-C Low-Level Waste Environmental Impact Statement* (DOE/EIS-0375) and issuing a Record of Decision. Before making a final decision on the disposal alternative(s) to be implemented, however, the Secretary is to provide Congress a report describing all alternatives under consideration and is to "await action by Congress." DOE has published an Advance Notice of Intent (70 FR 24775; May 11, 2005) for this EIS, which is being prepared by the Office of Environmental Management. (See Section 631.)

Siting of Interstate Electric Transmission Facilities

Within a year (then every three years thereafter), DOE is to consult with affected states to conduct a study of electric transmission congestion. Based on this study, the Secretary "may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor," and then both DOE and FERC could take action (e.g., FERC could grant construction permits). DOE would be the lead agency "for purposes of coordinating all applicable Federal authorizations and related environmental reviews," which generally should be completed within one year of application. DOE would "prepare a single environmental review document" to be "used as the basis for all decisions on the proposed [electric transmission facility] project under Federal law." (See Section 1221.)

Other Provisions Direct DOE Studies

DOE is to establish a task force in cooperation with the Departments of the Interior and Defense "to develop a program to coordinate and accelerate the commercial development of strategic unconventional fuels, including but not limited to oil shale and tar sands resources within the United States, in an integrated manner." In addition, DOE is to identify technologies for the development of oil shale and tar sands that "are ready for demonstration at a commercially-representative scale" and "have a high probability of leading to commercial production." For these technologies, DOE may provide technical and financial assistance, as well as assistance in meeting environmental and regulatory requirements. (See Section 369.)

DOE is authorized to provide more than $2 billion over the next decade in direct funding, loan guarantees, and cost sharing to promote coal power projects that advance efficiency, environmental performance, and cost competitiveness. The law emphasizes the development of technologies that can be commercially viable. (See Title IV.)

DOE is directed to establish the Next Generation Nuclear Plant Project to generate electricity, produce hydrogen, or both, and build a prototype reactor at the Idaho National Laboratory. (See Title VI, Subtitle C.)

Also, DOE is to fund hydrogen and fuel cell demonstration projects to address hydrogen generation, transmission, storage, or use. Congress encourages DOE to fund projects that would use hydrogen at existing office buildings, military bases, vehicle fleet centers, transit bus authorities, or units of the National Park System and "lead to the replication of hydrogen technologies and draw such technologies into the marketplace." (See Section 808.)

In addition, DOE is to establish two projects "in geographic areas that are regionally and climatically diverse to demonstrate the commercial production of hydrogen at existing nuclear power plants." (See Section 634.)

DOE is to create a program of "research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production." (See Title IX, Subtitle J.)

The Office of NEPA Policy and Compliance is continuing to study the Act and its implications for DOE NEPA activities. LL

Congressional NEPA Task Force Continues Regional Hearings

The House Resources Committee's Task Force on Improving the National Environmental Policy Act held three hearings this summer on "The Role of NEPA" for the Southwestern States (June 18, in Lakeside, Arizona), Southern States (June 23, in Nacogdoches, Texas), and Intermountain States (August 1, in Rio Rancho, New Mexico). (See *LLQR*, June 2005, page 3, for information on the first hearing, held in Spokane, Washington.)

Testimony from 27 witnesses from various professions and industries is excerpted below.[1] In selecting excerpts, we have tried to illustrate the variety of opinions presented, but have not captured all of the topics or the complexity of views expressed. The complete written testimony of each witness is available on the Task Force Web site (*http://resourcescommittee.house.gov/nepataskforce.htm* under Schedule).

The NEPA Task Force, formed in April 2005, is composed of 20 Members of the House Resources Committee and is chaired by Representative Cathy McMorris (R-WA). It will convene two more hearings in the Southeastern States (Georgia, Florida, and South Carolina) and Mid-Atlantic States (North Carolina, Virginia, West Virginia, and Maryland). Dates and locations for these have not been announced. At the conclusion of the hearings, the Task Force will issue a report on its findings and recommendations.

Southwestern States Hearing

Manage Adaptively

"What can we do to reduce . . . costs? . . . We now have the new world of adaptive management. . . . built around the premise that you don't have all the answers. If that is true, then off-the-shelf science should be good enough for an environmental impact statement if it's going to be followed by an adaptive management program."

Robert S. Lynch, Attorney at Law
Robert S. Lynch & Associates

Excessive Time, Money Do Not Make Better Decisions or a Better Environment

"The excessive time and money spent to make sure that every T is crossed and I dotted to satisfy agency and CEQ regulations does not make for better decisions or necessarily a better environment. It just delays important project implementation and creates opportunities for obstructionist litigation."

Jim Matson, Four Corners Representative
American Forest Resource Council

Agencies Should Increase Meaningful Participation of Local Governments

"There is a lack of clear direction in the law for inclusion of State, Tribal and local governments. . . . The active participation of local representatives of the citizens affected by the decisions can insure that the NEPA is implemented in a transparent manner."

"The NEPA should have a clear definition of significance. The term is hardly recognizable from its application and use by federal agencies. Significance should not be determined by analyzing impacts beyond the scope of impact the decision will have. . . . A grazing allotment permit renewal . . . should not have its economic impact analysis compared to the National Gross Domestic Product. Doing so . . . fails to disclose the importance to the local governments and economy."

Howard Hutchinson, Executive Director
Coalition of AZ/NM Counties for Stable Economic Growth

Use NEPA to Study Land Use

"Ongoing activities, like livestock grazing, that have been going on for hundreds of years should fall under a categorical exclusion. If uses, such as grazing, are to be analyzed that should be on the overarching use of the land, not micro managing items like seasons of use, grazing methods, and animal numbers. There is extensive NEPA analysis at the forest management level, which includes grazing. Why is there additional NEPA necessary?"

Marinel Poppie, D.V.M.
New Mexico Cattle Growers' Association

Optimize Use of Programmatic Reviews

"The Task Force should recommend that NEPA public comment scoping notices specify the range of decision options authorized by statute and land use plans, and establish that project-specific NEPA documents cannot be used to change existing law or to challenge previously authorized land use plans."

"The Task Force should recommend greater use of programmatic documents . . . Following preparation of a . . . programmatic NEPA document, exploration projects should be approved using categorical exclusions or NEPA checklists rather than individual NEPA documents."

Debra W. Struhsacker, Co-founder
Women's Mining Coalition

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[1] The excerpts do not include testimony from one witness whose testimony is not posted on the Task Force Web site and three witnesses whose testimony did not address NEPA issues. Two invited witnesses chose not to participate.

Excerpts from Written Testimony *(continued from previous page)*

Federal Cooperating Agencies Lack Cooperation

"Five federal agencies . . . are involved in the project's review. Each agency has a distinct but fragmentary institutional interest in the potential transmission line, but none . . . has overall responsibility or authority. None of the federal agencies reviewing the project describes its mission (or reasons for participating in the review) to include helping ensure reliability of present or future electric service in Arizona."

"Cooperation . . . was very poor throughout the process. Federal agencies were not equipped to resolve questions or differences of perspective . . . ."

". . . [The Fish and Wildlife Service] should have the ability to consult on multiple routes at the request of the lead agency."

Edmond A. Beck, Superintendent, Planning & Contracts
Tucson Electric Power Co.

Reestablish Intent of NEPA

"The intent of NEPA was to ensure protection of the environment and its resources. Unfortunately, lack of focus on process, staff turnover and lack of experience, lack of consistency among offices, lack of staff, and a lack of desire to make a decision for fear of legal retribution have marred the process."

"We propose that the NEPA process be improved by having a clear end point to the level of data reviewed and the studies undertaken. . . . that NEPA review remain focused on project purpose rather than unreasonable alternatives analysis."

Bill Mackey on behalf of Robert Dugan
Legislative and Public Affairs Manager
Granite Construction Incorporated

Southern States Hearing

NEPA-Related Lawsuits Hamstring the Process

"Lawsuits and litigation appear to be the norm rather than the exception, and oftentimes cases are litigated on technical issues rather than environmental issues. Misinterpretation by the courts continues to hamstring the process and delay projects that are necessary to restore forest health and reduce fuel loads."

"While NEPA was a godsend in its early beginnings, its metamorphosis into a battle ground between special interest groups and multiple-use, sustained yield advocates has turned it into a counterproductive piece of legislation."

Daniel J.Ructor, Executive Vice President
American Loggers Council

Redundancy, Judicial Review Cause Problems

The Task Force should consider . . . recommendations that include eliminating duplicative and overlapping environmental review processes, given the number of environmental laws (including state versions of NEPA) implemented since NEPA was originally enacted; clarifying the meaning of "major federal action" and what specific activities trigger a NEPA review; revising NEPA to streamline the number of alternatives the agencies must consider; and reforming the manner and impact of judicial review under NEPA.

