

LESSONS LEARNED

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For First Quarter FY 2001

Innovative Field Research Benefits from NEPA Review



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

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



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

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

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

NABIR Primer

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

EA Process Aids Site Selection and Design of Bioremediation Field Studies

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

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

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Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

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

Quarterly Questionnaires Due May 1, 2001

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

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

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Award Nominations Are Due March 15

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

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

Mini-guidance Collection Earns EPA Praise

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

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

Innovative Field Research (continued from page 1)

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

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

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

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

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

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

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



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

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

Authors' Vision: NABIR Serves NEPA's Goals

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

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

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

Saving \$ on EIS Distribution

By: Carl Sykes, Office of NEPA Policy and Compliance

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

Mailing Lists

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

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

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

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

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

Recommendations on Maintaining an EIS Mailing List

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



Mini-guidance from the Office of NEPA Policy and Compliance

Evaluating Alternative Delivery Services

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

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

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

Recommendations on Selecting a Delivery Service

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

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

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

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

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

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

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

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

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

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

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

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

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

Analyzing All Reasonable Alternatives in an EIS

By: Carl Sykes, Office of NEPA Policy and Compliance

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

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

Alternatives Analyzed in the EIS

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

Changed Circumstances Made Impractical Alternative Practical

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

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

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

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

Another EIS Analyzed All Alternatives, Allowed Ready Decision Making

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

Recommendations for EIS Alternatives

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

NOAA Issues New Coastal Zone Regulations

Integration with NEPA Addressed



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

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

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

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

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

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

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

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

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

Recommendations on Coastal Zone Review

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

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

DOE Solicits Comments on Public Participation Policy

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

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

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

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

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

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

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

More National Nuclear Security Administration NEPA Procedures Outlined

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

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

BLM Develops Tool to Foster Better EIS Scoping Comments



By: Brian Mills, Office of NEPA Policy and Compliance

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

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

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

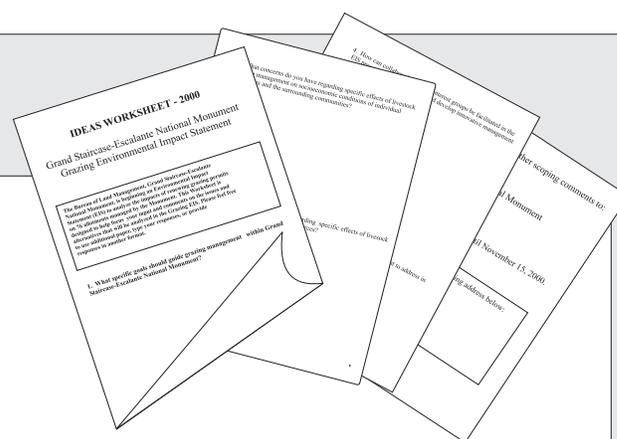
To defuse the intimidating atmosphere of typical gatherings of pro- and anti-grazing forces, BLM divided the meeting participants into working groups by handing out copies of the Ideas Worksheet coded with colored dots for assigned discussion groups. These small-group brainstorming sessions followed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

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

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

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

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



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

NEPA Staff Supported CEQ Technology Task Force

Lee Jessee has returned to the Office of NEPA Policy and Compliance, after serving as an agency representative to the Council on Environmental Quality (CEQ) Environmental Technology Task Force during 2000. Ms. Jessee, founder of the DOE NEPA Web and former Webmaster, applied her expertise in Internet communications to help upgrade environmental information systems in the Executive Office of the President. Working at the CEQ office with CEQ and other Federal agency staff, she also gained insights into broader national environmental policy issues.

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

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

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

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



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

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

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

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

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

Transitions

NEPA Office Welcomes New Staff

The Office of NEPA Policy and Compliance welcomes Jeanie Loving and Brian Mills to DOE. (Carl Sykes was introduced in the December 2000 *Lessons Learned Quarterly Report*.)

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



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

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

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

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

Four New NEPA Compliance Officers Designated

Fossil Energy: Don Silawsky

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

Strategic Petroleum Reserve: Katherine Batiste

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

NNSA Nevada: Kenneth Hoar

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

Ohio Field Office: Robert Grandfield

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

When to Provide Cost Estimates in Annual NEPA Planning Summaries

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

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

Some Considerations in Selecting NEPA Document Preparers

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

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

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

DOE-Wide NEPA Contracts Update

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

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



Litigation Updates

DOE Case Dismissed: Issues Not Ripe for NEPA Review

Sierra Club Challenge to Rocky Flats Gravel Mining

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

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

Other Agency NEPA Case

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

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

Tribe Sought to Resume a Tradition

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

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

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

How Early Is "Early" Under NEPA?

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

continued on page 14

Other Agency NEPA Case (continued from page 13)

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

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

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

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

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

Subsequent Cases Refer to This Decision

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

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

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

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

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

Training Opportunities

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

- **Environmental Laws and Regulations**
San Antonio, TX: April 18-19, 2001
Fee: \$675

An Overview of Environmental Laws and Regulations for Citizens Advisory Boards
Atlanta, GA: May 23, 2001
Fee: \$349

An Overview of Environmental Laws and Regulations for Managers
Las Vegas, NV: June 1, 2001
Fee: \$349

*USDA Graduate School/
DOE National Environmental Training Office*
Phone: 803-725-0818
E-mail: NETO@srs.gov
Internet: www.em.doe.gov/neto/
- **Cumulative Effects Assessment**
Irving, TX: May 15-17, 2001
Fee: \$695

*Environmental Impact Training
Dr. Larry Canter, University of Oklahoma*
Phone: 830-596-8804
E-mail: info@eiatraining.com
Internet: www.eiatraining.com
- **Introduction to Section 106 Review**
Washington, DC: March 20-21, 2001
Denver, CO: March 27-28, 2001
Oklahoma City, OK: April 5-6, 2001
Cleveland, OH: April 24-25, 2001
Omaha, NE: May 8-9, 2001
Albuquerque, NM: May 30-31, 2001
Fee: \$440

Heritage Resources Management
Phone: 800-233-8928
E-mail: crystalm@unr.edu
Internet: www.dce.unr.edu/hrm
- **Mastering NEPA**
Portland, OR: April 5 and 6, 2001
Fee: \$325 (by March 30, then \$355 for government employees)

*Oregon Law Institute, Northwestern School of Law of Lewis and Clark College
Ron Bass, Jones and Stokes
Owen Schmidt, U.S. Department of Agriculture*
Phone: 800-222-8213
E-mail: oli@llark.edu
Internet: www.lclark.edu/~oli
- **Clear Writing for NEPA Specialists**
Anchorage, AK: March 13-15, 2001
Orlando, FL: May 1-3, 2001
Fee: \$795

How to Manage the NEPA Process and Write Effective NEPA Documents
Albuquerque, NM: March 27-30, 2001
San Diego, CA: May 15-18, 2001
Fee: \$995

Reviewing NEPA Documents
Denver, CO: April 18-20, 2001
Fee: \$795

The Shipley Group
Phone: 800-270-2157 or 801-298-7800
E-mail: ben@shipleygroup.com
Internet: www.shipelygroup.com

15th Edition of NEPA Stakeholders Directory Issued

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

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

EAs

Albuquerque Operations Office/Defense Programs – National Nuclear Security Administration

DOE/EA-1335 (10/16/00)

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

Cost: \$60,000

Time: 9 months

Bonneville Power Administration

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

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

Cost: \$10,000

Time: 18 months

Chicago Operations Office

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

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

Cost: \$30,000

Time: 18 months

Golden Field Office

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

Nome, Alaska Wind Turbine Demonstration Project

Cost: \$68,000

Time: 26 months

National Energy Technology Laboratory

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

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

Cost: \$45,000

Time: 6 months

Oakland Operations Office/Environmental Management

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

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

Cost: \$43,000

Time: 8 months

Savannah River Operations Office/Environmental Management

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

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

Cost: \$31,000

Time: 14 months

*Not previously reported in Lessons Learned.

EIS

Nuclear Energy, Science and Technology

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

(EPA Rating: EC-2)

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

Cost: \$4.0 million

Time: 15 months

NEPA Document Costs and Completion Times

Costs

EAs

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

EISs

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

Completion Times

EAs

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

EISs

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

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

Notices of Intent

Bonneville Power Administration
DOE/EIS-0325
Schultz-Hanford Area Transmission Line Project, WA
12/1/00 (65 FR 77352; 12/11/00)

DOE/EIS-0324
Umatilla Generating Project, Umatilla County, OR
12/27/00 (66 FR 1332; 1/8/01)

Draft EIS

National Nuclear Security Administration/Defense Programs
DOE/EIS-0309
Site-Wide EIS for the Oak Ridge Y-12 Plant
December 2000 (65 FR 80856; 12/22/00)

Final EIS

National Nuclear Security Administration/Defense Programs
DOE/EIS-0236-S1
National Ignition Facility Final Supplemental EIS
February 2001 (66 FR 11288; 2/23/01)

Records of Decision

Bonneville Power Administration
DOE/EIS-0266
Fourmile Hill Geothermal Development Project
11/20/00 (65 FR 75929; 12/5/00)

Environmental Management
DOE/EIS-0200
Waste Management Programmatic Environmental Impact Statement; Revision to Record of Decision for Treatment and Storage of Transuranic Waste
12/19/00 (65 FR 82985; 12/29/00)

Environmental Management/Rocky Flats Office
DOE/EIS-0277
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site; Amended Record of Decision
1/11/01 (66 FR 4803; 1/18/01)

Environmental Management/Savannah River Operations Office
DOE/EIS-0220
Interim Management of Nuclear Materials; Amended Record of Decision
1/12/01 (66 FR 7888; 1/26/01)

Fossil Energy
DOE/EIS-0289
JEA Circulating Fluidized Bed Combustor Project, Jacksonville, Duval County, FL
11/29/00 (65 FR 76613; 12/7/00)

Nuclear Energy, Science and Technology
DOE/EIS-0310
Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility
1/19/01 (66 FR 7877; 1/26/01)

Supplement Analyses

Environmental Management/Carlsbad Field Office
DOE/EIS-0200/SA-01
Proposed Characterization for Disposal of Contact-Handled Transuranic Waste at the Waste Isolation Pilot Plant
(Decision: No further NEPA review required)
December 2000

National Nuclear Security Administration/Defense Programs
DOE/EIS-0238/SA-01 *
Modification of Management Methods for Certain Unwanted Radioactive Sealed Sources at Los Alamos National Laboratory
(Decision: No further NEPA review required)
August 2000

* Not previously reported in Lessons Learned

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

Adequacy of the EIS

- Category 1 – Adequate
- Category 2 – Insufficient Information
- Category 3 – Inadequate

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

First Quarter FY 2001 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2000. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping and Public Participation

What Worked

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

Data Collection/Analysis

What Worked

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

What Didn't Work

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

Schedule

Factors that Facilitated Timely Completion of Documents

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

Factors that Inhibited Timely Completion of Documents

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

First Quarter FY 2001 Questionnaire Results

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

Factors that Facilitated Effective Teamwork

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

Factors that Inhibited Effective Teamwork

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

Process

Successful Aspects of the Public Participation Process

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

Unsuccessful Aspects of the Public Participation Process

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

Usefulness

Agency Planning and Decision Making – What Worked

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

Agency Planning and Decision Making – What Didn't Work

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

Enhancement/Protection of the Environment

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

Effectiveness of the NEPA Process

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

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

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

June 1, 2001; Issue No. 27

For Second Quarter FY 2001

It's a Tough Job – And We're Doing It! DOE Issues Supplement to the Yucca Mountain Draft EIS

It's not easy to prepare an environmental impact statement (EIS) for what may become the nation's first geologic repository for spent nuclear fuel and high-level radioactive waste. The technical and policy issues are complex, and the degree of public controversy is likely to remain high. Nevertheless, the Department of Energy (DOE) made significant progress in the project's NEPA review when it issued a Supplement to the Yucca Mountain Repository Draft EIS in May 2001. The EIS Team, led by NEPA Document Manager Jane Summerson, aims to complete a Final EIS by the end of the year.

The Draft EIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-250D) was issued in August 1999. Since then, DOE has continued to investigate design features and operating modes that would reduce uncertainties about repository performance, increase operational flexibility, and improve operational safety and efficiency. The Supplement addresses new site characterization information and enhanced design concepts. The fundamental aspects of the proposed action – to construct, operate and monitor, and eventually close a repository at Yucca Mountain, in Nye County, Nevada – have not changed.

For the Draft EIS, DOE based its analysis of potential environmental impacts on the then-current design, as described in the 1998 *Viability Assessment of a Repository at Yucca Mountain*. The Draft EIS discussed



Lake Barrett, Director, Office of Civilian Radioactive Waste Management (right), addresses EIS issues with Dr. Jane Summerson, NEPA Document Manager (left) and Jay Jones, Yucca Mountain Headquarters Liaison.

ongoing technical evaluations that could result in modifications to that design.

As anticipated, the repository design has continued to evolve, as documented in the *Yucca Mountain Science and Engineering Report*, issued in May 2001. DOE prepared the Supplement to update information presented in the Draft EIS. The Supplement (approximately 60 pages of text) evaluates potential environmental impacts that

continued on page 3

The DOE NEPA Compliance Officers will meet in Washington, DC, June 13 and 14, on the theme of "NEPA: What's New, What's Next." Horst Greczmiel, CEQ's Associate Director for NEPA Oversight, and Anne Miller, Acting Director of the EPA's Office of Federal Activities, among others, will address the group. Readers may forward concerns, suggestions, and questions to their NCOs for them to raise at the meeting.

Inside *LESSONS LEARNED*

Welcome to the 27th quarterly report on lessons learned in the NEPA process.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

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

Quarterly Questionnaires Due August 1, 2001

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2001 (April 1 through June 30, 2001) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

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NAEP Holds 26th Annual Conference in June

The National Association of Environmental Professionals (NAEP) will hold its 26th Annual Conference – “Environmental Policy and Process: New Directions or Staying on Course?” – in Arlington, Virginia, June 24 to 28, 2001. One of the highlights will be NAEP’s 12th Annual NEPA Symposium, this year entitled “NEPA Across the Government.” The Symposium will consist of five NEPA presentation sessions and several panels, including a “NEPA Round Table” discussion in which Carol Borgstrom, Director of DOE’s Office of NEPA Policy and Compliance, will participate. Several NEPA-related courses and workshops also will be held in conjunction with the conference. (See Training Opportunities, page 14.)

DOE Environmental Policy and Guidance Office Wins Award for Biota Dose Method

At the NAEP conference, DOE’s Office of Environmental Policy and Guidance (EH-41) will receive an NAEP National Environmental Excellence Award for its “Graded

Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota.” The award “recognizes projects and programs that exceed established environmental excellence standards and stand out as significant contributions to our environmental profession.” The awardee’s approach, which EH-41 developed through the Department’s Biota Dose Assessment Committee (BDAC), responds to increasing regulatory and stakeholder interest in protecting ecological resources from the effects of radiation. (See *Lessons Learned Quarterly Report*, September 2000, page 7.) For further information about this project, contact Stephen Domotor at stephen.domotor@eh.doe.gov or 202-586-0871, or visit the BDAC Web site at homer.ornl.gov/oepa/public/bdac.

NAEP is a multidisciplinary association with more than 2,000 members dedicated to the advancement of the environmental professions in the United States and abroad. For more information, visit the NAEP Web site at www.naep.org or contact Sandi Worthman at 888-251-9902 or 301-860-1140. 

Supplement to the Yucca Mountain Draft EIS (continued from page 1)

could occur, based on the current, flexible design and its range of possible operating modes.

Preparation of the Yucca Mountain EIS is being led by a team from the Office of Civilian Radioactive Waste Management's Yucca Mountain Site Characterization Office. Dr. Summerson, who is following in the footsteps of two previous document managers, Ken Skipper and Wendy Dixon, has worked in the Yucca Mountain program for 11 years and is looking forward to completing the Final EIS.

"We intend to present a rigorous, scientifically accurate analysis of the potential impacts of the proposed repository," Dr. Summerson said. "We are now in the process of considering and responding to more than 11,000 public comments on the Draft EIS, and we will soon be adding the comments on the Supplement to this effort," she said.



NEPA Document Manager Summerson (right) and Joseph W. Rivers, Jr., Project Manager, EIS Preparation Contractor, discuss preparing the Final EIS.

The comment period for the Supplement began on May 11, 2001. Three public hearings have been scheduled in Nevada. After the public comment period, scheduled to close on June 25, DOE will integrate in the Final EIS the information in the Draft EIS and the Supplement, as well as public comments on both documents and DOE responses to those comments. As provided in the Nuclear Waste Policy Act, as amended, the Final EIS must accompany any recommendation that the Secretary of Energy may make to the President regarding the suitability of the Yucca Mountain Site for a repository.

The Draft EIS and the Supplement are available on the Internet at the Yucca Mountain Project Web Site at www.ymp.gov and on the DOE NEPA Web at tis.eh.doe.gov/nepa/. 

Importance of Objectivity

In December 2000, the Secretary of Energy asked the Inspector General (IG) to investigate allegations that certain technical program documents then in preparation – and referenced in the Supplement – reflected bias that may have compromised the Department's scientific integrity in evaluating the Yucca Mountain Site. After an investigation, the IG issued a report on April 23, 2001, concluding that there was no evidence to "substantiate the concern that bias compromised the integrity of the site evaluation process."

In his comments on the IG's report, Secretary of Energy Spencer Abraham stated that he "was pleased with the results of the investigation" and echoed a principle well known to NEPA practitioners: "...we must ensure that our work does not even raise the perception of possible bias. Public trust in the fundamental processes of government is crucial to the fulfillment of the Department's mission." [The Council on Environmental Quality's NEPA implementation requirements emphasize the need for completeness and integrity. See, for example, 40 CFR sections 1501.1 (full and fair discussion) and 1502.24 (professional integrity, including scientific integrity).]



An "alpine miner" excavates an access tunnel inside Yucca Mountain. The Office of Civilian Radioactive Waste Management continues to conduct site characterization studies of the Yucca Mountain Site.

Los Alamos Project Guided by MAP

By: Todd Haagenstad, *Los Alamos National Laboratory Ecology Group*
 Carl Sykes, *Office of NEPA Policy and Compliance*

Under DOE NEPA regulations, after the completion of each Final Environmental Impact Statement (EIS) and its associated Record of Decision (ROD), DOE must prepare a Mitigation Action Plan (MAP) that addresses any mitigation commitments expressed in the ROD and explains how the mitigation commitments will be planned and implemented (10 CFR 1021.331). At Los Alamos National Laboratory (LANL), the MAP for the Dual Axis Radiographic Hydrodynamic Test (DARHT) facility has been successfully implemented for about six years – a notable example of how a MAP can be effectively institutionalized at a DOE site.

The DARHT MAP, issued in January 1996, provides direction for implementing measures to reduce or avoid the potential adverse environmental impacts of the selected alternative. It also establishes Action Plans to carry out each mitigation commitment in the DARHT ROD (60 FR 53588; October 16, 1995). The status of implementation is managed through a tracking system and reported to the public and stakeholders via a MAP Annual Report issued in January.

Integrate with Project Management

The steps that led to successfully institutionalizing the DARHT MAP began early in the NEPA process. All members of the EIS team understood that a MAP would be needed, and the project staff were able to incorporate mitigation measures directly into project management documents and plans for DARHT facility design, construction, and operation even before the MAP was issued.

Because of this close integration of the NEPA process with project management, the project design team addressed many of the mitigation commitments early in the DARHT project-planning phase. For example, in

Potential Impacts Addressed in the DARHT Mitigation Action Plan	
Area of Concern	Example of Mitigation Action
Cultural Resources, especially a particular archaeological site	Designing the physical orientation of the DARHT facility to ensure that shrapnel would not adversely affect the important nearby Nake'muu archaeological structure, and monitoring the condition of Nake'muu over time to ensure that DARHT operations are not causing changes to the structure.
Human Health	Construction of an earthen berm over and around the accelerator tunnel to minimize radiation exposure to involved and collocated workers.
Soils, especially soil loss and contamination	Revegetation with native plants and reforestation of land disturbed by construction activities.
Biota, including threatened and endangered species	Development of a Habitat Management Plan, which serves all of LANL as well as the DARHT facility. (See <i>Lessons Learned Quarterly Report</i> , June 1999, page 1.)
General Environment, including air and water	Annual environmental contaminant monitoring of soils, vegetation, invertebrates, small mammals, birds, and large mammals around the DARHT facility site.



The Nake'muu site, a 50-room pueblo occupied between 1300 and 1400 and the only prehistoric pueblo at LANL with its original walls, was protected from shrapnel by orientation of the DARHT facility.

consultation with tribal representatives and the State Historic Preservation Office, a sensitive archaeological site in the project area was left in place and capped to prevent adverse effects from construction of the facility. Another site was protected from shrapnel by orientation of the DARHT facility. Completion of these commitments helped the project team gain approval for the final design and authorization to begin construction.

continued on next page

Guided by MAP

(continued from previous page)

Other mitigation measures from the NEPA process – particularly for construction-related impacts – were incorporated into the project construction documents. For example, the DARHT facility required an exclusion fence for worker safety and operations security; however, a standard security fence would adversely affect elk movement across the relatively narrow mesa top. After further study, including agency consultation and field studies, the fence design was modified to allow elk movement while still meeting security and safety requirements.

MAP Implementation Continues While DARHT Operates

Initially, the DARHT MAP was designated as a formal, line-item task during the design and construction phases. The roles and responsibilities of all parties were defined through formal work agreements updated for each fiscal year funding cycle.

After completion of DARHT construction in 1999, LANL transferred day-to-day management and operation of the facility from its DARHT project office to a facility manager. DOE staff, the DARHT MAP project leader, and project office staff had been thoroughly discussing the scope, schedule, and implications of the DARHT MAP with the facility manager a year before the transition. This allowed for a smooth transition to facility operation and guaranteed long-term implementation of the MAP. In the present operations phase of the project, the facility manager remains closely involved in MAP activities by reviewing all mitigation-related results and documents. Because he understands the MAP, the facility manager has directly assisted DOE and the DARHT MAP project leader in modifying and adapting the mitigation measures to new conditions, where needed.

A well-managed mitigation program like this helps ensure that adverse impacts are minimized, that mitigation measures can change over time if necessary, and that the environment is protected over the long term. All this can happen when a MAP is “baked” right into the design and long-term management plans for a project – and is not just the “frosting” on the top.

[This approach embodies the Council on Environmental Quality’s objective in its NEPA reinvention initiative: “Agencies should take a new approach... one that takes the standard NEPA paradigm of ‘predict, mitigate, implement,’ and incorporates monitoring and adaptation....” (See Lessons Learned Quarterly Report, June 1997, page 3.)]



A modified security fence design allows elk to pass across the DARHT facility site.

Recommendations

- ✓ Have NEPA Document Managers work directly with project design staff to incorporate MAP activities into project design documents.
- ✓ Fund and implement MAPs through a project’s facility management group to ensure long-term “ownership” of mitigation activities.
- ✓ When developing a MAP, provide means by which mitigation measures may be fine-tuned based on future experience and periodic review.

For more information, contact Todd Haagenstad at hth@lanl.gov or 505-665-2936, or Elizabeth Withers, Los Alamos Area Office NEPA Compliance Officer, at ewithers@doeal.gov or 505-667-8690.

Mitigation Measures

Identify in EIS

Commit to in ROD

Incorporate in Design

Fund and Implement

Monitor

Adapt



BPA's "Reader's Guide" Makes EIS Reader-Friendly

By: Charles Alton, *NEPA Document Manager*, and Kathy Pierce
Environmental Planning and Analysis, Bonneville Power Administration

To help readers understand the unique nature of a policy-level EIS, the Bonneville Power Administration (BPA) recently developed a Reader's Guide for its Fish and Wildlife Implementation Plan EIS (DOE/EIS-0312D; May 2001). The

guide, reproduced here in its entirety, is intended to help readers grasp the purpose and structure of what they might otherwise view as a complicated document.

READER'S GUIDE

Welcome to the Fish and Wildlife Implementation Plan draft environmental impact statement (DEIS). Below are a few tips to help you make best use of the document.

WHAT THIS DOCUMENT DOES

- This DEIS is designed to (1) evaluate the range of potential Policy Directions and to present possible implementing actions that the region could decide to take for fish and wildlife mitigation and recovery efforts, (2) identify the direction the Pacific Northwest is most likely to follow as a coordinated policy to recover fish and wildlife populations in the region, and (3) determine the environmental consequences of BPA's future decisions to implement and fund actions that could emerge from that policy and its associated alternatives. Ultimately, the BPA Administrator will decide how BPA will implement and fund its obligations under the identified policy path.
- BPA alone will *not* be responsible for deciding what the ultimate regional policy will be. State, federal, and local agencies; regional tribes; interest groups; and the people of the Pacific Northwest will decide what the policy itself will look like.

WHAT TO EXPECT IN THE DEIS

- Many EISs are written for specific actions: building or operating a transmission line or a hatchery, for example. This EIS, however, is about *policy*: what kind of priorities to set for fish and wildlife policy and how to integrate those priorities with other needs for use of the river and land.
- This means that the discussions and analyses in this EIS are different from those in typical site-specific EISs. You won't see many calculations, but you *will* see how different actions will cause more or less impact on a natural or social resource. You will see the same topics covered that the Council on Environmental Quality specifies: Need, Background, Alternatives (including No Action or Status Quo—continuing to follow the same path), and Environmental Consequences.
- The DEIS has condensed thousands of pages of technical information produced by other regional processes and has identified key topics connected with fish and wildlife policy. The many proposed fish and wildlife actions have been sorted into five different Policy Directions that represent a wide range of themes. These Directions provide a basis for the region to organize the fish and wildlife processes and ideas. (See the attached Figure RG-1.)
- To focus on the problem and compare possible solutions, read Chapters 1 and 3. For the detailed analysis of the effects on the human environment, read Chapter 5. To understand what effects might occur as a Policy Direction is carried out, or what provisions have been made for change, read Chapter 4. Chapter 2 describes the history of fish and wildlife policy and existing conditions. Chapter 6 focuses on how a selected policy might be managed. (See attached Figure RG-2.)

HOW THE POLICY DIRECTIONS WERE DEVELOPED

- There are many different ways to define and discuss alternatives. We developed a range of five Policy Directions (plus Status Quo) by reading proposals submitted by major participants in several regional planning forums, and identifying common themes or philosophies regarding priorities and values. Then, we grouped proposals together by their overall theme. We could have chosen other ways to organize the material. However, given the thousands of potential alternatives, we believe any policy analysis of this magnitude would require a comparison of broad policy choices, rather than individual options.
- To explore another approach and build your own alternative, please see Appendix I. For ways to comment on what we've done and offer suggestions, please see the cover sheet.

continued on next page

BPA's "Reader's Guide" (continued from previous page)

This EIS addresses broad regional fish and wildlife policy – for example, concerning endangered salmon stocks – to guide BPA funding decisions and mitigation and recovery actions.

For decades, the Columbia River Basin's fish and wildlife resources have been managed by the Federal, State and tribal entities in the Pacific Northwest – each with its own directives, legal constraints, and jurisdictional limits. (Recently, individual and organizational stakeholders also have increased their participation in proposing positions and activities.) Despite a common objective, the various governments and other stakeholders have different, and often conflicting, ideas about what recovery and mitigation to undertake, but they have no overall policy to help coordinate their actions or reconcile their differences.

This EIS provides a framework for integrating more than 2,000 proposed actions into a workable range of five policy alternatives: preserving wilderness from development, preventing extinction, sustaining fish and wildlife resources, sustaining primarily strong resources

over those with likely irreversible declines, and promoting commercial use of resources. The EIS also analyzes the status quo – i.e., a no action alternative.

The EIS preparation team recognized the difficulty of presenting a new policy-based approach to readers whose expectations are based on experience with project and programmatic EISs. To explain up front what to expect, a Reader's Guide (figure on previous page) describes the intent of the EIS, its methodology, and a rationale for organizing the alternatives by major policy themes. The Guide introduces the process used to sort the proposed actions among the policy alternatives (figure below, left) and lays out the structure of the chapters making up the core of this complicated and unusual EIS (figure below, right). With this approach, BPA hopes to make its EIS more inviting to readers.

For more information on the EIS Reader's Guide, contact Kathy Pierce at ks Pierce@bpa.gov or 503-230-3962. 

Figure RG-1: Sorting Policy Alternatives

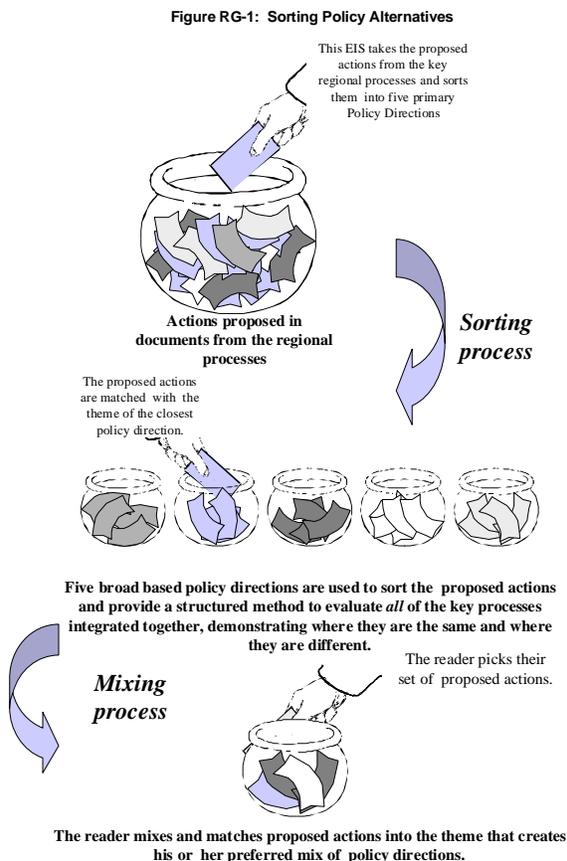
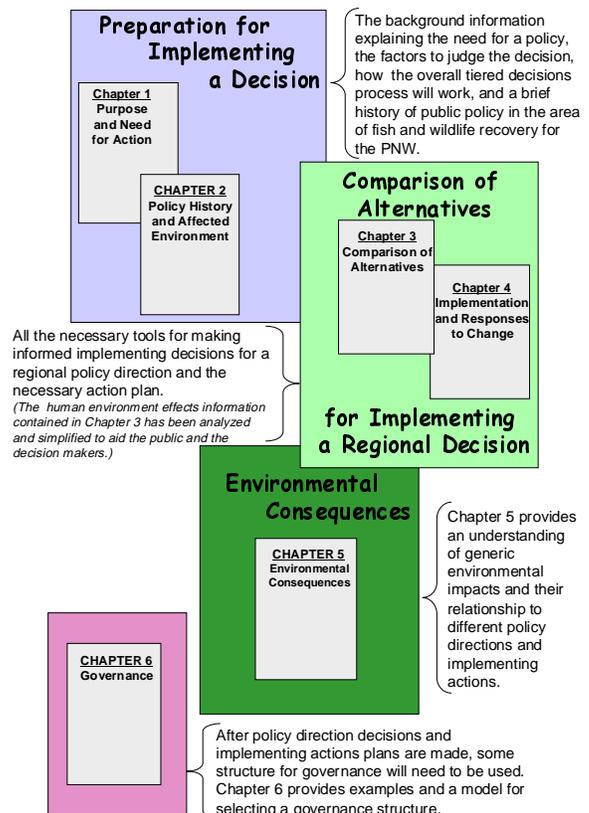


Figure RG-2: Structure of the Chapters



Secretarial Policy on Cultural Resources

On May 2, 2001, the Secretary signed a new DOE policy on Management of Cultural Resources, DOE P 141.1, to:

- Ensure that DOE programs, including the National Nuclear Security Administration (NNSA), and field elements, integrate cultural resources management into their missions and activities, and
- Raise the level of awareness and accountability among DOE (including NNSA) contractors concerning the importance of the Department's cultural resource-related legal and trust responsibilities.

DOE P 141.1 defines cultural resources to include a broad range of items and locations (for example, archeological materials and sites, and cultural and natural places that have importance for American Indians). The Policy reinforces DOE's obligation to uphold cultural resource laws and regulations "in a spirit of stewardship to the extent feasible given the agency's mission and mandates." Responsibilities outlined include those for DOE Operations Office Managers, Field Office Managers, and Program Secretarial Officers regarding tribal consultation, tribal access to cultural resource sites and districts, cultural resource management plans, use of cultural resource professionals, and other matters.

The policy is available on the DOE Directives Web page at www.directives.doe.gov/. 

DOE Guidance on "Working with Indian Tribal Nations"

DOE's Office of Environmental Management, Office of Intergovernmental and Public Accountability, has issued "A Guide for DOE Employees: Working with Indian Tribal Nations" (DOE/EM-0571, December 2000) to help DOE employees and contractors initiate contact with tribes and build effective relationships.

The guide presents an overview of the history of the relationship between the tribes and the Federal government and discusses the Federal government's trust responsibility to the tribes and tribal rights. The guide includes the Executive Orders that define the relationship between the Federal government and tribes, and the DOE American Indian Policy.

Of particular usefulness in our efforts to provide effective public participation opportunities in the NEPA process is the guide's discussion of important cultural differences that could lead to communication problems if not understood, with examples of potential cultural misunderstandings. The guide also discusses tribal environmental beliefs that shape tribal responses to DOE actions and provides pointers on tribal etiquette during meetings, cultural ceremonies, and visits to tribal reservations.

The guide is available at: www.em.doe.gov/public/tribal/history.html, or call the Center for Environmental Management Information at 800-736-3282 or 202-863-5084. Headquarters contacts include: Vicki Thornton, Congressional and Intergovernmental Affairs, at vicki.thornton@hq.doe.gov or 202-586-5499 and Martha Crosland, Environmental Management, Office of Intergovernmental and Public Accountability, at martha.crosland@em.doe.gov or 202-586-5944. 

Historic Preservation Final Regulations

The Advisory Council on Historic Preservation has issued new final regulations for Section 106 of the National Historic Preservation Act, "Protection of Historic Properties," that took effect January 11, 2001 (36 CFR Part 800; 65 FR 77698, December 12, 2000). The Council states that it has retained the major streamlining improvements that it had adopted in its May 1999 regulations but removed operational impediments in the review process and clarified certain provisions and terms. (See *Lessons Learned Quarterly Report*, June 1999, page 3; September 1999, page 2; and December 2000, page 6.)

In 36 CFR 800.8, the section that guides how Federal agencies can coordinate the Section 106 process with NEPA compliance, the Council rewrote Section 800.8(c)(4) to clarify what actions a Federal agency must take in making a binding commitment to avoid, minimize, or mitigate adverse effects on historic properties. The binding commitment is satisfied when either (1) it is in a record of decision (if the measures were proposed in an EIS) or in a Memorandum of Agreement as specified in the regulations, or (2) the Council has commented and the agency has responded to those comments, again as specified in the regulations.

The revised regulations, a User's Guide, and information on the National Historic Preservation Act are available on the Advisory Council's Web site at www.achp.gov/. 

For further information on these topics, contact Katherine Nakata, Office of NEPA Policy and Compliance, at katherine.nakata@eh.doe.gov or 202-586-0801; or Lois Thompson, Office of Environmental Policy and Guidance, at Lois.thompson@eh.doe.gov or 202-586-9581.

Can Pilot Projects, Dispute Resolution Techniques Improve NEPA Implementation?

Institute Requests Comments, Holds Workshops in June

By: Dr. Kirk Emerson, *Director, U.S. Institute for Environmental Conflict Resolution*

At the request of Senators Max Baucus (D-Montana), Mike Crapo (R-Idaho), Harry Reid (D-Nevada), and Craig Thomas (R-Wyoming), the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and dispute resolution processes can improve NEPA implementation. The U.S. Institute is part of the Morris K. Udall Foundation, an independent Federal agency, and was established by Congress in 1998 to assist parties in resolving environmental, natural resource, and public lands conflicts. It also was charged with assisting in achieving the substantive goals of NEPA as expressed in Section 101.

In response to the Senators' request, the Institute is seeking input from those with interest and experience in NEPA review activities and multi-stakeholder collaborative processes. Most agree that there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

Pilot Projects Would Span a Broad Range

The Institute has proposed criteria for selecting pilot projects that represent diversity in regions of the country, agencies, land and resource issues, and stages in the NEPA review and decision-making process. Priority would be given to pilot projects that would:

- Be specifically designed to address one or more of the identified problems (box below);
- Have a “genuine potential for success” (i.e., where decisions have not been predetermined and adequate incentives exist for collaboration or dispute resolution); and
- Emphasize “innovative approaches to the integration of the substantive aspirations of Section 101 of NEPA and the implementing procedures of Section 102.”

Public Comment and Workshops

With the assistance of the Meridian Institute, the U.S. Institute for Environmental Conflict Resolution has published for public review a draft report based on its

continued on page 10

Perceived Problems with NEPA Implementation and Collaboration

Through conversations with NEPA practitioners and stakeholders, the Institute identified a number of perceived problems with aspects of NEPA processes, including:

Implementation

- Inconsistent implementation of NEPA's statutory requirements, regulations, and guidelines
- Over-emphasis on NEPA documentation and litigation protection, rather than sounder strategic planning and decision making
- Inadequate coordination among Federal agencies with overlapping jurisdictions and inadequate intergovernmental coordination with state agencies
- Inadequate attention to realizing the goals of NEPA Section 101

Collaboration

- Lack of guidance on options Federal and state agencies have for using collaboration and dispute resolution and inconsistent approaches among the agencies
- Resource-intensive nature of collaborative processes at the same time there is inadequate funding for those processes
- Lack of clarity on stakeholder roles and responsibilities, and inadequate guidance to those stakeholders

NEPA Pilot Projects Initiative (continued from page 9)

initial discussions and review (66 FR 24161; May 11, 2001, and at www.ecr.gov/) and requests comments by June 25, 2001. The Institute will hold public workshops on June 8 in Denver, Colorado, and on June 14 in Washington, DC. The Institute will prepare formal recommendations to the Senators on a NEPA pilot projects initiative.

To obtain information on the public workshops or to submit comments on the proposal, contact Tutti Tischler at ttischler@merid.org, phone 970-513-8340, ext. 252;

fax 970-513-8348; or write to Meridian Institute, Attn. Tutti Tischler, P.O. Box 1829, Dillon, Colorado, 80435. For information on the pilot projects initiative, contact Sarah Palmer at palmer@ecr.gov, phone 520-670-5299, fax 520-670-5530, or write to U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. 

[Dr. Emerson will make a presentation at the NEPA Compliance Officers Meeting on June 13.]

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see the *Lessons Learned Quarterly Report*, March 2001, page 12; December 2000, page 11; and the Cumulative Index (under "Contracting, NEPA") in the September 2000 issue. For questions or comments on the DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date	Contract Team
Advanced Accelerator Applications Program EIS Scoping	Steve Chase 202-586-3789 stephen.chase@nnsa.doe.gov	1/11/01	Battelle
EA for Biosafety Level 3 Laboratory at Los Alamos National Laboratory	Tom Rush 505-667-5280 trush@doeal.gov	1/26/01	Tetra Tech, Inc.
Everett Delta Lateral Northwest Pipeline EA	Federal Energy Regulatory Commission	2/14/01	Battelle
West Valley Demonstration Project EIS (Decontamination and Waste Management)	Dan Sullivan 716-942-4016 daniel.w.sullivan@wv.doe.gov	2/16/01	Battelle
Supplement Analysis and Draft ROD Revision for WIPP EIS (Disposal of PCB-Commingled TRU Waste)	Harold Johnson 505-234-7349 johnsoh@wipp.carlsbad.nm.us	3/20/01	Battelle
Sandia Underground Reactor Facility EA	Gary Locklin 505-845-4083 glocklin@doeal.gov	4/26/01	Tetra Tech, Inc.

The Three DOE-wide NEPA Contractors

Battelle Memorial Institute
Program Manager: Lucinda Low Swartz
swartzl@battelle.org
phone: 301-933-4668
fax: 301-933-6796

Science Applications International Corporation (SAIC)
Program Manager: Mark Duff (New)
mark.j.duff@saic.com
phone: 303-969-6001
fax: 303-969-8899

Tetra Tech, Inc.
Program Manager: Thomas Magette
tom.magette@tetratech.com
phone: 703-931-9301
fax: 703-931-9222

Don't Forget DOE Public Reading Rooms

Some DOE Offices have been providing EISs to field and headquarters public reading rooms on an informal, walk-in basis. This approach to an important part of EIS distribution has its pitfalls. On occasion the reading rooms have been overlooked in the rush to file an EIS on a tight deadline. In other cases, public availability has been delayed until the reading room receives sufficient document identification, contact, and shelf-life information to help manage the collections.

NEPA Document Managers should:

- ✓ Add appropriate DOE reading rooms to the distribution list of an EIS communications plan, and deliver reading room copies as part of the formal distribution before filing an EIS.
- ✓ Prepare a brief memo to the reading room administrator: identify the document and a contact person, and state how long to keep it publicly available.
- ✓ Provide the reading room the "Interested Party" EIS distribution letter if the letter contains public participation information not on the EIS cover sheet, such as the schedule for public hearings or commenting instructions. 

United States Government Department of Energy

memorandum

DATE: March 26, 2001

REPLY TO:
AUTHOR: Savannah River Site (A. Grainger, 803-952-7205)

SUBJECT: Savannah River Site Salt Processing Alternatives Draft Supplemental Environmental Impact Statement (DOE/EIS-0082-S2D)

TO: Freedom of Information Public Reading Room

Please make the attached copy of the Savannah River Site Salt Processing Alternatives Draft Environmental Impact Statement (DOE/EIS-0082-S2D) available in the reading room through September 30, 2001.

Any inquiries concerning this document may be directed to me at:

Mr. Andrew R. Grainger, NEPA Compliance Officer
U.S. Department of Energy
Savannah River Operations Office
Building 742-A, Room 183
Aiken, South Carolina 29802
ATTN: Salt Processing

or leave a message at (800) 851-7292 or send electronic mail to nepa@srs.gov

Thank you for your assistance.

Andrew R. Grainger
NEPA Compliance Officer
Savannah River Operations Office

Attachment 

NEPA Staff at Earth Day 2001



Denise Freeman, Webmaster, Office of NEPA Policy and Compliance, demonstrates the DOE NEPA Web to students at DOE Headquarters on Earth Day 2001.

Drafting a *Federal Register* Notice, such as a Notice of Intent or Record of Decision?

See the National Archives and Records Administration's collection of document drafting resources at www.nara.gov/fedreg/draftres.html#top. The *Federal Register Document Drafting Handbook* (October 1998) available on that site explains how to prepare *Federal Register* documents that meet publication requirements.

Potential NEPA Implications of National Energy Policy

The Office of NEPA Policy and Compliance is studying the potential NEPA implications of the *Report of the National Energy Policy Development Group*, issued on May 16, 2001, and related Congressional activities. This topic will be discussed at the DOE NEPA Compliance Officers Meeting in Washington, DC, June 13 and 14, 2001. The full report is available on the Internet at www.whitehouse.gov/energy; excerpts potentially of interest to NEPA practitioners are provided below.

“...as a result of an analysis under the National Environmental Policy Act of the impacts of a new power plant in California, the company building the plant agreed to change the design to use a dry cooling method. This change reduced ground-water consumption by 95 percent and eliminated both cooling tower ‘blowdown’ water and particulate emissions, while still achieving the desired energy production.” (Page 3-7.)

[This refers to the Sutter Generating Plant EIS, prepared by DOE’s Western Area Power Administration. See *Lessons Learned Quarterly Report*, December 1999, page 6.]

“Energy development initiatives will be successful only if they address their impacts on natural resource values.” (Page 3-1.)

“The environmental review process can also be made more open, understandable, predictable, and coordinated among federal agencies and with state and local agencies. It can be improved by providing greater information to clarify expectations for energy developers, facilitating concurrent reviews by federal agencies by standardizing certain information needs, sharing information received by project applicants, and seeking opportunities to integrate required environmental processes and reviews.” (Page 3-13.)

Executive Orders Carry Out Energy Report Recommendations

Responding to a recommendation of the National Energy Policy Report, on May 18, 2001, the President issued two Executive Orders: one directing Federal agencies to expedite energy-related projects, and the other directing agencies to consider the energy impacts of their rulemaking proposals.

■ Executive Order 13212: Actions To Expedite Energy-Related Projects (66 FR 28357; May 22, 2001)

This Executive Order directs agencies to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. For energy-related projects, agencies shall expedite their review of permits or take other actions while maintaining safety, public health, and environmental protections. The Council on

Environmental Quality will lead, and DOE will administer, a multi-agency Task Force to monitor and assist agencies in setting up mechanisms to coordinate intergovernmental permitting.

■ Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355; May 22, 2001)

This Executive Order directs agencies to prepare a Statement of Energy Effects for rulemaking proposals with significant energy impacts, and to submit the statement to the Office of Management and Budget and make it publicly available. Although the form of the statement is similar to an EIS, focusing on the analysis and comparison of impacts of the proposal and alternatives, this is not a NEPA-related process. 

Nominee for Council on Environmental Quality

James Laurence Connaughton is the President’s nominee to be a Member of the Council on Environmental Quality (CEQ) and, upon confirmation by the Senate, to be designated as Chair. For the past seven years, Mr. Connaughton, an environmental attorney, served as a lead negotiator on the U.S. Technical Advisory Group to the International Standards Organization Technical Committee 207, which negotiates the ISO 14000 series of international environmental standards. He has worked on issues of foreign and U.S. environmental regulation, international treaties, U.S. legislation, and occupational health and safety management.

In his May 17 confirmation hearing before the Senate Committee on Environment and Public Works, Mr. Connaughton declared “[I] fully embrace NEPA’s broad policy objective. It is why I joined the environmental profession. It is why I have focused my legal practice on the most challenging matters of environmental policy and the promotion of innovative approaches to environmental protection.... I am a strong proponent of searching for and harnessing the power of consensus in meeting shared environmental goals.... I am a forceful advocate and practitioner of environmental stewardship where it matters most – at the source.” 

Transitions

Bill White Retires as Chicago Operations Office NCO

By: Clarence Hickey, NEPA Compliance Officer, Office of Science

Dr. Sedgefield (Bill) White, who served as the Chicago Operations Office NEPA Compliance Officer since 1993, retired on May 31. Bill brought considerable practical experience to his NCO position, having served previously in the DOE Salt Repository Project Office in Columbus, Ohio, and Hereford, Texas, and as an EIS author and ecology researcher with Argonne National Laboratory.

Bill has been a corporate-partner-in-NEPA with the Office of Science and the four National Laboratories administered by Chicago Operations. He has been a supporter of the Office of Science's efforts to conduct state-of-the-art research while protecting the environment and the health and safety of workers and the public. We have appreciated his collegial approach in working with Headquarters to assess under NEPA the potential environmental consequences of research endeavors, especially the way he kept environmental stewardship in the forefront of the NEPA process. Bill collaborated to plan and conduct NEPA training



Bill White served 8 years as Chicago NCO.

workshops for Chicago Operations Office and Office of Science Site Offices and National Laboratory staffs. This promoted efficiency in the sharing of ideas and experiences in NEPA implementation. Bill also helped to lead an Office of Science Categorical Exclusion Task Group in 1995, which led to revisions to the DOE NEPA regulations that have saved time and money.

In addition to his DOE duties, Bill lectures to groups and schools on ecology and the land ethic of Aldo Leopold. Bill plans to continue nurturing a small prairie plot at his Michigan home, which he began as a personal endeavor several years ago and now uses to help local schools teach ecology and environmental stewardship. Bill also plans to build an environmentally friendly cabin in the Maine woods and use it as a place to

nurture body and soul. Friends may contact Bill at wsedge@aol.com. **LL**

We wish Bill White a long, healthy, and fulfilling retirement.

New NCOs

Susan Dyer Morris: NNSA Y-12 Area Office

Susan Dyer Morris has been designated as the NEPA Compliance Officer for the National Nuclear Security Administration, Y-12 Area Office. Ms. Morris has managed the NEPA Compliance Program at Y-12, including the National Historic Preservation Act and related legislation, since 1992. She can be contacted at [morrissd@oro.doe.gov](mailto:morrisds@oro.doe.gov) or 865-576-3545. **LL**

Robin Sweeney: Yucca Mountain Office

Robin Sweeney has been designated as the NEPA Compliance Officer for the Yucca Mountain Site Characterization Office. Ms. Sweeney replaces Kenneth Skipper, who now works for the Bureau of Reclamation in Denver, Colorado. Ms. Sweeney is also the Transportation Manager at Yucca Mountain. She has worked on a wide range of NEPA documents, both at Headquarters and at various field offices since joining DOE in 1990. She can be contacted at Robin_Sweeney@ymp.gov or 702-794-1417. **LL**

Training Opportunities

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

DOE NEPA Course on CD-ROM: NEPA for NEPA Compliance Officers (NETO 122)

The National Environmental Training Office (NETO) offers a computer-based training course designed to provide DOE NEPA Compliance Officers and others with an introduction to NEPA and specific DOE NEPA requirements. Price: \$25.

*DOE National Environmental Training
Office NETO)*
Phone: 803-725-7153
E-mail: NETO@srs.gov
Internet: [www.em.doe.gov/neto/courses/
neto122.html](http://www.em.doe.gov/neto/courses/neto122.html)

• **CERCLA Orientation and Remedial Design/Feasibility Study (NETO 116)**

Idaho Falls, ID: June 26–27

Fee: \$590

Atlanta, GA: July 10–11

(USDA Graduate School)

Fee: \$675

Environmental Justice Training (NETO 120)

Denver, CO: June 21

Washington, DC: July 18

Albuquerque, NM: August 29

(USDA Graduate School)

Phone: 214-767-8245

Fee: \$775

Environmental Laws and Regulations (NETO 256)

Oak Ridge, TN: June 12–14

Fee: \$545

Atlanta, GA: August 8–9

(USDA Graduate School)

Phone: 214-767-8245

Fee: \$675

DOE National Environmental Training Office

Phone: 803-725-7153 or -0814

E-mail: NETO@srs.gov

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

• **Environmental Impact Assessment**

Dallas/Ft. Worth: July 24-26, 2001

Fee: \$695

Environmental Impact Training

Dr. Larry Canter

Phone: 830-596-8804

E-mail: info@eiatraining.com

Internet: www.eiatraining.com

• **The NEPA Toolbox™**

Denver, CO: June 11–15

– Essentials for NEPA Practitioners
June 11–12

– Bulletproofing Your NEPA Documents
(with Daniel R. Mandelker)
June 13

– EAs with FOCUS™

June 14–15

Fees: One day: \$425

Two days: \$650

Three days: \$850

Four days: \$1050

Five days: \$1250

*Environmental Training & Consulting
International Inc.*

Phone: 720-859-0380

E-mail: workshops@envirotrain.com

Internet: www.envirotrain.com

• **Overview of the NEPA Process**

Virginia Beach, VA: June 19

San Diego, CA: August 21

Fee: \$195

Reviewing NEPA Documents

Virginia Beach, VA: June 20-22

San Diego, CA: August 22-24

Fee: \$795

Clear Writing for NEPA Specialists

Portland, OR: July 17-19

Billings, MT: September 18-20

Fee: \$795

How to Manage the NEPA Process and Write Effective NEPA Documents

**(EPA Region 5 and the Southwest Power
Administration)**

Virginia Beach, VA: August 7-10

Billings, MT: September 11-14

Fee: \$995

The Shipley Group

Phone: 888-270-2157 or 801-298-7800

E-mail: ben@shipleygroup.com

Internet: www.shipleygroup.com

NEPA Courses to Be Offered at NAEP Annual Conference

The National Association of Environmental Professionals (NAEP) is offering several NEPA-related courses in conjunction with its annual conference (article, page 2). Courses are open to members (\$125) and non-members (\$225, membership included). All courses will be held June 24, 2001.

Advanced Cumulative Impacts

NEPA Tools for Planning

NEPA for Managers and New Practitioners

NEPA Legal Issues

Mitigation Under NEPA: Theory and Practice

*National Association of Environmental
Professionals*

Phone: 888-251-9902

Internet: www.naep.org/

EAs and EISs Completed (January 1 to March 31, 2001)

EAs

Bonneville Power Administration

DOE/EA-1342 (1/17/01)

*Rebuild of the Sheldon-Kitsap 115 kV No. 2
Transmission Line, Sheldon, WA*

Cost: \$98,000

Time: 12 months

Carlsbad Field Office/Environmental Management

DOE/EA-1340 (1/29/01)

*Conducting Astrophysics and Other Basic Science
Experiments at the Waste Isolation Pilot Plant*

Cost: \$150,000

Time: 12 months

Energy Efficiency and Renewable Energy

DOE/EA-1344 (1/3/01)

*Proposed Energy Conservation Standards for
Residential Clothes Washers*

Cost: \$125,000

Time: 8 months

DOE/EA-1352 (1/4/01)

*Proposed Energy Conservation Standards for
Residential Central Air Conditioners and Heat Pumps*

Cost: \$125,000

Time: 5 months

Oak Ridge Operations Office/Environmental Management

DOE/EA-1361 (1/31/01)

*Transfer of Floodplain Strip Abutting Boeing Property
and for Abrogation of Residential Restriction on Boeing
Property*

Time: 17 months

[Note: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.]

Savannah River Operations Office/Environmental Management

DOE/EA-1308 (2/15/01)

*Offsite Transportation of Certain Low-Level and Mixed
Radioactive Waste from the Savannah River Site for
Treatment and Disposal at Commercial and Government
Facilities, Aiken, SC*

Cost: \$65,000

Time: 20 months

Western Area Power Administration

DOE/EA-1349 (3/15/01)

Blythe Energy Project, Blythe, CA

Time: 11 months

[Note: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.]

EIS

National Nuclear Security Administration/Defense Programs/Oakland Operations Office

DOE/EIS-0236-S1 (66 FR 11288; 2/23/01)

(EPA Rating: EC-2)

*National Ignition Facility Supplemental EIS to the
Stockpile Stewardship and Management PEIS*

Cost: \$1.3 million

Time: 29 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

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

Recent EIS-Related Milestones (March 1 to May 31, 2001)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0330
Walla Walla Power Project, Walla Walla County, WA
3/26/01 (66 FR 18236; 4/6/01)

DOE/EIS-0331
Blackfeet Wind Project, Glacier County, MT
4/6/01 (66 FR 19473; 4/16/01)

DOE/EIS-0333
McNary – John Day Transmission Line Project
5/8/01 (66 FR 27083; 5/16/01)

**Environmental Management/West Valley
Demonstration Project**
DOE/EIS-0226
*Revised Strategy for the EIS for Completion of the West Valley
Demonstration Project and Closure or Long-Term
Management of Facilities at the Western New York Service
Center*
3/21/01 (66 FR 16447; 3/26/01)

Advance Notice of Intent

Environmental Management
DOE/EIS-0329
*Depleted Uranium Hexafluoride Conversion Facilities
at Portsmouth, OH and Paducah, KY*
5/1/01 (66 FR 23010; 5/7/01)

Draft EISs

**Environmental Management/Savannah River
Operations Office**
DOE/EIS-0082-S2
Savannah River Site Salt Processing Alternatives
March 2001 (66 FR 17422; 3/30/01)

Western Area Power Administration
DOE/EIS-0322
Sundance Energy Project, Pinal County, AZ
March 2001 (66 FR 16226; 3/23/01)

Draft EIS Supplement

Office of Civilian Radioactive Waste Management
DOE/EIS-0250D-S
*Supplement to the Draft EIS for a Geologic Repository for the
Disposal of Spent Nuclear Fuel and High-Level Radioactive
Waste at Yucca Mountain, Nye County, NV*
May 2001 (66 FR 24135; 5/11/01)

Supplement Analyses

Bonneville Power Administration

Yakima River Basin Fisheries Project, OR
(DOE/EIS-0169)

DOE/EIS-0169/SA-4
*Yakima Fisheries Project – Construction and Modification
Upgrades to the Prosser Hatchery and Marion Drain Hatchery
Facilities, Yakima County, WA.*
(Decision: No further NEPA review required) November 2000*

Business Plan (DOE/EIS-0183)

DOE/EIS-0183/SA-1
General Transfer Agreement with Okanogan County PUD
(Decision: No further NEPA review required) December 1999*

DOE/EIS-0183/SA-2
*Dworshak Small Hydroelectric Project – Purchase of Electrical
Energy Output*
(Decision: No further NEPA review required) June 2000*

DOE/EIS-0183/SA-3
Goldendale Energy Project
(Decision: No further NEPA review required) March 2001

Resource Contingency Program (DOE/EIS-0230)

DOE/EIS-0230/SA-2
Chehalis Generation Facility
(Decision: No further NEPA review required) May 2001

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246/SA-12
Big Island McKenzie River Wildlife Project, Springfield, OR
(Decision: No further NEPA review required) September 2000*

DOE/EIS-0246/SA-13
Malheur Wildlife Mitigation Project, Malheur County, OR
(Decision: No further NEPA review required) December 2000*

DOE/EIS-0246/SA-14
*Ladd Marsh Wildlife Management Area Additions, Conley Lake
Upland Habitat Restoration, Union County, OR.*
(Decision: No further NEPA review required) March 2001

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265/SA-42
*Umatilla River Basin Anadromous Fish Habitat Enhancement
Project, Umatilla River Basin, near Pendleton, OR*
(Decision: No further NEPA review required) September 2000*

*Not previously reported in Lessons Learned

continued on next page

Recent EIS-Related Milestones (March 1 to May 31, 2001) (continued from previous page)

DOE/EIS-0265/SA-43
Walla Walla River Basin Anadromous Fish Habitat Enhancement Project, Umatilla County, OR, and Columbia County, WA
(Decision: No further NEPA review required) October 2000*

DOE/EIS-0265/SA-44
Lower Wilson Creek Passage Restoration Project, Between Ellensburg, WA and Yakima Canyon
(Decision: No further NEPA review required) November 2000*

DOE/EIS-0265/SA-45
Implement Fisheries Enhancement Opportunities: Coeur d'Alene Reservation, Coeur d'Alene Reservation, ID
(Decision: No further NEPA review required) November 2000*

DOE/EIS-0265/SA-46
Elder and Henne Property Acquisition, Yakima, Yakima County, WA
(Decision: No further NEPA review required) December 2000*

DOE/EIS-0265/SA-47
Salmon River Irrigation Diversion Consolidation, Upper Salmon River, ID, Lemhi County, OR
(Decision: No further NEPA review required) December 2000*

DOE/EIS-0265/SA-48
Acquire Oxbow Ranch - Middle Fork John Day River, Grant County, OR, Middle Fork John Day River Watershed
(Decision: No further NEPA review required) December 2000*

DOE/EIS-0265/SA-49
Walla Walla Basin Passage Improvements Project
(Decision: No further NEPA review required) February 2001*

Records of Decision

Bonneville Power Administration
DOE/EIS-0183
Goldendale Energy Project
3/20/01 (66 FR 17542; 4/2/01)

National Nuclear Security Administration/Defense Programs/Oakland Operations Office
DOE/EIS-0236-S1
National Ignition Facility Supplemental EIS to the Stockpile Stewardship and Management PEIS
3/30/01 (66 FR 18078; 4/5/01)

*Not previously reported in Lessons Learned

NEPA Document Cost and Time Facts

Costs

EAs

- For this quarter, the median cost of five EAs, excluding EA-1349 and EA-1361, for which costs were not applicable, was \$125,000 and the average was \$113,000.
- Cumulatively, for the 12 months that ended March 31, 2001, the median cost for the preparation of 19 EAs was \$68,000; the average was \$81,000.

EISs

- Cumulatively, for the 12 months that ended March 31, 2001, the median cost for the preparation of six EISs was \$1.1 million; the average was \$1.6 million.

Completion Times

EAs

- For this quarter, the median and average completion times of seven EAs were both 12 months.
- Cumulatively, for the 12 months that ended March 31, 2001, the median completion time for 22 EAs was 10 months; the average was 13 months.

EISs

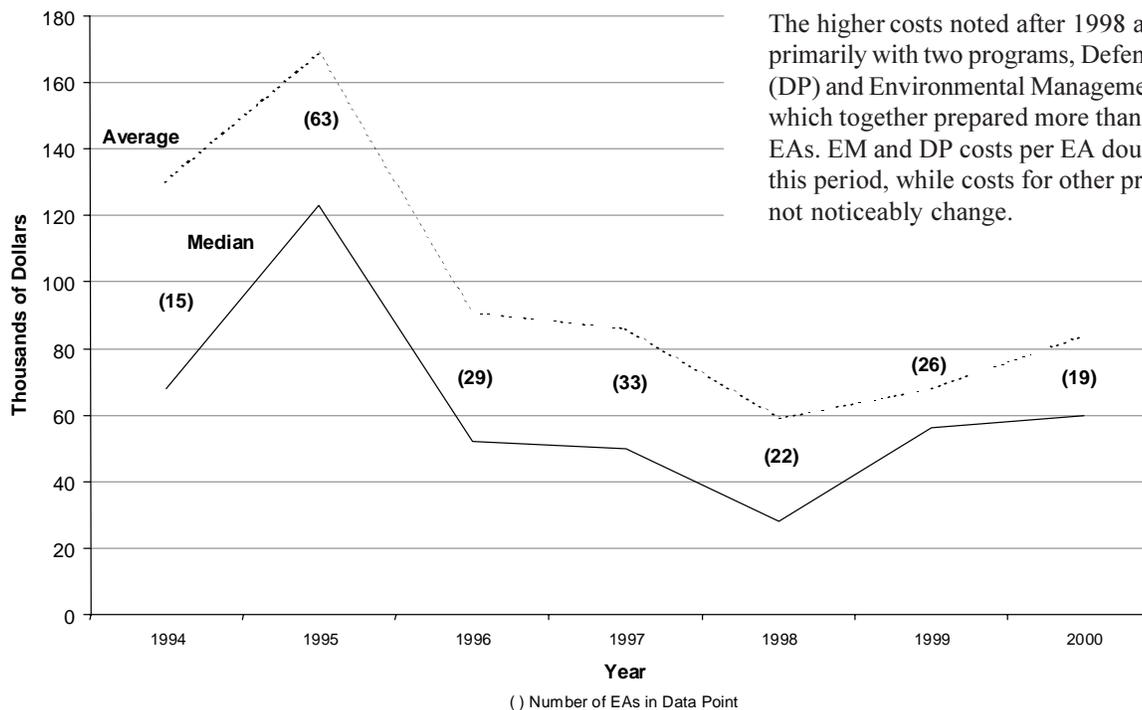
- Cumulatively, for the 12 months that ended March 31, 2001, the median completion time for six EISs was 23.5 months; the average was 24 months.

EA Cost and Completion Time Trends

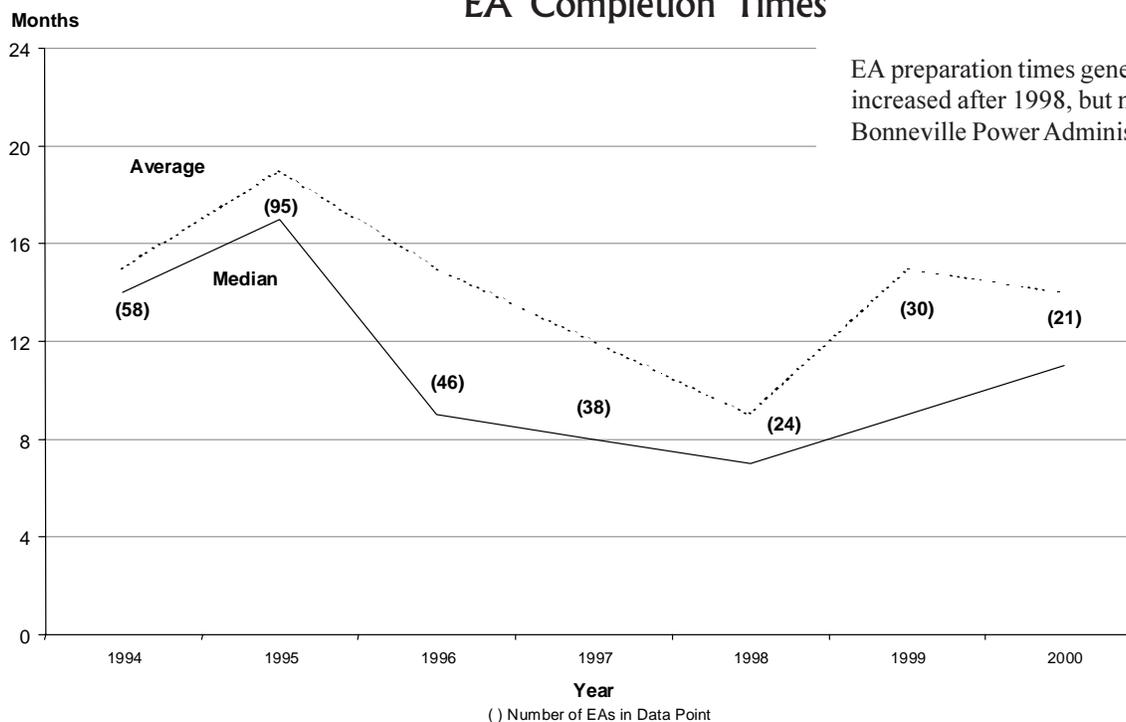
After Field Offices received EA approval authority in 1994, EA preparation cost and time initially increased as a relatively large number of EAs were completed in 1995. EA preparation cost and time subsequently decreased and leveled off at medians of about \$50,000 and 8 months, respectively.

From 1998 through 2000, EA preparation cost and time appear to have increased. Reasons for the increases are unclear. Our data show the following:

EA Costs



EA Completion Times



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 January 1 and March 31, 2001.

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

- *Applicant development of alternatives.* The applicant had already explored alternatives, which facilitated the review and analysis of alternatives.

What Didn't Work

- *Attempts to renegotiate scope.* The initial scope was determined by a legal settlement agreement. The plaintiffs then attempted to change the scope through parties who were not part of the original settlement.

Data Collection/Analysis

What Worked

- *Applicant data.* In preparing the application, the applicant had collected most of the data, so that much less information needed to be gathered for the EA.
- *Designing hypothetical future experiments to bound potential impacts.* The proposed action included defined and undefined potential future experiments. Since the details of all experiments had not been defined, DOE assembled a team of scientists to design hypothetical future experiments to assure that potential impacts were addressed.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Applicant interest.* The applicant's interest in finishing the project was probably the major factor that kept the document on schedule.
- *Internal reviews conducted via electronic mail.* Sending the document and review comments between offices via electronic mail avoided the time and expense of sending hard copies back and forth.

- *Rigorous adherence to a review comment format.* Rigorous adherence to written comment response formats, and having the contractor transfer spoken and handwritten comments into the format, facilitated timely completion of the document.

Factors that Inhibited Timely Completion of Documents

- *Poor communication within the DOE complex.* The site was unaware of the sensitivity of transportation issues in a distant state, leading to a firestorm of comments that could easily have been avoided.
- *Inaccurate modeling input.* Inaccurate information was used in RADTRAN calculations. Redoing the calculations delayed the EA and increased costs.
- *Changes in scope.* The project scope changed significantly during document preparation.
- *Input from outside agencies.* Incorporating input and permit requirements from external agencies took time.
- *Competing work loads.* Competing work loads on the part of DOE and the state agency that we worked with slowed the project.
- *A slow internal review process.* Competing demands prevented early and effective internal reviews, forcing an additional review cycle.
- *Not following the review comment format.* Internal reviewers often did not use the comment format provided, instead providing comments by marginal notes on separate versions of the document.

Factors that Facilitated Effective Teamwork

- *An established document review procedure.* An established document review procedure defined the role of each team member in the process. A limited scope of review allowed quick turnaround without interfering with other tasks.

Second Quarter FY 2001 Questionnaire Results

Factors that Inhibited Effective Teamwork

- *Changes in contractor staff.* Long delays in document preparation led to turnover in contractor staff, causing inefficiencies in coordination of reviews and responses.
- *Lack of detail in billing.* The contractor billed too generally, by person-months rather than work hours and job costs associated with specific tasks. This made it difficult to effectively track project progress.

Process

Successful Aspects of the Public Participation Process

- Good responses on the EA from the affected states prompted DOE to clarify its intentions.
- A special presentation to the Citizens Advisory Board helped inform local stakeholders about the EA.
- Use of a state agency public participation process led to more public involvement for this EA than usual, although the more formal agency style can seem too stiff and intimidating to the public.
- An informal meeting structure and the use of a facilitator to record comments on flip charts helped assure commenters that their input for this EA was heard and understood.

Unsuccessful Aspects of the Public Participation Process

- *Out of scope comments.* Most of the public comments were outside the scope of the EA.

Usefulness

Agency Planning and Decision Making – What Worked

- Public and state comments made DOE aware of sensitivities about the proposed action.
- The EA process enabled the project managers to learn about stakeholder transportation issues.
- A combined NEPA and state process was essential to project planning and decision making. As environmental issues were raised, the project proponent modified the project to decrease impacts.
- The EA helped inform EPA and led to review comments that more clearly defined their role in the permitting process.

Enhancement/Protection of the Environment

- The EA process did not affect the decision, but ensured that the proposed activities would be protective of the environment.
- The EA process identified the need to minimize large volume, liquid shipments to avoid potential accident impacts on small streams.
- Even though the endangered species habitat affected by the project is of low quality, as a result of the EA process the applicant provided funds to set aside an equivalent acreage in prime habitat.

Effectiveness of the NEPA Process

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

- For this quarter, in which there were 7 EAs and 1 EIS, 7 out of 9 respondents rated the NEPA process as “effective.”
- One respondent who rated the process as “5” stated that preparation of the document made the project sponsor look further into the future with respect to planning than they had done previously.
- Another respondent who rated the process as “5” indicated that the applicant planned the project with environmental impacts and mitigation in mind.
- One respondent who rated the process as “4” explained that the “NEPA public review process caused the project managers to make better decisions regarding the transportation of waste.”
- A respondent who rated the process as “1” wrote that it seemed for the most part that DOE was duplicating work that should have been done by another agency.
- A respondent who rated the process as “3” stated that the EA identified potential hazards related to the proposed action and prompted innovative thinking about ways to mitigate those hazards. LL

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

September 4, 2001; Issue No. 28

For Third Quarter FY 2001

NEPA Compliance Officers Consider Further Improvements

“What’s New, What’s Next,” was the theme of the Department of Energy (DOE) NEPA Compliance Officers (NCOs) meeting on June 13 and 14, 2001, in Washington, DC. Convened by the Office of NEPA Policy and Compliance, the meeting involved 70 participants including Program and Field Office NCOs, Headquarters NEPA attorneys, and others.

In welcoming participants, Carol Borgstrom, Director, Office of NEPA Policy and Compliance, recounted recent goals for DOE’s NEPA Compliance Program before considering new challenges. She noted that in the 1990s, the Department achieved significant improvements in the NEPA process through a series of reforms.

“What’s next?” she asked. “Can we make the NEPA process even cheaper, faster, and more useful? This Administration wants to streamline project approvals, especially for projects that increase energy supplies. How can DOE accomplish this while safeguarding the environmental values at the core of NEPA review, and without diminishing the public’s role or increasing litigation risks?”

CEQ NEPA Director: NEPA’s Goals Transcend Politics

The opening speaker, Horst Greczmiel, the Council on Environmental Quality’s (CEQ’s) Associate Director for NEPA Oversight, observed that making NEPA work better is CEQ’s overriding goal under any political administration. Under the leadership of James Connaughton, now confirmed as CEQ Chair, Mr. Greczmiel expects CEQ to emphasize environmental stewardship balanced with economic growth, enhanced opportunities for public participation, and collaboration and consensus building to resolve conflicts.

Mr. Greczmiel identified NEPA issues that are receiving increased attention from stakeholders and that agencies would do well to address:



Responding to NCO questions, CEQ’s Horst Greczmiel recommends the DOTS approach: Depends on the Situation. “CEQ guidance must serve NEPA but preserve the flexibility of over 85 diverse Federal agencies,” he said.

governments to become cooperating agencies. CEQ would generally favor Federal agencies having discretion in selecting cooperating agencies, he said, but agencies will have to justify their decisions.

Mitigation commitments: Mr. Greczmiel pointed to increased public scrutiny of agency follow-through on monitoring and mitigation commitments. He noted that as agencies rely increasingly on mitigated findings of no significant impact (FONSIs), public concern that significant adverse impacts are not being adequately mitigated has increased. He advises agencies to have a method of monitoring the implementation and

Cooperating agencies: He urged DOE to be sure to provide public participation opportunities for states, tribes, counties, and local governments with an interest in a proposed action. Mr. Greczmiel noted that Senate Bill 301 (the State and Local Agencies Involvement Act) would require agencies to invite state and local

continued on page 2

NCOs Consider Improvements (continued from page 1)

effectiveness of mitigation. [DOE's requirements under 10 CFR 1021.331, Mitigation Action Plans, serve this purpose.]

Invasive species: Mr. Greczmiel said that even before Executive Order 13112, Invasive Species (*Lessons Learned Quarterly Report*, March 1999, page 11), CEQ encouraged agencies to consider whether their actions contributed to environmental problems from introducing species that are not native to a region. He stated that the Invasive Species Council, working with CEQ, intends to issue guidance later this year on assessing impacts from nonnative and invasive species in the NEPA process.

Transboundary environmental impacts: Mr. Greczmiel said that CEQ is assisting in informal discussions with Mexico and Canada on approaches for environmental

review of transboundary actions. He said that states on both sides of the U.S.-Mexican border have agreed to provide for transboundary notifications of projects within 100 kilometers of the border.

Urban sprawl: Mr. Greczmiel noted that even agencies such as DOE that do not have direct jurisdiction regarding urban growth are affected as urban areas encroach on their formerly isolated facilities and agency actions may affect urban sprawl. He referred to proposed legislation that would require CEQ to review agency EISs to determine whether they have adequately considered urban sprawl as a direct, indirect, and cumulative impact. As thinking develops on this issue, Mr. Greczmiel predicted, it is likely that the "3Es" – environment, economics, and social equities – will be important in our relationships with communities.

continued on next page

Inside LESSONS LEARNED

Welcome to the 28th quarterly report on lessons learned in the NEPA process. This completes our seventh year of providing performance metrics, news, and guidance to the DOE NEPA Community. Please note the cumulative index in this issue. We thank you for your continuing support of the Lessons Learned program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

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

Quarterly Questionnaires Due November 1, 2001

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2001 (July 1 through September 30, 2001) 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 at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

Printed on recycled paper



Mr. Greczmiel responded to NCO questions on a broad range of NEPA topics:

- ✓ *Would it help to have “alternative arrangements” for an EA in an emergency?* Yes, agencies may want to cover such situations in their NEPA implementing procedures. As CEQ’s alternative arrangements (40 CFR 1506.11) apply to emergency actions with potentially significant impacts, CEQ would not be involved in an action that would be reviewed under an EA or categorical exclusion. [See the discussion of DOE’s emergency NEPA procedures for response to the Los Alamos (Cerro Grande) wildfire on next page.]
- ✓ *Would siting new power plants in California qualify as emergencies (under 40 CFR 1506.11) for reducing the EIS comment periods specified in the CEQ regulations?* Requests to shorten EIS comment periods should be discussed with CEQ and EPA on a case-by-case basis.
- ✓ *Is CEQ focusing on public perception of risk as an impact type in NEPA documents?* The Supreme Court has held that NEPA does not require consideration of potential damages based on risk perceptions **unconnected** to physical impacts to the environment.¹
- ✓ *Will CEQ’s “40 Most Asked Questions” be revised?* NCOs should give any suggestions on needed enhancements to CEQ guidance to Carol Borgstrom, who will forward them to CEQ. Answers to some questions – use of mitigation to support a FONSI (number 40), for example – no longer reflect NEPA practice and will be updated.
- ✓ *Could an EA be sufficient for a proposed action for which impacts appear to be solely beneficial, even though potentially significant?* Impacts, like beauty, are in the eye of the beholder. Not everyone may consider the impacts purely beneficial, and several courts have determined that NEPA review is necessary in cases where agencies claimed significant impacts were purely beneficial.
- ✓ *In setting the scope of review, how far does an agency need to go in assessing the impacts of applicant actions that require a Federal permit?* DOTS – depends on the situation. NEPA gives an agency substantial discretion to scope its NEPA analysis based on its statutory authority, including, for example, whether an agency can control the actions of permit applicants.

Improving Federal/State/Tribal Coordination

In a discussion led by Betty Nolan, Senior Advisor, Congressional and Intergovernmental Affairs, four members of DOE’s NEPA Community provided perspectives on intergovernmental coordination. Ms. Nolan advised NCOs to use the statement of purpose and need as an early coordination tool, because reaching agreement on it before the public scoping period helps smooth the NEPA process. “Instead of waiting until just before the first public meeting,” she said, “reach out and ask the states and tribes if they will work with you.”



Betty Nolan (center) advises NCOs that “Coordination comes down to good communication – meaning plain language and common courtesy.” Charles Alton (left), Bonneville Power Administration, and Nancy Johnson (right), Fossil Energy, also participated in the panel on intergovernmental coordination.

Panelists described their Offices’ NEPA activities with extensive or unique intergovernmental coordination challenges:

Nancy Johnson, Director, Planning and Environmental Analysis, Office of Natural Gas and Petroleum Technology,

based her remarks on the Office of Fossil Energy’s interactions with other agencies on their NEPA reviews concerning oil and gas supplies. To lay the groundwork for collaboration, she advises working with cooperating agencies to identify any differences in interpretation of requirements and to then establish procedures acceptable to all. “It all comes down to

(continued on page 6)

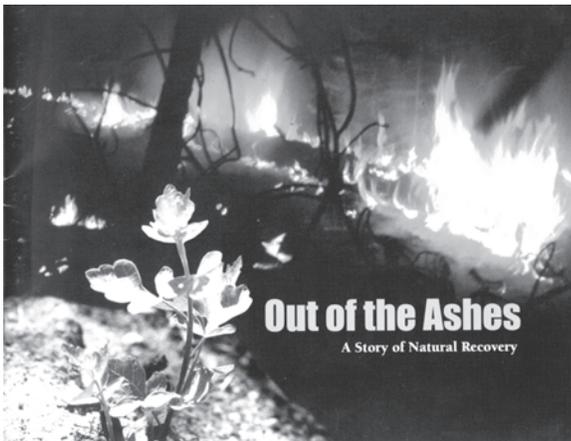
¹ *The Nuclear Regulatory Commission decided not to prepare an EIS on the restart of the undamaged reactor at Three Mile Island; People Against Nuclear Energy claimed that an EIS was needed to address severe psychological health damage to area residents. Metropolitan Edison Co. v. People Against Nuclear Energy (PANE). 460 U.S. 766, 103 S.Ct. 1556 (1983).*

One Forest Is Recovering; Another Is Preserved

NCOs do not just manage their Field or Program Office's NEPA efforts. They and their associates in the DOE NEPA Community also express, often with eloquence and emotion, the environmental consciousness of DOE and its communities – as exemplified by presentations on the May 2000 wildfire near Los Alamos National Laboratory (LANL) and the natural history of DOE's Germantown campus.