Steve Smith, Executive Director
Texas Mining and Reclamation Association

NEPA Process Should Be Expedited

"Unfortunately, the procedures in place under [NEPA], and the willingness of some to further stifle the process, too often limit the opportunity to restore forest health in the best manner."

"Our Farm Bureau policy supports efforts to streamline and expedite [NEPA] requirements to allow for the sound harvesting of . . . timber. . . . Without these changes, our natural resources will continue to be wasted, opportunities for healthy forest regrowth will be lost, and the best interest of local communities and families will be sacrificed to the misguided policies of activists."

W. I. Davis
Shelby County (Texas) Farm Bureau Forestry Chairman

When Is Enough Enough?

"Too often, the NEPA process is turned upside down by a game of 'gotcha' whereby the agencies complete their review only to be sued for failure to have considered some report or for failure to respond in detail to a minor comment on an obscure point."

"Data submitted at the last second . . . [and] Data of tangential importance not reviewed by the agencies should not cause the agency to have to reopen the entire NEPA process."

Stephen M. England, Manager of Mined Lands
TXI Operations, LP/
National Stone, Sand and Gravel Association

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Excerpts from Written Testimony *(continued from previous page)*

NEPA Must Be Preserved in Its Entirety

". . . I offer clear and unambiguous support for retaining the full integrity of . . . [NEPA] and to urge this Committee to make NO changes to the substance or intent of NEPA and none to the regulations that have subsequently been promulgated to implement NEPA."

"Any attempt to repeal the rights afforded to the American citizen under NEPA is an affront to the democratic institutions of this country . . . The many provisions of NEPA are inseparably linked. To preserve the integrity of the legislation it must be preserved in its entirety."

". . . Bad decisions can be made quickly, and initially they are cheap . . . The costs and delays of living with bad decisions or of trying to fix them after-the-fact are vastly greater than any costs incurred in complying with NEPA."

"Because NEPA calls for a comprehensive disclosure of the impacts . . . as well as public participation we often see a well-reasoned decision making process emerge . . . . Such consensus building at the start helps to reduce legal challenges to final decisions and to avoid the high cost of correcting poorly-planned projects."

Larry D. Shelton, Trustee
Texas Committee on Natural Resources

NEPA Takes Time, But Is Worth It

"In woodworking, the saying goes 'measure twice, cut once.' . . . For NEPA analysis, the same is true. Take the time to make sure what you are doing is right and done well . . . ."

"Follow the law, use good science, be honest and open with the public, and no attorney with any sense will dare sue you."

"The solution to NEPA 'burdens' lies not in changing the rules of analysis but in changing how the analysis is done. For too long, agencies have compartmentalized (literally) their work. Trying to make each project look small and insignificant seemed like a good way to avoid doing population data collection, cumulative impacts analysis and a host of other things required by law for 'big' projects."

"[I]f an agency hides things, minimizes real world impacts or evades full compliance with the laws and regulations, the public will assume that it is up to something, and they will challenge the proposal."

Sandra Nichols, Attorney
WildLaw

Intermountain States Hearing

NEPA Works Despite Lengthy Process

"NEPA has been the best and brightest weapon we've ever had in our fight against the kind of environmental degradation and destruction that was commonplace prior to the Act's implementation."

"Yes, the process is lengthy and complicated. But it couldn't be any other way. Public involvement takes time. Agency coordination takes time. Examination of alternatives takes time. Plain and simple, if we're going to stay true to the democratic heart of the Act, we've got to allow sufficient time for the process to take place."

Joanna Prukop, Secretary, New Mexico Department of Energy, Minerals and Natural Resources

Transparency, Specificity, and Follow Through

". . . [T]he withholding of information from the general public until the public comment period, under the guise of the pre-decisional information label, leads to public distrust and . . . is an unnecessary precaution."

". . . [T]he NEPA process must account for state and local agencies and their needs to fulfill their regulatory missions. . . . "

". . . federal NEPA private contractors, who are tasked with writing NEPA documents . . . [,] have only provided marginal efficiency gains . . . The key is to provide internal, rather than external, support."

Ryan Lance, Endangered Species Policy Act Coordinator
Office of Governor Freudenthal, Wyoming

Problem Lies in Implementation

"If there is a problem with NEPA, I would suggest that it lies more in its implementation than within the act itself. I believe that more consistent application, better training of agency personnel who are responsible for implementation, better and more consistent use of technology to increase public participation, and resources for citizens and local governments who are involved in the NEPA process, would be the most prudent courses of action to improve the process of implementing federal projects."

"The only way to dramatically streamline NEPA would be to reduce or eliminate the mandatory public comment periods. This would result in more frustration, more litigation, and the elimination of the most important part of this law, the involvement of our citizenry in our federal decision making process."

Martin Heinrich, City Councilor, District 6
Albuquerque, New Mexico
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Excerpts from Written Testimony *(continued from previous page)*

Improve Funding, Streamline Litigation

"Federal agencies are going overboard to prevent what they believe to be ex parte communication. This approach is leaving stakeholders out of the NEPA process for extended periods while the analysis is underway. This is a critical flaw in the current NEPA process that must be corrected if a timely and thorough NEPA analysis is to be achieved in a cost effective manner."

". . . [T]he right to appeal an agency decision must be preserved, but changes are required to minimize frivolous appeals. . . . Currently, the burden of proof is placed on the agency . . . An improvement in the law would require appellants to prove that the evaluation was not conducted using the best available information and science . . . ."

David Brown, Regional Regulatory Advisor
BP America, Inc. (Rocky Mountain Region)

Terms "Major" and "Significant" Cause Problems

"The purpose of my testimony is to discuss with you the evolution of the federal courts' interpretation of what types of decisions constitute a 'federal' action that is 'major' and 'significant' and to propose that the original intent of NEPA was not so expansive to include all types of decisions as are covered today."

". . . [M]y suggestion is to revisit the reason that NEPA was adopted – to force consideration of 'major' actions 'significantly' impacting the environment. . . . it is extremely difficult to imagine that ANY federal decision or action can escape NEPA review."

Karen Budd-Falen, Lawyer
Budd-Falen Law Offices, P.C.

Cooperation with States, Peer-Review Needed

"I recommend . . . an amendment to [NEPA]: 'Any state that requests Joint Lead for an . . . EIS . . . EA to be conducted in their state will be granted such request.'"

"NEPA implies that science is to be used and the regulations . . . say it will be used, but the language leaves too much discretion."

"I . . . recommend . . . the insertion of the specific wording 'sound peer-reviewable science' in the NEP Act."

"I believe when a true partnership is created between the states and the federal government and decisions are based on sound peer-reviewable science, most all arguments and thus costly litigation that has in reality harmed the environment becomes moot."

Walter Bradley
Former Lieutenant Governor of New Mexico

NEPA Is Too Constraining

". . . NEPA constraints inhibit the production of natural gas thereby limiting the supply and impacting the cost of living for all Americans, especially those on the lower economic earning level."

". . . [J]ust a few changes to the way NEPA is managed could have a positive impact on gas supply . . . . [Allow] Federal land managers the ability to rely on their Resource Management Plans, Forest Plans and associated [EISs] to assess cumulative impact. . . . [P]rovide a sufficient number and quality of staff . . . to handle NEPA related tasks."

Richard Fraley, Vice President, San Juan Division
Burlington Resources

NEPA Delays Approvals on Tribal Lands

". . . [W]e do not believe that Congress intended NEPA to be applied in way that would permit public citizen groups to second-guess our objectives, the substance of our negotiations, or the balancing of development and environmental interests implicit in the tribe's legislative decisions about its own non-public lands."

"NEPA review adds delay to the federal approval of tribal leases, rights-of-way, and land-related transactions. Additionally, NEPA and the National Historic Preservation Act have become the tools of choice of public citizens groups to block the decisions of federal agencies, not just as to public lands, but also as to tribal lands."

"We believe the Indian Title [in the Energy Policy Act of 2005] provides an important opportunity to evaluate alternatives to NEPA on tribal lands, that allow for some public involvement, but preserve the primacy of tribal decision-making."

Clement Frost, Chairman of the Tribal Council
Southern Ute Indian Tribe

Grazing Permits a "Major Federal Action?"

"We fail to see how the renewal of a livestock grazing permit where grazing has taken place for literally hundreds of years, predating federal land management agencies as well as NEPA, is a 'major federal action.'"

". . . Agencies are reaching a decision and then using the NEPA process to justify it with little or no data to base these decisions on."

"Issues such as the cumulative impacts of multiple well locations must include the people who have been stewards of the land here in New Mexico for over 400 years."