Recovering from the Los Alamos (Cerro Grande) Wildfire

In introducing the session on the Los Alamos wildfire, Carl Sykes, formerly of the Los Alamos Area Office and a resident of nearby White Rock (and now with the Office of NEPA Policy and Compliance), described his experience in evacuating his family to Santa Fe a few hours ahead of the evacuation order.



“Knowing your site-wide EIS helps you escape wildfires,” he observed, referring to the 1999 site-wide final EIS for the Los Alamos National Laboratory (DOE/EIS-0238), in which DOE prophetically analyzed an uncontrolled wildfire scenario that was uncannily similar to the fire that occurred a few months later. (See *Lessons Learned Quarterly Report*, June 2000, page 1, on the fire, mitigation, and EIS, and September 2000, page 1, on the CEQ consultations and emergency actions.) He recounted how his familiarity with the EIS helped him to quickly recognize the seriousness of the situation and avoid the traffic congestion (and scarcity of lodging) that started soon after.

Diana Webb, LANL Ecology Group Leader, described the coordinated emergency activities by DOE, agencies of the Departments of the Interior and Agriculture, the State of New Mexico, Los Alamos County, and Santa Clara and San Ildefonso Pueblos. She told how, after a non-coordinated response to the last severe wildfire in 1996, they had formed an interagency wildfire working group that has met every two weeks for five years and fought four subsequent fires. As a result, she emphasized, the Cerro Grande response effort benefited from their mutual trust, communication, and experience. Ms. Webb noted that it was a triumph that no human life was lost, but the toll was nonetheless immense: 400 homes burned, 12,000 people evacuated via one road, personal treasures lost, families dispersed, and 70 square miles of forest burned. Ms. Webb's observations are included in *The Cerro Grande Fire, Los Alamos, New Mexico*, available online at www.esh.lanl.gov/~esh20 under Cerro Grande Recovery Information.

Fire Ecologist Teralene Foxx (retired from LANL) discussed the process of ecological recovery from wildfire, and distributed the booklet she wrote, illustrated, and photographed: *Out of the Ashes: A Story of Natural Recovery* (LALP-01-201; September 2000). After a fire, she explained, a burned area supports a succession of plant communities and the animals that use the plants for food and habitat. The succession is a natural process, though one that can be and often is assisted by environmental rehabilitation activities, such as erosion control and seeding.

“Our mountain will survive longer than we will.... We... can predict only a mere 25 years, knowing that it will take far longer than our lifetimes to see the mountain covered with forests again.... Only the mountain will survive long enough to see all the changes and their impact on future generations.”

LANL NCO Elizabeth Withers, notified as soon as the fire started, recounted how she spent most of the next weeks working in the emergency operations center and at home. Within a day of recognizing that the fire was out of control, she started working with other agencies on environmental compliance; in three days, she realized that consultation with CEQ on emergency NEPA procedures would be needed. “Emergency consultation with CEQ is no less effort than normal NEPA review,” she reported. “It just gets emergency actions underway sooner.”

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One Forest Is Recovering; Another Is Preserved (continued)

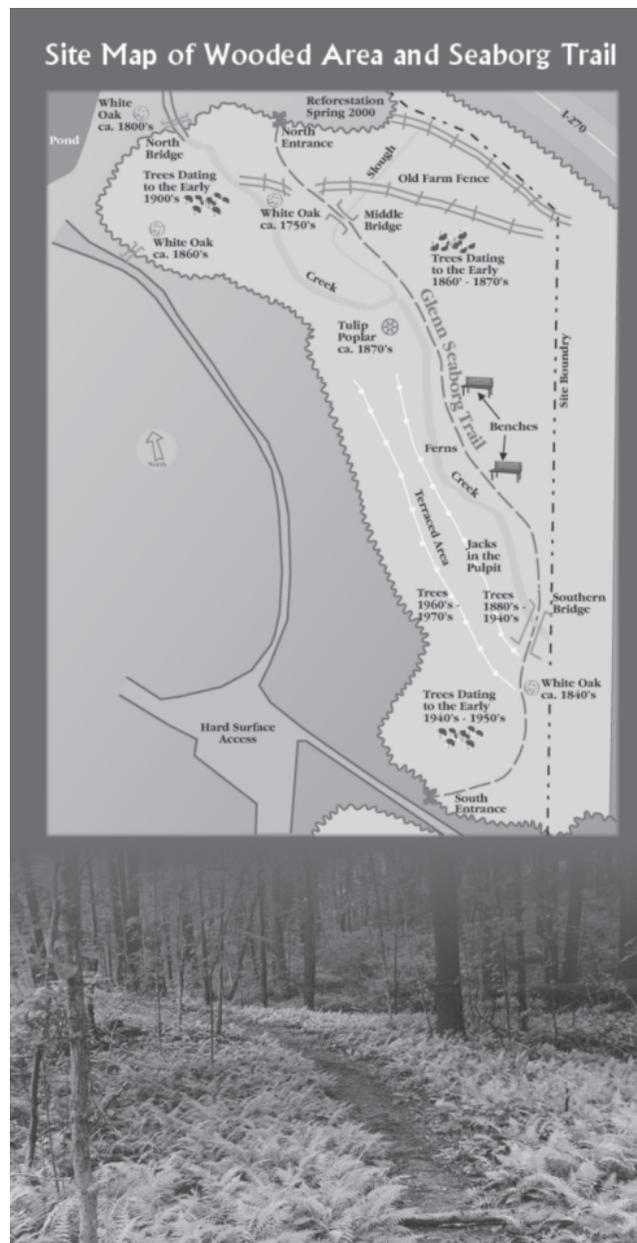
Ms. Withers explained how, in accordance with the alternative NEPA arrangements that DOE and CEQ agreed upon, the Los Alamos Area Office issued a Special Environmental Analysis (DOE/SEA-03) in September 2000 for emergency activities conducted at LANL during and after the fire to protect life, property, and the environment. The SEA documents the emergency actions taken, their associated impacts and mitigation measures, and cumulative impacts. Unlike an EIS, Ms. Withers explained, the SEA does not analyze alternative actions and DOE did not issue a record of decision based on the analysis. DOE fulfilled its last obligation under the alternative arrangements in June 2001 by providing CEQ with a report on lessons learned from preparing the SEA: that a public involvement process is beneficial in the absence of the normal NEPA process, and that the SEA provides a way to document actions taken and serves as a starting point for analyzing future activities. Beginning in January 2002, she said, DOE will issue an annual mitigation report until all actions have been completed.

History and Natural History of DOE's Germantown Campus

Office of Science NCO Clarence Hickey described his studies last summer of the human and natural history of the 100-acre DOE Headquarters campus in Germantown, Maryland, which includes a pond, stream, and a 200-year-old forested area with a trail established by Glenn Seaborg, Nobel Laureate and Atomic Energy Commission Chairman. Mr. Hickey undertook the studies to help DOE employees better understand their work environment and enhance their sense of place. "Many who work at DOE Headquarters have no knowledge of the forest or the pond, who Glenn Seaborg was, and why the Germantown site is there." (See www-ia1.lbl.gov/Seaborg/start.cfm.)

Mr. Hickey worked with DOE historian, Dr. Marie Hallion, and a college student intern to research photographic archives and survey the plants on the site. The results are published in two brochures and a natural history report that are available on the Office of Science Web site (www.science.doe.gov/production/er-80), which also provides a virtual walk along the Seaborg Trail.

Mr. Hickey leads guided tours along the Seaborg Trail that relate the human and natural history of the site. To arrange a tour or for more information, contact Mr. Hickey at clarence.hickey@science.doe.gov. 



The Office of Science Web site provides a site map and photos of the Seaborg Trail, for example, of the ferns surrounding the Trail.

(continued from page 3)

people,” she said. “Creative, dedicated people are the best insurance for a strong NEPA process.” In addition to procedural cooperation, she urges DOE to support a common information base – for example, by providing a geographic information system, data, and methodology to cooperating agencies. She reminded the NCOs that if a collaborative relationship has been established, good ideas can endure even when changes in priorities cause a planned project to be terminated. “Agencies do care,” she observed, “even about environmental matters outside their jurisdiction.”

Charles Alton and Kathy Pierce, Document Managers for the Bonneville Power Administration’s (BPA) Fish and Wildlife Implementation Plan EIS, described how BPA integrated the views of nine Federal agencies, four states, 50 tribes, and many additional stakeholders in preparing a policy-level EIS for recovery of fish and wildlife in the Northwest. Because BPA funds more than half of the recovery efforts in that region, BPA has taken a lead role in the environmental evaluation through the NEPA process. (See *Lessons Learned Quarterly Report*, June 2001, page 6.) Among the techniques they said helped BPA manage this EIS are: acknowledging the political nature of the decision making processes for all participating organizations, controlling document length by incorporating 15,000 pages by reference, and – in early meetings with other agencies and stakeholders – explicitly asking those involved to consider other parties’ positions. Mr. Alton said, “The process through NEPA has very much been ‘show me how the big picture fits together.’”



Dan Sullivan, NCO and NEPA Document Manager, described the flexible NEPA strategy for the Decontamination EIS at West Valley.

Dan Sullivan, NCO and NEPA Document Manager for the West Valley Demonstration Project Decontamination and Waste Management EIS, described the NEPA strategy to separate (that is, appropriately segment) the NEPA review for decontamination of DOE’s facilities at the West Valley site from NEPA review for site decommissioning. DOE intends to prepare a second EIS to address decommissioning with

the State of New York as a joint lead agency. He explained that this separation will allow DOE decision making to proceed on cleanup actions that are needed now, regardless of the later decisions concerning decommissioning that would be made only after difficult political, legal, and policy issues are resolved. Mr. Sullivan pointed to the flexibility of the NEPA process in allowing rescoping of a 1996 draft EIS that had analyzed both near-term (i.e., decontamination) and long-term (i.e., decommissioning) site management alternatives, but that had been stalled since then.

Robin Sweeney, NCO for the Yucca Mountain Site Characterization Office, shared her observations on working with tribes on the NEPA review for the proposed geologic repository for high-level radioactive waste and spent nuclear fuel. She explained that Native Americans living in areas near Yucca Mountain have concerns about protecting the traditional uses and spiritual integrity of the land and restricting access to the site. Accordingly, DOE facilitated early interaction with the tribes, instead of waiting to solicit their comments on the draft EIS. A tribal working group prepared a statement of tribal perspectives on the proposed repository, which was included in the draft EIS as an opposing view. (For more information, see *Lessons Learned Quarterly Report*, June 2001, page 1.)



Robin Sweeney, NCO for the Yucca Mountain Site Characterization Office, explained how her office is incorporating the views of Native Americans in the EIS for the proposed geologic repository.

Betty Nolan concluded the session by observing that a strategy of challenging the NEPA process sometimes appeals to those who cannot successfully challenge the agency on the substance of an action. “Don’t get ‘caught up’ in the disputes over process, but focus on preparing a good impact analysis and respecting the procedural requirements of NEPA,” she advised. “The key is communication.”

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The View from EPA

Anne Miller, Acting Director of the EPA's Office of Federal Activities, opened the second day of the NCO meeting by



Anne Miller, EPA Office of Federal Activities, says, "Now is the time to apply the S word [streamlining]."

discussing EPA's approach to streamlining, which other agencies are emphasizing in their NEPA processes for highways, airports, mining, and grazing projects. Now is the time to apply "the S word" (streamlining) to energy projects. She advised NCOs that the best way to facilitate streamlining is to start NEPA review early and get all parties, including

EPA, involved early. In that regard, she recommended that NCOs get to know their EPA reviewers (related article in *Lessons Learned Quarterly Report*, December 2000, page 3), saying that although budget limitations may keep EPA staff from scoping meetings, agencies could fund EPA participation if desired. She challenged DOE to describe the Department's often highly complex technical proposals in commonly understood language. Ms. Miller also answered questions concerning EISs:

- ✓ *On EPA's system of rating draft EISs:* EPA procedures state that a rating is to be based on the preferred alternative if identified, and otherwise all alternatives are rated, with the rating of record being the rating on the environmentally worst alternative. DOE should expect that most of its projects will be rated Environmental Concerns (EC), as the Lack of Objection (LO) rating is unlikely for a complex project where the impacts may not be "significant" but could be further mitigated. It is the Environmental Objection (EO) rating that denotes serious problems. [EPA ratings are reported for DOE EISs listed in each issue of *Lessons Learned*; in this issue, see page 21.]
- ✓ *On the disposition of the five copies of a filed EIS:* Copies are given to CEQ, a microfiche service, Northwestern University Library, EPA archives, and the EPA Headquarters Liaison for the lead agency.
- ✓ *On the justifications for EPA to allow an agency to reduce minimum comment periods per 40 CFR 1506.10(d):* The CEQ regulations specify that EPA may reduce the minimum 45-day comment period on a

draft EIS and 30-day period between issuing a final EIS and making a decision upon the agency showing compelling reasons of national policy. "There's an energy crisis and the President is very worried" is not a compelling reason. Recent waivers have involved situations in which an agency's regulations would have expired and left a resource vulnerable to excessive harvesting, and one with potential for armed conflict over fishing rights. When an agency requests a waiver, EPA wants to know what will happen if the record of decision date slips.

Streamlining Approvals of Energy Projects: Views from Other Agencies

Before introducing three NEPA officials from other Federal agencies to describe their organizations' approaches to streamlining the NEPA process, Carol Borgstrom reviewed the National Energy Policy and associated Executive Orders. (See article on Executive Order 13212, page 16, this issue, and also *Lessons Learned Quarterly Report*, June 2001, page 12.) Noting that the Policy emphasizes balancing environmental concerns with energy needs, she asked what DOE can learn from other agencies' experiences.

Richard Hoffmann, Leader, Gas Group 2, Office of Energy Projects, Federal Energy Regulatory Commission (FERC), discussed potential streamlining of NEPA review for gas pipeline permits requested by industry. Noting that streamlining has been an industry objective for at least 25 years, he advocates conducting NEPA review at the same time or before other administrative processes. Based on recent seminars with stakeholders, he says that FERC now believes it could reduce the Commission's process time by working with an applicant before an application is filed, when the applicant is selecting a gas pipeline route. Because FERC would get involved while the applicant is choosing its preferred route, FERC could



Richard Hoffmann, Gas Group 2, Office of Energy Projects, FERC, advocates outreach to stakeholders.

independently evaluate all alternative routes and issue a draft EIS sooner after receiving a permit application than

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Focus on June 2001 NCO Meeting

has been possible in the past. Mr. Hoffmann described outreach seminars that FERC is now conducting for industry, agency, and individual stakeholders in regions with pipeline experience, to hear their views concerning public participation in the NEPA review and other decision making processes. (Also see the article by Mr. Hoffmann on page 12 of this issue.)

Rhey Solomon, NEPA Group Leader of the Forest Service, which prepares more EISs than any other agency, described approaches he believes have the greatest potential for streamlining NEPA reviews. He said that the Forest Service initially focused on standardizing technical tools, such as document format templates and text sections. Although modest improvements were evident, he came to realize that the greatest potential results would come only by having senior managers show, through their actions, that environmental review is a priority (e.g., by assigning good people to each NEPA review). He believes

the final priorities for Forest Service streamlining are to promote meaningful environmental leadership – not just “talking the talk” – among the project managers who prepare the NEPA documents and to provide training to all involved in the NEPA process.

Wells Burgess, Assistant Section Chief, General Litigation Section of the Environment and Natural Resources Division, Department of Justice, provided the perspectives of the Office that litigates DOE’s largely high-profile NEPA cases. Noting how litigation can disrupt an agency’s work and put staff on the defensive, he recommends avoiding litigation, not just making it winnable. His recommendations include:

- ✓ Document application of a CX with a checklist that requires noting the presence or absence of extraordinary circumstances.

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NEPA Pilot Projects to Demonstrate Environmental Mediation

Dr. Kirk Emerson, Director of the U.S. Institute for Environmental Conflict Resolution, spoke on the Institute’s environmental mediation work to resolve disputes concerning, for example, allocation of scarce water resources and competing interests of grazing, forestry, and preservation of western Federal lands. As she explained, the Institute maintains a national roster of professional mediators and facilitators, and helps parties develop processes for reaching agreement over both procedural and substantive conflicts. At the time of the NCO meeting, the Institute was conducting a series of workshops (including one in Washington, DC) to discuss how to improve NEPA implementation through collaboration and conflict resolution processes. (The Institute’s NEPA Pilot Project proposal is described in *Lessons Learned Quarterly Report*, June 2001, page 9.)



Dr. Kirk Emerson discussed her Institute’s NEPA Pilot Project proposal.

Meeting participants addressed questions and comments to Dr. Emerson:

- ✓ *Has there been a great deal of noncooperation to give rise to this study?* Much of the focus of the pilot

project is on land management issues, which are of high concern in the West but also in the Florida Everglades and Northeast forests. She noted that the Institute aims not just to enhance cooperation, but also to link NEPA implementation to the goals of its Section 101 and focus less on procedures, documentation, and building legal defensibility. Steve Ferguson, Deputy Assistant General Counsel for Environment, observed that a good NEPA document can help build consensus, rather than provide people a means to block an unpopular decision on procedural grounds.

- ✓ *Can environmental mediation be applied to a “yes-no” decision on a project?* Conflict resolution is not very useful in this situation, though it may be applied to determining purpose and need. Don’t besmirch the good name of consensus building by trying to force these processes into unsuitable situations. If there are issues of legal interpretation, they should go to court, not to environmental mediation.
- ✓ *Sometimes our problem is credibility. We tell a good story but nobody believes it because we are DOE. It would help to have independent third parties tell the story, to help convince project opponents that what we are doing is rational.* Many agencies deal with endemic public mistrust. There is value in using neutral third parties, but they cannot become the agency’s advocates.

It's Working: DOE-wide NEPA Contracting



David Gallegos described the strengths and successes of the DOE-wide NEPA contracts.

than half of the tasks – by number issued and value – are firm fixed price or cost plus incentive fee, the preferred

David Gallegos, Contract Administrator, Albuquerque Operations Office, reviewed four years of experience with the DOE-wide NEPA contracts, concluding that, overall, the contracts have been successful in providing contractor support on short notice, incentives to control cost, and flexibility in establishing tasks. Setting up a task order now takes about 25 days, compared to 6 to 12 months to establish a traditional contract. More

mechanisms for cost control. Contractor performance evaluations have been high, especially in the area of responsiveness.

Mr. Gallegos presented a detailed comparison of the DOE-wide NEPA contracts and similar contracts established in 1999 by the Government Services Administration (GSA), recommending that NCOs and NEPA Document Managers consider both sets of contracts when planning for NEPA document preparation. The GSA contracts can count toward DOE's small business goals, provide additional services besides NEPA support, and provide access to additional contractors. He cautioned, however, that they do not allow the cost plus incentive fee type of contracts that DOE often needs, cannot be modified, and may be limited to tasks of less than \$1 million. Noting that the DOE-wide contracts are entering their final year, he invited feedback on how we can improve the recompeted contracts. For further information, contact David Gallegos at dgallegos@doeal.gov. 

Can We Do Better? Potential Improvements in Preparing EAs and EISs

Representatives for the three DOE-wide contracts – Lucy Swartz of Battelle Memorial Institute, Barry Smith of Science Applications International Corporation, and Tom Magette of Tetra Tech, Inc. – advised the NCOs on how DOE could improve its implementation of the DOE-wide NEPA contracts and obtain better results – faster, cheaper, better quality NEPA documents.

Ordering a Task

- Make the Request for Proposals for tasks simpler and shorter, for example, by not repeating requirements from the contract statement of work.
- Specify the task statement of work as much as possible, including, for example, the number of review cycles and the printing requirements, especially for firm fixed price task orders.
- Give bidders more flexibility in setting labor categories.
- Standardize the format for proposals.
- Establish page and time limits to control proposal preparation costs (contractors differed on how long to allow for proposal preparation).
- Issue more noncompetitive task awards based on past performance, as proposal preparation takes time and money.
- Ask for a management plan in task proposals, not as a deliverable.

Managing a Task

- Develop the proposed action and alternatives, including the no action alternative, early through internal scoping.
- Communicate more, especially by specifying DOE's wants and needs early in the document preparation phase.

- Strive for shorter NEPA documents, put technical material in appendices, and incorporate information by reference.

Reviewing a Draft Document

- Make sure each review comment adds value to the document.
- Keep your function in mind to avoid duplicative or contradictory instructions and make reviews more cost-effective.

Making the Process Collaborative

- Have the DOE document manager and contractor program manager work together "hands on" in document preparation; encourage a close working relationship between them and facilitate communication.
- Use a Web site to distribute information quickly internally.
- After each EIS, have contractors document and share lessons learned focused on team activities; fund this through the contract or as a shared cost.
- Have Program, Counsel, and EH staff participate in evaluating the contractor.

NCO Meeting: Other Agencies Streamlining (continued from page 8)



Wells Burgess, Department of Justice, provided perspectives on NEPA litigation.

✓ In an EIS, evaluate an alternative proposed by a significant stakeholder group as fully as other alternatives – even if it does not meet the stated purpose and need or is not reasonable – and candidly explain why the alternative is unsuitable and why it is being considered anyway.

non-involved workers, indirect effects, and ecological effects. The presentation included an explanation of the necessary differences between the accident analysis in a NEPA review and a safety analysis review, including differing purposes, timing, degree of conservatism, and scope. The guidance will continue to use radiation risk factors established by cognizant agencies, and the presenters reminded the NCOs that dose is not an impact. The Office is responding to the NCO comments and plans to issue the final guidance after final coordination with the commentors. On an interim basis while the guidance is being revised to reflect comment resolution, clarification, and formatting, NEPA document preparers should continue to follow the draft guidance. Contact Eric Cohen at eric.cohen@eh.doe.gov or Carl Sykes at carl.sykes@eh.doe.gov.

Guidance and Regulations Updates

Katherine Nakata, Office of NEPA Policy and Compliance, and Dean Monroe, Office of the General Counsel for Environment, described draft revisions to DOE's Floodplain/Wetlands Regulations (10 CFR Part 1022). They explained that the draft revisions would streamline DOE's review process by adding classes of actions exempt from assessment and eliminating the need to publish *Federal Register* notices for actions with only local impacts. The Office is now responding to NCO comments on the draft revisions, and plans to issue the proposed regulations for public review after conducting a Departmental coordination process. For questions, contact Katherine Nakata at katherine.nakata@eh.doe.gov or Dean Monroe at dean.monroe@hq.doe.gov.

Eric Cohen and Carl Sykes of the NEPA Office reported on progress in issuing final guidance on accident analysis in DOE NEPA documents. Issued as a draft in April 2000, this guidance offers approaches to meeting the existing analysis requirements of NEPA and the CEQ implementing regulations, including effects on involved and

Stan Lichtman, Deputy Director of the Office of NEPA Policy and Compliance, thanked NCOs for suggesting revisions to the DOE NEPA Regulations (10 CFR Part 1021), including those for modifying and adding categorical exclusions, in response to last year's request. He explained that although the suggestions to date would not warrant the resource commitment for undertaking a rulemaking, they will be saved for future consideration and additional suggestions are encouraged. Contact Stanley Lichtman at stanley.lichtman@eh.doe.gov.

Suggestion for Further Improvements

The NCO meeting open discussion sessions yielded a proposal by Clarence Hickey, Office of Science, and Raj Sharma, Office of Nuclear Energy, Science and Technology, to consider, through a process improvement evaluation, how to streamline the Headquarters review and approval process for EISs. Several NCOs volunteered to assist in this undertaking.

Overall, the meeting identified challenges, opportunities, and techniques for further improving the Department's NEPA implementation. The renewed focus on streamlining, especially for energy projects, fits well with the DOE's NEPA compliance program's emphasis on continuing improvement. **LL**

16th Edition of NEPA Stakeholders Directory Issued

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

NCO Transitions

Narendra Mathur has replaced Alan Brownstein as the NCO for the Office of Civilian Radioactive Waste Management. He may be reached at narendra.mathur@rw.doe.gov or 202-586-4929.

Executive Order Promotes Protection of Migratory Birds

NEPA Review Should Consider Impacts



“During the past 30 years, about one-fifth of the bird species native to the United States have declined at rates equal to or exceeding 2.5 percent per year. A trend of this magnitude represents a cumulative decline of more than 50 percent over a span of 30 years. Declines this large are considered to be biologically meaningful, even for species that are widely distributed and relatively abundant. These losses are not restricted to just one or two groups of birds; birds of grassland, wetland, scrubland, and woodland habitats have all been affected.”

*Fish and Wildlife Service
Press Release, January 11, 2001*



Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds (66 FR 3853; January 17, 2001), requires Federal agencies – within existing budgets, missions, and responsibilities – to avoid or minimize the negative impact of their actions on migratory birds. Agencies must take active steps to protect birds and their habitat, for example by restoring and enhancing habitat, preventing or abating pollution affecting birds, and incorporating migratory bird conservation into agency planning processes.

Within two years each Federal agency taking actions that have, or are likely to have, a measurable negative impact on migratory bird populations must develop and implement a Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (USFWS) for the conservation of migratory bird populations. The USFWS, in cooperation with these Federal agencies, will develop a schedule for completion of these agreements that gives priority to agencies with the greatest impacts.

The Executive Order also:

- Establishes a Council for the Conservation of Migratory Birds composed of administrators from the Departments of the Interior, Commerce, Agriculture, Transportation, and Defense, and the Environmental Protection Agency. The Council’s purpose is to assist agencies in implementing the order and to act as a clearinghouse to share migratory bird information.
- Directs agencies to ensure that environmental analyses under NEPA evaluate the effects of proposed Federal actions on migratory birds.

- Requires agencies, within the scope of their regular activities, to control the spread and establishment in the wild of exotic animals and plants that may harm migratory birds and their habitat.
- Requires agencies to provide advance notice of any action that may result in the taking of migratory birds, or to report annually to the Fish and Wildlife Service on the numbers of each species taken during the conduct of any agency action and avoid the taking of species of particular concern.

The USFWS is proceeding with implementation of the Executive Order. Representatives of 22 potentially affected Federal agencies, including DOE, met on June 28, 2001, to develop a timetable and framework for MOU negotiations. Each agency representative was assigned a USFWS partner and was tasked with developing an MOU between their agency and USFWS. Initial drafts are due by February 2002, and completed MOUs are scheduled for December 2002.

For more information on this Executive Order, contact Chris Tollefson, Office of Public Affairs, U.S. Fish and Wildlife Service, at chris_tollefson@fws.gov or 202-208-5634. For more information on DOE activities with respect to migratory bird protection and DOE’s actions with respect to this Executive Order, contact Lee Banicki, DOE Office of Environmental Policy and Guidance, at leroy.banicki@eh.doe.gov or 202-586-5193. ■■



Executive Order 13186 protects species of migratory birds listed in 50 CFR 10.13, including endangered species like the northern spotted owl (above left), as well as more familiar birds like the northern cardinal (above right), and (bottom left to right) the Canada goose, trumpeter swan, red-winged blackbird, roseate spoonbill, snowy egret, snow goose, Eastern bluebird, and more than 870 others.

FERC Outreach Seeks Win-Win Streamlining for Natural Gas Pipeline Approvals

By: Richard Hoffmann, *Leader, Gas Group 2, FERC Office of Energy Projects*
Jeanie Loving, *DOE Office of NEPA Policy and Compliance*

Early public participation in project planning could help streamline NEPA reviews of natural gas pipeline proposals and benefit industrial applicants, landowners, and other stakeholders. This finding results from exploratory seminars the Federal Regulatory Energy Commission (FERC) held with pipeline companies, government agencies, and the public on FERC's pipeline certification (i.e., approval) process.

A Decade of Modernization

FERC's mission includes approval of the location and construction of interstate natural gas pipelines and the associated facilities that move nearly one-fourth of the nation's energy resources among the 48 contiguous United States. Over the past decade, the Commission has substantially streamlined its process for granting pipeline project approvals, even with increasing demands for natural gas and the highly competitive and changing markets those demands stimulate. Since 1991, FERC has reduced the total time for reviewing and approving gas pipeline applications by about one-third.

Notwithstanding this improvement, the Commission found that the growing complexity of major pipeline projects was often causing delays in its environmental and non-environmental reviews, and protests and interventions were increasingly requiring FERC to resolve issues. Accordingly, the Commission recently focused on its NEPA reviews of pipeline applications, which are a significant element of the certification process, both in terms of the time required to conduct the reviews and the value they add.

The Way Things Are

Pipeline companies work fairly independently to identify proposed routes and develop project plans before filing with the Commission for approval. Landowners typically first learn about pipeline projects from the industry applicants on an informal basis, when the companies conduct surveys. In addition, FERC requires companies to formally notify landowners at about the same time FERC issues a Notice of Application in the *Federal Register*. But by then, the application includes the proposed route and alternatives that are subject to FERC's NEPA reviews. In essence, the scope of the review has already been identified.

Coming Together

In a six-meeting series of seminars focusing on NEPA review for certification, the Commission has sought cooperative dialogue among representatives from the industry, general public, and cognizant local, state and Federal agencies. FERC's Gas Outreach Team held the first four meetings as "brainstorming" seminars in regions where interstate natural gas markets are developing or expanding: New York, Illinois, Florida, and Washington.

The overarching theme in the seminars was to identify the general interest in and desirability of bringing gas pipeline companies together with potentially affected people and interested organizations well before the companies file their applications with the Commission. Although each seminar built on the information gathered in preceding meetings, FERC maintained consistent objectives throughout the series:

- Explore ways for affected parties to work together to resolve issues before an application is filed with the Commission,
- Foster creative issue resolution, and
- Develop a toolbox of methods for achieving more effective stakeholder involvement and higher quality applications.

Feedback from the seminars supports the view that early public involvement can go a long way toward achieving an acceptable project design while avoiding conflicts over routes that have typically arisen later in the approval process. This in turn can reduce the time FERC needs for review, resolving issues, and final certification. In other words, this win-win approach can help build consensus with landowners and other community elements, reduce corporate application costs, and moderate resource demands on FERC and other involved agencies.

The Way of the Future

The Gas Outreach Team has compiled early seminar discussion results into sets of practical action options for each of the major participating groups. The Team has

continued on next page

FERC Outreach (continued from previous page)

been gathering comments on these options, including those from a fifth seminar held in July in New Hampshire. The kinds of actions being considered include:

- ✓ *Pipeline Companies* – recognize the benefit to the company of early public involvement and commit to it; develop a multifaceted grass roots strategy for informing landowners, agencies, and other involved individuals at the earliest possible stage of project planning; train land agents and other company representatives to communicate well with landowners; be prepared to explain the need for the project, landowners’ rights, mitigation, and compensation; when people are upset, find out what they are upset about.
- ✓ *Cognizant Agencies* – identify whether there are local or state requirements for public notification and hearings; establish early coordination and public participation procedures; identify and communicate “show stoppers,” such as local codes or regulations that conflict with FERC routing criteria; identify cumulative effects, including those from other development projects in the vicinity of the proposed pipeline.
- ✓ *Citizens* – seek information; recognize what information the companies must provide and what they may withhold as proprietary; understand how the local government can work for individuals or groups;

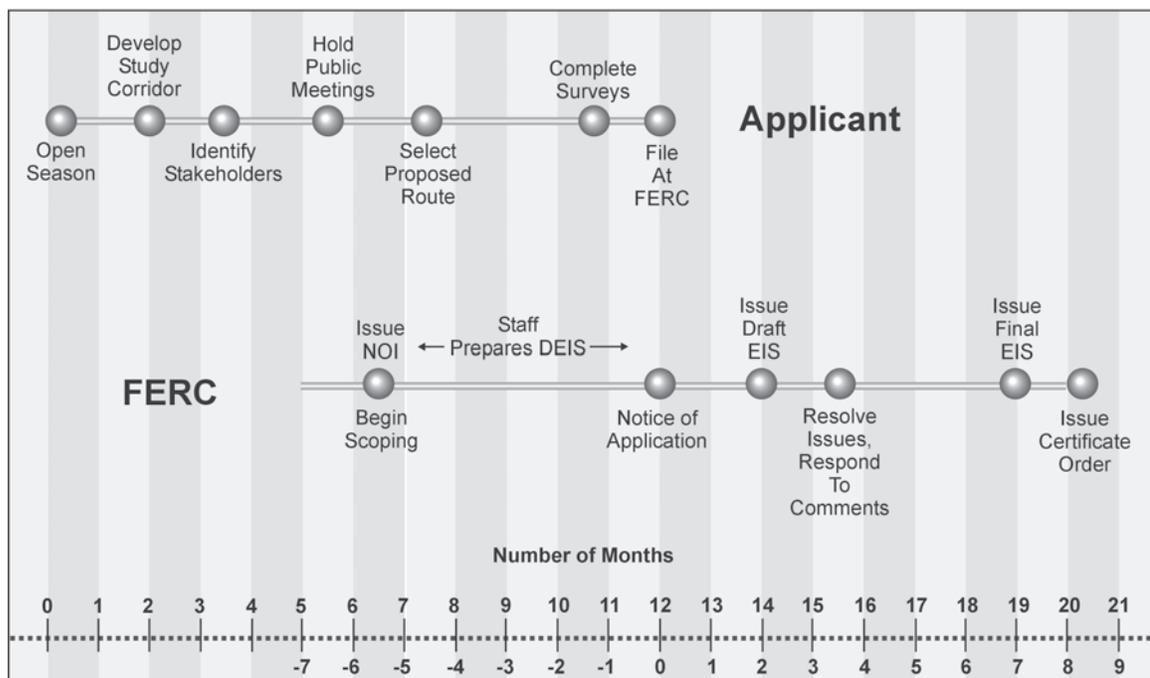
understand the concept of eminent domain; know the name and phone number of the supervisor for the company’s land agent.

- ✓ *FERC* – improve the quality and range of relevant information and its distribution; offer training for industry and consultants on environmental aspects of the filing requirements and compliance with environmental requirements during construction; make staff available for interagency coordination meetings where possible; provide staff in the field to help achieve consensus in route planning at the earliest possible point.

The Gas Outreach Team plans to present a final draft report at its sixth seminar, planned for September at FERC Headquarters in Washington, DC. The report will present the best practices identified from each set of action options. FERC expects this approach to improve its certification process such that EISs can begin before applicants file for approval and be completed as soon as seven months after they file. This result will be heavily dependent on successful pre-application involvement of stakeholders.

For updated information on FERC’s next seminar, visit www.ferc.gov. For more information on the seminar series, contact Richard Hoffmann at richard.hoffmann@ferc.fed.us or 202-208-0066. 

“The Way of the Future”



Life-Cycle Environmental Impact Assessment for “Green” Energy Projects (A Hypothetical Conversation)

By: Bill Karsell, NEPA Compliance Officer, Western Area Power Administration

“**W**hat do you mean I need NEPA compliance to buy green power?” The Site Manager scowled, and her eyes flashed with fire as she challenged her NEPA Compliance Officer. “It’s good for the environment, isn’t it?”

The NCO swallowed hard. “Yes,” he said. “Er, well, it can be. We just have to evaluate it first.”

The Site Manager was not mollified. “Look, we’re going to buy some wind power or some biomass energy. They don’t pollute, right?”

“You’re making a technology-based assumption,” said the NCO, wishing he were trying to convince anybody else. “NEPA assessment has to be performance-based. I mean, we have to actually dig in and analyze the impacts.”

“Look, we’re going to buy some wind power or some biomass energy. They don’t pollute, right?”

The Site Manager shook her head impatiently. “When the wind blows, we get electricity. Or we use new biomass fuel, not fossil fuel, with no net production of greenhouse gas. What’s to evaluate?”

“We need to look at several things.” The NCO was glad to be fielding a NEPA question. “First, will someone build a new generation facility to meet our demand?”

“Of course they will,” responded the Site Manager, as if enlightening a slow eight-year old. “There’s no unallocated wind or biomass power just floating around hoping someone will buy it. It’s too expensive. Nobody builds green generators without getting purchase commitments first.”

“Well, then, we have to do a NEPA review before we can commit to a purchase.” The NCO opened his dog-eared copy of DOE’s NEPA Regulations, 10 CFR Part 1021, to Subpart D. “It says here in Appendix B, item 4.1, that we can apply a categorical exclusion to power purchase contracts only if they don’t add a new generation source to the grid. So from that we know that we need at least an environmental assessment. How much capacity were you thinking of purchasing? I hope it’s less than 50 megawatts, because –”

“Of course it’s less than 50 megawatts! Two at the most.”

“– because Appendix D, item 7, says that a purchase of 50 megawatts resulting in a new source normally would require an environmental impact statement.”

“What possible negative environmental impacts could there be from a purchase of green power?”

The Site Manager leaned back in her leather chair, gazing into the middle distance and thinking. It still didn’t make a lot of sense to her, but the law was the law. In a less confrontational voice she asked the NCO, “What possible negative environmental impacts could there be from a purchase of green power?”

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A Hypothetical Conversation, continued

“Actually, quite a few,” said the NCO, now feeling more at ease. “But first, I think we should drop the term ‘green’ when talking about any power source. The Federal Trade Commission guides* discourage businesses from using words like ‘green’ to imply that their goods or services have general environmental benefits. Every product or service has tradeoffs. Nothing is pure green.”

The Site Manager nodded in agreement. She seemed to be calming down a little.

“If I were going to assess a wind project,” the NCO continued, “I’d start by looking at impacts to terrestrial habitat. Will trees need to be cleared? What would be the ecological effects? What about rainfall runoff? Then I’d review the literature on bird strikes to estimate those impacts. After tabulating the impacts of material production, construction, operation, maintenance and eventual decommissioning, I’d get wind patterns for the site and model the generators into the integrated transmission system.”

“The method I’m talking about is called ‘Life-Cycle Impact Assessment.’”

“Wait a minute,” interjected the Site Manager. “I understand all that about assessing the project impacts. But why do you need the transmission system model?”

“Wind doesn’t blow all the time,” the NCO responded. “At the risk of oversimplifying, if the wind blows when the demand for power is high, that’s great. If it doesn’t, some other generator has to pick up the load. How our project affects the environmental footprint of the entire integrated system can only be understood by modeling the system with and without the project.”

He continued, “Then, for every impact category, like habitat, emissions, wastes, resource depletion, et cetera, I would divide the impacts by the true power output in megawatt-hours. And I’d do the same for every project alternative. I would assess a biomass or any other project like that. With that information you can compare normalized impacts and make a rational choice among competing power sources.”

The Site Manager seemed to be listening, so the NCO went on.

“The method I’m talking about is called ‘Life-Cycle Impact Assessment,’” he said. “It looks at *all* environmental impacts of a product or service from cradle to grave. There’s an international standard for it, ISO 14042, and it’s part of our site’s environmental management system.”

“I understand all about assessing the project impacts. But why do you need the transmission system model?”

The Site Manager pondered this for a moment, then asked, “What if an alternative has lower impacts than the one I, er, we...that is to say –”

“No problem,” interrupted the NCO, rescuing his boss. “NEPA just requires that we present and consider the impacts before making a decision. The law doesn’t tell us what decision to make.”

“Right! Well, you’ve got your job cut out for you. Get to work and let me know when I can sign a contract! Good work!” said the Site Manager, reaching for the stack of papers in her in-basket.

Sensing that the interview was at an end, the NCO wished his boss good day and withdrew, silently thanking the NEPA gods that she hadn’t already signed a contract.

Bill Karsell can be reached at karsell@wapa.gov or 720-962-7252. 

*The Federal Trade Commission (FTC) issued the *Guides for the Use of Environmental Marketing Claims* (“Green Guides”) to prevent the false or misleading use of environmental terms in product advertising and marketing and reduce consumer confusion. For a copy of the Green Guides contact: FTC Consumer Reponse Center, 600 Pennsylvania Avenue, NW, Washington, DC 20580; 202-FTC-HELP (382-4357); 202-326-2502 (TDD for the hearing impaired). Also, see the FTC Web site at www.ftc.gov.

Interagency Task Force Launched to Expedite Energy-Related Projects

Executive Order 13212, “Actions to Expedite Energy-Related Projects” (May 18, 2001), establishes an interagency Task Force to monitor and assist Federal agencies in their efforts to expedite review of permits or other actions, as necessary, to accelerate the completion of energy-related projects, while maintaining safety, public health, and environmental protections. The Executive Order states that the Task Force shall be chaired by the Chairman of the Council on Environmental Quality (CEQ) and housed at DOE for administrative purposes. (See article on energy-related Executive Orders, *Lessons Learned Quarterly Report*, June 2001, page 12.)

In an August 20, 2001, *Federal Register* notice (66 FR 43586), CEQ announced the formation of the Task Force

and invited comments on “the proposed nature and scope of Task Force activities, specific suggestions, and examples of permitting or other decision making processes which should be improved or streamlined.” Also requested is information about “major energy projects” and “recommendations for improving [Federal] agency activities, consistent with the purposes and policies of the National Environmental Policy Act.”

Comments are due to the Chair, CEQ, by October 1. Comments may be sent electronically through the CEQ Web site at www.whitehouse.gov/ceq; by mail to the Executive Office of the President, 17th and G Streets, NW, Washington, DC 20503, Attention: Task Force; or by fax to the Task Force at 202-456-6546. 

EPA Reaffirms Commitment to Environmental Justice

Environmental Protection Agency (EPA) Administrator Christine Todd Whitman, in an August 9, 2001, memorandum to top EPA officials, stated EPA’s “firm commitment to the issue of environmental justice and its integration into all programs, policies, and activities, consistent with existing environmental laws and their implementing regulations.”

She noted that “Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities.” With particular reference to NEPA, she said that “Congress could not have been any clearer when it stated that it shall be the continuing responsibility of the Federal government to assure for all Americans ‘safe, healthful, productive and aesthetically and culturally pleasing surroundings.’”

“In sum,” the Administrator’s memo stated, “environmental justice is the goal to be achieved for all communities and persons across this Nation. Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards *and* equal access to the decision-making process to have a healthy environment in which to live, learn, and work.” 

CEQ NEPA Liaisons Convene on a Variety of Topics

EPA’s environmental justice program (article at left) was among a variety of topics presented to Federal Agency NEPA Liaisons at their August 23, 2001, meeting, sponsored by the Council on Environmental Quality (CEQ). Carol Borgstrom, Director, Office of NEPA Policy and Compliance, attended as the NEPA Liaison for DOE Headquarters. The presentation on EPA’s environmental justice program included an introduction to the agency’s online “Environmental Justice Query Mapper (EnviroJustice Mapper),” an interactive, public resource providing information on EPA-permitted facilities and their surrounding communities (<http://es.epa.gov/oeca/main/ej/ejmapper/>.)

John Fowler, the executive director of the Advisory Council on Historic Preservation, gave a presentation on encouraging the integration of the NEPA process with the National Historic Preservation Act Section 106 process, whenever possible. (See article on ACHP’s new regulations, 36 CFR Part 800, in *Lessons Learned Quarterly Report*, June 2001, page 8.)

Horst Greczmiel, CEQ Associate Director for NEPA Oversight, led a discussion on how to apply technology to improve both NEPA analyses and the presentation of information in NEPA documentation. 

e-NEPA: EPA Notices to List Web Addresses

In the interest of making EISs more accessible to the public, U.S. Environmental Protection Agency (EPA) Notices of Availability will now include a Web address (URL) for any Web-published EIS (memorandum from Anne Miller, Acting Director, Office of Federal Activities, to Federal Agency NEPA Contacts, June 22, 2001). EPA will obtain the Web address from the EIS cover sheet or the transmittal letter used to file the EIS with EPA.

DOE EIS preparers are encouraged to include the DOE NEPA Web address in the EIS cover sheet, and the Office of NEPA Policy and Compliance will provide the address in its filing letter. The Web address to provide is: "tis.eh.doe.gov/nepa under DOE NEPA Analyses." (It is not necessary to preface the address with "http://" or include a final "/"; the shorter version is more user-friendly.) You may also include a Program or Field Office Web address at which the document also will be available.

Note that in an EIS cover sheet or distribution letter it is appropriate to say that "the EIS **will be** available online at..." because the EIS may not yet be posted when the distributed document is first received. Address questions to Denise Freeman, DOE NEPA Webmaster, at denise.freeman@eh.doe.gov. 

NAEP Announces 2002 Conference

"Environmental Stewardship – Rebuilding and Maintaining America's Resources" will be the theme of the National Association of Environmental Professionals (NAEP) 27th Annual Conference to be held June 23 to 26, 2002, in Dearborn, Michigan. Abstracts for conference presentations are due October 15, 2001. As in previous years, there will be a NEPA symposium, and presentations on NEPA issues are welcomed.

NAEP is a multi-disciplinary professional association with 17 affiliated state and regional chapters and 20 university chapters. The organization publishes a quarterly research journal, *Environmental Practice*, and administers an environmental professional certification program. For more information on the organization and the 2002 conference, visit the NAEP Web site www.naep.org. (Also see *Lessons Learned Quarterly Report*, June 2001, page 2, and other NAEP articles listed in the index in this issue.) 

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see the Cumulative Index (under "Contracting, NEPA") in this issue. For questions or comments on the DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
EA for Right-of-Way Maintenance in the Sacramento Valley of California	Nancy Werdel 916-353-4537 werdel@wapa.gov	3/08/01	Tetra Tech, Inc.
Support for Environmental Analysis Report for Review of the Decision to Permanently Deactivate the FFTF	Mike Holland 631-344-3454 mholland@bnl.gov	5/22/01	SAIC
EA for the Small-Scale Geothermal Power Plant Project in New Castle, Utah, by Milgro Newcastle, Inc.	Maureen Jordan 303-275-3248 maureen_jordan@nrel.gov	6/18/01	Tetra Tech, Inc.
EA for the Small-Scale Geothermal Power Plant Project in Cotton City, New Mexico, by Exergy Inc.	Maureen Jordan 303-275-3248 maureen_jordan@nrel.gov	6/18/01	Tetra Tech, Inc.
Supplement Analysis for the California-Oregon Transmission Project EIS	Nancy Werdel 916-353-4537 werdel@wapa.gov	7/05/01	Battelle

Training Opportunities

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

- **An Overview of Environmental Laws and Regulations for the Citizens Advisory Boards**
San Antonio, TX: September 18
(USDA Graduate School)
Phone: 214-767-8245
Fee: \$349
- **Environmental Justice and Public Participation (NETO 120)**
Las Vegas, NV: December 7
Fee: TBD
DOE National Environmental Training Office
Phone: 803-725-7153 or -0814
E-mail: NETO@srs.gov
Internet: www.em.doe.gov/neto/
- **Implementation of NEPA on Federal Lands and Facilities**
Durham, NC: October 29 - November 2
Fee: \$960
- **Socioeconomic Impact Analysis Under NEPA**
Durham, NC: November 14-16
Fee: \$640
*Nicholas School of the Environment
Duke University*
Phone: 919-613-8082
E-mail: britt@duke.edu
Internet: www.env.duke.edu/cee/execed.html
- **The NEPA Toolbox™**
Denver, CO: December 3-7
 - Positive Public Involvement
December 3-4
 - Integrating NEPA and Section 106
December 5
 - Assessing Cumulative Impacts
December 6-7Fees: One day: \$425
Two days: \$650
*Environmental Training & Consulting
International Inc.*
Phone: 720-859-0380
E-mail: workshops@envirotrain.com
Internet: www.envirotrain.com
- **Mastering NEPA**
University City, CA: November 8-9
Fee: \$405
*UCLA Extension on Universal City Walk
UCLA Extension Public Policy Program*
Phone: 310-752-7398
E-mail: nlee@unex.ucla.edu
Internet: www.uclaextension.org/publicpolicy
- **Overview of the NEPA Process**
Virginia Beach, VA: September 11
Boise, ID: December 4
Fee: \$195
- **Reviewing NEPA Documents**
Virginia Beach, VA: September 12-14
Boise, ID: December 5-7
Fee: \$795
- **Clear Writing for NEPA Specialists**
Denver, CO: October 2-4
Jackson, MS: October 16-18
Raleigh, NC: November 6-8
Las Vegas, NV: December 4-6
Fee: \$795
- **Overview of the Endangered Species Act (ESA)**
Las Vegas, NV: October 9
Fee: \$195
- **Cultural and Natural Resource Management**
Las Vegas, NV: October 10-11
Fee: \$595
- **Section 106 Consultation Process**
Las Vegas, NV: October 12
Fee: \$195
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Las Vegas, NV: October 23-26
Seattle, WA: December 11-14
Fee: \$995
- **How to Manage the Environmental Impact Analysis Process**
San Antonio, TX: November 27-30
Fee: \$995
The Shipley Group
Phone: 888-270-2157 or 801-298-7800
E-mail: ben@shipleygroup.com
Internet: www.shipleygroup.com
- **NEPA Workshop**
Santa Clara, CA: October 16
Monterey, CA: November 16
Fee: \$155 (Federal agency staff), \$205 (non-agency)
Classes are held at the University of California, Santa Cruz Extension in Santa Clara and Monterey.
Tetra Tech, Inc.
Contact: Edward Yates
Phone: 415-974-1221
E-mail: eyates@ttsfo.com



Litigation Updates

Case Dismissed: DOE Not Obligated to Prepare Site-wide EIS at Paducah

The U.S. District Court for the Western District of Kentucky in August dismissed a lawsuit brought by the Regional Association of Concerned Environmentalists (RACE) seeking to require the Department to prepare a site-wide environmental impact statement (EIS) for the Paducah Gaseous Diffusion Plant. The court found, however, there was no “mandatory legal requirement” that DOE prepare the site-wide EIS.

The claim relied on the interpretation of language in DOE’s NEPA regulations at 10 CFR 1021.330(c), which states: “As a matter of policy when not otherwise required, DOE shall prepare site-wide EISs for certain

large, multiple-facility DOE sites;....” The court interpreted this language as providing no standards, meaningful or otherwise, and, therefore, that DOE had a “discretionary choice” whether to prepare site-wide EISs at “certain of its facilities.”

This was the remaining issue in a suit involving a proposed demonstration of Vortec waste treatment technology at Paducah, which was otherwise settled last year (*Lessons Learned Quarterly Report*, December 2000, page 12). **LI**

Other Agency NEPA Case EIS Required for Proposal with High Degree of Uncertainty, Scientific Controversy

In litigation over a National Park Service plan to manage vessel traffic in Glacier Bay, Alaska, the U.S. Court of Appeals for the Ninth Circuit found that an environmental assessment (EA) that identified the certain existence of adverse impacts but did not assess their severity could not support a finding of no significant impact (FONSI). Further, the court found that agency commitments to monitor the impacts and mitigate them later did not guarantee that significant, possibly irreversible, adverse impacts could be prevented.

Glacier Bay Vessel Management Plan/EA Challenged

Because there are no roads to Glacier Bay National Park and Preserve in the Alaskan panhandle, cruise ships and other watercraft provide most of the access for visitors who enjoy the deep fjords, actively calving (detaching) tidewater glaciers, and abundant wildlife, including the endangered humpback whale. Approximately 80 percent of the visitors arrive on large, thousand-passenger cruise ships. The National Marine Fisheries Service expressed concerns in biological opinions beginning in 1978 over the increasing vessel traffic and the related disturbance of marine animals in the bay. In response, in 1995 the Park Service issued a draft EA evaluating alternatives for managing vessel operations, combined with a proposed

Vessel Management Plan that would adopt the preferred alternative of allowing the number of cruise ships entering the bay each summer to increase from 107 to 184.

After six public hearings and receiving about 450 comments – most of which favored reducing vessel traffic – in 1996 the Park Service issued a revised Plan and EA, and a proposed FONSI. The revised Plan would allow a phased increase in the number of cruise ships over several seasons, up to the previous preferred alternative number, if certain conditions were met. The quotas for charter boats and private watercraft would also increase.

The revised EA acknowledged that marine mammals would be affected by increased vessel traffic, noise, and related disturbances. The nature or extent of such effects, however, was “unknown.” Also unknown were potential effects on bird populations, including waterfowl and bald eagles. Increased risks of vessel accidents and fuel spills were predicted, but with “unknown” magnitude. Air quality could be degraded by the increase in cruise ships’ stack emissions, but again the biological effects were “unknown.” The proposed FONSI stated, however, that mitigation strategies – primarily in the form of research and monitoring – would significantly reduce

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Other Agency NEPA Case (continued from previous page)

environmental effects resulting from vessel entries into Glacier Bay.

The National Parks and Conservation Association, a nonprofit citizen's organization, submitted objections to the revised EA and Vessel Management Plan and the proposed FONSI. The Park Service adopted the revised Vessel Management Plan and issued a FONSI in 1996. The National Parks and Conservation Association in 1997 brought suit in the U.S. District Court for the District of Alaska, requesting the court to rescind the Plan and require an EIS. The district court denied the request, determining that the numerous uncertainties manifested in the EA were not sufficient to require an EIS and observing that the Park Service had "thoroughly canvassed" the existing information. The court concluded that a modest increase in the number of visitors could be allowed while additional studies were conducted. The plaintiffs appealed, and the Ninth Circuit Court of Appeals, in a February 2001 decision, reversed the district court's ruling and remanded the case, requiring that the Plan to allow increased vessel traffic not be implemented until the Park Service completed an EIS.

Determining "Significance" is Key

The appeals court found that an EIS was required because the Plan could cause significant adverse impacts on the environment. The court noted that, under Council on Environmental Quality NEPA regulations, significance depends on context and intensity. The court established intensity in this case by using three of the ten factors listed at 40 CFR 1508.27, specifically (1) unique characteristics of the geographic area; (2) the degree to which effects are highly uncertain; and (3) the degree to which effects are highly controversial. Stating that the unique qualities of Glacier Bay need no elaboration, the court focused on uncertainty and controversy.

Uncertainty In determining that the Park Service should have prepared an EIS, the court premised that an agency must prepare an EIS if the environmental effects of a proposed agency action are highly uncertain. The court stated that the "uncertainty manifested through the EA stems from two sources: an absence of information about the practical effect of increased traffic on the Bay and its inhabitants; and a failure to present adequate proposals to offset environmental damage through mitigation measures." The court found that the Park Service's lack of knowledge did not excuse the preparation of an EIS; rather it required the Park Service to do the necessary work to obtain the knowledge.

Observing that an agency's decision to forego an EIS may be justified under some circumstances by the adoption of mitigation measures, the appeals court found that, in this case, there was "a paucity of analytical data to support the Park Service's conclusion that the mitigation measures would be adequate in light of the potential environmental

harms." In the court's view, there was insufficient evidence that the mitigation measures would be effective to reduce the mostly "unknown" effects of the increase in vessel traffic.

Controversy The appeals court also found that an EIS was required because the proposal had engendered sufficient controversy about the effects. Decisions in past NEPA litigation have established that a Federal action is controversial when (1) substantial questions are raised as to whether the proposal would cause significant degradation of the environment, or (2) there is a substantial dispute concerning the size, nature, or effect of the action. Of the 450 comments on the Vessel Management Plan and EA, approximately 85% opposed the Park Service's preferred alternative. To the extent the comments urged that the EA's analysis was incomplete and the mitigation uncertain, they cast substantial doubt on the adequacy of the Park Service's methodology and data, the court stated.

The appeals court found that the dispute was more than a disagreement among qualified experts. The National Parks and Conservation Association had asserted that the potential effects would be substantial; the Park Service responded that the extent of the effects was unknown. "Therein lay the controversy," the court stated.

An Agency Cannot Act First, Study Later

The Park Service's Plan and EA proposed a research and monitoring program to fill information gaps and assist in understanding the potential effects on the environment. The court stated that this was "precisely the understanding that is required before a decision that may have a significant adverse impact on the environment is made and precisely why an EIS must be prepared in this case." According to the court, in proposing to increase the risk of harm to the environment and then perform studies, the Park Service "has the process exactly backwards." Agencies must take the requisite "hard look" before, not after, the action is implemented.

Injunctive Relief and the Cruise Companies

The Ninth Circuit granted the plaintiffs' request for an injunction by ordering the Park Service to return Glacier Bay vessel traffic to pre-1996 levels, based on the court's determination that resulting damage to ship companies and their passengers would not outweigh the environmental harm of implementing the Vessel Management Plan. (Generally the Federal government is the only defendant in a NEPA action, but in this case the court allowed a tour company to intervene and assert its interests.)

National Parks and Conservation Association v. Babbitt (Nos. 99-36065, 99-36094; 241 F.3d 722; 9th Cir., February 23, 2001). ■■

EAs and EISs Completed (April 1 to June 30, 2001)

EAs

Bonneville Power Administration

DOE/EA-1374 (4/5/01)

Avian Predation on Juvenile Salmonids in the Lower Columbia River Research Project, Astoria and Hermiston, OR

Cost: \$14,000

Time: 3 months

National Energy Technology Laboratory/Fossil Energy

DOE/EA-1336 (4/6/01)

Participation in the Ocean Sequestration of CO₂ Field Experiment, HI

Cost: \$140,000

Time: 15 months

Nevada Operations Office/Defense Programs – National Nuclear Security Administration

DOE/EA-1381 (5/30/01)

Atlas Relocation and Operation at the Nevada Test Site, NV

Cost: \$23,000

Time: 7 months

Oak Ridge Operations Office/Office of Science

DOE/EA-1362 (6/1/01)

Oak Ridge National Laboratory Facilities Revitalization Project, TN

Cost: \$158,000

Time: 9 months

Oak Ridge Operations Office/Environmental Management

DOE/EA-1392 (6/13/01)

Winterization Activities in Preparation for Cold Standby at the Portsmouth Gaseous Diffusion Plant, Piketon, OH

Cost: \$133,000

Time: 2 months

Richland Operations Office/Environmental Management

DOE/EA-1369 (6/20/01)

K-Basins Sludge Storage at 221-T Building, Hanford Site, WA

Cost: \$37,000

Time: 7 months

Rocky Flats Field Office/Environmental Management

DOE/EA-1371 (4/4/01)

Rock Creek Reserve Integrated Natural Resources Management Plan, CO

Cost: \$210,000

Time: 7 months

EIS

Western Area Power Administration

DOE/EIS-0322 (66 FR 34632; 6/29/01)

(EPA Rating: EC-2)

Sundance Energy Project, AZ

Cost: [The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.]

Time: 10 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

(See the EPA Web site, <http://es/epa/gov/oeca/ofa/rating.html> for a full explanation of these definitions.)

Recent EIS-Related Milestones (June 1 to August 31, 2001)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0333

Maiden Wind Farm Project, Benton and Yakima Counties, WA

6/5/01 (66 FR 31624; 6/12/01)

DOE/EIS-0334

Starbuck Power Project, Columbia County, WA

6/4/01 (66 FR 32339; 6/14/01)

Environmental Management

DOE/EIS-0327

Disposition of Scrap Metals, Programmatic

7/6/01 (66 FR 36562; 7/12/01)

Fossil Energy

DOE/EIS-0336

Tucson Electric Power Company Transmission Line, AZ

7/5/01 (66 FR 35950; 7/10/01)

Nevada Operations Office/Defense Programs – National Nuclear Security Administration

DOE/EIS-0335

Proposed Wind Farm at the Nevada Test Site, NV

7/17/01 (66 FR 38648; 7/25/01)

Draft EISs

Bonneville Power Administration

DOE/EIS-0312

Fish and Wildlife Implementation Plan, OR, WA

June 2001 (66 FR 33537; 6/22/01)

DOE/EIS-0317

Kangley-Echo Lake Transmission Line, WA

June 2001 (66 FR 34632; 6/29/01)

DOE/EIS-0321

Condon Wind Project, Gilliam County, OR

June 2001 (66 FR 29799; 6/1/01)

DOE/EIS-0324

Umatilla Generating Project, OR

August 2001 (66 FR 44620; 8/27/01)

Western Area Power Administration

DOE/EIS-0315

Big Sandy Energy Project, Wikieup, AZ

June 2001 (66 FR 33537; 6/22/01)

Final EIS

Savannah River Operations Office/Environmental Management

DOE/EIS-0082-S2

*Savannah River Site Salt Processing Alternatives,
Aiken, SC*

July 2001 (66 FR 37957; 7/20/01)

Amended Records of Decision

Environmental Management

DOE/EIS-0200

*Treatment and Storage of Transuranic (TRU) Waste from
the Mound Plant (Second Revision to Programmatic
Record of Decision for Treatment and Storage of TRU
Waste)*

7/13/01 (66 FR 38646; 7/25/01)

Savannah River Operations Office/Environmental Management

DOE/EIS-0217

*Management of Low-Level Radioactive Waste and
Mixed Hazardous and Low-Level Radioactive Waste at
the Savannah River Site, Aiken, SC*

6/4/01 (66 FR 34431; 6/28/01)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Temporary Small Resource Policy

6/22/01 (66 FR 35779; 7/9/01)

DOE/EIS-0230

*Electrical Interconnection of the
Chehalis Generation Facility*

5/24/01 (66 FR 29937; 6/4/01)

Western Area Power Administration

DOE/EIS-0322

Sundance Energy Project, AZ

8/20/01 (66 FR 45979; 8/31/01)

Supplement Analyses

Bonneville Power Administration

Mid-Columbia Coho Reintroduction Feasibility Project (DOE/EA-1282)

DOE/EA-1282/SA-1

*Mid-Columbia Coho Reintroduction Feasibility Project –
Modifications to Original Proposal*

(Decision: No further NEPA review required) April 2001*

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246/SA-15

Western Pond Turtle Recovery – Columbia River Gorge
(Decision: No further NEPA review required) May 2001*

continued on next page

Recent EIS-Related Milestones (continued from previous page)

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265/SA-50
John Day Watershed Restoration
(Decision: No further NEPA review required) May 2001*

DOE/EIS-0265/SA-51
Chumstick Creek Culvert Replacement Projects
(Decision: No further NEPA review required) April 2001*

DOE/EIS-0265/SA-52
Protect and Enhance John Day Anadromous Fish Habitat
(Decision: No further NEPA review required) May 2001*

DOE/EIS-0265/SA-53
Lake Billy Shaw Operations and Maintenance
(Decision: No further NEPA review required) June 2001

DOE/EIS-0265/SA-54
Habitat Enhancement and Protection on the Duck Valley Indian Reservation
(Decision: No further NEPA review required) June 2001

DOE/EIS-0265/SA-55
Jim Brown Creek Streambank Stabilization Project
(Decision: No further NEPA review required) June 2001

DOE/EIS-0265/SA-56
Mining Reach of the Wind River and Dry Creek Rehabilitation
(Decision: No further NEPA review required) June 2001

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

DOE/EIS-0285/SA-2
Danger Tree Clearing on Nine Rights-of-Way
(Decision: No further NEPA review required) April 2001*

DOE/EIS-0285/SA-3
Vegetation Management on Grizzly-Summerlake Transmission Line Corridor from Structure 52/2 to 68/1+340
(Decision: No further NEPA review required) March 2001*

DOE/EIS-0285/SA-4
Vegetation Management on Ponderosa-Pilot Butte 18/2 to 18/4 Relocation
(Decision: No further NEPA review required) March 2001*

DOE/EIS-0285/SA-5
Vegetation Management on Big Eddy-Ostrander Transmission Line Corridor from Structure 27/3 to 93/3+100
(Decision: No further NEPA review required) March 2001*

DOE/EIS-0285/SA-6
Vegetation Management of Annual Weeds on Seven Acres of BPA-Owned Pastureland at the Walla Walla Substation
(Decision: No further NEPA review required) April 2001*

DOE/EIS-0285/SA-7
Vegetation Management on Sections of Three Rights-of-Way
(Decision: No further NEPA review required) April 2001*

DOE/EIS-0285/SA-8
Clearing C-Trees (Tall Growing Trees) Along the South Side of the Right-of-Way
(Decision: No further NEPA review required) April 2001*

DOE/EIS-0285/SA-9
Vegetation Management on McNary-Santiam No. 1 and No. 2 Transmission Line Corridor from Structure 137/2 to 150/1+500
(Decision: No further NEPA review required) May 2001*

DOE/EIS-0285/SA-10
Vegetation Management along the Covington-Duwamish No. 1 Right-of-Way From Covington Substation to Tower 10/4
(Decision: No further NEPA review required) May 2001*

DOE/EIS-0285/SA-11
Vegetation Management along the Covington-Maple Valley No. 2 Transmission Line Right-of-Way
(Decision: No further NEPA review required) May 2001*

DOE/EIS-0285/SA-12
Vegetation Management along the Olympia-Grand Coulee No. 1 Transmission Line Right-of-Way
(Decision: No further NEPA review required) May 2001*

DOE/EIS-0285/SA-13
Vegetation Management along the Naselle Tarlett No. 1 and No. 2 Transmission Line Right-of-Way
(Decision: No further NEPA review required) June 2001

DOE/EIS-0285/SA-14
Vegetation Management at the Teakeah Butte Microwave Site
(Decision: No further NEPA review required) June 2001

DOE/EIS-0285/SA-15
Vegetation Management on Selected Sections of Rights-of-Way in the Ross-St. John and Ross-Carborundum Transmission Line Rights-of-Way
(Decision: No further NEPA review required) June 2001 

*Not previously reported in Lessons Learned

Third Quarter FY 2001 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 2001.

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

- *Early stakeholder involvement.* Project staff met with all of the stakeholder organizations early in the process to obtain their input.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Responsive NEPA document contractor management.* Contractor project management was very responsive to changing the scope and the need to update or generate supporting documentation.
- *Pressure to complete the process.* The NEPA process and project permits needed to be completed for the research to proceed, and the research had to be timed to coincide with bird migration periods.
- *Communication and determination.* Constant communication among all parties involved in document preparation, and a willingness to drive to meet the scheduled completion date, facilitated timely completion.

Factors that Inhibited Timely Completion of Documents

- *Lack of attention from the NEPA Compliance Officer.* The NEPA Compliance Officer did not always sign off on necessary letters in a timely manner, and allowed discussions in review meetings to wander to irrelevant topics and previously reviewed issues.
- *An inexperienced NEPA Document Manager.* The NEPA Document Manager was new to the job, unassertive, and on travel during the review process.
- *Extensions of public comment periods.* The operations office continually allows more than the required 30-day public comment period on EAs, which eventually affects the schedule.

Factors that Facilitated Effective Teamwork

- *Close cooperation between DOE and contractor personnel.* The NEPA Document Manager and a DOE radiation exposure expert worked closely with contractor personnel to resolve issues.
- *Having a stake in the outcome.* All parties had a stake in completing the process for the good of the laboratory.

Factors that Inhibited Effective Teamwork

- *Irrelevant discussions during reviews.* One panel member continually brought up irrelevant topics during review meetings.

Process

Successful Aspects of the Public Participation Process

- *Use of electronic mail for communication.* Electronic mail provided an efficient and inexpensive way to provide information to the public and for the public to submit comments.
- *Early and continual communication.* The public was pleased with the early and continual communication about the project, and a public meeting was highly effective in generating stakeholder comments on the draft EA.

Unsuccessful Aspects of the Public Participation Process

- *Out of scope comments.* The public didn't understand the NEPA process and provided comments that were outside the scope of the EA.
- *Problems opening electronic documents.* The only public comment on the EA was from someone unable to open the document on our facility's web site. In the future we will provide a phone number for people to call for a paper copy if they have similar problems.

continued on next page

Third Quarter FY 2001 Questionnaire Results

What Worked and Didn't Work (continued)

- *Lack of influence of the NEPA process on the project.* There was little public participation because other requirements made the proposed action inevitable.

Usefulness

Agency Planning and Decision Making – What Worked

- *Helping project management focus.* The NEPA process helped project management focus on needed engineering studies concerning various technical issues.
- *Early scoping.* Discussions held early in the scoping process led to a sound and complete scope of work for preparing the EA and resulted in a definite cost savings.

Enhancement/Protection of the Environment

- *Endangered species protection.* The EA process ensured that the project would avoid disturbing an endangered bird species.

Effectiveness of the NEPA Process

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

- For this quarter, in which seven EAs and one EIS were completed, 3 out of 5 respondents rated the NEPA process as “effective.”
- One respondent who rated the process as “4” stated that the environment is enhanced any time a NEPA document is produced, if only by recognition of the potential impacts of the project.
- One respondent who rated the process as “2” stated that the purpose of the proposed project was to determine the effectiveness of another project designed to protect an endangered species, and the decision to continue that project had already been made.
- A respondent who rated the process as “0” stated that other requirements mandated the proposed action, and the NEPA document just confirmed the existing plans. 

NEPA Document Cost and Time Facts

Costs

EAs

- For this quarter, the median cost of the seven EAs completed was \$133,000; the average was \$102,000.
- Cumulatively, for the 12 months that ended June 30, 2001, the median cost for the preparation of 23 EAs was \$65,000; the average was \$81,000.

EISs

- Cumulatively, for the 12 months that ended June 30, 2001, the median and average costs for the preparation of 3 EISs (excluding EIS-0322, which was paid for by the applicant) were both \$2.6 million.

Completion Times

EAs

- For this quarter, the median and average completion times of seven EAs were both 7 months.
- Cumulatively, for the 12 months that ended June 30, 2001, the median completion time for 25 EAs was 9 months; the average was 11 months.

EISs

- Cumulatively, for the 12 months that ended June 30, 2001, the median completion time for 4 EISs was 17 months; the average was 18 months. 

LESSONS LEARNED

December 5, 2001; Issue No. 29

Fourth Quarter FY 2001

CEQ Chair Describes Goals, Supports NEPA Principles



The Council on Environmental Quality (CEQ) wants Federal agencies to weave environmental considerations into everyday business, as opposed to conducting NEPA compliance as a distinct project to fend off lawsuits. Recently appointed CEQ Chair James L. Connaughton (*Lessons Learned Quarterly Report*, June 2001, page 12) described this and other key CEQ goals at a September 21, 2001, meeting with Federal agency NEPA Contacts.

Mr. Connaughton made it clear that this administration supports NEPA's principles "as much as all previous administrations." In this connection, he referred to Section 101 of NEPA – which declares a Federal policy "to use all practicable means and measures... to create

and maintain conditions under which man and nature can exist in productive harmony" – as the first articulation of "sustainable development."

Approach to Environmental Issues

Based on his favorable experiences in advising major corporations how to deal with environmental aspects, Mr. Connaughton described his approach for Federal agencies in terms of the following "themes:"

- ✓ **Promote stewardship.** Empower and challenge local managers to carry out day-to-day environmental responsibilities as an integral component of their long-range management. Develop an "e-consciousness," seeking to avoid environmental problems today, and in the future.

continued on page 3

DOE NEPA Post-9/11: Reconciling the Need to Protect and the Need to Inform the Public

This article describes the current situation regarding DOE's actions to protect information that terrorists might use and the implications for DOE's NEPA Program. Policies regarding protection of such sensitive information are evolving within DOE and the Federal government. We will update DOE's NEPA Community as any significant changes occur. It should be noted that DOE continues to distribute paper copies of its NEPA documents to the public in accordance with NEPA regulations.

Public access to DOE NEPA documents on the Internet has been restricted as a result of the events of September 11, 2001. In early November, the Office of Environment, Safety and Health blocked all access to environmental assessments (EAs) and environmental impact statements

(EISs) and related documents published on the DOE NEPA Web. (Access to NEPA Announcements and guidance modules has not been restricted.) Various DOE Program and Field Offices also removed NEPA documents from their Web sites or blocked access to the documents. Other Federal agencies, including the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission, have taken similar actions.

DOE actions to restrict Web information were taken in response to a memorandum dated October 26, 2001, from DOE Deputy Secretary Francis S. Blake. Referring to the recent terrorist attacks and the resulting heightened concern about publicly available information on the Department's operations, Deputy Secretary Blake directed

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Inside *LESSONS LEARNED*

Welcome to the 29th quarterly report on lessons learned in the NEPA process. We thank you for your continuing support of the *Lessons Learned* program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by February 1, 2002. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2002

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2002 (October 1 through December 31, 2001) should be submitted by February 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

Feedback on LLQR

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

LLQR Online

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

LLQR Index

A cumulative index of the *Lessons Learned Quarterly Report* is provided in the September issue each year.

Printed on recycled paper



NAEP Environmental Excellence Award Nominations Due in March

March 30, 2002, is the deadline for submitting nominations for the National Association of Environmental Professionals (NAEP) Environmental Excellence Awards. This national award competition recognizes projects, including NEPA reviews, and programs that serve as models of excellence in the environmental professions and that have made significant contributions. The Award categories are NEPA excellence, educational excellence, environmental management, planning integration, public involvement and partnership, environmental stewardship, conservation programs, and best available environmental technology. NAEP will present the 2002 Environmental Excellence awards at its annual conference to be held June 23 to 26, in Dearborn, Michigan.

DOE has earned several Environmental Excellence Awards (*Lessons Learned Quarterly Report*, June 2001, page 2, and September 2000, page 3). Most recently, DOE's Office of Environmental Policy and Guidance was recognized in June 2001 for its graded approach for evaluating radiation doses to aquatic and terrestrial biota. Previously, DOE received three awards in 2000, including one for its NEPA Lessons Learned Program (which includes this quarterly report).

For additional information and a copy of the award nomination form, visit the NAEP Web site at www.naep.org or contact Dr. Fred Pinkney, NAEP Awards Chairman, at fpinkney@burnsmcd.com or 816-822-3304. Self-nominations are permitted and appropriate. 

CEQ Chair Describes Goals (continued from page 1)

- ✓ **Employ science-based decision making.** Improve the application of risk management tools to environmental risks. Mr. Connaughton believes Federal agencies already manage financial and physical risks very well.
- ✓ **Strengthen Federalism.** Involve local governments early. Mr. Connaughton realizes this may be a challenge at the outset, but believes it produces better outcomes. CEQ will press Federal agencies to overcome their apparent resistance and engage local governments as cooperating agencies in EISs.
- ✓ **Strive for innovation.** Emulate how the marketplace often finds efficient solutions by examining underlying issues apart from legal requirements.
- ✓ **Assure compliance.** Build assurance of compliance with environmental requirements into effective management processes.

Upcoming Actions

Mr. Connaughton plans several actions “to help get on with the people’s business more quickly.” He expects, for example, that the President will “recharge” Executive Orders concerning environmental management, waste prevention, and recycling. Further, the Chair intends to meet frequently with senior-level Federal agency managers, such as Deputy Secretaries, to challenge them to change agency cultures so as to optimize their environmental management processes. That is one of the reasons he recently asked agency heads to designate senior-level managers as NEPA Liaisons to CEQ. Finally, CEQ is seeking to identify potential changes to its regulations or guidance that would streamline or otherwise improve the NEPA process. 

Recent CEQ NEPA Activities

CEQ circulated refresher guidance on emergency alternative arrangements under NEPA (40 CFR 1506.11). (See page 6.)

CEQ sought and received suggestions from agency NEPA Contacts regarding

- *Improvements to CEQ’s NEPA regulations and guidance:* CEQ is evaluating the ideas it has received from Federal agencies and is preparing a draft action plan that it will give to agencies for review and comment. Horst Greczmiel, CEQ’s Associate Director for NEPA Oversight, says that CEQ has not yet decided whether it will propose changes to its regulations for implementing NEPA, prepare additional CEQ guidance, or provide education on its current regulations and guidance. He expects that all these options will be used to address the issues raised to date.
- *Draft guidance on cooperating agencies:* CEQ continues efforts to ensure that all Federal agencies actively consider designation of Federal and non-Federal cooperating agencies in the preparation of NEPA analyses and documents. Mr. Greczmiel projected that the guidance will provide factors for Federal agencies to consider when determining whether to invite or to end cooperating agency status. Mr. Connaughton again emphasized that “cooperating agency status does not enlarge or diminish the decision-making authority of any agency involved in the NEPA process.”

NEPA Post-9/11 (continued from page 1)

all Departmental elements to review information that is available on the Internet and in other venues that could be used by those who would target DOE sites, facilities, and activities for terrorist attacks. Citing EISs as an example of the type of information that could be used by terrorists, the Deputy Secretary directed the Department to remove or restrict public access to such information, as appropriate.

Aiming to Limit But Not Eliminate Access

“The need to protect the public post-9/11 and the need to inform the public through the NEPA process presents an extremely challenging security review, but these two objectives must be reconciled,” said Nancy Slater, who is leading an ongoing operational security review for the Office of Civilian Radioactive Waste Management (RW). “Our intention is to limit, as necessary, but not eliminate, access to sensitive material,” she said.

Public access to information under the NEPA process generally parallels public access under the Freedom of Information Act (FOIA). The Council on Environmental Quality’s regulations implementing NEPA direct Federal agencies to make EISs and related documents available to the public under the provisions of FOIA with one exception – “without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action” (40 CFR 1506.6(f)). In its NEPA regulations, DOE affirms that it shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to FOIA. However, DOE shall, “to the fullest extent possible,” segregate any information that is exempt from disclosure requirements into an appendix to allow public review of the remainder of a NEPA document. (See 10 CFR 1021.340.)

Attorney General John Ashcroft issued a Memorandum on FOIA procedures for Heads of all Federal Departments and Agencies on October 12, 2001, emphasizing the need for Federal agencies to carefully consider institutional, commercial, and personal privacy interests that could be implicated by disclosure of information. “When you carefully consider FOIA requests and decide to withhold records in whole or in part,” the memorandum states, “you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis....”

The Attorney General’s memorandum and Department of Justice guidance on its application are available on the Department of Justice Web site (www.usdoj.gov, under “FOIA,” then “Reference Materials,” then “FOIA Post,” then “New Attorney General FOIA Memorandum Issued” (posted 10/15/01)). The guidance accompanying the memorandum focuses on an exemption referred to as “High 2 Exemption: Risk of Circumvention,” and the important role it can play in allowing agencies to protect critical infrastructure information.

The Department’s regulations implementing FOIA require DOE to make records (even records authorized by FOIA to be withheld) available to the requester whenever such disclosure is in the public interest (10 CFR 1004.1), and obligates DOE when denying a request for information to state why a discretionary release is not appropriate (10 CFR 1004.7(b)(1)).

Focus Shifts to Documents in Preparation

In response to the Blake directive, the NEPA Office first focused on securing information on the DOE NEPA Web site so as to limit easy access to existing information. (In this regard, access to EAs and EISs on the DOE NEPA Web for persons with doe.gov addresses has been restored. A process for password access for others with a “need to know” is being developed.) Attention has now shifted to the content of NEPA documents that are being prepared.

In reconciling the sometimes competing needs of protecting and informing the public in the RW program, Ms. Slater is consulting with the NEPA Office, Office of General Counsel, Office of Security, and other entities, and applying a general security concept that is analogous to a “three-legged stool.”

The “three legs” represent types of information that may be useful to a terrorist who wants to cause an adverse “consequence” (e.g., fatalities, radiation exposures to the public, theft of Special Nuclear Material, etc.). Removing any one “leg” would render the stool useless – that is, make the information represented by the other two legs unusable. The three legs are: (1) “Target” (e.g., identifying an inventory of nuclear or hazardous material that a terrorist might find to be an attractive target),

continued on next page

NEPA Post-9/11 (continued)

(2) “Location” (e.g., identifying specific buildings or operations where such materials or hazards are located), and (3) “Accessibility” (e.g., identifying vulnerabilities of materials to unauthorized access or destruction).