Stella Montoya
New Mexico Farm and Livestock Bureau

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Excerpts from Written Testimony *(continued from previous page)*

Much of NEPA Irrelevant

"The way NEPA is structured, and the way it is currently applied, seems to assume that all Federal decisions are bad for the environment, and that the only way to offset the bad is to spend money to describe the resources that those bad decisions will damage. . . . Revise NEPA to provide a screening method to allow exclusion from the NEPA process for Federal decisions that support mandatory environmental programs . . . , and establish for those decisions a more flexible and expeditious analytical framework that is predicated upon use of the best science currently available."

"NEPA should be adaptively revised . . . to incorporate what society has learned and to eliminate those . . . requirements that are no longer necessary or appropriate. . . . Review environmental policy acts from other countries to see if some of their elements could be adopted in a revised NEPA to meet current U.S. environmental policy objectives."

Sterling Grogan, Biologist/Planner
Middle Rio Grande Conservancy District

NEPA Process Leads to Degradation

". . . [T]he permitting process associated with NEPA compliance is vastly longer and more cumbersome than it needs to be. Further, given its complex and overly prescriptive nature, it is a process that also invites costly litigation. The end result is often unnecessary degradation to the environment itself, but also the delayed production of the important and clean natural gas resources that our country so desperately needs."

Duane Zavadil, Vice President
Government and Regulatory Affairs
Bill Barrett Corporation

Simplify Process

"NEPA processes should not take more than six months to a year. Federal agencies should be required to meet the deadlines. That means simpler assessment on the front end, which would include (among other things) standardized requirements for specialists analyzing effects of each alternative. The 'do nothing' alternative should be examined in the process. . . . Do nothing has consequences and in many cases undesirable consequences."

Sue Kupillas, Executive Director
Communities for Healthy Forests

NEPA Is a Decisionmaking Tool

"We did not use NEPA as an obstacle . . . but as the decision making tool it is intended to be. As any community would wish to do under similar circumstances, we employed NEPA's mandate to compel an unaccountable, out of state corporation, and its federal regulators, to tell the true story about theses impacts. This is perhaps NEPA's most important authority: Ensuring the government tells the truth about the way in which its action will affect people, local communities and the land, water, life itself."

Calbert Seciwa, Pueblo of Zuni Tribal Member
Testifying as an Individual

NEPA Process Cannot Be Ignored

"The Administration, Congress, BLM, and Industry are responsible for allowing the damage and impacts to the land, water, wildlife, and ways of life across the Rocky Mountain West and they are responsible for the cleanup [of] sacrifice areas [that] have been created by ignoring NEPA . . . ."

Tweeti Blancett, Rancher LL

Transportation Act Promotes Efficient NEPA Reviews

Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Act) signed by President Bush on August 10, 2005, affect the Department of Transportation's (DOT's) procedures for implementing NEPA. (See Section 6002.) The changes apply to any highway project, public transportation capital project, or multimodal project that requires approval by the Secretary of Transportation for which an EIS is required and, as deemed appropriate by the Secretary, to any such project for which an EA is required.

The Act specifies that DOT (and any state or local agency serving as a joint lead agency) is to provide an opportunity, as early as practicable during the environmental review process, for agencies and the public to participate in defining the purpose and need for a project and determining the range of alternatives. DOT is to establish a plan for coordinating this agency and public participation.

The Act establishes that the public comment period on a draft EIS shall not exceed 60 days, unless the deadline is extended by agreement of the lead agency, the project sponsor, and the participating agencies, or the lead agency extends the deadline for good cause. The Act also provides that the preferred alternative for a DOT project may be "developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance" with applicable laws, if doing so "will not prevent the lead agency from making an impartial decision . . . ."

Office of Science Sponsors "OneSC" NEPA Workshop

By Peter Siebach, *NEPA Compliance Officer, SC Integrated Support Center*

Restructuring the Office of Science (SC) under the "OneSC" framework became effective March 20, 2005. An objective of the OneSC restructuring is to eliminate management layers throughout the organization. To that end, each Site Office Manager has been designated a "Head of Field Organization" for purposes of implementing NEPA consistent with DOE Order 451.1B, National Environmental Policy Act Compliance Program.

Formerly, the Head of Field Organization designation was reserved for Operations Office Managers at Chicago and Oak Ridge. Now, Site Office Managers from the Ames, Argonne, Berkeley, Brookhaven, Fermi, Pacific Northwest, Princeton, Stanford, and Thomas Jefferson Site Offices will need to satisfy the Order's program requirements either in-house or by requesting the services of the Chicago or Oak Ridge Offices, which together comprise SC's new Integrated Support Center (in addition to their ongoing programmatic roles).

Some of the participants at the SC NCO workshop (left to right): Ken Chiu (Argonne Site Office), Jim Oprzedek (Chicago Operations Office), Donna Green (Argonne Site Office), Allen Wrigley (Princeton Site Office), Mark Kamiya (Argonne National Laboratory), Caroline Polanish (Brookhaven Site Office), Regen Weeks (Pacific Northwest National Laboratory), Clarence Hickey (Headquarters), Don Wilhelm (Stanford Site Office), Peter Siebach (Chicago Operations Office), Jon Cooper (Fermi Site Office), and Katatra Day (Oak Ridge Operations Office).

The Office of Science held a workshop in May 2005 in Chicago, Illinois, to bring together NEPA Compliance Officers (NCOs) and staff from the SC Site Offices, the Integrated Support Center, and Headquarters. Twenty people participated, two via conference call, in planning a corporate approach to NEPA compliance and implementation for the newly reorganized SC.

Participants identified a number of issues – most of which SC can resolve internally, such as communicating with and assisting each other and reporting milestones. SC will need to work with the Office of Environment, Safety and Health and others in DOE to pursue additional issues and ideas discussed at the workshop, including:

- Effectively coordinating the NEPA process with states that have NEPA-like laws.
- Codifying a new categorical exclusion for "educational facilities."
- Exploring the possibility of a budgetary threshold below which a government grant does not constitute a "major Federal action" for purposes of NEPA.
- Developing a standardized set of instructions for completing the NEPA determination checklist – an action that is especially important in SC organizations that deal predominantly with grants to nongovernmental organizations unfamiliar with the NEPA process or requirements.

Clarence "Corky" Hickey, SC's NCO who recently retired (page 20), concluded the workshop by sharing wisdom gained from his long-time service. "You guys can stay with the status quo or move on," he said. To that end, Mr. Hickey spoke of the importance of ongoing communication and support among the sites, particularly when issues arise or the workload is heavy. He also spoke of the value of consistency in SC Site Offices' NEPA implementation and anticipated the need for the SC NCOs to formally and collectively address consistency as implementation of OneSC progresses. Finally, Mr. Hickey counseled workshop participants to "look for ways to identify and 'sell' the program benefits of NEPA apart from merely pointing to the requirement to comply with the NEPA statute and CEQ's and DOE's regulations."

The group responded favorably to Mr. Hickey's advice.

Future SC NCO meetings will be held in conjunction with the DOE NEPA Community Meeting or rotated among SC Site Offices. For more information, contact Peter Siebach at peter.siebach@ch.doe.gov or 630-252-2007. LL

Transitions

Retirement: Clarence Hickey, Office of Science

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

Friends, co-workers, and associates of Clarence "Corky" Hickey gathered on June 23, 2005, to celebrate his long and distinguished career, including 15 years as the NEPA Compliance Officer (NCO) for the Office of Science (SC). Corky served the DOE NEPA Community well as a model NCO. A self-described "NEPA concierge," Corky actively coordinated NEPA implementation and other environmental matters throughout SC and with other DOE Program Offices.

A trophy like this one takes foresight! Corky displayed his career-long collection of conference name badges, a good number of them from meetings of the DOE NEPA Community.

To the Office of NEPA Policy and Compliance, Corky was one of the most effective and responsive NCOs – particularly as an advocate of the "spirit of NEPA," promoting the policy goals of Section 101 of NEPA to enhance environmental stewardship and a harmonious relationship with the environment. He was a frequent contributor to *LLQR* (text box) and a speaker or panelist at most DOE NEPA Community Meetings.

Corky received many gifts and mementos at his farewell celebration, including a large cake labeled NEPA (Never Ending Pension Approved). A more lasting tribute was a plaque signed by Andy Lawrence, Deputy Assistant Secretary for Environment:

> *In recognition of 17 years of dedicated service to the mission of the U.S. Department of Energy and in appreciation of your unwavering support for the Department's National Environmental Policy Act (NEPA) Compliance Program. Your championship of NEPA 101 policy and goals and your enthusiasm to reach beyond the letter to the spirit of NEPA will continue to inspire our environmental stewardship.*

He also received a framed historic print of DOE's Germantown, Maryland, campus, a particularly fitting tribute in light of his stewardship of the site. Corky conducted natural history field studies of the 100-acre site and served as an interpretive guide for walks along the Glenn Seaborg Trail through the 200-year-old forest there. "I used those walks as opportunities for environmental interpretation and education in this outdoor lab and classroom," he said. Corky's writings about the natural history of the Germantown campus are available on the SC Web site at *www.sc.doe.gov/sc-80/trail*.