Security Concerns Do Not Change Required NEPA Analysis

The analytical work that is done for an EIS or EA has not changed as a result of our heightened concerns for security. The same type of analysis with the same level of detail needs to be provided to the decision maker and others with a “need to know.” How the analytical information is packaged and issued may change, however.

Most DOE NEPA documents routinely undergo a Scientific and Technical Information review before issuance that may consist of a patent review, classification review and review for “unclassified controlled nuclear information” (UCNI), and an operational security review. As the Department is now focusing more attention on operational security, these reviews may take longer, affect EIS and EA schedules, and result in segregation of certain sensitive information.

DOE has precedents and the NEPA process provides flexibility for necessary segregation of all or parts of an environmental analysis from public review. For example, in proposing the “Sapphire Project,” DOE prepared a classified EA that was later declassified and issued to the public after the action was taken (DOE/EA-1006, October 1994, Proposed Interim Storage at the Y-12 Plant, Oak Ridge, TN, of Highly Enriched Uranium Acquired from Kazakhstan by the United States). In several other cases, DOE has segregated material into classified appendices that were nonetheless provided to Environmental Protection Agency personnel with security clearances for review (DOE/EIS-0236, Stockpile Stewardship and Management Programmatic EIS, is a major example).

What’s Next

The Office of NEPA Policy and Compliance is working to address the need for public disclosure of appropriate information while protecting homeland security. The Office plans to prepare guidance on evaluating and segregating NEPA information for security purposes as NEPA documents are prepared. In addition, the Office is considering the feasibility of reviewing NEPA documents that were previously accessible to the public on the DOE NEPA Web, segregating information as necessary, and again making the documents accessible to the public on its Web site. **LL**

Some Types of Information

Classified – Information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, or information determined to require protection against unauthorized disclosure under Executive Order 12958 or prior Executive Orders, which is identified as National Security Information. DOE Manual 475.1-1A, May 8, 1998, issued under DOE Order 200.1.

Official Use Only (OUO) – A designation identifying certain unclassified but sensitive information that may be exempt from public release under the Freedom of Information Act. DOE Manual 475.1-1A, May 8, 1998. (Per the Office of DOE General Counsel for General Law, OUO is not a recognized exemption under FOIA. Only that material that qualifies under one or more of FOIA’s nine exemptions may be withheld from a FOIA requester.) (A DOE Order concerning OUO is being developed.)

Unclassified Controlled Nuclear Information (UCNI) – Certain unclassified but sensitive Government information concerning nuclear material, weapons, and components whose dissemination is controlled under Section 148 of the Atomic Energy Act. DOE Order 471.1A, June 30, 2000.

An e-NEPA Reminder

For all completed DOE NEPA documents, please continue to provide the Office of NEPA Policy and Compliance with the required electronic file(s) and a completed DOE NEPA Document Certification and Transmittal Form. We will continue to maintain the Department’s comprehensive electronic NEPA library for access by the DOE NEPA community and others with a “need to know.” For further information on electronic files and submittal procedures, see *Lessons Learned Quarterly Report*, December 2000, page 7, and June 2000, page 11, or contact Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879.

Agencies' Responses to Terrorist Attacks Have Implications for NEPA, Other Reviews

The September 11 terrorist acts at the World Trade Center, the Pentagon, and in Pennsylvania, and the President's subsequent Proclamation 7463 – Declaration of National Emergency by Reason of Certain Terrorist Attacks (66 FR 48199; September 18, 2001), prompted agency responses with implications for all, including the environmental community. The Council on Environmental Quality (CEQ) promptly provided guidance on the applicability of NEPA to emergency actions, and the Advisory Council on Historic Preservation established and then extended emergency provisions.

Emergency Alternative Arrangements under NEPA

One day after the September 11 terrorist attacks, CEQ Chair Jim Connaughton e-mailed to agency NEPA Contacts a list of factors (below) for decision makers

to consider in determining whether Federal response actions would trigger the procedural requirements of NEPA. He reminded the Contacts that "CEQ is empowered to provide alternative arrangements for NEPA compliance to facilitate expeditious responses to emergencies."

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Do Agency Responses Trigger NEPA Procedures? Notes from CEQ, September 12, 2001 (edited for this publication)

- The CEQ NEPA Regulations (40 CFR 1506.11) address emergencies:
"Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review."
- Federal action is required to trigger NEPA. (For example, New York City authorities condemning a building does not trigger NEPA.)
 1. If impacts are not "significant," then the provisions of section 1506.11 do not apply (e.g., the Federal Aviation Administration canceling all flights is unlikely to trigger NEPA).
 2. If impacts are "significant," consider whether they are covered by an existing NEPA analysis or applicable statutory exemption (e.g., implementing plans to redeploy military vessels and aircraft; Federal Emergency Management Agency emergency actions).
 3. If impacts are "significant" and you are not already covered (e.g., unsorted disposal of debris at a specific site; permanent expansion of airport facilities), consult with CEQ.
- **Do not delay** immediate actions necessary to secure lives and safety of citizens to consult, but consult as soon as feasible.
- The "alternative arrangements" take the place of an EIS and only apply to **Federal** actions with "significant environmental impacts." Lesser actions may be subject to agency NEPA procedures. Agency NEPA personnel should be contacted regarding agency-specific definitions of "significant" actions and actions that are "categorically excluded."
- "Alternative arrangements" for compliance with NEPA may be subject to judicial review. "Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance."
- Alternative arrangements are limited to "the actions necessary to control the immediate impacts of the emergency."
- Courts afford CEQ substantial deference regarding its determination of emergency alternative arrangements. Alternative arrangements have been unsuccessfully challenged three times (including Westover, Massachusetts, overflights for Desert Storm training). Once the alternative arrangements are established, CEQ will provide a letter spelling out the considerations on which they are based.
- Factors to address when crafting "alternative arrangements:" nature and scope of the emergency; actions necessary to control the immediate impacts of the emergency; potential adverse effects of the proposed action; components of the NEPA process that can be followed and provide value; duration of the emergency; and potential mitigation measures.

Agencies' Responses (continued)

DOE recently applied the emergency provisions of CEQ's and its own NEPA regulations (10 CFR 1021.343) in responding to the Cerro Grande wildfire near Los Alamos National Laboratory. (See *Lessons Learned Quarterly Report*, September 2000, page 1, and September 2001, page 4.)

Advisory Council Sets Emergency Provisions for Historic Properties

On October 26, 2001, the Advisory Council on Historic Preservation notified its contacts that, as a result of the President's declaration of national emergency, Federal agencies may use the emergency provisions of the Advisory Council's regulations, 36 CFR Part 800.12, for undertakings that are an essential and immediate response to the President's declaration.

The Advisory Council's emergency provisions apply "only to those undertakings that will be implemented within 30 days after the disaster or emergency has been

formally declared...." Because of the nature of the emergency and the ongoing national security needs, however, the Advisory Council extended the applicability period of the emergency provisions until further notice, provided that agency undertakings are directly associated with "the continuing and immediate threat of further attacks." While the regulations allow for an agency to request an extension of the emergency provisions, the Advisory Council is granting extensions without requiring official requests because many agencies may be implementing emergency undertakings in the coming months.

The Advisory Council urges those agencies that may need to implement emergency provisions for multiple undertakings to develop their own procedures for taking historic properties into account during their emergency operations.

Questions concerning the Advisory Council's decision to extend its emergency provisions can be directed by e-mail to achp@achp.gov. 

Forest Service Succeeds with NEPA Training

By: Joseph Carbone, *National Environmental Policy Act Coordinator*
U. S. Department of Agriculture, Forest Service



More than 10 years ago, the Forest Service developed its Forest Plan Implementation course to help its staff successfully implement land and resource management plans at the project level. Taught by instructors with field experience, the course meets the needs of line officers responsible for decisions by focusing on key NEPA and decision-making concepts. Although the course is based on Forest Service procedures and case studies, other agencies have found it useful and are welcome to register their employees.

The course charts a path from broad early planning through analysis to decision making. It presents land and resource plan implementation as a three-phase process:

- Pre-NEPA assessment identifies needs and preliminary project-level alternatives by comparing existing conditions and practices to those described in a land and resource management plan.
- The NEPA process focuses on defining issues, developing alternative activities to implement the plan, and analyzing environmental impacts.
- Environmental monitoring supports mitigation of project impacts and adjustments to the land and resource management plan.

Class modules include: process management, making phased or tiered decisions, and creating a project record to support appeals and litigation. Public involvement strategies are discussed throughout the course.

The Forest Plan Implementation course is "hands on," not just informational. After presenting concepts and case studies, instructors help students practice applications through team exercises. Assessing student performance in the classroom helps instructors and students identify what material they need to revisit before the class ends and students are back on the job.

The four-day course has five or six instructors, drawn primarily from field units, for 30 to 35 students. Many instructors are environmental practitioners rather than NEPA specialists – for example, district rangers may discuss key decision strategies, and wildlife biologists may teach effects analysis. Each of the nine Forest Service regions maintains instructor teams and schedules courses, while the Headquarters Office in Washington, DC, oversees the course content and format.

The Forest Plan Implementation course was offered approximately 30 times during fiscal year 2001 to high praise from students. One student commented: "NEPA is just like eating your vegetables. Not everyone likes to do it, but it is good for you.... You guys are the 'cheese sauce' over the NEPA, you make it taste better." Whatever works!

The Forest Service plans to deliver about 20 to 30 courses in 2002 (with cheese sauce). Contact Joe Carbone at jcarbone@fs.fed.us or 202-205-0884 for schedules and additional information, or see the course description at www.fs.fed.us/forum/nepa/ftcp1.html. 

Oak Ridge Holds NEPA Community Meeting

By: *Katatra Day, Environmental Protection Group*
David Allen, NEPA Compliance Officer, Oak Ridge Operations Office

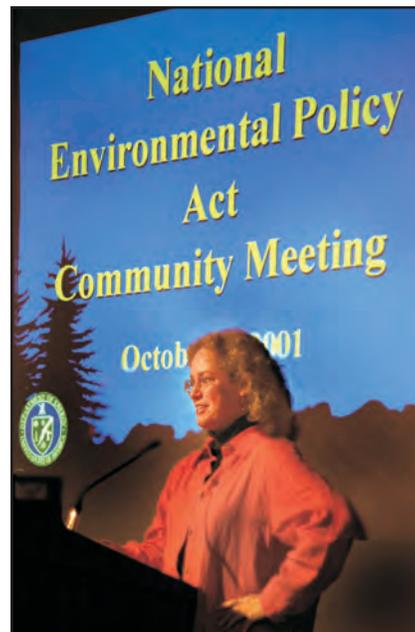
To improve its implementation of NEPA, about 40 Oak Ridge Operations Office (ORO) employees and NEPA support contractors gathered for a half-day NEPA Community Meeting on October 4, 2001, in Oak Ridge, Tennessee. Additional participants at ORO-managed facilities in Portsmouth, Ohio, and Paducah, Kentucky, were linked by voice line.

“This meeting provided us with an excellent opportunity to share our accomplishments and plans among our contractors and Federal employees,” said Leah Dever, Operations Office Manager. “Oak Ridge has many plans for new projects; consequently, talking about our various projects, the NEPA expectations, and lessons learned was time well spent!”

Ms. Dever opened the meeting by reflecting upon her personal experiences in preparing NEPA documents. She recommended early NEPA planning and close attention to public participation.

The NEPA Community Meeting consisted of five presentations and a panel discussion.

- ✓ Walter Perry, Public Affairs Office, and David Page, NEPA Team, discussed the benefits of public participation in the NEPA process, describing the appropriately different levels of involvement for an EA and an EIS. Mr. Page emphasized the value of cooperating agency status for agencies such as the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers: such “partnering” can enhance the development of alternatives, provide technical assistance with field studies (e.g., floodplain studies, wetland delineation, and archaeological inventories), and facilitate project implementation.
- ✓ Katatra Day, NEPA Team, discussed matters involving “Electronic NEPA,” including electronic publishing guidelines, the Oak Ridge internal NEPA Web site (currently in development), and the DOE NEPA Web.
- ✓ David Allen, NEPA Compliance Officer, explained and promoted the use of the DOE-wide NEPA task order contracts for document preparation. Representatives from contract incumbents SAIC, Battelle Memorial Institute, and Tetra Tech, Inc., discussed NEPA documents completed for ORO under the DOE-wide NEPA contracts and provided information on their companies’ NEPA capabilities.



Oak Ridge Operations Office Manager Leah Dever encourages NEPA practitioners to start NEPA early and pay close attention to public involvement.

- ✓ Jim Elmore, Alternate NEPA Compliance Officer, discussed environmental reviews and consultations that should be integrated with the NEPA process, to the fullest extent possible, such as the threatened and endangered species consultation with the U.S. Fish and Wildlife Service (<http://endangered.fws.gov/consultations/index.html>), and floodplain and wetlands requirements under 10 CFR Part 1022.
- ✓ Ray Moore, Cultural Resources Management Coordinator, reviewed cultural resources laws and regulations and discussed the status of cultural resources management at Oak Ridge, Paducah, and Portsmouth. He explained how, in consultation with the State Historic Preservation Office, ORO completed a survey of all structures at Oak Ridge and determined each structure’s eligibility for the National Register of Historic Places. He also described the benefits of ORO’s recently completed Cultural Resources Management Plan, which adheres closely to DOE cultural resource management guidance (DOE/EH-0501, available at tis.eh.doe.gov/oepa/guidance/cultural.cfm).

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Oak Ridge NEPA Meeting (continued)

The panel discussion focused on lessons learned by Oak Ridge NEPA Document Managers Carolyne Thomas (Programmatic Environmental Assessment to Store Potentially Reusable Uranium Materials, (DOE/EA-1393, in preparation) and Gary Hartman (Y-12 Sitewide EIS, DOE/EIS-0309) and the Portsmouth Winterization EA, DOE/EA-1392). They recommended that NEPA document preparers allow sufficient review time for draft documents and initiate all consultation processes early. The panel also discussed the future development of a handbook for Oak Ridge NEPA Document Managers.

Mr. Allen closed the meeting by emphasizing keys to NEPA success: initiating the NEPA process early,

planning for adequate public involvement, writing clearly, consulting other agencies as appropriate in preparing EAs, and properly using and keeping records of categorical exclusions. The participants judged the ORO NEPA Community Meeting a success and scheduled a follow-up meeting for early March. As Mr. Allen stated, "Oak Ridge is a multi-program site, and, without increased communication such as this meeting, we cannot implement NEPA consistently."

For more information on the Oak Ridge NEPA Program, contact David Allen at allendr@oro.doe.gov or 865-576-0411 or Katatra Day at daykc@oro.doe.gov or 865-576-0835. 

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see the Cumulative Index (under "Contracting, NEPA") in the September 2001 issue. For questions or comments on the DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
NEPA Document Support for New Power Plant Sites	Nancy Werdel 916-353-4537 werdel@wapa.gov	7/23/01	Battelle
EA for the Gray's Harbor Lateral Pipeline	Federal Energy Regulatory Commission	7/23/01	Battelle
Environmental Reviews and Documentation for Fiber Optic Cable Installations	Ted Anderson 406-247-7385 tanderson@wapa.gov	7/25/01	Tetra Tech, Inc.
EA for Decontamination & Decommissioning of the Omega West Reactor and Associated Structures at Los Alamos National Laboratory	Richard Nevarez 505-845-5804 rnevarez@doeal.gov	8/27/01	Tetra Tech, Inc.
EIS for Islander East Pipeline Project	Federal Energy Regulatory Commission	9/18/01	Tetra Tech, Inc.
Williston-Wolf Point Environmental Review and Documentation	John Harrington 605-353-9431 jharrington@wapa.gov	9/19/01	Tetra Tech, Inc.
Supplement Analysis for the Site-wide EIS for the Nevada Test Site	Michael G. Skougard 702-295-1759 skougard@nv.doe.gov	9/28/01	Tetra Tech, Inc.

Training Opportunities

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

- **Cumulative Effects Assessment in the NEPA Process**

Durham, NC: February 6-8

Fee: \$640

Register by January 7

- **Preparing and Reviewing Environmental Impact Analysis**

Durham, NC: June 3-6

Fee: \$960

Register by May 6

Nicholas School of the Environment

Duke University

Phone: 919-613-8082

E-mail: britt@duke.edu

Internet: www.env.duke.edu/cee/execed.html

- **“NEPACoach” Program**

Custom-designed coaching and training to improve an organization’s existing NEPA program in any or all of four phases:

Phase I – Train the Team (NEPA Toolbox curriculum).

Phase II – The NEPA Planning Blueprint, focusing on scoping, public involvement, and other early NEPA activities.

Phase III – The NEPA Navigator, focusing on the middle of the NEPA process – e.g., evaluating impacts, and keeping document preparers on the right track.

Phase IV – The NEPA Document Production System, dealing with final compliance checks, preparing decision documents, distribution, and the administrative record.

Available through GSA Contract No. GS-10F-0163L.

Environmental Training & Consulting International, Inc.

Phone: 720-859-0380

E-mail: info@envirotrain.com

Internet: www.envirotrain.com

- **Clear Writing for NEPA Specialists**

Boise, ID: February 5-7

Fee: \$795

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Seattle, WA: December 11-14

Boise, ID: January 29 - February 1

Fee: \$995

- **Endangered Species Act Overview**

Portland, OR: February 26

Fee: \$195

- **Section 106 (of the NHPA) Overview**

Portland, OR: March 1

Fee: \$195

The Shipley Group

Phone: 888-270-2157 or 801-298-7800

E-mail: ben@shipleygroup.com

Internet: www.shipleygroup.com

NETO is Closed

Due to the reorganization of DOE Environmental Management resources, the National Environmental Training Office (NETO) has closed and NETO course offerings have been discontinued.

Some environmental training courses previously sponsored by NETO may be offered by the following organizations:

- WPI, an affiliate of Virginia Tech, at www.wpi.org
- Epsilon Solutions. Phone: 803-643-8704
- Advanced Resource Technologies Inc., Environmental Training Management Division at www.team-arti.com/etmd/index.htm
- The Academy of Certified Hazardous Materials Managers (ACHMM) (www.achmm.org) sponsors CHMM course offerings by local ACHMM Chapters.

For more information, contact David Hoel at 803-725-0818 or david.hoel@srs.gov.

New on the NEPA Bookshelf

From time to time the Office of NEPA Policy and Compliance highlights (without endorsement) new books that may be useful or interesting to the DOE NEPA Community. (See *Lessons Learned Quarterly Report*, September 2000, page 11. Also, "Suggestions for the NEPA Practitioner's Bookshelf," August 1996, is available in the DOE NEPA Compliance Guide on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under "DOE NEPA Tools.")

Environmental Assessment, Second Edition

Ravi Jain, L.V. Urban, Gary Stacey, Harold Balbach,
and M. Diana Webb
New York, New York: McGraw-Hill; 2002
Phone: 800-262-4729
Internet: www.mhhe.com/catalogs/0071370080.mhtml
ISBN 0-07-137008-0; 700 pages; \$89.95

This work is intended as both a handbook for the NEPA practitioner and a textbook for college or graduate level classes. Although it focuses on NEPA, the book also covers other aspects of environmental assessment, including national and international issues such as acid rain, global warming, and biodiversity. DOE's NEPA Community will recognize two case studies based on DOE NEPA reviews, involving Los Alamos National Laboratory: the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility EIS, and emergency procedures for the Cerro Grande Fire. Other topics of interest include environmental justice, public participation, assessment of energy projects, and ecological risk analyses. Each chapter ends with discussion and study questions.



This book features an appendix that classifies and describes environmental characteristics, or "attributes," of resources that may be affected by proposed actions and therefore need to be addressed in an environmental analysis. Attributes are described for air, water, land, ecology, sound, human aspects (e.g., community needs), economics, and fuel, non-fuel and aesthetic resources. For water, for example, the key attributes listed as potentially relevant to an impact assessment are categorized as physical (such as, aquifer yield, flow variation, radioactivity), chemical (acidity, biochemical oxygen demand), and biological (aquatic life). The text defines each attribute, lists activities that may affect it, and describes measurement of variables, evaluation and interpretation of data, geographical and temporal limitations, and mitigation of impacts. This material could be useful in developing explanations that are readily understandable to nontechnical readers of a NEPA document.

(Diana Webb, formerly with DOE's Office of NEPA Policy and Compliance and a DOE NEPA Compliance Officer, and now Ecology Group Leader at Los Alamos National Laboratory, is a co-author of this second edition.)

The NEPA Book: A Step-by-Step Guide on How to Comply with the National Environmental Policy Act, Second Edition

Ronald E. Bass, Albert I. Herson, and Kenneth M. Bogdan
Point Arena, California: Solano Press Books; 2001
Phone: 800-931-9373
Internet: www.solano.com
ISBN 0-923956-67-0; 475 pages; \$65.00

This practitioner's handbook (expanded from a first edition published as *Mastering NEPA: A Step-by-Step Approach*) describes the requirements and decision points of the NEPA review process. In addition to explaining the EA and EIS processes, the book addresses integrating NEPA with other environmental laws, using NEPA information technology, and applying NEPA to global environmental issues. The book provides appendices with the CEQ regulations and guidance, summaries of key NEPA litigation decisions, and lists of Federal agency NEPA regulations and Web sites. (The authors praise the DOE NEPA Web and DOE Lessons Learned Program as particularly worthwhile resources.)

Prediction: Science, Decision Making, and the Future of Nature

Edited by Daniel Sarewitz, Roger A. Pielke, Jr.,
and Radford Byerly, Jr.
Center for Science, Policy, and Outcomes
Washington, D.C.: Island Press; 2000
Internet: www.cspo.org/products/books/
ISBN 1-55963-776-5; 400 pages; \$29.50

Prediction "attempts to paint a comprehensive portrait of the troubled relationship between predictive science and environmental decision making" by looking at the interdependent scientific, political, and social factors involved. It suggests that the appealing notion of basing decisions on a clear picture of the future is deeply problematic in practice. The book explores 10 case histories in predictive science, subdivided into three groups:

1. "Natural" hazards that decision makers perceive as largely unavoidable: short-term weather, floods, asteroids, and earthquakes;

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Litigation Update

Congressional Action Changes Outcome in Glacier Bay National Park Service Case

The September 2001 issue of the *Lessons Learned Quarterly Report* (page 19) reported on litigation involving the National Park Service’s Vessel Management Plan and an associated EA for Glacier Bay National Park and Preserve in Alaska. The U.S. Court of Appeals for the Ninth Circuit had found that the Park Service’s EA – which acknowledged potential adverse effects on the Glacier Bay environment but assessed their severity as “unknown” – could not support a Finding of No Significant Impact. For this reason, and because agency commitments to monitor impacts and mitigate them after implementing the Plan had the process “exactly backwards,” the appeals court found that an EIS was required.

The Park Service’s 1996 Plan had proposed to increase cruise ship entries into Glacier Bay by 30 percent and allow phased increases in the future. As part of its decision, however, the appeals court also granted the plaintiff’s request for an injunction by ordering the National Park Service to roll back the number of vessels allowed to enter Glacier Bay to pre-Plan levels.

Congress Overturns Injunction

On November 5, the President signed the Department of the Interior and Related Agencies Appropriations Act of

2002 (Public Law No. 107-63). Section 130, originally attached as a rider to the appropriations bill by Senator Ted Stevens on behalf of the Alaska cruise ship industry, counteracts the appeals court decision.

The Act requires the Park Service “to complete and issue, no later than January 1, 2004, an [EIS] to identify and analyze possible effects of the 1996 increases in the number of vessel entries issued for Glacier Bay National Park and Preserve,” and provides that the Secretary of the Interior shall use the completed EIS “to set the maximum level of vessel entries.”

The Act further provides that, “until the Secretary sets the level of vessel entries based on the new EIS, the number of vessel entries into the Park shall be the same as that in effect during the 2000 calendar year,” thus effectively overturning the appeals court injunction. This provision also approves the alternative in the Park Service’s 1996 Plan allowing the highest phased increase of vessel entries. Finally, Section 130 states that “nothing in this section shall preclude the Secretary from suspending or revoking any vessel entry if the Secretary determines that it is necessary to protect Park resources.” **LL**

New on the NEPA Bookshelf (continued)

- 2. Problems for which environmental predictions are generated in a context that already has strong political involvements: beach erosion, mining impacts, and nuclear waste disposal; and
- 3. Multifaceted environmental issues that respond to – and raise – complex unresolved policy dilemmas: oil and gas reserves, acid rain, and global climate change.

To help predictive science contribute to positive policy outcomes for environmental issues like these, the authors develop recommendations:

- ✓ Users of predictions, along with other stakeholders, must question predictions. Predictions should be as transparent as possible, including assumptions, limitations, and weaknesses in input data.

- ✓ The prediction process must be open to external scrutiny.
- ✓ Predictions must be generated primarily with the needs of the user in mind.
- ✓ Uncertainties must be clearly articulated so users can understand their implications.
- ✓ Decision makers must realize that predictions can themselves be significant events that catalyze decision making.
- ✓ The quest for alternatives to prediction must be institutionalized in the prediction process, especially when dealing with an action that will occur over or after a very long time and when decision makers have limited experience with the predicted phenomenon. **LL**

EAs and EISs Completed (July 1 to September 30, 2001)

EAs

Albuquerque Operations Office

DOE/EA-1375 (7/26/01)

Construction and Operation of a New Administration Building and Parking Garage in TA-3 at Los Alamos National Laboratory

Cost: \$80,000

Time: 6 months

DOE/EA-1376 (7/26/01)

Construction and Operation of a Joint Operations Center at Los Alamos National Laboratory

Cost: \$74,000

Time: 6 months

Chicago Operations Office

DOE/EA-1387 (9/19/01)

Proposed Wetlands Management Program at Argonne National Laboratory

Cost: \$100,000

Time: 7 months

Fossil Energy

DOE/EA-1357 (3/8/01)

Presidential Permit Application, Brownsville to Mexico Transmission Line Project

[Not previously reported in *Lessons Learned Quarterly Report*]

Time: 6 months

[**Note:** The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

DOE/EA-1383 (9/21/01)

Amendment of Presidential Permit (PP-68), San Diego Gas and Electric Company, for Interconnection of Otay Mesa Generating Project to Miguel-Tijuana

Time: 7 months

[**Note:** The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming/Fossil Energy

DOE/EA-1350 (7/11/01)

Preparation for Production of Crude Oil from a Subterranean Facility

Cost: \$10,000

Time: 12 months

Oak Ridge Operations Office/Environmental Management

DOE/EA-1315 (7/18/01)

Off-Site Transportation of Low Level Waste, Oak Ridge Reservation, Oak Ridge, TN

Cost: \$95,000

Time: 30 months

Western Area Power Administration

DOE/EA-1354 (9/25/01)

Fort Collins 115kV Transmission Line Upgrade Project

Time: 13 months

[**Note:** The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

DOE/EA-1390 (7/9/01)

Page Generating Project

Time: 3 months

[**Note:** The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

EISs

Bonneville Power Administration

DOE/EIS-0321 (66 FR 46792; 9/7/01)

(EPA Rating: LO)

Condon Wind Project, Gilliam County, OR

Cost: \$440,000

Time: 15 months

Savannah River Operations

Office/Environmental Management

DOE/EIS-0082-S2 (66 FR 37957; 7/20/01)

(EPA Rating: EC-2)

Savannah River Site Salt Processing Alternatives, Aiken, SC

Cost: \$1.5 million

Time: 29 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

(See the EPA Web site, <http://es/epa/gov/oeca/ofa/rating.html> for a full explanation of these definitions.)

Recent EIS-Related Milestones (September 1 to November 30, 2001)

Notices of Intent

Environmental Management

DOE/EIS-0329

Depleted Uranium Hexafluoride Conversion Facilities
9/10/01 (66 FR 48123; 9/18/01)

Environmental Management/Ohio Field Office

DOE/EIS-0337

Advance Notice of Intent, Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center
10/31/01 (66 FR 56090; 11/6/01)

Bonneville Power Administration

DOE/EIS-0338

Horse Heaven Wind Farm Project, Benton County, WA
10/5/01 (66 FR 52398; 10/15/01)

DOE/EIS-0340

Northeast Oregon Hatchery – Grande Ronde and Imnaha Spring Chinook Project
11/4/01 (66 FR 58721; 11/23/01)

Draft EISs

Fossil Energy

DOE/EIS-0318

Kentucky Pioneer Integrated Gasification Combined Cycle (IGCC) Demonstration Project, Trapp, Kentucky (Clark County)
November 2001 (66 FR 57716, 11/16/01)

Final EIS

Oak Ridge Operations Office/Defense Programs – National Nuclear Security Administration

DOE/EIS-0309

Site-Wide for the Y-12 National Security Complex
November 2001 (66 FR 55658; 11/2/01)

Amended Record of Decision

Savannah River Operations Office/Environmental Management

DOE/EIS-0220

Interim Management of Nuclear Materials, Savannah River Site, Aiken, SC
10/19/01 (66 FR 55166; 11/1/01)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

TransAlta Centralia Generation LLC Big Hanaford Project
10/19/01 (66 FR 54507; 10/29/01)

DOE/EIS-0321

Condon Wind Project, Gilliam County, OR
11/6/01 (66 FR 57710; 11/16/01)

Savannah River Operations

Office/Environmental Management

DOE/EIS-0082-S2

Savannah River Site Salt Processing Alternatives, Aiken, SC
10/9/01 (66 FR 52752; 10/17/01)

Supplement Analyses

Bonneville Power Administration

Mid-Columbia Coho Reintroduction Feasibility Project (DOE/EA-1282)

DOE/EA-1282/SA-2

Peshastin Incubation Facility
(Decision: No further NEPA review required)
October 2001

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246/SA-17

Eagle Lakes Ranch Acquisition and Restoration
(Decision: No further NEPA review required)
September 2001

DOE/EIS-0246/SA-18

Eugene Wetlands Acquisition Phase II, Lane County, OR
(Decision: No further NEPA review required)
October 2001

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Recent EIS-Related Milestones (continued from previous page)

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265/SA-60
Wagner Ranch Acquisition
(Decision: No further NEPA review required)
August 2001*

DOE/EIS-0265/SA-62
Hood River Fish Habitat Project
(Decision: No further NEPA review required)
September 2001

DOE/EIS-0265/SA-63
Pelican Creek Crossing Improvement
(Decision: No further NEPA review required)
September 2001

DOE/EIS-0265/SA-64
Yakima Basin Side Channels Project, Easton Reach Land Acquisition
(Decision: No further NEPA review required)
September 2001

DOE/EIS-0265/SA-66
Water Rights Acquisition Program
(Decision: No further NEPA review required)
October 2001

DOE/EIS-0265/SA-67
Install Fish Screens to Protect ESA Listed Steelhead and Bull Trout in the Walla Walla Basin
(Decision: No further NEPA review required)
October 2001

DOE/EIS-0265/SA-68
Mill Creek and Little Creek Crossing Improvement, Union County, OR
(Decision: No further NEPA review required)
October 2001

DOE/EIS-0265/SA-70
Yakima Basin Side Channels Project, Scatter Creek/Plum Creek Land Acquisition, Phase I, Kittitas County, WA
(Decision: No further NEPA review required)
October 2001

DOE/EIS-0265/SA-71
Duncan Creek Channel Rehabilitation Project, Skamania County, WA
(Decision: No further NEPA review required)
November 2001

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

DOE/EIS-0285/SA-22
Vegetation Management Along the Chief Joseph-Snomish No. 3 and 4 Transmission Line Right-of-Way from Structure 94/1 to Structure 113/1
(Decision: No further NEPA review required)
August 2001*

DOE/EIS-0285/SA-23
Vegetation Management Along the Schultz River Nos. 1 and 2 from Structure 60/3 to Structure 75/5 and the Olympia-Grand Coulee from Structure 70/2 to Structure 70/5 Transmission Line Rights-of-Way
(Decision: No further NEPA review required)
August 2001*

DOE/EIS-0285/SA-24
Vegetation Management Along the Keeler-Alston Transmission Line Right-of-Way from Structure 29/1 to Structure 43/5
(Decision: No further NEPA review required)
August 2001*

DOE/EIS-0285/SA-25
Vegetation Management Along the Right-of-Way of the Ostrander-Pearl Transmission Line
(Decision: No further NEPA review required)
September 2001

DOE/EIS-0285/SA-26
Vegetation Management on Reedsport-Fairview No. 1 Transmission Line from Structure 1/5 to Structure 39/4
(Decision: No further NEPA review required)
September 2001

DOE/EIS-0285/SA-27
Vegetation Management Along the Marion-Alvey No. 1 from Structure 14/5 to Structure 64/3 and the Marion-Lane No. 1 from Structure 14/5 to Structure 70/2
(Decision: No further NEPA review required)
October 2001

DOE/EIS-0285/SA-28
Vegetation Management Along the Port Angeles-Sappo No. 1 Transmission Line Right-of-Way from Structure 1/1 to Structure 42/10
(Decision: No further NEPA review required)
September 2001 LL

*Not previously reported in Lessons Learned

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 July 1 and September 30, 2001.

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

- *Use of external technical advice in developing alternatives.* A National Academy of Sciences panel advised DOE on alternative technologies for salt processing, which influenced the scope of the EIS. In particular, this advice caused DOE to consider one alternative that DOE had initially rejected as unreasonable.
- *Early involvement of stakeholders.* We invited all the neighboring agencies and entities to come to a kick-off meeting where we visited the existing emergency operations center and then the new proposed replacement building site and asked for participation in the NEPA process. Almost every entity that might ever use the facility sent representatives, and the visit to the old site was sufficient to convince everyone of the need for a new facility. The visit to the proposed building site brought us several comments on how to lessen the effect of the visual impacts of the proposed facility and how to plan the layout to make it more useful and efficient.
- *Use of a research from multiple sources.* DOE, the site contractor, Oak Ridge National Laboratory, the National Academy of Sciences, and internal and expert panels all contributed to determining what technologies should be considered in developing the EIS alternatives.

Data Collection/Analysis

What Worked

- *General site surveys followed by more detailed surveys.* Because wind power projects cover a lot of area (though their actual footprint is small), surveys take a while. In the beginning, the applicant did not know exactly where the turbines would go, so the surveys were larger than necessary. For cultural

resources, the contractor did very general surveys and then, after turbine locations were known, they did a thorough survey of the proposed roads, turbine pads, etc.

- *Use of skilled analysts.* A very well-respected and knowledgeable contractor performed wildlife studies. Data obtained will aid future analysis of impacts of wind farm projects on birds.
- *Analysis of impacts on non-DOE workers.* The main effect analyzed was the potential for adverse human health impacts on non-DOE workers who would come to the site to work during an emergency, rather than leave the area. This represented an unusual twist to the "accident analysis," considered as a normal operations analysis in the EA for a proposed emergency operations center.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Communication with reviewers.* All DOE reviewers were notified of the project and EIS schedule, and the reasons for the time constraints were explained.
- *In-house preparation.* Preparing the EA in-house and having complete control facilitated timely completion.
- *Setting monthly goals.* The document was kept on schedule by setting monthly goals and ensuring that they were achieved.
- *A motivated staff.* Motivated project people who gathered information quickly made it easy to stay on schedule.
- *A dedicated staff.* Having a dedicated program and project staff helped the timely completion of the EA. This greatly facilitated gathering information and getting information to the preparers and project team.

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What Worked and Didn't Work (continued)

- *Working with the NEPA Compliance Officer.* A close working relationship with the local NEPA Compliance Officer facilitated timely completion of the document.
- *Early completion of a technical analysis.* The risk analysis was conducted up-front in order to prevent negative impacts to the schedule.
- *Priority setting by a Deputy Assistant Secretary.* The responsible Deputy Assistant Secretary made completion of the document the top NEPA priority of his organization.
- *Close communication.* Close communication among EH and GC via fax, e-mail, and conference calls allowed for essentially real-time changes to the approval drafts of the draft and final documents, and avoided travel expenses.
- *Coordination with the printer.* Establishing a contract with the printing contractor prior to the need date, and close communication during the printing process, made printing more efficient.
- *A team approach to document distribution.* Timely document distribution was facilitated by early coordination with EH and Congressional Affairs, sending a small field team to Headquarters to coordinate distribution, and having EH-42 actively assist in distribution.
- *Having a DOE staff person at the contractor's office.* The NEPA Compliance Officer, the document manager, or a program staff member was at the support contractor's office during periods of intense work, which facilitated quick decision making and allowed use of the contractor's office as the central communications point for completion of the EIS.
- *Coffee and donuts.* The unashamed, liberal application of sugar and caffeine was particularly effective as a procedure to help keep the document team on schedule.
- *Outside coordination.* Several regulatory agencies and other organizations did not submit reviews on schedule, which inhibited timely completion of the document.
- *Delayed understanding of the schedule at Headquarters.* An earlier understanding of the EIS process and schedule on the part of Headquarters could have allowed timely completion of the EIS on a more relaxed schedule.

Factors that Inhibited Effective Teamwork

- *Withholding project details.* Project proponents did not always provide complete information for purposes of internal discussion and review. For example, the development and operation of a pilot-scale facility was a key element in implementing the proposed action, but this was not acknowledged or documented until after focused querying by Headquarters participants. For effective teamwork, all team members need to have a full understanding of the project objectives and requirements.
- *Limited DOE resources.* Our office seems to be reaching a critical point in having enough available DOE subject matter experts who can cover their regular jobs and serve on a NEPA management and review team at the same time. The project team had to rely on the site contractor to provide that expertise.
- *An inexperienced contractor.* The contractor hired by the applicant had never prepared a DOE NEPA document before and was a bit argumentative at times.

Process

Successful Aspects of the Public Participation Process

- *Open house workshops.* Open house workshops, which have been used for previous projects, were successful for this EA.
- *Publishing a comment form in a newspaper.* The local newspaper included a write-up on our public scoping meeting, with a comment form. Several EIS comments were submitted on the form.

Factors that Inhibited Timely Completion

- *Simultaneous EIS preparation and research.* EIS preparation coincided with technology research and development whose results needed to be discussed and reflected in the EIS.
- *Regulatory delays.* Delays in USFWS concurrence with Endangered Species Act Section 7 consultation determinations inhibited timely completion of the document.

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What Worked and Didn't Work (continued)

- *Public input to the design process.* By involving the public in the EA process, we were able to find flaws in design prior to construction and create win-win situations with our stakeholders.
- *Giving the public an opportunity to express their feelings.* Some members of the public seemed to appreciate the opportunity to vent their negative feelings about the project for this EA.
- *Providing answers to questions.* Although the process did not provide information useful to DOE decision making, it did provide a vehicle for some members of the public to get answers to questions for which they had not received satisfactory answers in other venues.

Usefulness

Agency Planning and Decision Making – What Worked

- *Anticipating and solving problems.* The EA process helped the project staff anticipate and solve problems. It also helped point out a waste disposal problem for the decontamination and decommissioning of a very large building. The staff then developed creative recycling and waste minimization actions that became part of the project and will affect how other decontamination and decommissioning projects are conducted in the future.
- *Coordinating design criteria.* The project has a large number of user organizations, and the NEPA process provided a useful method to coordinate design criteria.
- *Ensuring the safety of non-DOE workers.* The NEPA process helped to focus the project's attention on the need to insure the safety of non-DOE workers who may come to help staff the emergency operations center. In this respect it helped in making a sound decision on the design and function of the facility.
- *Reconsidering alternatives.* The NEPA process may have helped facilitate identification of a reasonable alternative that previously had been rejected.

Agency Planning and Decision Making – What Didn't Work

- *Difficulty in coordinating related documents.* Two closely related EISs were being prepared at the same time. It was sometimes difficult to reconcile or eliminate differences between the two EISs in the way similar or related issues were being analyzed and discussed. The close association of the two EISs probably inhibited preparation of both because of conflicting demands on staff time and because team members tended to confuse the two EISs.

Enhancement/Protection of the Environment

- *Altering locations of wind turbines.* Several proposed turbine locations were moved based on bird data collected for the wind power EIS.
- *Incorporation of mitigation measures.* Additional scheduling and construction mitigation measures were incorporated into the project as a result of the EA process.
- *Waste reduction.* Less waste will be generated than would have occurred without the NEPA process.
- *Avoiding and reducing impacts.* The human environment was protected as well as the natural environment, in that the facility was sited so as to avoid adverse effects on an archeological site nearby, and to reduce visual impacts to neighboring sensitive areas.

Effectiveness of the NEPA Process

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

- For this quarter, in which there were 8 EAs and 2 EISs, 9 out of 11 respondents rated the NEPA process as “effective.”

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What Worked and Didn't Work (continued)

- A respondent who rated the process as “5” explained that DOE had a difficult technical decision to make regarding technology alternatives, and the NEPA process was effective in ensuring that relevant environmental factors were not forgotten or overlooked.
- One respondent who rated the process as “3” stated that the proposed project design incorporated best management practices and best available technologies, and the NEPA process didn’t add much more.
- One respondent who rated the process as “3” stated that the NEPA process was valuable to project planning but not to DOE decision making.
- A respondent who rated the process as “4” stated that the NEPA process provided a useful forum for future facility user organizations. ■■

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost of five EAs was \$80,000; the average was \$72,000. The costs for EAs 1354, 1383, and 1390 were paid by the applicant and do not apply to DOE.
- Cumulatively, for the 12 months that ended September 30, 2001, the median cost for the preparation of 23 EAs was \$74,000; the average was \$82,000.
- For this quarter, the median and average completion times of eight EAs were 7 and 11 months, respectively.
- Cumulatively, for the 12 months that ended September 30, 2001, the median completion time for 29 EAs was 8 months; the average was 11 months.

EIS Costs and Completion Times

- For this quarter, the costs to prepare two EISs were \$440,000 and \$1.4 million; their respective completion times were 15 and 29 months.
- Cumulatively, for the 12 months that ended September 30, 2001, the median cost for the preparation of 4 EISs, excluding EIS-0322, which was paid for by the applicant, was \$1.4 million. The average cost was \$1.8 million.
- ***Cumulatively, for the 12 months that ended September 30, 2001, the median completion time for 5 EISs was 15 months; the average was 20 months. This meets DOE’s policy goal to reduce median process time to 15 months for EISs.*** ■■

LESSONS LEARNED

March 1, 2002; Issue No. 30

First Quarter FY 2002

CEQ Guidance Encourages Agency Cooperation DOE Experience Is Generally Positive

Better cooperation and coordination – always a good idea in the NEPA process – is given an extra boost by the Council on Environmental Quality (CEQ) in new guidance.

James Connaughton, CEQ Chair, in a January 30, 2002, letter to Heads of Federal Agencies, underscores the benefits of enhanced cooperating agency involvement in the NEPA process. These benefits, including analytical and process efficiencies, improved trust among stakeholders, and greater likelihood of successful implementation of a proposed action, extend to both the lead agency and cooperating agencies. Moreover, all affected parties stand to share in the benefits of better decisions.

The CEQ guidance aims to ensure that all Federal agencies are actively considering designation of Federal and non-Federal cooperating agencies in the preparation of NEPA analyses and documentation, and that Federal agencies actively participate as cooperating agencies

continued on page 3

Benefits of Enhanced Cooperating Agency Participation Identified by CEQ

- Discloses relevant information early in the analytical process
- Applies available technical expertise and staff support
- Avoids duplication with other Federal, state, tribal, and local procedures
- Establishes a mechanism for addressing inter-governmental issues
- Fosters intra- and inter-governmental trust and a common understanding of and appreciation for various governmental roles in the NEPA process
- Enhances agencies' ability to adopt environmental documents

DOE Embraces Further NEPA Improvements

“There are lessons to be learned by all of DOE’s NEPA Community in the recent Top-to-Bottom Review conducted by the Office of Environmental Management [EM],” said Carol Borgstrom, Director of the Office of NEPA Policy and Compliance. “Improving NEPA is a continuous process, and we’re always interested in both new ideas and reassessing older ones,” she said.

“We’re examining the Review Team’s recommendations and have begun to develop generally applicable guidance. For example, the team was concerned that risks might worsen while an EIS is underway and that DOE has not

always examined a broad enough range of alternatives. We’ve developed guidance in both areas to improve NEPA implementation,” she said. (See pages 6 and 7.)

EM Top-to-Bottom Recommendations

“It is clear that EM’s NEPA process can be enhanced to support decision making more effectively and in a timely and cost-effective manner,” wrote the Top-to-Bottom Review Team in its February 4 report. “This is an

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Inside *LESSONS LEARNED*

Welcome to the 30th quarterly report on lessons learned in the NEPA process. We thank you for your continuing support of the *Lessons Learned* program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by May 1, 2002. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2002

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2002 (January 1 through March 31, 2002) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

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

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Beverly Cook Becomes Assistant Secretary for Environment, Safety and Health

Beverly A. Cook was sworn in as Assistant Secretary for Environment, Safety and Health on February 6, 2002. In this position she advises the Secretary of Energy on national environmental goals and oversees the Department's compliance with environmental laws and regulations, including NEPA. She is also the Secretary's principal advisor for worker and public health and safety at DOE sites.

Ms. Cook has more than 27 years of experience directly related to DOE's environment, safety, and health goals. She earned a bachelor's degree in metallurgical engineering, and performed both nuclear safety

research and development and basic and applied materials research while working as a contractor at the Idaho National Engineering and Environmental Laboratory. After serving on the staff of the Defense Nuclear Facilities Safety Board, she joined DOE's Office of Nuclear Energy (now Nuclear Energy, Science and Technology), where she served in a variety of positions, including Principal Deputy Director. She was appointed Manager of the Department's Idaho Operations Office in 1999, and most recently served as Acting Director, Site Operations, in the Office of Environmental Management. We look forward to working with her on initiatives to improve DOE's NEPA program. 

CEQ Guidance (continued from page 1)

in another agency's NEPA processes. Reluctance to assume the role of a cooperating agency results in inconsistent implementation of NEPA, according to CEQ.

While cooperating agency status is a major component of stakeholder involvement, the guidance notes that this role neither enlarges nor diminishes the responsibilities or decision making authority of any agency involved in the NEPA process.

To assure that the NEPA process proceeds efficiently, CEQ urges agencies to set time limits, identify milestones, assign responsibilities, and establish other appropriate ground rules. Agencies are encouraged to document their expectations, roles, and responsibilities.

Factors to Consider in Initiating or Ending Cooperative Status

CEQ suggests 12 factors that an agency could use in determining, on a case-by-case basis, whether to invite, decline, or end cooperating agency status. These include jurisdiction by law or special expertise, as specified in the CEQ regulations (respectively, 40 CFR 1508.15 and 1508.26); ability to participate in a timely manner in scoping, analysis, and document preparation; and ability to provide resources such as personnel, expertise, funding, models and databases, and facilities and equipment. The factors are not intended to be all-inclusive, nor is it necessary to satisfy all factors.

Under the CEQ regulations (40 CFR 1501.6), upon a lead agency's request, a Federal agency with jurisdiction by law shall be a cooperating agency and one with special expertise may be a cooperating agency. Non-Federal agencies may be cooperating agencies in cases where they have either jurisdiction by law or special expertise (40 CFR 1508.5). It is incumbent on Federal officials to identify as early as practicable in the environmental planning process those Federal, state, tribal, and local government agencies that have jurisdiction by law and special expertise with respect to all reasonable alternatives or significant environmental impacts associated with a proposed action. In that regard, in subsequent letters, the CEQ Chair asked state governors, state and local government entities, and tribal leaders to consider accepting or requesting an invitation to participate in the NEPA process as a cooperating agency.

The guidance reminds an entity invited to participate in a NEPA review as a cooperating agency of its obligation to respond to the request, and if it declines, to provide a copy of its response to CEQ (40 CFR 1501.6).

To measure progress in addressing cooperating agency issues, CEQ directs Federal agencies to report biannually

Determining Whether to Invite, Decline, or End Cooperating Agency Status

1. Does the agency have jurisdiction by law?
2. Does the agency have special expertise?
3. Does the agency understand what cooperating agency status means, and can it legally enter into an agreement to be a cooperating agency?
4. Can the agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet established milestones?
5. Can the agency, in a timely manner, aid in identifying significant environmental issues, eliminating minor issues from further study, identifying issues previously the subject of environmental review, or identifying the proposed action's relationship to the objective of regional, state, and local land use plans, polices, and controls?
6. Can the agency assist in preparing portions of the review and analysis and in resolving significant environmental issues to support scheduling and critical milestones?
7. Can the agency provide resources to support scheduling and critical milestones such as personnel, expertise, funding, models, databases, facilities, equipment, or other services?
8. Does the agency provide adequate lead-time for review and participate in meetings in a timely manner?
9. Can the agency accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action?
10. Is the agency able and willing to provide data and rationale underlying the analyses or assessment of alternatives?
11. Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents?
12. Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

Excerpted from CEQ Guidance

continued on next page

CEQ Guidance (continued from page 3)

on the cooperating agency status of their EAs and EISs started during the previous six months. The first report, due on October 31, 2002, will include EAs and EISs started from March 1 through August 31, 2002. An attachment to the guidance provides a format for this report. The Office of NEPA Policy and Compliance will request this information from DOE's NEPA Compliance Officers and submit a compiled report on behalf of the Department.

DOE Experience with Cooperating Agencies Is Extensive, Generally Positive

Since 1995, DOE has issued 24 final EISs that involved cooperating agencies – 16 Federal agencies and their component organizations, 8 tribes, 5 counties, 2 states, and 1 city. These cooperating agency experiences were largely positive. A few examples are described below.

Idaho High-Level Waste (HLW) EIS

The State of Idaho is participating as a cooperating agency in the preparation of the *Idaho HLW and Facilities Disposition EIS* (DOE/EIS-0287). State technical staff participated actively in preparing and reviewing the Draft EIS (January 2000) and the Final EIS, to be issued in 2002. The Draft EIS contains a foreword written by the State that explains its role in the EIS: "By participating in the preparation of this EIS, Idaho hopes it can expedite progress towards the [1995 court] Settlement Agreement's goals to treat and remove HLW from the State." Idaho's foreword further notes that the Settlement Agreement allows DOE to propose changes to the Agreement, provided that they are based on adequate environmental analyses under NEPA, and that Idaho would agree to reasonable changes.

The Memorandum of Agreement establishing the State as a cooperating agency recognizes that Idaho and DOE can "agree to disagree" on issues and that the EIS will reflect both positions. For example, the EIS could reflect different preferred alternatives for DOE and the State. Accordingly, the Draft EIS's foreword identifies four "Key Policy Issues" and the State's views on those issues. This arrangement enables DOE and the State to make progress on the EIS without first resolving every issue.

Experience to date shows that the cooperative process has resulted in a longer document preparation process than preferred. It is expected, however, that the cooperative process will result in an environmental analysis upon which both parties agree and a document that will help meet the goals of the Settlement Agreement.

Hanford Comprehensive Land-Use Plan EIS

To help map out a long-term comprehensive blueprint for the 586-square mile Hanford Site, diverse parties with divergent interests were invited to participate in preparing this EIS. Nine parties accepted DOE's 1997 invitation to participate as either a cooperating agency or, in the case of the Tribal Nations, a consulting government: three Federal organizations, three counties, one city, and two tribes. Together they reached substantial agreement on the framework for environmental analyses, and for the land-use plan's policies and implementing procedures.

Some of the cooperating agencies and consulting tribal governments, however, strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To provide fair opportunities to voice competing interests, these cooperating agencies developed their own alternatives for consideration in the EIS, using guidelines to yield technically parallel information. Although the collaborative process required considerable time, it enabled the Department to create a land-use plan that balances competing needs and interests. Further, in its Record of Decision, DOE established implementing procedures that include the continued participation of the consulting and cooperating agencies in future land use decisions.

Excess Mercury Management Programmatic EIS

The Defense National Stockpile Center (DNSC) – part of the Defense Logistics Agency (DLA) under the Department of Defense – is preparing a programmatic EIS on the disposition of excess mercury that was stockpiled for national defense. DLA invited DOE to participate in the NEPA review as a cooperating agency because: (1) DOE manages an inventory of stockpiled mercury that could be affected by any decision the DLA reaches, (2) approximately 1.5 million pounds of the DNSC-managed mercury are collocated with a like amount of DOE-managed mercury at the Oak Ridge National Laboratory, (3) DOE possesses special expertise associated with mercury in the environment and with long-term storage of mercury, and (4) DOE is undertaking ongoing studies on mercury stabilization. DOE accepted DLA's invitation, and the notice of intent (66 FR 8947; February 5, 2001) identified DOE as a cooperating agency. Other Federal agencies – Environmental Protection Agency, Public Health Service, Geological Survey, and Department of Commerce – agreed to participate in an Interagency Working Group that helps with planning. DOE staff also participated in some of the DNSC-sponsored scoping meetings held near the current

continued on next page

CEQ Guidance (continued from previous page)

mercury storage sites. The Draft EIS is expected to be issued in mid-2002.

Previous issues of *Lessons Learned Quarterly Report* provided guidance on adopting a lead agency's EIS (*LLQR*, June 2000, page 13) and the requirement to list any cooperating agencies on an EIS cover sheet (*LLQR*, December 2000, page 4). A listing of DOE EISs issued between 1995 and 2000 with cooperating agencies is in the December 2000 issue, page 5.

CEQ's guidance is available on NEPA.net at ceq.eh.doe.gov/nepa/nepanet.htm and on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Tools. For further information or questions on DOE implementation of the CEQ guidance, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NEPA Improvements (continued from page 1)

opportune time to undertake improvements since nine EISs are currently being prepared for EM actions. Of these, four ... are particularly important since the associated projects or activities may commit DOE to significant funds or set forth major policies."

Secretary Spencer Abraham quickly accepted the Review Team's recommendations, which cover many aspects of the EM program, and instructed EM Assistant Secretary Jessie Roberson to immediately begin implementing internal reforms.

NEPA-related recommendations advocated by the Review Team include the following:

- The process of preparing an EIS should be a deliberate one managed by senior EM officials.
- Unrealistic concerns about litigation should not receive greater emphasis than the effects of increased, technically based risk analysis.
- NEPA considerations should be initiated earlier in the project-planning process.
- Once the decision has been made to prepare an EIS, EM management needs to oversee the process to ensure adequate scope; necessary technical analysis; and discussion of alternatives based on safety, performance assessments, costs, accelerated risk reduction, and environmental protection.
- EM Headquarters needs to provide assistance to the field in expediting and reducing the associated time requirements.
- DOE's NEPA guidance should be reviewed, in consonance with NEPA and its implementing regulations, with a view toward developing a more streamlined, flexible, cost-effective process.

NEPA Office Actions

While the Top-to-Bottom Review Team focused on the EM program, many of its conclusions have DOE-wide

applicability. For example, the Review Team raised the caution that, "Immediate responses that can mitigate or alleviate defined hazards during completion of the NEPA process are not pursued where appropriate," and that "delays in taking action while NEPA analyses are being prepared may have adverse impacts on human health and the environment and can result in additional program costs."

Regulations and guidance to implement NEPA prepared by both the Council on Environmental Quality and DOE provide for interim actions (40 CFR 1506.1, 10 CFR 1021.211) and emergency actions (40 CFR 1506.11, 10 CFR 1021.343(a)) to ensure that compliance with NEPA does not become the reason that near-term hazards are unmitigated. The NEPA process provides the flexibility necessary to address the concerns raised by the review team, and it continues to be DOE's policy to use that flexibility as appropriate. To underscore this point, the Office of NEPA Policy and Compliance has prepared draft guidance explaining the types of actions that may qualify as interim actions under NEPA. The draft guidance has been circulated within the DOE NEPA community for comment. (See "DOE NEPA Office Prepares Draft Interim Action Guidance," page 6.)

Another caution raised in the Top-to-Bottom review was that, "Many of EM's EISs are too narrowly scoped and do not adequately evaluate the breadth of options to be considered in the decision-making process." As an aid in addressing this concern, the Office of NEPA Policy and Compliance has produced a mini-guidance on the subject that appears in this issue of *Lessons Learned Quarterly Report*. (See "Analyze Alternatives," page 7.)

The NEPA Office will continue working with EM and other DOE program offices in the months ahead to identify opportunities for further improvements in DOE's NEPA process.

The Top-to-Bottom Review is available online at www.em.doe.gov/ttbr.html. 

DOE NEPA Office Prepares Draft Interim Action Guidance

DOE frequently needs to decide whether an action that is within the scope of an ongoing EIS may proceed before the NEPA review is completed (e.g., before a Record of Decision is issued). DOE may want to take such actions, commonly referred to as “interim actions,”

immediately to reduce risk or mitigate adverse impacts to human health and the environment or to reduce program costs. Indeed, interim actions to respond to an immediate need are often

permissible and should be pursued, as appropriate. This issue is especially important with respect to actions that fall within the scope of a programmatic or site-wide document.

To help respond to the concern that compliance with NEPA could become the reason for near-term hazards to go unmitigated, as expressed in the recent EM Top-To-Bottom Review (see “DOE Embraces Further NEPA Improvements,” page 1), the NEPA Office has prepared draft guidance on interim actions. The guidance is based on criteria established by the Council on Environmental Quality in its regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508), DOE’s NEPA implementing regulations (10 CFR 1021), which rely on those criteria, and the DOE NEPA Order, O 451.1B. Examples of the types of actions that may proceed as interim actions, a case study, and a flow diagram summarizing key aspects of the guidance are provided.

Interim Actions for Project-Specific EISs

For project-specific EISs, in general, project managers may proceed with conceptual design and feasibility studies in support of a project. Site characterization activities to support a meaningful analysis of the environmental impacts of the proposed action also generally may be undertaken, as well as small scale corrective actions under the Resource Conservation and Recovery Act.

Although these activities often take place while a more extensive action (e.g., a waste management action) with its associated EIS is being evaluated, they normally benefit the existing environment and are unlikely to involve adverse environmental impacts or limit the choice of reasonable alternatives for the final action. Documentation is not needed for interim actions under project-specific NEPA reviews.

Interim actions to respond to an immediate need are often permissible and should be pursued, as appropriate.

Interim Actions for Programmatic EISs

For programmatic EISs, DOE would first need to determine that the proposed interim action could be undertaken irrespective of whether or how the program goes forward. For example, in most cases in which DOE is obligated by law to carry out the interim action (e.g., usually cases involving compliance with environmental requirements), DOE would be able to demonstrate independent justification by showing that no reasonably foreseeable decision based on the programmatic EIS would affect the interim action.

In cases that involve the continuing operation of an existing facility that is in the scope of a programmatic EIS in preparation, DOE would need to establish that the proposed interim action is needed to allow the facility to fulfill its existing mission before decisions can be made and implemented on the basis of the programmatic EIS. If so, a near-term modification or activity would be permissible because it would be necessary for the ongoing program, regardless of how decisions based on the programmatic EIS may affect the future of the facility.

DOE would also need to determine whether a proposed interim action would tend to determine subsequent programmatic development or limit programmatic alternatives. In general, interim actions of relatively limited scope or scale that have only local utility are unlikely to prejudice programmatic assessment or decisions, and could be taken before a Record of Decision. A number of related interim actions, however, when considered collectively could unduly influence programmatic decisionmaking.

For example, proceeding with a number of decentralized waste treatment projects could prejudice the choice of programmatic options involving centralized treatment. Interim actions for a programmatic EIS need their own NEPA review.

The draft guidance on interim actions was transmitted to NEPA Compliance Officers for review via memorandum of March 1, 2002. Comments are due to the Office of NEPA Policy and Compliance by April 12, 2002. For more information on the draft guidance, contact Brian Mills at brian.mills@eh.doe.gov or 202-586-8267. 

In general, interim actions of relatively limited scope or scale that have only local utility... could be taken before a Record of Decision.

Analyze Alternatives Not Currently Authorized, If Reasonable, to Provide Greater Flexibility

According to the Environmental Management (EM) program's Top-to-Bottom Review, the NEPA process for EM projects and programs "is often time-consuming and costly without providing the sound analysis and rational alternatives to support good decisionmaking." The Review also found that many of EM's EISs are "too narrowly scoped and do not adequately evaluate the breadth of options to be considered in the decisionmaking process.... Initial alternatives may not be adequate to support Departmental goals and decisionmaking; thus reanalysis may be necessary."

Value of Broad Range of Reasonable Alternatives

It is important to evaluate a broad range of alternatives in an EIS or EA to give a decisionmaker flexibility in responding to changing circumstances. By coordinating continually with project planners and engineers, document preparers can ensure that an EIS or EA covers "new ideas" that may be emerging on better, cheaper, and faster ways to accomplish the agency's purpose and need for action.

An earlier article in *Lessons Learned Quarterly Report* dealt with the general topic of analyzing reasonable alternatives and included examples of changed circumstances wherein what was impractical became practical over time. (See "Analyzing All Reasonable Alternatives in an EIS," *LLQR*, March 2001, page 6.) That article did not emphasize, however, the value of analyzing alternatives not currently authorized.

Unauthorized Alternatives Can Be Reasonable Alternatives

The concept of reasonableness is not self-defining – that is, reasonable alternatives for an EIS or EA must be determined on a case-by-case basis. To ensure flexibility in decisionmaking, consider the possibility of change not only in the context of an agency's ongoing activities and compliance framework, but also with an eye toward flexibility should technology advance or new compliance agreements be reached.

In guidance, CEQ has stated that "reasonable alternatives include those that are practicable or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant" (CEQ's Forty Most Asked Questions,

CEQ Regulations and Guidance on Alternatives Outside an Agency's Jurisdiction

- CEQ's regulations implementing NEPA require that an agency "rigorously explore and objectively evaluate all reasonable alternatives" to a proposed action (40 CFR 1502.14(a)).
- The regulations specifically require that the analysis include "reasonable alternatives not within the jurisdiction of the... agency" (40 CFR 1502.14(c)).
- The "Forty Most Asked Questions Concerning CEQ's NEPA Regulations" (46 FR 18026, March 23, 1981) further address the issue of alternatives beyond the agency's jurisdiction (Question 2b):

An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or Federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered (40 CFR 1506.2(d)). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies (40 CFR 1500.1(a)).

Question 2(a), reference provided in Text Box). A common thread that runs throughout the CEQ NEPA implementing regulations and related CEQ guidance is that alternatives must be analyzed if they are "reasonable."

An alternative that is practical, feasible, and consistent with an agency's established mission may be "reasonable" for purposes of NEPA, even if it would require some augmentation of the agency's existing authority or a change in existing legal requirements. Inclusion of these alternatives in NEPA documents may provide useful information to inform decisionmaking.

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Analyze Alternatives (continued from page 7)

Analysis of Unauthorized Alternatives Proves Useful

The EIS preparation team for the *Idaho High-Level Waste and Facilities Disposition EIS* (DOE/EIS-0287) did not apply “regulatory filters” in developing the range of reasonable alternatives. The EIS includes alternatives for managing high-level radioactive waste at the Idaho National Engineering and Environmental Laboratory that would not meet existing regulatory requirements and court ordered agreements. Considering such alternatives provides decisionmakers with a broad range of options to properly manage waste, and the flexibility to consider technology developments and new information on potential new waste management approaches. Further, DOE and the State of Idaho have agreed that the EIS could facilitate negotiations on proposed changes to a court-ordered agreement. (See “CEQ Guidance Encourages Agency Cooperation,” page 1.)

Likewise, in the *Supplemental EIS for the Waste Isolation Pilot Plant (WIPP) Disposal Phase* (DOE/EIS-0026-S-2), three of the four action alternatives would violate the restriction in the WIPP Land Withdrawal Act on the total volume of transuranic waste to be disposed of at WIPP and the Act’s implied ban on disposal of non-defense transuranic waste at WIPP. Further, some of the action alternatives would also violate the limit on the volume of remote-handled transuranic waste imposed by the Cooperation and Consultation Agreement with the State of New Mexico. The analysis of these unauthorized alternatives was useful, however, to examine the environmental impacts of disposing of all of DOE’s transuranic waste at WIPP, because non-defense waste and pre-1970 buried waste could constitute as much as 46 percent of DOE’s transuranic waste volume. The unauthorized alternatives were consistent with the purpose and need for agency action and the CEQ regulations and related guidance. 

Annual NEPA Planning Summaries: Are They Important?

As a NEPA Compliance Officer, you may have wondered why your office must submit an annual NEPA planning summary each year to the Office of Environment, Safety and Health (EH). What is EH doing with these reports?

The purpose of annual planning summaries is *more than* just informing EH’s Office of NEPA Policy and Compliance about EAs and EISs that are being or will be prepared over the next 12 to 24 months, along with estimated costs and schedules. Knowing when EISs are scheduled helps EH plan to have the necessary staff resources available to review and assist in their preparation and approval. Additionally, being aware of all EAs and EISs being prepared throughout the Department helps EH identify cross-cutting issues and trends.

In addition to notifying EH, the annual planning summaries alert the public to upcoming NEPA documents, and ensure that the Secretarial Officers and Heads of Field Organizations are involved early in the NEPA process. Preparation of an annual planning summary provides a vehicle for senior officials to review their NEPA compliance strategies and make any necessary adjustments (e.g., to schedules, resources, alternatives) to reflect program priorities.

Based on a preliminary review of the 23 annual planning summaries received to date, approximately 98 EAs and 41 EISs are scheduled in the next 12 to 24 months. 

Update on Security Issues in the DOE NEPA Process

The DOE Office of NEPA Policy and Compliance remains concerned about how best to inform the public about the Department's NEPA process and yet limit access to sensitive information. Although there is some uncertainty within DOE and throughout the Federal government about appropriate security policies for Internet content, and, as a result, inconsistent approaches to the problem, we expect the Administration to provide guidance soon. In the meantime, we are beginning to restore electronic access to DOE's NEPA documents. It should be noted that DOE continues to distribute paper copies of its NEPA documents to the public in accordance with NEPA regulations. What follows is an update to the December 2001 *Lessons Learned Quarterly Report* article, "DOE NEPA Post-9/11."

Broad Federal Government Actions Expected

The Council on Environmental Quality (CEQ) convened a meeting of Federal agency NEPA contacts on December 20, 2001, to discuss security concerns over sensitive information and NEPA. Staff from DOE's Offices of NEPA Policy and Compliance, General Counsel (GC), and Civilian Radioactive Waste Management (RW) participated in the exchange of information.

A CEQ NEPA Task Force plans to work with the Office of Homeland Security to provide policy and guidance on security and the NEPA process for Federal agencies. (See "DOE NEPA Staff to Participate in CEQ Task Force to Modernize NEPA," page 17.)

The Office of Homeland Security is considering proposing new guidance that would allow for the protection and control of specific unclassified information. The guidance would provide a level of protection for sensitive unclassified information that will be disseminated to Federal, state, and local governments, and the private sector. The majority of the information would involve infrastructure vulnerability information and response plans.

Other Federal agencies have taken similar actions and face similar questions as DOE in aiming to limit but not eliminate public access to NEPA analyses. Most agencies have restricted Web access to previously issued EISs and EAs while working to establish criteria for "sensitive information" and reinstating Web access.

Two Agencies, Two Approaches

The Federal Energy Regulatory Commission (FERC) believes that NEPA documents for natural gas facilities

could contain sensitive information and has removed from its Web site all such documents for projects that have received a certificate. To provide opportunities for public involvement for proposed new gas facilities, however, FERC still posts current NEPA documents on its Web site. After issuing a certificate, FERC considers the gas facility to be an existing one and removes the related documents from the publicly accessible Web site. FERC does not believe that NEPA documents for hydroelectric facilities contain sensitive information, and such documents remain available on the FERC Web site.

The Nuclear Regulatory Commission (NRC) disabled its entire Web site soon after the September 11th terrorist attack. Since that time, NRC continues to perform a security sensitivity screening of Web site content, including new information and information that was previously available. After information has undergone the security sensitivity screening and been judged appropriate for public access, NRC is reloading NEPA documents and other information onto the Web site. For example, NRC initially removed from its Web site the final EIS for a proposed independent spent nuclear fuel storage facility on an Indian reservation in Utah (NUREG-1714). NRC subsequently reviewed that document for potential security concerns and made it publicly available via its Web site.

Online Access Follows Operational Security Review of the Yucca Mountain Final EIS

In preparing the *Final EIS for a Geologic Repository for Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0309), RW, in consultation with the NEPA Office, GC, Office of Security, and other entities, reviewed the approximately 5,000-page document for information that might be useful to terrorists. RW determined that, because of the security sensitivity of some information in the Final EIS, portions of it should be segregated in a separate volume (Volume IV, "Additional Information") for limited distribution.

RW will not make Volume IV of the Final EIS available via the Internet or in public reading rooms. That volume contains the entire technical appendix on accident analyses (about 49 pages) and about 10 pages from the technical appendix on transportation risk (which is about 207 pages). Volumes I, II, and III, however, are available on

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Security Issues (continued from page 9)

the Web and in reading rooms, and a person reading these would learn of the existence of Volume IV and receive instructions on how to request it. RW would provide Volume IV to people who give their name and address. RW is reviewing the references for the EIS for potential security concerns and may limit electronic access.

Restoring Access to DOE's NEPA Web Site

Since blocking access to EISs and EAs on the DOE NEPA Web in early November 2001, the Office of NEPA Policy and Compliance has been considering appropriate ways to make information available while protecting homeland security. As a first step, in January 2002, the NEPA Office restored online access to DOE NEPA documents for DOE personnel (i.e., to people with "doe.gov" and similar DOE e-mail addresses).

The NEPA Office is now taking additional steps to increase availability of EISs and EAs online. A password access system for contractors who prepare DOE NEPA documents will be available in mid-March. The system will require these contractors to complete an electronic account application in which they must provide identifying information, including a DOE contact. The Office is also planning to make future NEPA documents for which appropriate operational security reviews have been conducted generally available without restrictions.

In seeking to restore public availability to DOE's EISs and EAs online, the NEPA Office seeks input from the DOE NEPA Community on a range of options:

- Continue to restrict access to the approximately 100 draft and final EISs and 320 EAs on the DOE NEPA Web. (The Office is aware that some DOE EISs and EAs may still be publicly available elsewhere online.)
- Establish a password access system for members of the public who identify themselves (e.g., provide their name and address and need for access).
- Open the Web site without restriction. This could be done without a review of the past documents for sensitive information, as the NEPA Office does not have the resources or expertise to conduct such a review. Alternatively, this could be done after Program or Field Offices conduct such reviews or confirm that such a review is not needed for certain documents.

The NEPA Office continues to solicit information and suggestions from the DOE NEPA Community. For further information or to provide comments, contact Denise Freeman, Webmaster, Office of NEPA Policy and Compliance, at denise.freeman@eh.doe.gov or 202-586-7879. 

A NEPA Streamlining Strategy

By: Roger P. Hansen, J.D., *Environmental Consultant*,
and Theodore A. Wolff, Ph.D., *Sandia National Laboratories/New Mexico*

The authors, whose combined NEPA experience serving Sandia National Laboratories totals over 30 years, propose a ten-element strategy, summarized below, to make NEPA "work better and cost less." A fuller discussion of these concepts is contained in their article "Making NEPA More Effective and Economical for the New Millennium," Federal Facilities Environmental Journal, Autumn 2000.

Efficient and effective implementation is needed for NEPA to fulfill its promise as a great tool for environmental management. Obstacles to achieving this promise remain, in part from the persistence of major compliance problems:

- Avoidance of NEPA compliance at all costs, even if it means stopping the project.
- Documentation procrastination that results in setting impossible schedules for EA or EIS preparation.
- Failure to use NEPA to make better decisions.
- "Encyclopedia mania," which results in producing massive multi-volume, often unreadable NEPA documents.

- Inadequate public and agency involvement, causing delay.
- Atrocious writing, editing, and formatting of documents.
- Preparing an EA where an EIS is required and vice versa.

Our strategy is mostly common sense and it cannot overcome long-held anti-NEPA attitudes. But our approach can make NEPA compliance easier and more helpful to decisionmakers and the public.

continued on next page

A NEPA Streamlining Strategy (continued from previous page)

- 1. Integrate the NEPA process with other environmental compliance and review procedures.** This provides an opportunity to save time, money, and paperwork. Managers, however, must maintain a proper balance between complying with NEPA and addressing other environmental review requirements, and avoid creating a document that is too long and complex for efficient and effective public review.
- 2. Accelerate the decision time for determining the appropriate level of NEPA documentation.** Contractors and project managers consume time and resources while awaiting agency decisions on whether or how to comply with NEPA. The consequence of a wrong decision (preparing an EA when an EIS is required, or vice versa) is further delay and waste of more resources. Use of internal scoping (see 3 below), and an early determination of whether an EIS is required, can avoid these problems.
- 3. Conduct early and thorough internal NEPA document scoping.** Thorough internal scoping, not to be confused with public scoping, should be completed before document preparation starts. The agency cannot be adequately prepared for a public scoping process when it has not done its own internal homework. When possible, internal scoping should include the document preparer personnel, who otherwise lose time at the front end of a project as they learn the scope and issues of concern.
- 4. Organize and implement public scoping processes that are participatory rather than confrontational.** Public controversy can never be avoided altogether, but its effects can be mitigated if the public and other agencies feel they are being given the opportunity to really participate. An approach that is receiving wider acceptance is to have participants form working groups based on the major issues in the NEPA document.
- 5. Maintain an up-to-date compendium of environmental “baseline” information.** Maintaining current environmental baseline reports can significantly decrease the time and cost of NEPA document preparation, and help preparers avoid “reinventing the wheel” for each affected-environment section in EAs and EISs. Standardizing this information and focusing on what is important helps eliminate encyclopedic discussions and unnecessary details.
- 6. Prepare more broad-scope “umbrella” EAs and EISs that can be used for tiering.** Use a programmatic or site-wide document from which to tier narrower, more project-specific documents. Tiering in the Council on Environmental Quality regulations refers to EISs, but a broad-scope EA can also be used for a tiering document.
- 7. Prepare an annotated outline as a “road map” for EA or EIS preparation.** Annotated outlines provide specific guidance to authors on the desired contents of each section or subsection of the document, the recommended approach to the topic, and data gaps that need to be filled. They are generally organized in a tabular format with four columns: (1) outline element (table of contents); (2) target number of pages for each element; (3) authors responsible; and (4) contents and data needs.
- 8. Decrease the length and complexity of highly technical portions of NEPA documents.** Highly technical data must be presented in a succinct, understandable manner and interpreted for the benefit of both the general public and sophisticated readers. Place detailed technical data in an appendix or in a separate document incorporated by reference.
- 9. Increase and systematize NEPA compliance outreach, training, and organizational support.** One of the major reasons for decision delays, confusion about appropriate levels of NEPA review, writing reiterations, inability to meet schedules, and cost overruns is the lack of NEPA training for project managers, document authors, and others with NEPA compliance responsibilities. Training in the philosophy, purpose, legal requirements, and methods of NEPA compliance is imperative for everyone involved in the NEPA process.
- 10. Work diligently to prepare better organized, shorter, more readable NEPA documents.** None of these streamlining strategies will be effective if EAs and EISs are poorly organized and written in language incomprehensible to public reviewers. NEPA documents that are understandable permit greater public participation, increase credibility and support, and reduce appeals and litigation. Project managers and NEPA professionals must learn to focus at least as much attention on the organization and writing of documents as on their technical content. **LL**

Anthrax Aftermath – Dealing with Mail Delays

In the aftermath of the DC area anthrax scare, DOE continues to be affected by mail delivery delays, primarily in the Washington. Although U.S. Postal Service (USPS) delivery to the DOE Forrestal Building was restored in November, the NEPA Office, as of late February, was still receiving letters that were postmarked in October and November. Even items mailed in January – from the public, other Federal agencies, and other DOE offices – were received more than 30 days later. Such delays affect not only internal DOE operations, but also may affect external participants in the NEPA process.

Consequently, the NEPA Office encourages Program and Field Offices to take steps to accommodate these new circumstances to ensure that the NEPA process is not unduly delayed and that public involvement opportunities are not reduced. For example, NEPA Document Managers should consider allowing additional time beyond identified deadlines for receipt of comments, as appropriate. In general, public comments that are postmarked before the end of a public scoping or comment period, but received by DOE after a deadline date, should be considered, to the extent practicable.

In addition, requests for public comments should offer options to commenters, inviting them to respond by using mail, facsimile, electronic mail, or telephone.

Delays should gradually decrease as the backlog of undelivered mail is reduced, but additional time to process

Federal mail may still be required. Based on an informal survey, it appears that most Federal mail is either inspected and tested in accordance with Centers for Disease Control and Prevention guidelines before distribution (as is done for Germantown mail), or it is sanitized (irradiated) as is done for much of the mail directed to Federal agencies at Washington, DC, zip codes.

According to a USPS representative, all mail destined for Washington, DC, first goes to the “hub” in Landover, MD, where government mail is sorted by hand. All mail bound for Capitol Hill and the White House is sent to New Jersey or Ohio for irradiation. Mail bound for other Federal addresses is also irradiated, unless the sender is known, such as another Federal agency.

Based on the experiences of the NEPA Office, however, much of our mail is sanitized (and therefore delayed), including mail from other DOE offices and Federal agencies. Accordingly, for time-sensitive communication sent to this office, we encourage the use of facsimile or e-mail as a backup to the USPS until the situation improves. Additional options include the use of the United Parcel Service and Federal Express.

For further information contact Jim Sanderson at jim.sanderson@eh.doe.gov or 202-586-1402. 

NRC Seeks Comments on Draft NEPA Guidance

In October 2001, the Nuclear Regulatory Commission (NRC) published for comment and interim use draft environmental review guidance intended to improve the consistency of NEPA implementation throughout the NRC’s Office of Nuclear Material Safety and Safeguards (NMSS). The Office of NEPA Policy and Compliance will compile DOE comments on the draft guidance, which are due to the NRC by September 30, 2002.

Intended for NRC staff, licensees and applicants, and members of the public, the guidance is especially relevant to DOE program elements who prepare environmental documentation for an NRC license (e.g., certain spent nuclear fuel and high-level waste storage or disposal facilities). The guidance covers a broad range of NEPA issues including whether a categorical exclusion, EA, or EIS is appropriate; early planning for an EA or EIS; EIS project planning; using previous environmental analyses related to a proposed action; preparing accident, transportation, and cost-benefit analyses; environmental

justice; consulting other agencies; public meetings; and preparing a Finding of No Significant Impact or a Record of Decision.

The NRC’s draft *Environmental Review Guidance for Licensing Actions Associated with NMSS Programs*, NUREG-1748 (about 150 pages), is available electronically from Mr. Matt Blevins, Project Manager, Environmental and Performance Assessment Branch, NRC, at mxb6@nrc.gov or 301-415-7684. Printed copies may be requested from: NRC, Distribution Services, Washington, DC 20555, or via e-mail at distribution@nrc.gov. The Notice of Availability for the draft NUREG-1748 was published in the October 18, 2001, *Federal Register* (66 FR 52951).

For further information contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771. Please provide any comments on the guidance to Ms. Bowie by July 26. 

DOE-wide NEPA Contracts Update

By: David A. Gallegos, *DOE-Wide NEPA Contract Administrator*

DOE is now preparing a solicitation for new contracts for DOE-wide NEPA support services. Because three of the four existing DOE-wide NEPA contracts (SAIC, Tetra Tech, and Tetra Tech NUS) expire on June 18, 2002, task orders may be issued only through June 17, 2002. Further, since the contracts state that “the contractor is not required to make any deliveries . . . beyond one-year after the contract’s effective period,” these contractors must make any deliveries by June 17, 2003. If new contracts are not in place by June, the existing contracts could be extended. (Similarly, the Battelle contract expires on March 13, 2003, and has similar restrictions on issuing task orders and deliveries.)