A 35-Year Career

After serving two years as a medic in the U.S. Army, Corky began his civilian career in environmental protection in 1970 as a marine fishery biologist with the New York Ocean Science Laboratory, where he authored numerous papers and technical reports on the effects of

(continued on next page)

Clarence Hickey: A Valued and Frequent Contributor to *LLQR*

- "ER's NCO Describes His Role" (March 1998, page 10)
- "Book Review: 'Founding Father' Challenges Practitioners to Fulfill NEPA's Potential" (September 2000, page 11)
- "Innovative Field Research Benefits from NEPA Review" (March 2001, page 1)
- "Office of Science Promotes Early Integration of NEPA Process with Project Planning" (December 2002, page 13)
- "More Thoughts on Getting Better and Better" (September 2004, page 13)

Glenn Seaborg, Nobel Laureate and Atomic Energy Commission Chairman from 1961 to 1971, blazed the approximately quarter-mile trail at DOE's Germantown campus. Corky lead interpretive walks under the white oaks, including this one (left) estimated to date to the 1750s, and through this field of New York and Christmas ferns (right).

Transitions

Corky Retires *(continued from previous page)*

nuclear power plants on marine and coastal ecosystems. In 1976, Corky began coordinating EIS preparation teams for commercial nuclear power plant operating license applications reviewed by the Nuclear Regulatory Commission.

Corky joined what was then called the Office of NEPA Project Assistance in DOE's Office of Environment, Safety and Health in 1987, before becoming SC's NCO in 1990. During his career at DOE, Corky volunteered for the Speakers Bureau of the Secretary of Energy's Council on Community Service, frequently visiting schools in the Washington, DC, area. Corky wrote some 50 *Nature Notes* columns for newsletters targeted to DOE employees that raised awareness about the natural places at DOE sites and the successes of the environmental programs DOE established to protect them.

Always Active in the Community

Throughout his career, Corky gave back to the community. He lectured at colleges and judged high school science fairs. He wrote on environmental topics for local newspapers and professional society newsletters. To commemorate the 50th anniversary of Aldo Leopold's *A Sand County Almanac*, Corky conducted lectures and seminars for community groups in 1998 and 1999.

Corky, a Civil War history buff, has for several years portrayed Dr. Edward E. Stonestreet at the Montgomery County Historical Society's Stonestreet Museum of 19th Century Medicine. Through his portrayal of the former Union Army surgeon, Corky discusses the doctor's life and times, his medical education and practice, and Civil War medicine in general.

Every Day Is Saturday

"Retirement really does agree with me so far," Corky said recently. "Every night is Friday night, and every day is Saturday."

"I have not had a whole summer off since 1961, and so I'm keeping plenty busy with some writing, reenacting, public school matters, church, home improvement projects, and using my new stereo microscope. I've been examining my collection of beach sand from various places – east coast, west coast, Hawaii, New Zealand – and they all are different."

"I'd be glad to hear from my DOE NEPA friends," Corky said. He can be reached at whitneylake1@aol.com.

On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance expresses gratitude for his 35 years of devoted service and wishes Corky well in all his future endeavors.

New NEPA Compliance Officers

Bonneville Power Administration: Kathy Pierce

Kathy Pierce has been designated as NCO for Bonneville Power Administration (BPA) following the retirement of Tom McKinney. (See *LLQR*, June 2005, page 20.) Ms. Pierce is currently a senior environmental specialist, focusing on policy- and program-level environmental analyses for power and transmission projects and fish and wildlife resources. She has been with BPA since 1981. Ms. Pierce is a contributor to *LLQR* (*Card Game Highlights Diversity at Federal-Trial NEPA Clinic*, June 2004, page 10; *BPA's "Reader's Guide" Makes EIS Reader-Friendly*, co-authored with Charles Alton, June 2001, page 6) and has been a presenter at many DOE NEPA Community Meetings. Ms. Pierce has a particular interest in cultural resources and tribal issues and is a volunteer at the Cathlapotle Plankhouse (*www.plankhouse.org*), a full-scale Chinookan-style cedar plankhouse located on the Ridgefield National Wildlife Refuge (U.S. Fish and Wildlife Service) in Ridgefield, Washington. She can be reached at kspierce@bpa.gov or 503-230-3962.

National Nuclear Security Administration: Emil Morrow, Ted Wyka

The new NCO for the National Nuclear Security Administration (NNSA) is Emil Morrow, Acting Senior Advisor for Environment, Safety and Health. Mr. Morrow can be reached at emil.morrow@nnsa.doe.gov or 202-586-5530. Ted Wyka serves as Assistant NCO. Mr. Wyka can be reached at theodore.wyka@nnsa.doe.gov or 202-586-3519. Both have served with NNSA since May 2005 and with DOE since 1994, and were previously in the Navy Nuclear Submarine Program.

Polygons, Pixels, and Bytes: Oh My!

(A NEPA Nerd Goes to the 2005 ESRI International User Conference)

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

Every agency preparing EAs or EISs, and every NEPA contractor, utilizes maps. Most NEPA practitioners want to include the latest and most accurate map information in their documents. That is where a Geographic Information System (GIS) often comes into the picture.

To learn more about GIS and its application in DOE NEPA activities, I traveled to San Diego the week of July 24, 2005, to attend the 25th annual ESRI International User Conference. Founded as the Environmental Systems Research Institute in 1969, ESRI (*www.esri.com*) develops GIS computer software and other tools for land use analysis and mapping.

The first conference was held in 1981 with only 18 people in attendance. Today, the ESRI User Conference is the single largest gathering of those who use or support GIS tools in their organizations, with more than 14,000 attendees from around the globe. Imagine 14,000 techies (with pocket protectors replaced by personal GPSs and cell phones) gathered in one place, all speaking the same indecipherable tech speak. (See text box.)

The keynote speaker was Dame Jane Goodall, founder of the Jane Goodall Institute and famous for her work with chimpanzees. After greeting the audience with the chimpanzee version of "hello," Dr. Goodall presented her chimpanzee research conducted in Tanzania, explaining that GIS is an integral part of the Institute's work. For example, GIS software is used to record chimpanzee activity and movement so that scientists can model locations of their habitats and behaviors.

The balance of the conference was primarily about maps – paper maps, electronic maps, photomaps, 3-D maps – and electronic information displays ranging from aerial photography and multi-beam bathymetry to vibracoring.

The sessions I attended ranged from "Implementing GIS in the NEPA Process at FERC" to "Using BLM's GeoCommunicator to Search/Map/Access Land and Mineral Data." The conference, and its 99-page list of abstracts, was full of numerous other interesting topics such as "Vector Driven Spatial Analysis" and "Using GIS to Predict Sanitary Sewer Overflows."

Some of the presentation titles that fellow NEPA Nerds might find interesting include: "GIS Solutions for Environmental Impact Statements," "Secondary and Cumulative Effects Analysis through the Use of GIS," and "Streamlining Environmental Analysis and Mapping through GIS." We hope to have some of the ESRI conference presentations available at the upcoming DOE NEPA 35 Conference. (See page 1.)

For additional information, contact Brian Mills at brian.mills@eh.doe.gov or 202-586-8267.

"Tech Speak" Overheard at ESRI Conference

- **Blobs:** A technique for representing surfaces without specifying a hard boundary representation, usually implemented as a procedural surface like a Van der Waals equipotential (in chemistry).
- **Bump mapping:** A normal-perturbation technique used to simulate bumpy or wrinkled surfaces.
- **Global Positioning System (GPS):** A satellite navigation system used for determining one's precise location and providing a highly accurate time reference almost anywhere on Earth or in Earth's orbit. It uses an intermediate circular orbit satellite constellation of at least 24 satellites.
- **Multi-beam bathymetry:** Bathymetry is the underwater equivalent to topography. A bathymetric map gives the depth contours of the soil, rock, and sand at the bottom of a body of water such as an ocean or a lake.
- **Pixel:** One of the many tiny dots that make up the representation of a picture in a computer's memory. Usually the dots are so small and so numerous that, when printed on paper or displayed on a computer monitor, they appear to merge into a smooth image. Pixels are generally thought of as the smallest complete element of an image.
- **Spline:** Originally, a pliable strip used by draftsmen to draw curves. In the context of approximation and interpolation theory, a spline is a mathematical function that interpolates or approximates a finite sequence of data.
- **Texture mapping:** A technique for simulating surface detail by mapping images (textures) onto polygons.
- **Vibracoring:** One of many subsurface sediment acquisition (sediment coring) techniques. Vibracoring obtains sediment samples by vibrating a core barrel into the sediment.

NAEP Invites Abstracts, Award Nominations for 2006 Conference

Global Perspectives on Regional Issues: The Future for Environmental Professionals in the Next 30 Years is the announced theme of the National Association of Environmental Professionals (NAEP) 2006 national conference to be held April 23-26 in Albuquerque, New Mexico. Presentations on NEPA practice, case law, e-government applications, and other aspects of environmental impact review will comprise NAEP's 17th annual "NEPA Symposium." Abstracts for papers, posters, and other presentations, such as panels and roundtable discussions, are due September 30, 2005. Additional information, including instructions for submitting an abstract online, is provided on the NAEP Web site (*www.naep.org*) under 2006 Conference.

Environmental Excellence Nominations Due January 15

At the conference, NAEP will recognize significant contributions to environmental practice through presentation of its tenth set of President's and National Environmental Excellence Awards in eight categories, including NEPA Excellence, Public Involvement/ Partnership, Educational Excellence, Planning Integration, and Environmental Stewardship. The President's National Environmental Excellence Award, the organization's most prestigious award, will be selected from among nominations in all categories.

The award competition is open to all interested environmental professionals; NAEP membership is not required. The deadline for award nominations is January 15, 2006. Winners will be notified by March 15, 2006, and will be invited to present their program or project at a conference technical session and provide a poster display. Additional information, including the nomination form and instructions, is found on the NAEP Web site under Awards Nominations.

DOE's NAEP Environmental Excellence Awards

2005:
- Pollution prevention via crude oil degassing at the Strategic Petroleum Reserve

2003:
- Environmental management system that includes NEPA integration for the Strategic Petroleum Reserve

2001:
- Guidance on evaluating radiation doses to aquatic and terrestrial biota

2000:
- NEPA Lessons Learned Program (President's Award)
- Environmental management research and development plan for Idaho National Engineering and Environmental Laboratory
- Environmental management system for the Western Area Power Administration, Upper Great Plains Region

1999:
- NEPA/CERCLA integration guidance for the Savannah River Site

Litigation Updates

West Valley EIS Inadequate, Group Claims

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D.N.Y.): Plaintiffs allege in their complaint filed August 26, 2005, that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because it has segmented the analysis of the proper response to the waste at the West Valley Demonstration Project (WVDP) site in New York by analyzing its proposed action in two separate EISs. DOE has issued the *West Valley Demonstration Project Waste Management Environmental Impact Statement* (DOE/EIS-0337, December 2003) and Record of Decision (ROD; 70 FR 35073; June 16, 2005). In addition, DOE is preparing the *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS* (DOE/EIS-0226-R) (Notice of Intent, 68 FR 12044; March 13, 2003).

Plaintiffs contend that waste management, decommissioning, and long-term stewardship should be addressed in a single EIS. Plaintiffs also allege that the *WVDP Waste Management EIS* does not support the ROD's reference to the possible use of a waste-incidental-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level waste or mixed low-level waste. [Case No.: 05-0614]

DOE Identifies Inconsistencies in Hanford Groundwater Analysis

State of Washington v. Department of Energy (E.D. Wash.): On May 13, 2005, the court (1) removed the preliminary injunction in place since May 2003 on shipping non-mixed transuranic (TRU) waste from the Battelle West Jefferson site in Ohio to the Hanford site in Washington; (2) left in place a preliminary injunction against shipping TRU waste mixed with hazardous waste (an injunction related to the state's Hazardous Waste Management Act, not NEPA), and (3) issued a preliminary injunction against shipping low-level radioactive waste (LLW) and mixed LLW (MLLW) to Hanford for at least a 90-day discovery period on issues related to the groundwater analysis in the *Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (HSWEIS; DOE/EIS-0286, January 2004). (See *LLQR*, June 2005, page 22.)

DOE notified the court on July 22, 2005, that, during the course of preparing replies to plaintiff, it had "identified differences between information in the groundwater cumulative impact analysis published in Appendix L of the HSWEIS and certain input parameters" employed in the model "used to prepare that analysis." DOE further stated that, at this point, it "does not have sufficient information" to determine whether the differences "are likely to produce a meaningful effect on the groundwater cumulative impact analysis contained in the HSWEIS, nor can Energy estimate whether any such differences would be significant."

DOE committed to the court that, "Regardless of whether Energy decides to prepare a Supplement Analysis under Energy's NEPA regulations or a supplemental EIS [10 CFR 1021.314], that examination will provide an opportunity for public review, comment, and participation in the results of this review" of the groundwater analysis. Pending the outcome of this further environmental review, DOE said that the deadline for discovery and the preliminary injunction against the shipment of off-site LLW and MLLW to Hanford should be extended, and motions for summary judgment regarding that waste should be held in abeyance. Also, DOE announced its decision to delay shipments of TRU waste from the Battelle site to Hanford. The court has since extended the discovery deadline to October 7, 2005.
[Case No.: 03-CT-5018]

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Litigation Updates *(continued from previous page)*

Border Power Amends Complaint

Border Power Plant Working Group v. Department of Energy (S.D. Calif.): The plaintiff filed an amended complaint on August 19, 2005, alleging that DOE and the Bureau of Land Management (BLM) violated the Clean Air Act and NEPA in an EIS for the *Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004), prepared after the court found the agencies' 2001 EA inadequate. The alleged NEPA violations associated with the EIS include:

- failure to adequately evaluate cumulative impacts, including air and water impacts from additional power plants that plaintiff claims will be built in the Mexicali region, and failure to "describe the significance of the cumulative impact in total;"
- failure to adequately evaluate alternative cooling technologies that would minimize environmental impacts;
- failure to ensure the scientific accuracy of information in the consideration of alternative cooling technologies; and
- inadequate analysis of mitigation measures because the ROD does not state why mitigation measures discussed in the EIS were not adopted.

Plaintiff asked that the permits be set aside and that operation of the transmission lines be stopped, or that the court order mitigation measures, pending completion of a conformity determination that complies with the Clean Air Act and an EIS and ROD that comply with NEPA.

The government's response to the amended complaint will be filed in October 2005, and the parties have 30 days thereafter to propose a schedule for the litigation. (See *LLQR*, June 2004, page 16; December 2003, page 7; and September 2003, page 22. This case was previously cited as *Border Power Plant Working Group v. Abraham et al.*) [Case No.: 02-CV-513]

Other DOE NEPA Litigation in Brief

Center for Biological Diversity et al. v. Department of Energy et al. (N.D. Calif.): Plaintiffs claim that 15 government agencies are not in compliance with various alternative fuel vehicles purchasing and reporting requirements contained in the Energy Policy Act of 1992. The complaint states that DOE violated NEPA when it promulgated a rule in which it determined not to adopt "a regulatory requirement that owners

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GAO Study Finds Emissions Are Low, But Health Impacts Are Unknown

A recent Government Accountability Office (GAO) study found that the emissions from the two new Mexicali, Mexico, power plants considered in the *Imperial-Mexicali 230-kV Transmission Lines EIS* are comparable to emissions from similar plants recently permitted in California and are low relative to emissions from the primary sources of pollution in Imperial County, California – dust and vehicles. In addition, the report found that, based on the amount of energy produced per pound of nitrogen oxide emissions, the plants are cleaner than other major fuel-fired plants operating in Imperial County or the border region of Baja California, Mexico. Nevertheless, if the plants were located in Imperial County, they would be required to offset their emissions because the county is a nonattainment area for particulates and ozone.

The GAO report concluded that emissions generated by the power plants, like any other source of emissions, may contribute to adverse health impacts in Imperial County, but the full extent of such impacts is unknown. The GAO report criticized DOE for not analyzing all potential health impacts in the EIS. (In commenting on a draft of the report, DOE generally disagreed with GAO's characterization of the limitations of the health risk assessment done as a part of the EIS.)

The report found that policymakers have limited options to ensure that emissions from the two power plants do not adversely affect the health of residents in Imperial County. The power plants are not subject to the Federal Clean Air Act or the California Clean Air Act and, therefore, are not required to offset their emissions.

Air Pollution: Estimated Emissions from Two New Mexicali Power Plants are Low, but Health Impacts are Unknown (GAO-05-823, August 2005) is available on the GAO Web site at *www.gao.gov* under Reports and Testimony.