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see December 2001, page 9, and the cumulative index (under “Contracting, NEPA”) on page 26 of the September 2001 issue of *Lessons Learned Quarterly Report* or on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Process Information. For questions, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
EA for the Conveyance of DOE-ORO Properties to the City of Oak Ridge, Tennessee	David Allen 865-576-0411 allendr@oro.doe.gov	11/6/01	SAIC
EA for the Proposed Carlsbad, New Mexico, Actinide Chemistry Laboratory	Harold Johnson 505-234-7349 harold.johnson@wipp.ws	12/12/01	Battelle
Site-wide EA for Sandia National Laboratories, California	Susan Lacy 505-845-5542 slacy@doeal.gov	2/13/02	Tetra Tech, Inc.

Essential Fish Habitat Final Rule Issued

The National Marine Fisheries Service (NMFS), an agency of the Department of Commerce’s National Oceanic and Atmospheric Administration (NOAA), has issued its final rule (50 CFR 600, Subparts J and K) implementing the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 *et seq.*). Under the Act, Federal agencies must consult with NMFS regarding proposed actions that may adversely affect designated essential fish habitat, defined as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”

Effective February 19, 2002, the final rule replaced but did not substantively change an interim final rule that had been in effect since January 1998. The final rule reinforces NMFS’s preference for combining essential fish habitat consultations with other environmental reviews (including

NEPA) to promote efficiency. It institutes streamlined procedures for developing “General Concurrences” (which eliminate the need for individual consultations on actions with minimal impacts to essential fish habitat) and clarifies that, for relatively simple actions, the Federal agency’s written assessment of effects to essential fish habitat may be brief.

Considering essential fish habitat in NEPA reviews was the subject of previous mini-guidance in the *Lessons Learned Quarterly Report* (March 2000, page 12). For additional information on the essential fish habitat final rule, including the associated EA and FONSI, and the *Federal Register* notice (67 FR 2343; January 17, 2002), see the NOAA Fisheries Office of Habitat Conservation Web site at www.nmfs.noaa.gov/habitat. 

Transitions

Retirement Reflections on a Career of NEPA Lessons Learned

By: Stan Lichtman, *formerly Deputy Director, Office of NEPA Policy and Compliance*

Upon my retirement in January 2002, my *Lessons Learned* colleagues appropriately asked me to do what I had asked so many others to do – write an article that would help DOE’s NEPA practitioners to do their work. I am happy to do so, and will take the opportunity for some strictly personal remarks as well.

About NEPA

The NEPA process seems unique and complex. It is neither; rather, it is ordinary and straightforward. The NEPA process simply evaluates the *environmental* consequences of alternative ways to solve a defined problem, something good managers should routinely do for *all* the consequences of solving major business problems. NEPA was enacted because Federal agencies were not viewing environmental protection as part of their mission; if they had, there might be no NEPA.

About DOE’s Application of NEPA

I think NEPA is especially important to DOE, and very much misunderstood and underappreciated. Much of DOE’s work necessarily has been done secretly, which has encouraged public suspicions of its activities and enabled those who oppose its missions to successfully demagogue the issues. NEPA does not have the power to persuade committed people to change their positions, nor is it DOE’s mission to try to change them. NEPA does provide a means to set down facts and viewpoints, however, and, unlike most of its elected and non-elected critics, DOE has a duty to do so fairly and completely. To the degree that a means of providing information and public participation can be useful in addressing controversial issues, NEPA is useful by providing such a means. (One legacy of past secrecy is that DOE has communicated poorly even internally. I believe NEPA is very useful for this purpose too, and I especially think that EISs and their associated Records of Decision have served to bring a degree of management order and accountability to DOE that is at least as important internally as it is to outside stakeholders.)

Does DOE’s application of NEPA actually protect the environment? Most often not directly, but perhaps indirectly. Much of DOE’s work is done under tightly controlled conditions, often on large government-owned reservations. DOE’s NEPA reviews, even those for “major” projects, generally show that the environmental impacts will be small. We should not be surprised that DOE’s engineers, who now incorporate environmental protection into their mission and who understand that the

environmental aspects of their work will be subject to public scrutiny, generally design proposed actions so as to avoid environmental impacts. Moreover, the NEPA process earns its keep if it only occasionally produces a substantial improvement or avoids a significant mistake. (New Production Reactor and Hanford Tanks are examples of high profile and high cost projects that were cancelled in large part because information developed under NEPA showed that they were unnecessary.)

About My NEPA Work

NEPA practitioners mainly deal with matters that are new and currently important to an agency’s mission. DOE often is criticized for its broad diversity of programs, but that diversity only makes NEPA work more interesting. The Office of NEPA Policy and Compliance may be the very best place in DOE – perhaps the only place – where one can get so deeply involved in such a wide variety of interesting and important matters. As a Division Director and then Deputy Director of the Office, I was privileged to deal with the entire scope of DOE’s missions. I also valued meeting and working with a great number and variety of field and program personnel and contractors whose job was straightforwardly to advance specific proposed projects. (My job was to promote and ensure NEPA compliance for those proposed projects; I often functioned as a facilitator and collaborator, however, but primarily was a critic.) I have found these people to be very knowledgeable about and dedicated to their work,

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Some 90 “Friends of Stan” gathered on January 29 to wish him a fulfilling and enjoyable retirement. Ray Berube, Deputy Assistant Secretary for Environment, presented a Distinguished Career Service Award to Stan.

Transitions (continued)

and we often have developed mutual respect for and appreciation of our different roles. They have difficult jobs, and I wish them well.

... And the Office of NEPA Policy and Compliance, on behalf of the DOE NEPA Community, wishes Stan well in his retirement. We have all benefited from his dedication to the letter and spirit of NEPA, high standards, and commitment to cooperation. It is fitting that on retiring

after almost 25 years of Federal service, including 14 years with DOE, then-Acting Assistant Secretary for Environment, Safety and Health Steve Cary presented Stan with an Exceptional Service Bronze Medal Award with the following citation: "In recognition of the technical expertise and managerial excellence that you provided to the Department of Energy's NEPA compliance program. Your dedication, outstanding leadership and exemplary service are appreciated." 

Retirement Reflections from a Learned Lawyer

By: Janine M. Sweeney, formerly Deputy Assistant General Counsel
Office of the Assistant General Counsel for Environment

Of all the topics related to NEPA that I could reflect upon in "retirement," I choose one that many might label pedantic. But looking back over my career at DOE, I am struck by how much of my time, and indeed that of my colleagues in the Office of General Counsel and the Office of NEPA Policy and Compliance, was spent rewriting NEPA documents in an effort to make them more understandable. Every NEPA document must "tell the story" of how the need for agency action arose, what alternative means are available for addressing the perceived problem, and what potential environmental impacts may result. But consistently producing NEPA documents that clearly tell that story has proven to be an illusive goal.

Why does it matter that "the story" be clearly written? Obviously, the description of the need for agency action serves as the bedrock for what comes later. Given the nature of DOE proposals, they often are fraught with public controversy, and the potential environmental impacts are not always easy to explain. The cornerstone of any NEPA document is the description of the environmental impacts of the proposed action and alternatives, and if DOE has not clearly articulated the need for agency action and the alternatives being considered, the description of environmental impacts may fail to adequately inform.

In contrast to the myriad NEPA challenges faced by DOE, such as how to define alternatives in ways that adequately illuminate the differences among them while at the same time providing flexibility to program managers, clearly telling the story would appear to be a relatively straightforward and achievable goal. Yet, during my tenure at DOE, draft NEPA documents often were presented for review by GC and EH that were not clearly written. When confronted with such a draft, the reviewer is left to wonder whether the lack of clarity represents "fuzzy" thinking, or whether it is simply a matter of not

having the benefit of a good "storyteller." Often, but not always, it was the latter.

Being a good "storyteller" is not usually among the skill sets required of the engineers and risk assessment scientists who write DOE's NEPA documents and, as the saying goes, *therein lies the rub*. So, where can the program offices responsible for preparing NEPA documents acquire the services of one who can clearly tell the story? Look within. Many federal program employees at headquarters and in the field offices are gifted writers, and are well equipped to undertake such a task if management is willing to make clear writing a program priority.

Whether a storyteller is recruited within DOE or its contractor community, such services admittedly come at a cost, and there are ever fewer dollars available for NEPA document preparation. So, spend money where it must be spent, such as in the preparation of new analyses, and save it where it does not need to be spent, thereby freeing-up money to be devoted to ensuring that the story is clearly told.

Where could money be saved? Don't spend scarce dollars reinventing the wheel. For example, use previously approved descriptions of the "affected environment," updated as appropriate. Incorporate previously approved descriptions of common terms, analytical methods, and environmental impacts, such as transportation radiological accident risk. Don't authorize the preparation of any new descriptions of "applicable laws, regulations, and other requirements" unless there are no current descriptions available. Numerous NEPA documents have been prepared that describe the generally applicable federal and state requirements. The preparers of NEPA documents should use these to the greatest extent possible, modifying the descriptions only to explain the relevancy of any particular requirement to the proposal at hand.

continued on next page 16

Transitions (continued from page 15)

This not only would save money, but also would save the time and effort (and sanity) of the attorneys who have to review the descriptions of legal requirements.

The advantages of submitting clearly written NEPA documents for concurrence in the first instance are self-evident. The time a document spends in the concurrence process would be reduced, as would the costs associated with editing or rewriting draft documents. Most importantly, it would ensure that DOE consistently produces clearly written NEPA documents, regardless of the penchant for rewriting that any particular reviewer may bring to the concurrence process.

During the last decade, DOE has made great strides in producing quality NEPA documents. It is now time that the program offices responsible for preparing NEPA documents extend the same commitment for producing good science to consistently producing documents that

clearly tell the story of DOE problem-solving that is, after all, at the heart of the NEPA process.

Some final thoughts. As a reviewer, I was guilty of changing “happy” to “glad” in more than a few instances. As H.G. Wells once observed, “no passion in the world is equal to the passion to alter someone else’s draft.” I hope, however, that on the whole my efforts were not misdirected. During my years at DOE, I had the distinct privilege and pleasure of working with many gifted and dedicated professionals, who taught me a great deal about nuclear science and risk assessment. I wish you all well.

The Office of NEPA Policy and Compliance expresses its appreciation, on behalf of the Department, for the many contributions Janine Sweeney made to the DOE NEPA Program. She reviewed NEPA documents, guidance, and, yes, Lessons Learned Quarterly Report articles. Her recommendations always helped DOE tell a better story. LL

Four New NEPA Compliance Officers Designated

National Nuclear Security Administration: James Mangeno

James J. Mangeno now serves as the NEPA Compliance Officer (NCO) as well as Special Environmental, Safety and Health Advisor to the Administrator of the National Nuclear Security Administration (NNSA). He is assisted by Deputy NCO Jay Rose on issues related to Defense Programs and Deputy NCO Hitesh Nigam on issues related to the Materials Disposition Program. Before joining NNSA, Mr. Mangeno worked for 37 years in the Naval Reactors Program, including 17 years as Director of Nuclear Technology with responsibility for all environment, safety, and health matters in Naval Reactors. Mr. Mangeno can be reached at james.mangeno@nnsa.doe.gov or 202-586-8395.

Nevada Operations Office: Michael Skougard

Michael Skougard recently resumed the duties of NCO for the Nevada Operations Office, replacing Kenneth Hoar who served during 2001. Mr. Skougard has been a NEPA Specialist and the Environmental Protection Team Leader in the Nevada Operations Office since 1995 and was first designated as NCO in 1997. For 15 years before that, Mr. Skougard was with the Western Area Power Administration (WAPA) in Billings, Montana, and Salt Lake City, Utah, where he was involved in a broad range of environmental issues, including NEPA. Mr. Skougard can be reached at skougard@nv.doe.gov or 702-295-1759.

National Petroleum Technology Office: David Alleman

David Alleman is now the NCO for the National Energy Technology Laboratory’s National Petroleum Technology Office in Tulsa, Oklahoma. Previously, Mr. Alleman was NCO for the former Bartlesville Project Office and also served on the Fossil Energy NEPA streamlining committee. When he is not doing NEPA work, he manages environmental research related to oil and gas production. Mr. Alleman can be reached at david.alleman@npto.doe.gov or 918-699-2057.

WAPA Sierra Nevada Region: Loreen McMahon

Loreen McMahon has been designated as NCO and Native American Tribal liaison for the Sierra Nevada Region of WAPA. Ms. McMahon has been with the Environmental Division of the Sierra Nevada Region since 1991. Recently, she was the NEPA Document Manager for the Sutter Power Plant and Transmission Line EIS (*LLQR*, December 1999, page 6), the first EIS that WAPA prepared for a merchant powerplant interconnection in California and the first major merchant plant approved by the California Energy Commission since electric industry restructuring legislation passed in 1996. Before joining WAPA, Ms. McMahon worked for California’s Governor and legislature, providing policy support on environmental legislation and regulations. Ms. McMahon can be reached at mcmahon@wapa.gov or 916-353-4460. LL

DOE NEPA Staff to Participate in CEQ Task Force to Modernize NEPA



Responding to rapid advances in technology and heightened concerns about information security, the Council on Environmental Quality (CEQ) is establishing a NEPA Task Force under the direction of Horst Greczmiel, Associate Director for NEPA Oversight, to develop ways to modernize the NEPA process as practiced by Federal agencies in the 21st century. Lee Jessee of the Office of NEPA Policy and Compliance will represent DOE on the Task Force.

The NEPA Task Force will examine how NEPA is implemented by agencies, focusing on making resource management and potentially on making major acquisition decisions. The Task Force will identify opportunities for technology to enhance the NEPA process (e.g., data collection, electronic communication with stakeholders, GIS-based management). Protocols to identify and address information security concerns at various stages of the NEPA process will be considered.

In addition, the NEPA Task Force will address NEPA implementation through governmental collaboration, including cooperating agencies; examine new ways to use programmatic and tiered analyses; and explore applications for “adaptive management” – a structured process of “learning by doing” to promote sustainability. The Task Force will also examine performance-based alternatives to facilitate flexibility in decisionmaking by selecting alternatives that implement performance standards.

The Task Force is expected to complete its work and issue reports in September 2002. For further information on CEQ’s NEPA Task Force, contact Lee Jessee at lee.jessee@eh.doe.gov or 202-586-7600. 

Senior NEPA Liaisons to Meet with CEQ

The first meeting of the Federal agencies’ senior NEPA Liaisons with Jim Connaughton, Chair of the Council on Environmental Quality, will be held on March 5 in Washington, DC. Ray Berube, Deputy Assistant Secretary for Environment, serves as DOE’s senior NEPA liaison and will represent DOE at the meeting. The agenda includes sessions on senior management’s support of NEPA initiatives, the CEQ Task Force (related article, above), the CEQ Chair’s vision and goals for NEPA’s future, and NEPA and technology. *Lessons Learned Quarterly Report* plans to report on this meeting in the June 2002 issue. 

Training Opportunities

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

- **International Environmental Law**

Washington, DC: April 4-5

Fee: \$795

ALI-ABA CLE-REVIEW
800-253-6397
phunt@ali-aba.org
www.ali-aba.org/aliaba/cg056.htm

- **Preparing and Documenting Environmental Impact Analysis**

Durham, NC: June 3-6

Fee: \$960

Levine Science Research Center
Duke University
919-613-8082
britt@duke.edu
www.env.duke.edu/cee/coursesEIS.html

- **Proponent-Sponsored NEPA Toolbox™ Training**

Proponent-Sponsored Training (PST) is a new program that provides agencies with a flexible schedule for NEPA Toolbox™ workshops, which can be tailored to an agency's specific needs. As a "proponent," the agency determines the course, date, and place. The agency sponsors the course and recruits participants, including from other agencies. Services are available to agencies of the US government through GSA Contract No. GS-10F-0163L (899-3).

Environmental Training & Consulting International, Inc.
720-859-0380
info@envirotrain.com
www.envirotrain.com

- **Overview of the Endangered Species Act and Section 106 of the National Historic Preservation Act**

Salt Lake City, UT: April 11
Oklahoma City, OK: May 16
Phoenix, AZ: September 26
Fee: \$245

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Denver, CO: April 16-19
Atlantic City, NJ: June 18-21
San Francisco, CA: August 13-16
Fee: \$995

- **Clear Writing for NEPA Specialists**

Seattle, WA: May 14-16
Atlantic City, NJ: August 20-22
Fee: \$795

- **Overview of the NEPA Process**

Phoenix, AZ: June 11
Portland, OR: September 17
Fee: \$195

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



Litigation Updates

Secretary's Yucca Mountain Recommendation

Nevada State and local governments filed a lawsuit on February 15, 2002, challenging Secretary of Energy Spencer Abraham's recommendation to President Bush that the President approve the Yucca Mountain site in Nevada for the development of the nation's first geologic repository for spent nuclear fuel and high-level radioactive waste. The State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada, filed the lawsuit in the United States Court of Appeals for the District of Columbia Circuit. The Nevada governments claim the recommendation was made in violation of the Nuclear Waste Policy Act (NWPA) and NEPA. They ask the court to direct the Secretary to withdraw his recommendation to the President or, alternatively, terminate all Yucca Mountain site characterization activities.

The Secretary submitted his recommendation, accompanied by the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250), to the President on February 14. The President accepted the Secretary's recommendation and notified Congress on February 15 that he considers the Yucca Mountain site qualified for a construction permit application.

Many of Nevada's NWPA claims center around DOE reliance upon engineered barriers in addition to geologic isolation to protect public health and safety and the environment. The Nevada governments argue that the

NWPA requires DOE to rely primarily on geologic isolation, but that DOE's site suitability guidelines allow primary reliance on engineered barriers such as waste packages. Because "extensive studies of Yucca Mountain have conclusively demonstrated that the site is incapable of geologically isolating radioactive wastes for any significant period," Nevada claims that the Secretary's site suitability recommendation is contrary to the NWPA. Nevada also asserts that the Secretary did not follow procedural requirements set forth in the NWPA to include the comments of the Nevada Governor and legislature and the Secretary's response to those comments along with the recommendation to the President. Nevada further claims that the President's recommendation to Congress is itself inconsistent with the NWPA because the President's decision was based on "the same unlawful siting criteria as those employed by the Secretary."

The NEPA claims focus on the fact that DOE did not make the Final EIS available to the public or issue a Record of Decision prior to the Secretary's site recommendation. Nevada also argues that DOE's "failure to observe the 30-day circulation rules" means that "the Secretary's decision was made without enabling the EPA Administrator in accordance with Clean Air Act Section 309, or other federal agencies, to refer the Yucca Mountain Final EIS to CEQ pursuant to 40 CFR 1504.1," and in violation of the NWPA, prevented any opportunity for the Secretary of the Interior, CEQ, EPA Administrator, or the Nuclear Regulatory Commission to provide comments on the Final EIS. LL

Planned Shipments of Plutonium Composite Parts

A lawsuit challenging the planned shipments of plutonium composite parts from the Rocky Flats Environmental Technology Site to the Lawrence Livermore National Laboratory (LLNL) was filed by Tri-Valley CARES (Communities Against a Radioactive Environment) in the United States District Court of Northern California on February 13, 2002.

Plutonium composite parts are weapons components made of plutonium bonded to other metals. DOE plans to ship the parts to LLNL, which has unique capabilities to separate the plutonium from the other metals. The separated plutonium would then be available for the surplus plutonium disposition program; other metals would be appropriately managed. DOE would use the

DT-22, a 45-gallon shipping container large enough to accommodate the composite parts. This container is not fully certified for transporting the quantities of plutonium contained in the parts, however, and DOE granted itself a national security exemption to allow use of the DT-22.

In its complaint, Tri-Valley CAREs maintains that DOE did not properly follow the NEPA process for the planned shipments, violated the Administrative Procedure Act by granting the national security exemption, and failed to respond to Tri-Valley CAREs' Freedom of Information Act requests for related documents. They ask the Court to issue an injunction barring the shipments until DOE fully complies with NEPA by preparing an EIS to analyze alternatives for shipping and processing the composite parts. LL

EAs and EISs Completed (October 1 to December 31, 2001)

EAs

Albuquerque Operations Office

DOE/EA-1388 (11/20/01)

Construction of the Sandia Underground Reactor Facility (SURF) at Sandia National Laboratories, NM

Cost: \$ 62,000

Time: 9 months

Fossil Energy

DOE/EA-1391 (12/5/01)

Presidential Permit Applications for Baja Power, Inc. and SEMPRA Energy Resources, CA

Time: 9 months

[**Note:** The cost for the EA was paid by the applicant; therefore, cost information does not apply to DOE.]

Grand Junction Project Office/Environmental Management

DOE/EA-1388 (10/26/01)

Groundwater Compliance at the Shiprock Uranium Mill Tailings Site, NM

Cost: \$96,000

Time: 10 months

Richland Operations Office/Environmental Management

DOE/EA-1403 (10/10/01)

Use of Sand and Gravel Borrow Areas, Hanford Site, Richland, WA

Cost: \$ 40,000

Time: 2 months

EIS

Oak Ridge Operations Office /

National Nuclear Security Administration - Defense Programs

DOE/EIS-0309 (66 FR 55658; 11/2/01)

(EPA Rating: EC-2)

Site-Wide for the Y-12 National Security Complex, TN

Cost: \$ 3.4 million

Time: 31 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

(See the EPA Web site es.epa.gov/oeca/ofa/rating.html for a full explanation of these definitions.)

Final EIS for Yucca Mountain

The Final EIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250) accompanied the Secretary of Energy's February 14, 2002, recommendation to the President that the Yucca Mountain site be approved for development as a geological repository for spent nuclear fuel and high-level radioactive waste. The Final EIS is available online at www.ymp.gov and in DOE public reading rooms (see 67 FR 9048, February 27, 2002).

Recent EIS-Related Milestones (December 1, 2001 to February 28, 2002)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0343

COB Energy Facility, Klamath County, OR
12/21/01 (67 FR 576; 1/4/02)

DOE/EIS-0344

Grand Coulee – Bell 500-kV Transmission Line Project, WA
1/4/02 (67 FR 1746; 1/14/02)

DOE/EIS-0345

Plymouth Generating Facility Project, Benton County, WA
1/11/02 (67 FR 2868; 1/22/02)

DOE/EIS-0346

Salmon Creek Project, Okanogan County, WA
1/22/02 (67 FR 5099; 2/4/02)

Fossil Energy

DOE/EIS-0339

Presidential Permit Application, GenPower 500 kV Submarine Electric Transmission Cable from Nova Scotia to New York
1/31/02 (67 FR 5572; 2/6/02)

Draft EIS

Bonneville Power Administration

DOE/EIS-0325

Schultz-Hanford Area Transmission Line Project, WA
February 2002 (67 FR 6021; 2/8/02)

Final EISs

Bonneville Power Administration

DOE/EIS-0324

Umatilla Generating Project, OR
February 2002 (67 FR 4959; 2/1/02)

DOE/EIS-0330

Wallula Power Project and Wallula-McNary Transmission Line Project, Walla Walla County, WA and Umatilla County, OR
February 2002 (67 FR 8243; 2/22/02)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Mint Farm Generation Project
2/15/02 (67 FR 8948; 2/27/02)

Western Area Power Administration

DOE/EIS-0128

Los Banos – Gates Transmission Project
12/18/01 (66 FR 65699; 12/20/01)

Supplement Analyses

Bonneville Power Administration

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265/SA-69

Improvement of Anadromous Fish Habitat and Passage in Omak Creek

(Decision: No further NEPA review required)

November 2001*

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

DOE/EIS-0285/SA-31

Vegetation Management Along the Fairmont-Port Angeles No. 1 and 2 Transmission Line from Structure 1/1 to Structure 27/8

(Decision: No further NEPA review required)

July 2001*

DOE/EIS-0285/SA-32

Re-vegetation Plot Study Along the Lower Monumental McNary Transmission Line Right-of-Way

(Decision: No further NEPA review required)

November 2001*

Condon Wind Project

(DOE/EIS-0321)

DOE/EIS-0321/SA-1

Additional Work at DeMoss Substation and Interconnection Agreement with SeaWest on the DeMoss - Fossil Transmission Line

(Decision: No further NEPA review required)

November 2001*

*Not previously reported in Lessons Learned

What Worked and Didn't Work in the NEPA Process

“What Worked and Didn't Work in the NEPA Process” does not appear in this issue of *Lessons Learned Quarterly Report* because of the small number of documents and questionnaires completed for the quarter. This feature will return in the June 2002 issue and will include observations from all questionnaires submitted for the first half of FY 2002. We remind all involved in the preparation and review of NEPA documents of their important responsibility to report NEPA lessons learned. **LL**

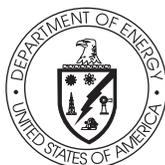
NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost of three EAs, excluding one EA that was paid for by the applicant, was \$62,000; the average cost was \$66,000.
- Cumulatively, for the 12 months that ended December 31, 2001, the median cost for the preparation of 27 EAs was \$96,000; the average was \$92,000.
- For this quarter, the median completion time of four EAs was 9 months; the average was 8 months.
- Cumulatively, for the 12 months that ended December 31, 2001, the median completion time for 27 EAs was 8 months; the average was 9 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended December 31, 2001, the median cost for the preparation of 4 EISs, excluding one EIS that was paid for by the applicant, was for \$1.4 million. The average cost was \$1.7 million.
- Cumulatively, for the 12 months that ended December 31, 2001, the median completion time for 5 EISs was 29 months; the average was 23 months.



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LESSONS LEARNED

June 3, 2002; Issue No. 31

Second Quarter FY 2002

Beverly Cook Balances NEPA Objectives: Both Flexibility and Consistency Are Needed

“We must change some of our thinking on how we implement NEPA to get a more flexible outcome within our basic NEPA process,” advises Beverly Cook, DOE’s new Assistant Secretary for Environment, Safety and Health. “DOE’s NEPA Program is mature, with many years of experience in environmental reviews that add value to decisionmaking. But we need to better accommodate technical and policy changes that develop while an EIS is in preparation,” she said in a recent interview with staff of the Office of NEPA Policy and Compliance.

Formerly a senior manager of DOE Field, Program, and contractor organizations, and now the Assistant Secretary responsible for DOE’s NEPA program, Ms. Cook has experienced NEPA from a range of perspectives: from generating data, through designing and preparing environmental analyses to meet the needs of decisionmakers and the public, to making major decisions based on NEPA documents. Following is a summary of Ms. Cook’s comments during the April 29, 2002, interview.

As a decisionmaker, I found that NEPA documents are invaluable for providing all the needed information, both the big picture and the details, in one place. The contents of an EIS – the stated need, affected areas, alternatives for meeting that need, and impacts of all alternatives – are essential for making good decisions in general, not just good decisions about the environment. Having this information presented in one location – with documentation of the background information and with consistent perspective and assumptions – gave me confidence in the paths we were choosing to accomplish the Department’s missions.

The hardest part of NEPA is using a single document to explain issues to a variety of audiences. Decisionmakers need a comprehensive and detailed examination of the implications of the decision at hand. Some members of the public want a concise explanation that does not presuppose a great deal of technical knowledge, while other groups, such as retired workers with decades of experience



Before taking the reins of Environment, Safety and Health, Beverly Cook served as Idaho Operations Office Manager and as a senior manager in Nuclear Energy and Environmental Management.

continued on page 3

DOE NEPA Community Meeting to be held July 16 – 17 in Washington, DC
See page 4 for details.

Inside *LESSONS LEARNED*

Welcome to the 31st quarterly report on lessons learned in the NEPA process. We thank you for your continuing support of the *Lessons Learned* program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by August 1, 2002. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 1, 2002

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2002 (April 1 through June 30, 2002) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

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

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NAEP Annual Conference to Address Environmental Stewardship, NEPA Topics

The National Association of Environmental Professionals (NAEP) will hold its 27th annual conference – Environmental Stewardship: Rebuilding and Maintaining America's Resources – in Dearborn, Michigan, June 23-26, 2002. As usual, many current NEPA-related issues are on the agenda.

The NEPA track will include three sessions of presentations in which NEPA practitioners will discuss "Expanded Use of Web-based Resources to Increase NEPA Public Participation at DOE's Savannah River Site," "Performing Cumulative Impact Assessments for NEPA," "Integration of Decision and Roadmapping Process and Tools for State of the Art NEPA EIS Process," "Using the Internet to Support EIS Development and Public Involvement Programs," and "NEPA in an Age of Terrorism," among other topics.

There will be two expert panels that discuss NEPA legal issues. In addition, there will be a two-hour session focused on integrating Environmental Management Systems and the NEPA process.

NEPA training will be offered during the conference. Courses include "Conducting Quality Cumulative Impact Analyses" under NEPA, "NEPA Tools and Techniques for Solving Problems," and "NEPA for Managers and New Practitioners." The cost of each course is \$150 for NAEP members, in addition to conference registration. Registration is still open for the conference and courses. For more information, see www.naep.org. 

Beverly Cook Balances NEPA Objectives (continued from page 1)

at our sites, often request more technical details than are appropriate for an EIS. To keep an EIS focused, we should create technical appendices as needed and incorporate by reference additional resources that are available in the administrative record.

State officials and agency regulators also have information needs that DOE can address effectively in NEPA documents. In particular, better explanation of environmental analyses would help these stakeholders assess the implications of DOE proposals, and in particular, understand the factors that affect the choice among the alternatives.

While we are proficient at impact assessment, we are not as adept in developing alternatives that give us the flexibility to deal with technology and policy changes. Anticipating future needs and adapting quickly to change are significant challenges. It is difficult to anticipate what changes could occur during an EIS process that would make formerly unreasonable alternatives reasonable. For a complex EIS process, incorporating new alternatives is very difficult. One way to address this is to focus more on the outcomes of alternatives, not specific solutions. If the desired outcome is to reduce risk, for example, the NEPA process should include flexible and efficient alternatives that can reduce risk, perhaps by implementing more than one alternative to address different categories of risk or by taking appropriate steps incrementally over time. We need to work on developing a more responsive NEPA process that can accommodate change relatively quickly.

The Office of Environment, Safety and Health can make a major contribution to consistency in DOE's NEPA implementation. Consistency promotes respect. As a contractor manager at Idaho National Engineering and Environmental Laboratory, I observed apparent inconsistencies in application of categorical exclusions around the complex. In Nuclear Energy, Environmental Management, and the Idaho Operations Office, I worked on EISs for major projects with issues affecting many parts of the complex. Although DOE sites are diverse, they hold similar hazardous and radioactive materials and perform associated common activities, such as transportation and storage. DOE would benefit from

more consistent determinations of the level of NEPA review for similar types of activities, for example, considering transportation impacts consistently. We must recognize that public trust comes from consistency in how we implement NEPA. When a NEPA review does something “out of the box” in comparison to how DOE has handled the issue in other EISs, people may mistrust our NEPA process. They may think that we are trying to “game” the NEPA process to support a predetermined conclusion. When we use innovative analysis or procedures, we should also explain why we are changing our approach and indicate why it is appropriate to do so.

Risk communication – that is, explaining how DOE estimates risk and how we use it to make decisions – is central to successful stakeholder interactions. My experiences with the 1997 launch of the Cassini spacecraft to Saturn, in which DOE was a cooperating agency with the National Aeronautics and Space Administration, illustrated to me how the public perceives risk. DOE's involvement in the project was in providing the plutonium power sources for the Cassini spacecraft, and much of the controversy centered on the consequences of possible plutonium contamination from an accident during launch or earth orbit.

While with the Office of Nuclear Energy, I acted as the DOE spokesperson in explaining risks associated with this highly controversial project to public groups, television interviewers, and others. It was important first to explain the tools used to assess risk, then to present the results – that is, the facts regarding risks and benefits of the project – and finally to explain how the agencies would use these results to make decisions.

Managers can have a more hassle-free NEPA process by focusing document preparation efforts to serve the decision and by applying guidance and lessons learned. It is not surprising that NEPA is sometimes hard to do, but managers need to be specific about the problems they encounter. What do they see as burdens in preparing a NEPA analysis and what obstacles does the process pose for decisionmaking? Are we trying to produce documents that are too encyclopedic?

continued on page 4

Beverly Cook Balances NEPA Objectives (continued from page 3)

Guidance can be an effective tool for supporting the internal DOE NEPA process. We have a wealth of advice on scoping, public participation, document content and quality, developing alternatives, assessing various types of impacts, and many other subjects. We should avoid viewing guidance as requirements, however. It is not appropriate or helpful to “overproduce” a NEPA document, for example, by providing highly detailed discussions of issues or resources that are not central to a decision.

Even more helpful, I believe, is sharing and applying lessons learned in previous NEPA reviews. Since 1994, DOE has had a system for collecting, analyzing, and disseminating lessons learned – both positive and negative ones. As new major EISs are issued, we should aim to refine our lessons learned.

A new challenge lies in balancing NEPA activities, which are designed to make information publicly available, with newly recognized needs for greater security, which could warrant restricting access to information. After the events of September 11, DOE, like many other agencies, made the difficult decision to remove certain operations-related information from NEPA documents and to limit their online availability. We must remember that protection of our workers and neighboring communities is our Number 1 priority. If publishing

information on the location and features of hazardous materials and facilities makes them more vulnerable to attack, we must favor the approach of limiting distribution of this information. But we need to implement this change consistently, and explain to the public why we are doing so with a consistent message. If we fail to do so, we will raise suspicions that we are trying to make secretive decisions.

Everyone dealing with NEPA needs to be thinking of framing analyses to support future decisions. EH wants to help meet the challenges of timeliness and flexibility. The Department’s missions, priorities, and activities are dramatically changing to respond to a variety of cleanup efforts, challenges in maintaining our energy supplies, and supporting national security needs. Don’t wait to be called upon to start framing issues. EH wants to enhance the usefulness of NEPA reviews to support more flexible decisions.

We will discuss these ideas – and more – at the July NEPA meeting in Washington, DC. I look forward to meeting DOE’s NEPA community there.

[This interview was conducted by Eric Cohen, Jim Daniel, Yardena Mansoor, and Carolyn Osborne.] 

DOE NEPA Community Meeting in July Will Focus on Guidance, Streamlining, Flexibility

More than 100 DOE NEPA Compliance Officers, NEPA Document Managers, and NEPA counsel, contacts, and contractors will meet with the Office of NEPA Policy and Compliance at DOE’s NEPA Community Meeting, to be held July 16 and 17 at the Hotel Washington in Washington, DC.

Council on Environmental Quality (CEQ) Chair James L. Connaughton, and DOE’s new Assistant Secretary for Environment, Safety and Health Beverly Cook, among others, will address the group.

“We’re trying to reform and re-energize NEPA implementation at DOE,” said Carol Borgstrom, director of the Office of NEPA Policy and Compliance, emphasizing the meeting’s theme. “New NEPA-related guidance will be a major focus of discussion. We want to facilitate a more efficient NEPA process at DOE, and we hope all participants will share lessons learned.”

“The CEQ is leading Federal agencies toward integration of NEPA with its Environmental Management Systems initiative,

and all Federal agencies are looking at how the tragedy of September 11 impacts day-to-day activities, including the release of information during the NEPA process. Here at DOE, Assistant Secretary Cook is enthusiastic about continuing improvements in our NEPA implementation, and the Environmental Management program is taking a hard look at its NEPA activities. We have numerous NEPA reviews underway, each supporting important decisions. We’ll discuss these topics and many more at this year’s NEPA Community Meeting.”

The two-day meeting will feature panel discussions on recommendations from the Top-to-Bottom Review of the Environmental Management Program, e-NEPA and Web security issues, lessons learned from the Yucca Mountain EIS, and NEPA-related guidance. For more information about the meeting, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

Expanding Online Access to DOE NEPA Documents

By: Denise Freeman, *Webmaster*

Since blocking access to EISs and EAs (but not to any other content) on the DOE NEPA Web Site in early November 2001, the Office of NEPA Policy and Compliance has taken steps to make NEPA documents available on a limited basis while protecting homeland security. (See related articles in March 2002 and December 2001 issues of *LLQR*.)

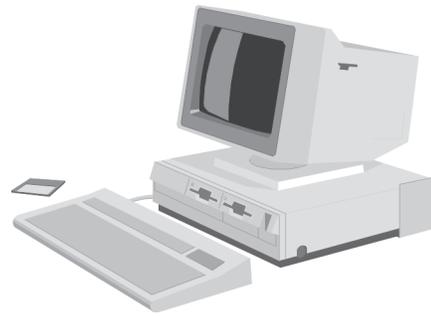
First, in January 2002, the NEPA Office restored online access to all DOE NEPA documents for DOE personnel (i.e., to people with “doe.gov” and similar DOE e-mail addresses). Then, in April 2002, the NEPA Office implemented the NEPA Document Access System to make all NEPA documents available online to contractors who help DOE prepare NEPA documents. The system requires that contractors complete an electronic account application in which they identify themselves, state their need for access to DOE NEPA documents, and provide a DOE contact. Upon confirmation of applicant information (usually within two or three days), User IDs and passwords are issued to applicants via U.S. mail, or upon request, telephone or an attended fax machine.

All DOE personnel should be able to access NEPA documents directly, without need for a password account. Some DOE personnel, however, have had difficulties accessing documents. We try to diagnose and fix such problems when they are reported. This takes time and in some cases DOE personnel have asked for password accounts, which we process as soon as possible.

At this time, archived documents are not available online to anyone other than DOE employees and DOE NEPA contractors because these documents have not been reviewed to determine if they contain security-sensitive information. We welcome comments on whether and how to expand the universe of people that may access documents archived on the DOE NEPA Web site.

We will make newly-completed NEPA documents (in their entirety or with sensitive material removed) available online to anyone, if that is appropriate after security reviews of the documents have been completed by the cognizant Program or Field Office. We would also make documents archived on the DOE NEPA Web Site available to anyone, if appropriate after security reviews are completed.

We will keep the NEPA community apprised of any new developments in e-NEPA. 



Change in e-file Submittal Address

For Draft and Final EISs, after consulting with the Office of NEPA Policy and Compliance staff, send the following as soon as available (preferably when the document is sent to the printer) by overnight courier to the following (changed) address:

ES&H Info Center
Attn: Rhonda Toms, EH-72
Building 270CC
19901 Germantown Road
Germantown, MD 20874-1290

- ✓ One paper copy of the EIS*
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/nepa/docs/docs.htm).

*Also send *two* paper copies of the EIS to Carol Borgstrom at the Office of NEPA Policy and Compliance.

For EAs, FONSI, and other NEPA Documents, send the following within two weeks of their availability directly to the Office of NEPA Policy and Compliance:

- ✓ Three printed copies of the NEPA document
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/nepa/docs/docs.htm). 

Perspectives from a Town Official: Good Risk Communication Aids Local Government

By: Dave Pyatt, P.E., Environment, Safety and Health, Office of Authorization Bases Oversight, and Councilman, Mount Airy, Maryland

Beverly Cook has noted (see page 1) that risk information is key to informed decisionmaking and successful interactions with stakeholders. This view is shared by a staff member who also serves as a local government official.

Since 1988, I have been both a “nose to the grindstone” safety engineer in DOE’s Office of Environment, Safety and Health and an elected member of the Town Council in Mount Airy, Maryland. I based my first career choice on education, work experience, interests, and economics. I began my second career as a lark – just one meeting a month, or so I was told. Juggling these careers has gotten me involved in environmental policy from two different perspectives.

The environment is often a key issue for local government, for a variety of reasons. Environment is often interpreted very broadly, encompassing many “quality of life” concerns. It is often a hot-button issue with the public. The costs of environmental protection activities can be high compared to local resources; my town of about 8,000 people has an annual budget totaling about \$2.5 million. And municipal environmental staffing is limited, even counting consultants and volunteers.