Litigation Updates *(continued from previous page)*

and operators of certain private and local government fleets acquire alternative fueled vehicles" (69 FR 4219; January 29, 2004). DOE provided the Administrative Record of its determination on August 12, 2005. A hearing on the case is scheduled for March 2, 2006. [Case Nos.: 02-00027 and 05-01526]

Natural Resources Defense Council et al. v. Department of Energy (ID): This is an action in which DOE appealed the Idaho District Court's ruling that a provision of the Manual for DOE Order 435.1, Radioactive Waste Management, is invalid. That provision allows waste resulting from reprocessing spent nuclear fuel that is determined to be incidental to reprocessing to be managed as LLW if certain conditions are met. The U.S. Court of Appeals for the Ninth Circuit decided on November 5, 2004, that the plaintiffs' claims were not ripe for review and, therefore, it vacated the district court's judgment and remanded the case with directions that it be dismissed. The appeals court held that any challenge to DOE's Waste Incidental to Reprocessing criteria and process should be framed as a challenge to an actual application of those criteria and that process, not in the abstract. (See *LLQR*, December 2004, page 16, and September 2003, page 23.)

In briefs filed in the district court in August 2005, plaintiffs contend that DOE has taken actions related to waste reclassification and that the district court should retain jurisdiction notwithstanding the Ninth Circuit's mandate that the action be dismissed. DOE's response is due September 9, 2005. [Case No.: 01-0413]

State of Nevada v. Department of Energy (D.C. Cir.): This case involves the state of Nevada's challenge to DOE's record of decision on the mode of transportation and selection of the Nevada rail corridor for disposal of spent nuclear fuel and high-level nuclear waste at Yucca Mountain. (See *LLQR*, December 2004, page 17.) Oral argument is scheduled for October 18, 2005. [Case No.: 04-1082]

Other Agency NEPA Cases

Contribution to Global Warming Provides Basis for Legal Standing

Friends of the Earth, Inc., et al. v. Peter Watson and Phillip Merrill (N.D. Calif.): Plaintiffs allege that the Overseas Private Investment Corporation (OPIC) and the Export-Import Bank of the United States (Ex-Im), without complying with NEPA, have provided assistance to particular projects that contribute to climate change. The court on August 23, 2005, denied defendants' motion for summary judgment, which, if granted, would have ruled that plaintiffs do not have standing to sue, there is no final agency action at issue, and OPIC is not subject to NEPA.

Both defendant organizations are U.S. government corporations. OPIC offers insurance and loan guarantees for projects in developing countries. Ex-Im provides financing support for exports from the United States.

Plaintiffs provided the court "evidence demonstrating that projects supported by OPIC and Ex-Im are directly or indirectly responsible for approximately 1,911 million tonnes[1] of carbon dioxide and methane emissions annually, which equals nearly eight percent of the world's emissions and is equivalent to one-third of the total carbon emissions from the United States in 2003," the court wrote. Plaintiffs further provided evidence that greenhouse gases contribute to global warming, with its "consequent widespread environmental impacts," and the court found that, "Plaintiffs have demonstrated that OPIC and Ex-Im's decisions could be influenced by further environmental studies."

The court ruled that this evidence is sufficient to demonstrate that plaintiffs have standing to bring the lawsuit. Because the court was ruling on a motion for summary judgment, it did not weigh the evidence per se but determined only whether the material facts in dispute were sufficient to warrant proceeding with the case. Also, because the NEPA claims address procedural issues, the court did not consider whether particular environmental effects would occur. Instead, the court considered whether "environmental consequences might be overlooked as a result of deficiencies in the government's analysis under environmental statutes." (Quoting *Citizens for Better Forestry v. U.S. Department of Agriculture*, 341 F.3d 961, 972 (9th Cir. 2003).)

The court also ruled that plaintiffs' challenge is properly directed to final agency action: "Plaintiffs' suit does not broadly challenge the day-to-day operations of Ex-Im or OPIC, but rather, challenges those agencies' discrete determinations that the projects they support do not, on a cumulative basis, have a significant environmental impact." [Case No.: 02-4106]

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[1] *One tonne is equal to 1,000 kg or about 2,200 pounds.*

Litigation Updates *(continued from previous page)*

Telescope Project Case Dismissed; New EA to Be Prepared

Tohono O'odham Nation v. National Science Foundation et al. (Ariz.): Plaintiffs allege that the National Science Foundation (NSF) and Smithsonian Astrophysical Observatory undertook the Very Energetic Radiation Imaging Telescope Array System (VERITAS) project (text box) without complying with the National Historic Preservation Act (NHPA) or NEPA.

In 1958, the Tohono O'odham Nation leased 2,400 acres of land at Kitt Peak, located in southern Arizona, in perpetuity to NSF for astronomical study or research and related scientific purposes. The Tohono O'odham Nation considers Kitt Peak to be sacred land. In 2003, Smithsonian entered into a sublease with NSF for use of 25 acres of Kitt Peak to construct and operate the VERITAS project. Smithsonian completed a Cultural Resources Report in October 2003 and an *Environmental Assessment of the Proposed VERITAS Facility on Kitt Peak, Pima County, Arizona*, which was issued by NSF in January 2004. NSF issued a finding of no significant impact (FONSI) related to the project in March 2004. Construction of the project began in August 2004.

The Tohono O'odham Nation filed suit on March 23, 2005, in the United States District Court for the District of Arizona, asking that the court halt construction until NSF and Smithsonian comply with NHPA and NEPA. Plaintiff alleges that NSF and Smithsonian failed to comply with NHPA and NEPA, in part, by not properly providing the Cultural Resources Report, EA, and FONSI to the Tohono O'odham Nation or to the State Historic Preservation Officer and by not adequately involving the public. In addition, plaintiff alleges that the EA and FONSI fail to identify Kitt Peak as an Indian sacred site.

What is VERITAS?

The proposed VERITAS project would consist of an array of six telescopes arranged in a hexagonal pattern approximately 80 meters (262 feet) apart, with a seventh telescope at the center. The telescopes would be used for the study of very high energy gamma rays. More information is available on the VERITAS project Web site at *http://veritas.sao.arizona.edu*.

NSF withdrew the Cultural Resources Report, EA, and FONSI on April 7, 2005, and halted construction on the VERITAS project the next day. In May 2005, NSF and Smithsonian initiated consultation with the Tohono O'odham Nation and the State Historic Preservation Officer pursuant to Section 106 of the NHPA and began work on a new EA. In response, the court determined on July 26, 2005, that plaintiff's claims are moot and dismissed the case.

The VERITAS project is funded by NSF, DOE, and Smithsonian. DOE was not involved in preparation of the original EA and is not a party to the lawsuit. At NSF's request, DOE is a cooperating agency in preparation of the new EA, a draft of which is expected to be issued later this year. [Case No.: 05-203]

An Information Brief *on the National Historic Preservation Act is available at* www.eh.doe.gov/oepa/guidance/cultural/nhpa_brf.pdf. LL

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.*

- **How to Manage the NEPA Process and Write Effective NEPA Documents**
  Salt Lake City, UT: September 26-28
  Fee: $885 (GSA contract: $795) until September 16
  Dallas/Ft. Worth, TX: October 18-21
  Fee: $1,110 (GSA contract: $995) until October 4
  Anchorage, AK: November 14-16
  Fee: $885 (GSA contract: $795)

  Overview of the NEPA Process
  Las Vegas, NV: September 28
  Fee: $220 (GSA contract: $195) until September 18

  Team Building for NEPA Specialists
  Salt Lake City, UT: September 29-30
  Fee: $660 (GSA contract: $595) until September 22

  NEPA Process Management – Online Distance Education
  Webcast: October 10-21
  (may be completed anytime during this period)
  Chat Session: October 24
  Fee: $435 (GSA contract: $395)

  Clear Writing for NEPA Specialists
  Salt Lake City, UT: October 17-19
  Fee: $885 (GSA contract: $795) until October 10

  Cumulative Impact Analysis and Documentation
  Salt Lake City, UT: October 20-21
  Fee: $660 (GSA contract: $595) until October 6
  Anchorage, AK: November 17-18
  Fee: $660 (GSA contract: $595)

  Reviewing NEPA Documents
  Las Vegas, NV: November 16-18
  Fee: $880 (GSA contract: $795)
  Logan, UT: December 7-9
  Fee: $835 (GSA contract: $745) until September 6

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

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

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

- **Implementation of the National Environmental Policy Act**
  Durham, NC: September 12-16 (waiting list)
  Fee: $1,050

  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

  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.

  del@nicholas.duke.edu
  www.env.duke.edu/del/continuinged/certificates.html

Training Opportunities

(continued from previous page)

- **NEPA Toolbox™ Training**
  Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including those from other agencies. Services are available through a GSA contract.

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

- **Environmental Impact Training**
  Courses cover topics such as environmental impact assessment, cumulative effects, environmental justice, reviewing NEPA documents, computer-based models, and adaptive management. Topics from several courses can be packaged together to meet the specific training needs of clients.

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

- **NEPA Compliance Workshop**
  San Francisco, CA: September 13-15
  Fee: $950 (Government: $750)

  Assessing Cumulative Impacts
  San Francisco, CA: September 16 (half day)
  Fee: $300 (Government: $200)

  Effective Community Outreach
  San Francisco, CA: September 16 (half day)
  Fee: $300 (Government: $200)

  Tetra Tech, Inc.
  877-468-3872
  fall2005@ttsfo.com
  www.tetratechNEPA.com

- **NEPA Practice: 2005 Update**
  Portland, OR: October 5-6
  Fee: $395 (Government: $325)
  until September 28

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

Department of Energy
in partnership with the Council on Environmental Quality

Observance of the 35th Anniversary of the National Environmental Policy Act (NEPA)

November 2 and 3, 2005
Hotel Washington, Washington, DC

The conference registration Web site (*www.NEPA35.org*) provides additional details on preconference training, informative plenary sessions, and a broad range of breakout topics.

Program Overview:

November 2:	9:00–11:30	Pre-conference training
	1:00 - 5:00	Conference opening, Plenary sessions
November 3:	9:00 - 11:45	Breakout sessions
	1:00 - 5:00	Plenary sessions, Conference closing

EAs and EISs Completed April 1 to June 30, 2005

EAs

Argonne Site Office/Office of Science
DOE/EA-1519 (4/12/05)
Decontamination and Decommissioning of Zero Power Reactors (Building 315) at Argonne National Laboratory, Argonne, Illinois
Cost: $37,000
Time: 6 months

Bonneville Power Administration
DOE/EA-1518 (6/15/05)
Kootenai River Ecosystem/Fisheries Improvement Study, Oregon
Cost: $26,000
Time: 7 months

Golden Field Office/
Office of Energy Efficiency and Renewable Energy
DOE/EA-1517 (4/6/05)
Design and Construction of a Proposed Fuel Ethanol Plant, Jasper County, Indiana
Cost: $280,000
Time: 5 months

Los Alamos Site Office/
National Nuclear Security Administration
DOE/EA-1515 (5/22/05)
Environmental Assessment for Proposed Closure of the Airport Landfills within Technical Area 73 at Los Alamos National Laboratory, Los Alamos, New Mexico
Cost: $41,000
Time: 5 months

Savannah River Operations Office/
Office of Environmental Management
DOE/EA-1513 (4/12/05)
National Pollutant Discharge Elimination System Wastewater Permit Compliance Alternatives at the Savannah River Site, South Carolina
Cost: $64,000
Time: 5 months

Savannah River Operations Office/
National Nuclear Security Administration
DOE/EA-1528 (6/1/05)
Storage of Tritium-Producing Burnable Absorber Rods in K-Area Transfer Bay at the Savannah River Site, South Carolina
Cost: $52,000
Time: 3 months

Western Area Power Administration
DOE/EA-1521 (6/13/05)
Spring Canyon Wind Project (formerly known as the Peetz Table Wind Project), Logan County, Colorado
Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 6 months

EIS

National Nuclear Security Administration/
Livermore Site Office
DOE/EIS-0348 (67 FR 41224, 4/29/05)
(EPA Rating: EC-2)
Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic Environmental Impact Statement, Livermore, California
Cost: $5 million
Time: 34 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 text box on page 9 and the EPA Web site 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 $46,000; the average was $83,000.
- Cumulatively, for the 12 months that ended June 30, 2005, the median cost for the preparation of 20 EAs for which cost data were applicable was $51,000; the average was $84,000.
- For this quarter, the median and average completion time for 7 EAs was 5 months.
- Cumulatively, for the 12 months that ended June 30, 2005, the median completion time for 24 EAs was 7 months; the average was 11 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS for which cost data was applicable was $5 million.
- Cumulatively, for the 12 months that ended June 30, 2005, the median and average cost for the preparation of 2 EISs for which cost data were applicable was $2,875,000.
- For this quarter, the completion time for one EIS was 34 months.
- Cumulatively, for the 12 months that ended June 30, 2005, the median completion time for 6 EISs was 31 months; the average was 30 months.

Recent EIS-Related Milestones (June 1 to August 31, 2005)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0384
Chief Joseph Dam Hatchery Program, Okanogan County, Washington
August 2005 (70 FR 44347, 8/2/05)

Office of Fossil Energy
DOE/EIS-0383
Orlando Gasification Project, Orlando, Florida
August 2005 (70 FR 46825, 8/11/05)

Draft EISs

Office of Electricity Delivery and Energy Reliability
DOE/EIS-0372
Presidential Permit Application, Northeast Reliability Interconnect (Bangor Hydro-Electric), Bangor, Maine
August 2005 (70 FR 50346, 8/26/05)

Office of Nuclear Energy, Science and Technology
DOE/EIS-0373
Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems, Tennessee, New Mexico, and Idaho
July 2005 (70 FR 38131, 7/1/05)

Final EISs

Bonneville Power Administration
DOE/EIS-0353
South Fork Flathead Watershed/Westlope Cutthroat Trout Conservation Project, Powell and Missoula Counties, Montana
August 2005 (70 FR 48704, 8/19/05)

Office of Environmental Management/ Grand Junction Office
DOE/EIS-0355
Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah
August 2005 (70 FR 45389, 8/5/05)

Notice of Preferred Technology

Office of Environmental Management
DOE/EIS-0287
Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement, Idaho
August 2005 (70 FR 44598, 8/3/05)
(70 FR 49264, 8/23/05; comment period extended to 9/21/05)

(continued on next page)

Recent EIS-Related Milestones (June 1 to August 31, 2005)

(continued from previous page)

Records of Decision

Bonneville Power Administration
DOE/EIS-0183
Business Plan: Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007-2011, Administrator's Record of Decision, Portland, Oregon
July 2005 (70 FR 40999, 7/15/05)

Office of Environmental Management/ Ohio Field Office
DOE/EIS-0337
West Valley Demonstration Project Waste Management Environmental Impact Statement, West Valley, New York
June 2005 (70 FR 35073, 6/16/05)

National Nuclear Security Administration/ Los Alamos Site Office
DOE/EIS-0293
Amended Record of Decision, Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the U.S. Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
August 2005 (70 FR 48378, 8/17/05)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program Environmental Impact Statement
(DOE/EIS-0246)

DOE/EIS-0246-SA-46
Blue Creek Winter Range - Spokane Reservation (Acquisition of Gribner, Wolfrum, and Yepa Properties and 11 Tribal Allotments), Spokane Indian Reservation, near Wellpinit, Stevens County, Washington
(No further NEPA review required)
August 2005

DOE/EIS-0246-SA-47
Malheur (Denny Jones Ranch) Wildlife Mitigation Project - Management Plan, Malheur County, Oregon
(No further NEPA review required)
August 2005

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

DOE/EIS-0265-SA-208[1]
Columbia Basin Water Transactions Program (Fiscal Year 2005), Oregon, Washington, Idaho and Montana
(No further NEPA review required)
June 2005

DOE/EIS-0265-SA-209*
John Day Watershed Restoration Program, Wheeler County and Grant County, Oregon
(No further NEPA review required)
April 2005

DOE/EIS-0265-SA-212
Restoring Anadromous Fish Habitat in Lapwai Creek Project, Nez Perce and Lewis County, Idaho
(No further NEPA review required)
June 2005

DOE/EIS-0265-SA-213
Lostine Bank Stabilization Project (Phase 2), Wallowa County, Oregon
(No further NEPA review required)
June 2005

DOE/EIS-0265-SA-214
Poley Allen Diversion Structure Modification Project, Wallowa County, Oregon
(No further NEPA review required)
June 2005

DOE/EIS-0265-SA-215
Idaho Model Watershed Projects for FY 05, Custer and Lemhi Counties, Idaho
(No further NEPA review required)
July 2005

DOE/EIS-0265-SA-216
Grande Ronde Model Watershed - Wallowa Canyonlands Weed Removal, Wallowa County, Oregon
(No further NEPA review required)
July 2005

(continued on next page)

[1] DOE/EIS-0265-SA-208 was listed in the June 2005 issue of *LLQR* as *Final Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington*. This document number has been reassigned by BPA to the current listing. The *Toppenish Creek Watershed Restoration Project* is DOE/EIS-0265-SA-206.

** Not previously reported in* LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-217
Grande Ronde Model Watershed Program - Dry Creek/Lower Valley Ditch Passage,
Wallowa County, Oregon
(No further NEPA review required)
July 2005

DOE/EIS-0265-SA-218
Columbia Basin Water Transactions Program (Fiscal Year 2005, No. 2), Oregon, Washington, Idaho and Montana
(No further NEPA review required)
July 2005

DOE/EIS-0265-SA-219
Yakima Basin Side Channels Project, Upper County Community Church Property Acquisition, Kittitas County, Washington
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-220
Protect and Restore Lolo Creek Watershed - Blonde Creek Road/Stream Crossing Upgrades, Clearwater County, Idaho
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-221
Oxbow Conservation Area - CREP Conservation Practices, Grant County, Oregon
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-222
Oregon Fish Screening Project - Beech Creek and Rock Creek Diversions, Grant and Wheeler Counties, Oregon
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-223
Lake Roosevelt Habitat Improvement Project - San Poil River Bank Stabilization, Ferry County, Washington
(No further NEPA review required)
August 2005

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

DOE/EIS-0285-SA-258*
Vegetation Management along the Ross-St. Johns No. 1, 230 kV, and Rivergate-Keeler No. 1, 115 kV Transmission Line Corridors, Clark County, Washington and Washington County, Oregon
(No further NEPA review required)
May 2005

DOE/EIS-0285-SA-259*
Vegetation Management along the Grand Coulee-Bell 115 kV and 230 kV Transmission Line Corridor Right of Way (ROW), Spokane County, Washington
(No further NEPA review required)
May 2005

Office of Environmental Management/ Idaho Operations Office

Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement
(DOE/EIS-0287)

DOE/EIS-0287-SA-01
Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement, Idaho
(No further NEPA review required)
June 2005

DOE Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement
(DOE/EIS-0203)

DOE/EIS-0203-SA-02
INL Site Portion of the April 1995 Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement, Idaho
(No further NEPA review required)
June 2005 LL

* *Not previously reported in* LLQR

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 2005.

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

Scoping

What Worked

- *Alternatives defined early.* Alternatives were discussed in the first internal EA scoping meeting, including the definition of the no-action alternative and a request for proper analyses for each alternative early in the process.
- *Addressed issues presented at scoping meeting.* The Introduction chapter of the EA addressed issues raised during public scoping that are outside the NEPA process to demonstrate that DOE had listened to public comments. Also, DOE considered measures that the interested parties put forward during scoping, even though they were bounded by other alternatives, so as to demonstrate again that the agency did listen to their suggestions.
- *Familiarity with community.* The project staff planned and conducted the public EA scoping meeting. They live and work in the community, and they know the media, elected officials, environmental groups, and their neighbors.
- *Established deadline.* A deadline was set for internal EA review comments.

What Didn't Work

- *Large number of alternatives considered.* The project scope was problematic due to the large number of alternatives considered.

Data Collection/Analysis

What Worked

- *More data are better.* Credible and defensible data are important. More data are better than not enough.
- *Project staff actively involved.* Project staff was very involved in gathering and providing information and reviewing drafts.

What Didn't Work

- *File format difficult to edit.* The contractor provided the draft and final EA in Adobe Acrobat (pdf) format. Minor editorial revisions were troublesome; revisions would have been easier if the documents had been provided in Microsoft Word (doc) format. Additionally, the color pictures in the EA looked good, but required special equipment to reproduce in color.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Working together effectively.* DOE and contractor NEPA staffs and project staff worked closely and effectively throughout a detailed EA scoping meeting, document review, and comment resolution. Daily contact facilitated staying on schedule, and contacting reviewers in advance helped assure completion of reviews on time.
- *Use of existing information.* Information was readily available in safety analyses to support the EA.
- *Transmittals to states.* Providing electronic as well as hard copies of the EA to the states for review proved to be a more efficient use of time.
- *Close coordination and adherence to deadlines.* A close working relationship with the preparer of the document, early engagement with interested parties, use of data from other NEPA documents, and adherence to deadlines all facilitated timely completion of the EA.
- *Frequent communication.* Frequent conference calls between the writer/editor and project staff facilitated timely completion of the EA.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

Factors that Inhibited Timely Completion of Documents

- *Changing project scope.* Periodic changes in the project scope adversely affected the EA schedule.
- *Reviewers did not read drafts.* Some reviewers did not read the draft EA and related documents. If the people had reviewed the documents as requested, the EA could have been issued sooner.
- *Reviewer harassment.* Hounding the reviewers caused difficulty in completing the EA. A "personable" coordinator usually guarantees action.
- *Late notification.* NEPA staff were not notified about the project early enough by project managers, inhibiting timely completion of the EA.

Teamwork

Factors that Facilitated Effective Teamwork

- *Smooth coordination.* Interaction/coordination between DOE and the contractor went smoothly using established protocol.
- *Frequent communication.* Frequent communication facilitated effective teamwork.
- *Previous work with contractor.* DOE used an experienced contractor to prepare the EA. DOE had worked with the contractor before and was confident in its ability to provide a quality product. This relationship contributed to the effective teamwork.
- *Close working relationship.* A close working relationship in reviewing and in comment resolution facilitated effective teamwork on the EA.
- *Availability of staff.* All individuals involved were available at every critical step to stay on schedule and have an agreed upon excellent product.
- *Excellent teamwork and support.* Excellent teamwork and support by DOE and the contractor existed, although there was no established procedure. Communication, teamwork, and responsiveness aided the process. All were found to be excellent.
- *Good communication.* Good communication facilitated effective teamwork between DOE and the contractor.
- *Effective coordination.* Effective coordination existed between the document manager, NEPA Compliance Officer, management, and the review team, which consisted of other public entities. Continuous communication with the EA preparer ensured a quality document and on-time deliverable.

Factors that Inhibited Effective Teamwork

- *Procrastination.* Procrastination on the part of reviewers inhibited effective teamwork. All parties involved in the NEPA process need to accept responsibility for the timely review of documents, adherence to schedules, and meeting attendance. Failure to do so, even on the part of one participant, inhibits the effectiveness of the team.

Process

Successful Aspects of the Public Participation Process

- *Public appreciation.* The public seems genuinely grateful that there is a process to ensure that the environment is protected.
- *Posting on multiple Web sites.* The draft EA was posted on Environmental Protection Agency, state, and DOE Web sites. A public notice was released in the form of an Environmental Bulletin within a day of issuing the finding of no significant impact.
- *Flexibility.* Successful aspects of the process are: notification of intent to prepare the EA by newspaper and direct mailings for those that wanted to be on a mailing list; flexibility to have public meetings on an EA; notifications of availability and direct mailings of a draft document; flexibility of review times and public meetings on a draft; and the flexibility to respond to comments either individually or grouped with other similar comments.
- *Keep public informed.* The public reaction was positive. The public respects the project staff, who keep the local community informed about all of their projects and activities in the area.

(continued on next page)

What Worked and Didn't Work

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Unsuccessful Aspects of the Public Participation Process

- *No public comment.* DOE received no public comment on the EA.
- *Involvement in NEPA and RCRA processes.* The public was pleased with the EA process but more concerned with the results of the associated Resource Conservation and Recovery Act process.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Safety and security.* Project staff was allowed to consider the safety and security of alternative storage areas for radioactive materials and to consider long-term storage options.
- *Appropriate decisions.* The EA process supported DOE decisions that the contractor regarded as appropriate.
- *Project planning and design.* The EA process was useful in helping the project proponents think through and clarify how to design and operate the project in an environmentally safe manner.

What Didn't Work

- *Earlier initiation.* The EA process should have been initiated earlier in the project planning/decisionmaking process.
- *More guidance needed.* There should be more guidance on defining and presenting an effective cumulative impacts section.
- *Politics.* Politics drove the EA process.
- *Prior decisionmaking.* Management had decided to implement the proposed action as approved by regulators; the NEPA process was just part of the approval process.

Enhancement/Protection of the Environment

- *Enhanced environment.* The environment was protected and enhanced as a consequence of the NEPA process.
- *Improved surface water quality.* The action would allow DOE to comply with permit requirements and improve surface water quality.
- *Risk analysis.* Human health was protected through a risk analysis.
- *Safety decisions.* NEPA supported safety basis decisions.

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 9 questionnaire responses were received for EAs, 4 out of 9 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process must become a normal occurrence. "We, as a people, cannot afford to compromise the environment any more."
- A respondent who rated the process as "5" stated that the NEPA process was useful in helping to design and operate the project in an environmentally safe manner.
- A respondent who rated the process as "3" stated that there was already an agreement to undertake the proposed action, and the decision was not especially influenced by the NEPA process.
- A respondent who rated the process as "3" stated that the activity could have been categorically excluded, but external politics drove the EA designation.
- Three respondents who rated the process as "2" stated that management had made a decision regarding the proposed action before initiating the NEPA process.
- Two respondents who rated the process as "0" stated that the activity was understood to present no environmental impacts prior to the EA process. LL

Cumulative Index: Lessons Learned Quarterly Reports December 1994–September 2005

KEY
Primary Topic
secondary topic
Month Year/page number(s)

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Lessons Learned *Cumulative Topical Index*

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