A key environmental responsibility of local government is to implement state requirements, which are often tiered from Federal requirements such as U.S. Environmental Protection Agency (EPA) regulations. The Maryland Department of Environment (MDE) sets and enforces specific requirements in many areas, for example, water pollution. The MDE licenses wastewater treatment plants and drinking water purification facilities, two critical parts of a local community’s infrastructure.

Protecting drinking water from all forms of contamination is perhaps the number one local environmental issue, especially where rapid population growth, encroaching urbanization, and changing weather patterns are stressing water supplies. In periods of drought, the lower water table of regional aquifers may change the chemical balance and can cause exceedance of EPA or MDE allowable chemical concentrations, triggering expensive water treatment fixes.

In my experience, nothing causes more public concern than real or perceived contamination of water supplies. We had one episode about seven years ago involving the discovery of low levels of trichloroethylene in drinking water, an event prominently reported in the local papers. Someone calculated, however, that you could drink the water for 24 hours a day for 30 years, with no health impacts. Still, it eventually cost the town’s taxpayers about \$100,000 for additional treatment costs that I didn’t believe was necessary.

I am very sympathetic with DOE’s efforts to explain the results of risk assessment, in particular that very low levels of contaminants in groundwater need not be a big concern – and therefore need not drive decisionmaking – if they do not cause adverse impacts. DOE is fairly effective in bridging complex environmental issues from the top levels of government to the grass roots level, and should continue to pay particular attention to this effort in the NEPA process. 

EH Priority: Guidance to Improve NEPA Implementation

In a continuing effort to improve the efficiency of the DOE NEPA process and to foster greater consistency in DOE NEPA documents, the Office of NEPA Policy and Compliance is developing several priority guidance documents. These guidance initiatives are intended to support the Top-to-Bottom Review recommendations that were recently issued by the Office of Environmental Management – and are generally applicable to all of DOE – with respect to developing “a more streamlined, flexible, cost-effective process.” (See *LLQR*, March 2002, page 1.) Beverly Cook, Assistant Secretary for Environment, Safety and Health (EH), supports such guidance initiatives as a tool for improving performance. (See related article, page 1.)

Streamlining Floodplain/Wetland Process

In preparing the proposed revisions to the floodplain and wetland regulations (10 CFR Part 1022), the NEPA Office analyzed DOE’s experience in applying the existing requirements. According to our records, since 1994, DOE has prepared about 100 floodplain or wetland assessments. Under the proposed revisions to the regulations, which include several additional exemptions, only about half of those assessments would have been required. The proposed revisions would also simplify the public notification procedures by not regularly requiring *Federal Register* publication.

Accident analysis guidance, to supplement the general guidance in the “Green Book” (*Recommendations for the Preparation of Environmental Assessments and*

Environmental Impact Statements, May 1993), has been underway for several years. The NEPA Office received over 200 comments on the draft guidance circulated in April 2000. NEPA Compliance Officers (NCOs) will soon receive preliminary final guidance and a detailed response to comments. The guidance emphasizes using the “sliding scale” principle to give document preparers flexibility in approach while promoting consistency among DOE analyses.

Promoting Flexibility for Decisionmakers

The NEPA Office circulated draft guidance on interim actions (actions that may proceed during the NEPA process) to NCOs in March 2002 for comment and is now revising the guidance to address comments received. The NEPA Office is also consolidating and updating information on its policies regarding NEPA review for actions to be taken under the Comprehensive Environmental Response, Compensation and Liability Act and under the Resource Conservation and Recovery Act. The Office also plans to issue guidance that consolidates and enhances *LLQR* articles on alternatives analysis to aid the Department in structuring EISs and EAs to provide decisionmakers needed flexibility in meeting future requirements.

Coordination of draft guidance products with the Office of General Counsel and NCOs is ongoing, as shown in the chart below. The completed guidance products and the status of pending items will be discussed at the July NEPA Community Meeting. 

<i>Subject</i>	<i>Contact</i>	<i>Comments</i>
<i>Proposed revised regulations</i>		
Floodplain/Wetland Regulations (10CFR Part 1022)	Katherine.Nakata@eh.doe.gov	Planned to be published in the <i>Federal Register</i> in July 2002 for public comment.
<i>Guidance efforts underway for the Summer of 2002</i>		
Interim Actions	Brian.Mills@eh.doe.gov	Final guidance to be issued
Accident Analyses	Eric.Cohen@eh.doe.gov	Final guidance to be issued
CERCLA/RCRA/NEPA	Carolyn.Osborne@eh.doe.gov	Draft guidance for DOE coordination
Alternatives Analysis	Carolyn.Osborne@eh.doe.gov	Draft guidance for DOE coordination
Cooperating Agencies	Yardena.Mansoor@eh.doe.gov	Instructions regarding October report to CEQ on EISs and EAs initiated during March - August
<i>Planned guidance documents</i>		
Supplement Analyses	Jeanie.Loving@eh.doe.gov	Revisions underway to address comments on previous drafts
Section 216 Process	Brian.Mills@eh.doe.gov	
NEPA Compliance Guide	Carolyn.Osborne@eh.doe.gov	To include guidance issued since 1998

EPA Distributes Reminders on Filing an EIS

The Environmental Protection Agency's (EPA) Office of Federal Activities recently provided the Federal NEPA Contacts with notes on EPA's system for filing EISs. There are no new requirements, but reminders and clarifications.

Federal agencies may file an EIS with EPA no earlier than providing it to commenting agencies and the public, and must assure that the transmittal to the public has been performed when the EIS is filed. An EIS may be filed by delivering five bound copies (one of which EPA delivers to the Council on Environmental Quality) to:

U.S. EPA, Office of Federal Activities
EIS Filing Section, Room 7220
South Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC

To file an EIS by mail, use Zip Code 20460 and mail code 2252A; by a private delivery service, use Zip Code 20004 and phone number 202-564-2400.

Each Friday (or Thursday if Friday is a Federal holiday), the Office of Federal Activities publishes in the *Federal Register* a notice of availability that lists draft and final EISs filed during the week ending on the preceding Friday. A comment period for a draft EIS and the waiting period before an agency issues a record of decision after a final EIS both begin with publication of this notice of availability. For more information, call EPA's Auto Phone Service at 202-564-7167 or see EPA's Web site at www.epa.gov/oeca/ofa. 

Interior Department Welcomes "Electronic" EISs



Joining the trend towards conducting more Government business electronically, the Department of the Interior (DOI) now encourages agencies to meet DOI's needs for multiple copies of environmental review documents by submitting one paper copy and additional copies in an electronic format, such as CD-ROM or posting on the Web. DOI has accepted EISs by these methods for 3 years and now receives about 25 percent of EISs in computer-readable form.

"Overall, it's better for everybody," said Terry Martin, leader of DOI's Natural Resources Management Team. "It speeds our internal distribution and reduces costs of both distribution and storage. We're hoping this will reduce the bulk of documents that has to be mailed to us." DOI publicized these document submittal options in an April 16, 2002, letter to Federal agency NEPA Contacts.

DOI also used its April 2002 letter to remind Federal agencies of steps they should take to facilitate a timely, coordinated review of EISs by DOI's bureaus. Multiple copies of draft and final EISs should be sent to a single point of contact in DOI, which distributes the copies internally and consolidates comments:

Director, Office of Environmental Policy and Compliance
Department of the Interior
Main Interior Building, MS 2340
1849 C Street, NW
Washington, DC 20240

The number of copies to submit varies by region. For proposed actions in Minnesota, Iowa, Missouri, Arkansas, Louisiana, and states east, plus American Samoa, Guam,

Hawaii, Puerto Rico, the Virgin Islands, and Trust Territories, DOI requests 12 copies of a draft EIS and 6 copies of a final EIS; for proposed actions in Alaska, 16 copies of a draft EIS and 8 copies of a final EIS; for proposed actions in other states, 18 copies of a draft EIS and 9 copies of a final EIS. Multiple copies allow parallel reviews by DOI bureaus, thus speeding the review process. When an agency provides CD-ROMs or an address of a Web-posted EIS, DOI still requests one paper copy of each document for its files and other internal use.

-  *CD-ROM is not appropriate as the only format for public distribution of a NEPA document. (See "CD-ROM – A Useful Complement to Printed NEPA Documents?" LLQR, December 1999, page 8.)*
-  *EPA does not accept CD-ROM copies for filing an EIS.*
-  *Cost savings to an agency issuing some copies of an EIS on CD-ROM can be significant.*

Early coordination and scoping requests, stand-alone EAs, findings of no significant impact, and similar material of regional interest should be sent directly to DOI bureaus at the regional level. Regional Environmental Officers, who represent the DOI Office of Environmental Policy and Compliance, can assist in identifying appropriate contacts in the regional bureaus. Contact information for the Regional Environmental Officers is available at www.doi.gov/oepc/oepcinfo.html. For more information on DOI review procedures, contact Terry Martin, Team Leader, Natural Resources Management Team, at 202-208-5465 or terry_martin@ios.doi.gov. 

New on the NEPA Bookshelf

From time to time the Office of NEPA Policy and Compliance highlights (without endorsement) new books that may be useful or interesting to the DOE NEPA Community. (See “Book Reviews” in the *LLQR* cumulative index and “NEPA Practitioner’s Bookshelf” in volume II of the DOE NEPA Compliance Guide. Both are available on the DOE NEPA Web at tis.eh.doe.gov/nepa under “DOE NEPA Process Information” and “DOE NEPA Tools,” respectively.)

The National Environmental Policy Act: Judicial Misconstruction, Legislative Indifference, and Executive Neglect

Matthew J. Lindstrom and Zachary A. Smith
College Station, Texas: Texas A & M University Press; 2001
Phone: 800-826-8911
Internet: www.tamu.edu/upress
ISBN 1-58544-125-2; 208 pages; \$34.95

Beginning with the historical context in which passage of NEPA was possible and continuing through its first 30 years of implementation, Lindstrom and Smith examine the “divergence between enforcing the procedural actions required by NEPA and meeting its substantial policy values.” The authors, professors of political science at, respectively, Siena College and Northern Arizona University, contend that all branches of the Federal government have relegated the ambitious policy statement in section 101 of NEPA to the sidelines, while focusing almost exclusively on the procedural requirements involved with preparing NEPA documents. They believe this has led to some improvements in decisionmaking and



environmental quality, but that it has failed to live up to the potential expressed in NEPA.

The historical account of NEPA begins with the Act’s political and social origins. The book then discusses the legislative history, including the dynamic between Congress and the Nixon administration. The book evaluates implementation of the law, focusing on how its interpretation has been shaped over the years and especially on the role of the courts. The authors claim that the courts’ “unwillingness to challenge the discretionary judgment of federal agencies on environmental matters” led to a judicial focus on the procedural aspects of NEPA. This focus has raised the prominence of EISs while lessening the practical significance of the law’s broader ecological objectives.

The book concludes with a chapter briefly evaluating proposals for the future of NEPA. Lindstrom and Smith contend that with adequate presidential support, NEPA “could be a foundation for global sustainability.” The authors discuss potential reforms consistent with this goal, including a proposal that agency action could be conditioned or denied based on findings in an EIS, implementation of adaptive environmental management,

and increased staffing and budget for the Council on Environmental Quality. The authors also direct readers to several areas of potential improvement in the EIS preparation process, such as reducing page length, phasing out the reliance on contractors, increasing the linkage between risk assessment and action limitations or other mitigation, and strengthening social, cultural, and economic impact analysis.

Effective Environmental Assessments: How to Manage and Prepare NEPA EAs

Charles H. Eccleston
Boca Raton, Florida: Lewis Publishers; 2001
Phone: 800-272-7737
Internet: www.crcpress.com
ISBN 1-56670-559-2; 488 pages; \$69.95

The author, president of Environmental Planning and NEPA Services Corporation in Richland, Washington, draws on practical experience as a contractor to DOE, DOE NEPA guidance, *LLQR* articles, and NEPA case law to create a guide to the EA process. This book provides an overview of the NEPA process followed by a detailed discussion of the EA process, writing guidelines (documenting assumptions, readability, “will” and “would”), and three areas of impact analysis: cumulative impacts, accident analysis, and environmental justice.

The chapter on assessing significance, a reprint of an article by Frederic March of Sandia National Laboratories, discusses the considerations and procedures to be used in deciding whether potential impacts are significant. A final chapter addresses the finding of no significant impact (FONSI), including the implications of not preparing an EIS, documentation requirements, and the use of mitigation to support a FONSI.

The 138-page text is supplemented by six appendices. These include a reprint of NEPA and the Council on Environmental Quality NEPA regulations, a modified version of DOE’s EA checklist, and three environmental assessments, two of which were issued by DOE: *Continued Development of Naval Petroleum Reserve No. 3* and *Transfer of DOE Grand Junction Office to Non-DOE Ownership*. In brief critiques of these EAs, Eccleston highlights strengths and points to areas of potential improvement, including comments on the selection of alternatives, impact analysis, whether sections need be included in an EA, and writing and presentation techniques. 

NEPA Compliance Officer Transitions

WAPA: Farewell to Bill Karsell; David Swanson, Acting NCO

Bill Karsell, NEPA Compliance Officer (NCO) for the Western Area Power Administration (Western) Corporate Services Office (CSO) for 8 years, is now the Chief of the Environmental Services Division for the Bureau of Reclamation's Technical Service Center. Karsell was the leader of Western's NEPA program, where as Environment Manager since 1991, he coordinated Western-wide NEPA work for four regions, covering all or part of 15 western states. Karsell now oversees more than 100 technical support personnel working in terrestrial and aquatic ecology, environmental research, water treatment engineering, remote sensing, and economics.

Western's CSO has not decided when its Environment Manager position will be filled. Two existing Western NCOs will be detailed to the Environment Manager position: Shane Collins from Western's Colorado River Storage Project Management Center in Salt Lake City, Utah, between June 2 and July 13, and Nick Stas from Western's Upper Great Plains Region in Billings, Montana, between September 3 and October 19. Other Western employees also will be detailed to the Environment Manager position. David Swanson, an experienced NEPA Document Manager, will act as the Western CSO NCO until the position is permanently filled. He can be reached at swanson@wapa.gov or 720-962-7261.

Naval Petroleum Reserves in Colorado, Utah, and Wyoming: Farewell to David Miles; Welcome to Don Ross

David Miles, the original NCO (since 1991) of the Office of Naval Petroleum and Oil Shale Reserves in Colorado, Utah, and Wyoming, recently retired. He has been traveling, fishing, planning future hunting trips, and building a new home in Mexico. We wish David well in his retirement.

The Office's new NCO is Don Ross, the Environment, Safety and Health Manager for the Teapot Dome oilfield (NPR-3) and Rocky Mountain Testing Center located near Casper, Wyoming. He has worked in various environmental and engineering capacities for the U.S. Geological Survey, Minerals Management Service, Bureau of Land Management, and DOE. Mr. Ross can be reached at don.ross@rmtoc.doe.gov or 307-437-9610.

Peter Siebach Is Chicago NCO

Environmental engineer Peter R. Siebach has joined the Office of Safety and Technical Services at the Chicago Operations Office and has been designated NCO. For the previous 12 years, he was with DOE's Environmental Management program – for the last five years in Chicago as a senior program manager for the Center for Risk Excellence. Before that, he worked for Environmental Management in Germantown overseeing the Albuquerque Operations Office Waste Management Program. He has contributed to the Waste Management Programmatic EIS and several site-wide EISs. Mr. Siebach has a B.S. in Engineering Geology and a M.S. in Environmental Remote Sensing (Civil Engineering). He can be reached at peter.siebach@ch.doe.gov or 630-252-2007.

Grand Junction Project Office Names Tracy Plessinger as NCO

Tracy Plessinger has been designated NCO for categorical exclusions for the Grand Junction Project Office (which formerly managed the Uranium Mill Tailings Remedial Action Project under the Albuquerque Operations Office; now an Environmental Management office under the Idaho Operations Office). Ms. Plessinger is currently a Project Manager supporting the nearby Moab Site Project. Previously, she was an environmental compliance specialist for the Office, served as NEPA Document Manager, managed environmental restoration projects, and served as team leader for technical and support staff. Ms. Plessinger can be reached at tplessinger@gjo.doe.gov or 970-248-6197.

Jeff Robbins, Acting NCO for Amarillo Site Operations

Jeff Robbins, NCO of the Albuquerque Operations Office, now also serves as Acting NCO for the NNSA Office of Amarillo Site Operations. He can be reached at jfrobbins@doeal.gov or 505-845-4426. 

What's New from CEQ

Chair Addresses Senior NEPA Liaisons

The five goals of the Bush Administration – Stewardship, Science-based Decisionmaking, Federalism, Innovation, and Compliance – fit well with the NEPA process, according to James L. Connaughton, Chair of the Council on Environmental Quality (CEQ). Speaking at the first meeting of senior agency NEPA Liaisons on March 4, 2002, he affirmed CEQ's overarching commitment to the "value of a vibrant NEPA program."

His goal is to "eliminate opportunities for NEPA issues to arise." NEPA should not be viewed as a "project," he said, but as a management tool. "There is an environmental dimension to day-to-day government operations," according to Connaughton. He encouraged the group of senior government officials to help make NEPA a "way of life, not something that gets in the way."

Environmental Management Systems Emphasized

CEQ Chair James Connaughton and Office of Management and Budget (OMB) Director Mitchell Daniels sent a memorandum on April 1 to the heads of Federal agencies emphasizing the importance of developing Environmental Management Systems. Under Executive Order 13148 (65 FR 24595; April 26, 2000), Federal agencies are required to implement Environmental Management Systems at all applicable facilities by the end of 2005. The memorandum is available at www.whitehouse.gov/ceq/memoranda01. [The June 2002 National Association of Environmental Professionals Conference will include a session on Environmental Management Systems and NEPA. See related article on page 2.]

NEPA Task Force Underway

CEQ's NEPA Task Force was established in April and convened in late May 2002. The Task Force will seek ways to improve and modernize NEPA analyses and documentation. In addition to considering technology and information security issues, the NEPA Task Force will explore opportunities where greater clarity in NEPA guidance or procedures could afford greater efficiencies in analysis.

Task Force modernization projects include guidance on the use of technology and addressing information security concerns. In addition, recommendations to modernize practices and procedures will address issues that include Federal and inter-governmental collaboration,

programmatic analyses and tiering, and adaptive management. A "best practices" pamphlet will be published and posted on the Web.



The NEPA Task Force will operate for approximately six months. A notice and request for comments is being developed and will, in addition to formal publication and distribution, be sent to the senior agency NEPA Liaisons and Federal NEPA Contacts. For further information, please contact Lee Jessee, DOE's representative to the Task Force, at lee.jessee@eh.doe.gov, or call 202-586-7600 or 202-456-5433.

Upcoming NEPA Contacts Meeting

CEQ will meet next with Federal NEPA Contacts on June 12 in Washington, DC. The agenda includes an opportunity for the liaisons to meet the NEPA Task Force and discussion of cooperating agency reporting. (See "CEQ Guidance Encourages Agency Cooperation," *LLQR*, March 2002, page 1.) The NEPA Contacts also will discuss agency guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. *LLQR* will report on this meeting in the September 2002 issue.

[Data quality will be a topic of work for the NEPA Task Force and for DOE's NEPA Community. Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658) directed the OMB to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies."

OMB issued final guidelines on February 22, 2002 (67 FR 8452), under which agencies must issue their own final guidelines by October 21, 2002. OMB also established interim milestones for agencies, including publishing draft guidelines on agency Web sites by May 1, 2002, and submitting draft final guidelines to OMB for review by July 1, 2002. DOE has not yet published its draft guidelines. OMB directed that agency final guidelines must include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency." 

Training Opportunities

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

- **Overview of the NEPA Process**

Phoenix, AZ: June 11
Portland, OR: September 17
Atlantic City, NJ: November 5
Fee: \$195

- **Reviewing NEPA Documents**

Phoenix, AZ: June 12-14
Portland, OR: September 18-20
Atlantic City, NJ: November 6-8
Fee: \$795

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Atlantic City, NJ: June 18-21
Phoenix, AZ: June 18-21
San Francisco, CA: August 13-16
Las Vegas, NV: October 8-11
Jacksonville, FL: December 10-13
Billings, MT: December 10-13
Fee: \$995

- **Risk Communication: Strategies & Implementation**

San Diego, CA: July 16-18
Fee: \$795

- **Cumulative Impacts, Analysis and Documentation**

San Antonio, TX: July 23-24
Fee: \$595

- **How to Create and Manage an Interdisciplinary Team**

Atlantic City, NJ: August 19-20
San Francisco, CA: October 21-22
Fee: \$595

- **Clear Writing for NEPA Specialists**

Atlantic City, NJ: August 21-23
San Francisco, CA: October 23-25
Fee: \$795

- **Overview of the Endangered Species Act and Section 106 of the National Historic Preservation Act**

Phoenix, AZ: September 26
Las Vegas, NV: December 5
Fee: \$245

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

- **The Law of NEPA**

Durham, NC: September 25-27
Fee: \$670

*Office of Continuing and Executive Education
Nicholas School of the Environment
and Earth Sciences
Duke University
919-613-8083
sea3@duke.edu
www.env.duke.edu/cee/execed.html*

- **Socioeconomic Impact Analysis Under NEPA**

Durham, NC: October 9-11
Fee: \$670

- **Implementation of NEPA on Federal Lands and Facilities**

Durham, NC: October 28 - November 1
Fee: \$990

*Nicholas School of the Environment
and Earth Sciences
Levine Science Research Center
Duke University
919-613-8082
lsheafer@duke.edu
www.env.duke.edu/cee/execed.html*

- **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 participants, including from other agencies. A distance learning curriculum is expected to be available by the end of summer. Services are available to Federal agencies through GSA Contract No. GS-10F-0163L (899-3).

*Environmental Training & Consulting
International, Inc.
720-859-0380
info@envirotrain.com
www.envirotrain.com*



Litigation Updates

South Carolina Sues to Stop Plutonium Shipments to Savannah River Site

On May 1, the State of South Carolina filed a lawsuit against DOE claiming violations of NEPA and the Administrative Procedure Act (APA) and asking the court to halt shipments of surplus plutonium from the Rocky Flats Environmental Technology Site (RFETS) or any other site to the Savannah River Site (SRS). At issue is the Department's amendment (67 FR 19432; April 19, 2002) of its Records of Decision (RODs) for the *Storage and Disposition of Weapons-Usable Fissile Materials PEIS* (DOE/EIS-0229, December 1996) and the *Surplus Plutonium Disposition EIS* (DOE/EIS-0283, November 1999).

The April 2002 amended ROD announced DOE's decision to cancel plans to immobilize a portion of the nation's surplus plutonium inventory. Immobilization was included in the earlier RODs, along with conversion of most of the plutonium to mixed-oxide (MOX) fuel for use in a commercial reactor prior to disposal. DOE now proposes to complete all surplus plutonium disposition through the MOX approach. As noted in the amended ROD, DOE is evaluating the need for additional NEPA review for changes to the MOX fuel portion of the surplus plutonium disposition strategy.

Shipment of plutonium to SRS had been contingent upon the site's selection as the location for plutonium

immobilization. The amended ROD sets that contingency aside, stating that the new plutonium disposition strategy, which eliminates the immobilization component, removes the basis for the contingency. Instead, DOE designates SRS as the location for consolidated long-term storage of the surplus plutonium now stored at RFETS. South Carolina challenged this action, claiming that the amended ROD is not adequately supported by NEPA reviews and that a supplemental EIS is required to analyze long-term storage at SRS and other aspects of the Department's new strategy.

South Carolina contends that DOE violated the APA in failing to provide the State adequate notice and opportunity to comment before announcing its new strategy. An additional claim by South Carolina under the APA challenges DOE's issuance of a national security exemption for the DT-22 shipping container to transport plutonium from RFETS. In a press release of May 16, 2002, however, DOE announced that no DT-22 containers will be used to transport certain weapons-related materials from Rocky Flats to either the Lawrence Livermore or Savannah River facilities. Instead, DOE will re-size such materials for shipment in certified Type B containers. (See "Planned Shipments of Plutonium Composite Parts," *LLQR*, March 2002, page 19, regarding a separate legal challenge related to DOE's use of the DT-22.)

Lawsuit Filed over Permits for U.S.-Mexico Transmission Lines

The Border Power Plant Working Group, a coalition of public interest groups and citizens from California, Arizona, and Mexico, filed suit on March 19, 2002, in the U.S. District Court for the Southern District of California challenging the adequacy of DOE's EA and FONSI for permits for two transborder electric power transmission lines, *Presidential Permit Applications for Baja California Power, Inc. and Sempra Energy Resources* (DOE/EA-1391, December 2001).

The EA evaluated construction and operation of two transmission lines from a substation in Imperial County, California, to the U.S.-Mexico border, about six miles through lands managed by the Bureau of Land Management, a cooperating agency in the EA. At the border, the lines would connect with transmission lines to separate power plants under construction about three miles inside Mexico. The transmission lines would be used to supply up to 1,200 MW of electricity from the

new plants to the southern California market. On occasion, the transmission lines would be used to supply startup power from the U.S. to the plants in Mexico.

The Border Power Plant Working Group claims that construction and operation of the transmission lines, construction and operation of a natural gas pipeline across the U.S.-Mexico border to supply fuel to the power plants, and operation of the power plants are connected actions that require an EIS. The coalition also states that the EA does not adequately consider cumulative impacts, including deterioration of air and water quality and risks to the Salton Sea Wildlife Refuge in southeastern California. The coalition asks the court to set aside the Presidential Permits that DOE granted until DOE prepares an EIS that evaluates alternatives, fully examines potentially significant impacts, considers connected actions and cumulative impacts, and identifies mitigation.



continued on page 14

Litigation Updates (continued from page 13)

Court Reinstates Sierra Club Challenge in Rocky Flats Mining Case

On April 19, the U.S. Court of Appeals for the 10th Circuit reversed and remanded the district court's dismissal of a lawsuit by the Sierra Club against DOE and the U.S. Army Corps of Engineers. In February 2001, the lower court had dismissed the action as premature (*LLQR*, March 2001, page 13). The appeals court found, however, that the plaintiff's NEPA and Endangered Species Act (ESA) claims are ripe for review and that the Sierra Club has standing to raise those claims.

The lawsuit stems from DOE's application of a categorical exclusion to issue an easement to a private company for a road through the buffer zone around the Rocky Flats Environmental Technology Site. The road would be used to support expansion of the company's existing gravel mine, located just outside the buffer zone, to include approximately 425 acres located in the buffer zone. The district court held that the Sierra Club's lawsuit is

premature because of the many procedural steps yet to be completed before the decision whether to construct the road. The appeals court found to the contrary, that the suit is ripe for adjudication because DOE's decision to issue the easement was not informed by the analyses required by NEPA and the ESA. The uncertainty surrounding the eventual construction of the road did not relieve DOE of its NEPA and ESA obligations with regard to issuing the easement.

The appeals court also determined that the Sierra Club has standing to pursue the lawsuit because the organization "established that its members have worked to protect both the Buffer Zone's wetlands and the 'threatened' [Preble's meadow jumping mouse], and have used the area in the Buffer Zone for recreational and educational purposes." 

Proposals Due for New DOE-wide Contracts

By: David A. Gallegos, *DOE-wide NEPA Contract Administrator*

The recompetition of the DOE-wide NEPA contracts is now underway. Solicitations DE-RP04-02AL67952 (Full and Open Competition) and DE-RP04-02AL67464 (Small Business Set-Aside Competition) were posted on May 9, 2002, on the DOE e-Center Website at <http://e-center.doe.gov>. Proposals are due by June 10, 2002. DOE contemplates multiple awards of indefinite delivery, indefinite quantity contracts. The period of performance for the contracts will be five years.

The contracts would be for preparation of EISs and EAs under NEPA and for preparation of environmental reports and related documentation required by the Nuclear Regulatory Commission in its review of license applications. The contracts would also be for compiling environmental information, conducting environmental analyses and activities required under an Executive Order or under another environmental statute and its implementing regulations (e.g., biological assessments under the Endangered Species Act), and evaluating information in NEPA documents.

Because new contracts will not be awarded before the current contracts with Science Applications International Corporation and TetraTech, Inc., expire, these will likely be extended an additional 30 to 90 days, depending on the number and quality of new proposals received. If you anticipate issuing a task order after June 17, 2002, please contact David A. Gallegos, DOE-wide NEPA Contract Administrator, at 505-845-5849 or dgallegos@doeal.gov. 

EAs and EISs Completed, January 1 to March 31, 2002

EAs

**Albuquerque Operations Office/
Office of Los Alamos Site Operations**
DOE/EA-1364 (2/26/02)
*Proposed BioSafety Level 3 Laboratory at
Los Alamos National Laboratory, Los Alamos,
New Mexico*
Cost: \$107,000
Time: 17 months

DOE/EA-1410 (3/28/02)
*Proposed Disposition of Omega West Facility
Los Alamos, New Mexico*
Cost: \$107,000
Time: 12 months

Bonneville Power Administration
DOE/EA-1366 (1/29/02)
*Santiam-Bethel Tap 230 kV Transmission Line
Project, Oregon*
Cost: \$92,000
Time: 15 months

Fossil Energy
DOE/EA-1380 (1/16/02)
*Presidential Permit Application, Northern States
Power/Xcel Energy Inc., Rugby, North Dakota*
Time: 12 months
[Note: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.]

**Richland Operations Office/
Environmental Management**
DOE/EA-1405 (3/22/02)
*Transuranic (TRU) Drum Retrieval in the 218-W-4B
and 218-W-4C Low-Level Burial Grounds, Hanford
Site, Richland, Washington*
Cost: \$24,000
Time: 7 months

EIS

Bonneville Power Administration
DOE/EIS-0324 (67 FR 4959, 2/1/02)
(EPA Rating: LO)
Umatilla Generating Project
Time: 15 months
[Note: The cost for this EIS was paid by the
applicant; therefore, cost information does not apply
to DOE.]

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost of four EAs for which cost data were applicable was \$99,000 (EA-1380 was paid for by the applicant); the average was \$82,000.
- Cumulatively, for the 12 months that ended March 31, 2002, the median cost for the preparation of 19 EAs was \$80,000; the average was \$82,000.
- For this quarter, the median completion time of five EAs was 12 months; the average was 13 months.
- Cumulatively, for the 12 months that ended March 31, 2002, the median completion time for 25 EAs was 8 months; the average was 9 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended March 31, 2002, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1.5 million. The average cost was \$1.8 million.
- Cumulatively, for the 12 months that ended March 31, 2002, the median completion time for 6 EISs was 22 months; the average was 30 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

(See the EPA Web site es.epa.gov/oeca/ofa/rating.html
for a full explanation of these definitions.)

Recent EIS-Related Milestones (March 1 to May 31, 2002)

Notice of Intent

Bonneville Power Administration

DOE/EIS-0317

Supplemental Draft Environmental Impact Statement for the Kangley-Echo Lake Transmission Line
May 2002 (67 FR 34917, 5/16/02)

Draft EISs

Bonneville Power Administration

DOE/EIS-0332

McNary-John Day Transmission Line Project
March 2002 (67 FR 10712, 3/8/02)

DOE/EIS-0333

Maiden Wind Farm Project
March 2002 (67 CFR 15193, 3/29/02)

Richland Operations Office/Environmental Management

DOE/EIS-0286

Hanford Site Solid (Radioactive and Hazardous) Waste Program, Washington
May 2002 (67 FR 36592, 5/24/02)

Final EIS

Savannah River Operations Office/Environmental Management

DOE/EIS-0303

Savannah River Site High-Level Waste Tank Closure, South Carolina
May 2002 (67 FR 38100, 5/31/02)

Records of Decision

Bonneville Power Administration

DOE/EIS-0230

Resource Contingency Program, Electrical Interconnection of the Satsop Combustion Turbine Project
May 2002 (67 FR 30905, 5/8/02)

National Nuclear Security Administration

Amended Record of Decision, Surplus Plutonium Disposition Program

April 2002 (67 FR 19432, 4/19/02)

[Amended Records of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic EIS (DOE/EIS-0229) and Surplus Plutonium Disposition EIS (DOE/EIS-0283)]

Oak Ridge Y-12 National Security Complex/ National Nuclear Security Administration – Defense Programs

DOE/EIS-0309

Site-wide for the Y-12 Plant, Oak Ridge, Tennessee
February 2002 (67 FR 11296, 3/13/02)

Supplement Analyses

Bonneville Power Administration

Watershed Management Program
(DOE/EIS-0265)

DOE/EIS-0265/SA-77

Methow Valley Fish Screening Project, McKinley Mountain Screen Replacement and Rockview Screen Decommissioning and Replacement with a Well
(Decision: No further NEPA review required)
March 2002

DOE/EIS-0265/SA-78

Yakima Basin Side Channels Project, Scatter Creek/ Plum Creek Land Acquisition Phase II
(modification to DOE/EIS-0265/SA-72)
(Decision: No further NEPA review required)
May 2002

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

DOE/EIS-0285/SA-39

Vegetation Management Along the Allston-Keeler 500kV Transmission Line Right-of-Way, Lands Between 1/1 through 29/1, Excluding BLM Land
(Decision: No further NEPA review required)
February 2002*

*Not previously reported in LLQR

continued on page 17

Recent EIS-Related Milestones (March 1 to May 31, 2002) (continued from previous page)

Supplement Analyses (continued)

DOE/EIS-0285/SA-40

Vegetation Management Along the Allston-Keeler 500 kV Transmission Line Right-of-Way Exclusive to BLM Lands Between 8/4 through 27/4
(Decision: No further NEPA review required)
February 2002*

DOE/EIS-0285/SA-41

Vegetation Management Around Wood Poles in 41 Transmission Line Rights-of-Way
(Decision: No further NEPA review required)
February 2002*

DOE/EIS-0285/SA-45

Benton County Noxious Weed Management Along 35 Rights-of-Way, Structures and Roads
(Decision: No further NEPA review required)
February 2002*

DOE/EIS-0285/SA-46

Franklin County Noxious Weed Management Along 14 Transmission Rights-of-Way Structures, Roads and Switches
(Decision: No further NEPA review required)
February 2002*

DOE/EIS-0285/SA-54

Ross Transmission Lines 1 and 2
(Decision: No further NEPA review required)
March 2002

DOE/EIS-0285/SA-59

Vegetation Management Along the Chehalis Covington/River Paul/Paul Alston 230 and 500 kV Transmission Line Corridor Right-of-Way 48/2 to 70/6 and 1/1 to 13/4
(Decision: No further NEPA review required)
April 2002

DOE/EIS-0285/SA-60

Vegetation Management Along the Bell-Boundary No. 3, 84/4 to 96/1 Transmission Line Right-of-Way
(Decision: No further NEPA review required)
April 2002

DOE/EIS-0285/SA-61

Vegetation Management Along the Rocky Reach – Maple Valley No. 1 Transmission Line Right-of-Way from Structure 110/1 to the Maple Valley Substation
(Decision: No further NEPA review required)
April 2002

DOE/EIS-0285/SA-62

Vegetation Management Along the Rocky Reach – Maple Valley No. 1 Transmission Line Right-of-Way from Structure 98/2 to Structure 110/1
(Decision: No further NEPA review required)
April 2002

DOE/EIS-0285/SA-75

Gourlay Creek Fish Ladder Project
(Decision: No further NEPA review required)
February 2002*

*Not previously reported in LLQR

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1, 2001 and March 31, 2002.

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

- *Public Input.* The EA process helped us to change our preferred alternative to one that was acceptable to the public while still meeting our needs.

What Didn't Work

- *Lack of understanding.* The first and most pervasive problem for this EA was the concept of bounding analysis and communicating that to the environmental restoration folks...they actually argued long and hard to not use the term at all. Unfortunately, they didn't have enough detail to do anything other than a bounding analysis so they lost that round.

Data Collection/Analysis

What Didn't Work

- *Late data.* Late responses to data calls caused last minute delays until late data could be evaluated.
- *Information gathering.* Getting information about potential environmental restoration/D&D activities is about as easy as catching a greased pig at a county fair.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Following deadlines.* Close adherence to deadlines; conference calls and meetings to communicate problems early on; and close contact with program and field contacts as well as with General Counsel facilitated timely completion of the EIS.

Factors that Inhibited Timely Completion

- *Several rounds of comments.* Several rounds of comments and revisions of the draft document were needed because reviewers always seemed to come up with additional comments that were not addressed in previous revisions.
- *Change in alternatives.* A major change in alternatives inhibited completion of the EIS.
- *9/11 concerns.* A need to consider post-9/11 sensitivity concerns was identified late in the EA review process and added several weeks delay.
- *Outside agency concurrence.* Obtaining concurrence from other agencies inhibited completion of the EA.
- *Too much work.* An NCO inundated with work and unwilling to delegate authority to others slowed completion of the EA.
- *Requiring many pre-drafts and drafts.* Currently it is required that the contractor prepare and submit a 50%, 90%, 100%, Draft Pre-Decisional Draft, Pre-Decisional Document, Draft Final Document, and finally a Final Document. I found this process to be very ineffective, as what is required for the 50% and 90% drafts contribute little to the technical analysis and conclusions.

Factors that Facilitated Effective Teamwork

- *Interaction and cooperation.* We had excellent interaction and cooperation with the contractors who worked on the EA. Frequent meetings were held with key managers and authors for the document.
- *Frequent meetings.* Biweekly status meetings among the DOE NEPA Document Manager, document contractor, and site management contractor were an excellent forum for working issues and reinforcing teaming.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

Factors that Inhibited Effective Teamwork

- *Reviewing not prompt.* People were not prompt in reviewing the document due to other work priorities.
- *Lack of teamwork.* When people are argumentative or abuse their authority, this can be very upsetting and disturbing to team members. The cohesiveness that is so important to teamwork erodes and so the team essentially ceases to be a team. It is always beneficial to keep one's temper, not to be confrontational, and to respect the dignity of others. If everyone gets along, and there is a spirit of teamwork, things get accomplished.
- *Not using contractors effectively.* The method used to convey comments by a member of the team was to redraft large portions of the document and provide that back to the contractor. This method defeats the intent of hiring a contractor to prepare the document. It also does not enable the contractor to benefit from an assumed dialogue which would normally be pursued had the comments been pre-prepared. A comment is typically prepared as such: "Page 3, Section A, Title of section, delete the following phrase xx, page xx, as per xx. Replace the phrase with the following, XX." Providing a comment in this format actually benefits both the DOE and the contractor, as in this process DOE communicates that that contractor failed to meet a DOE requirement, what the requirement is, a proposed fix and the contractor knows not to make the mistake again.

Process

Successful Aspects of the Public Participation Process

- *Provided information at a stakeholder's meeting.* We provided information about the EA to the Trustee council that was meeting during the comment period in addition to our normal letter notification.
- *Public meeting instead of public hearing.* The public meeting was an open forum for conversing with the public rather than a formal public hearing.

Unsuccessful Aspects of the Public Participation Process

- *Irrelevant comments.* Too often the public participation process becomes an avenue for the public to vent its frustrations on DOE. DOE spends a huge amount of wasteful time reviewing and responding to comments that don't warrant a response.
- *Inadequate DOE participation.* We briefed stakeholders in the area separately at their request – unfortunately, for the briefing with the closest and most adversely disposed stakeholder to our EA issues, the document manager didn't notify me and the public relations person that he wouldn't be showing up, nor did he send anyone knowledgeable about the project in his place...I did the best I could but it had an overall bad effect on our local relationship with the stakeholder and wasn't a successful experience.

Usefulness

Agency Planning and Decisionmaking

What Worked

- *Two versions.* Post 9/11 issues were resolved by producing two versions of the EA: Hard copy with all maps etc. and an electronic copy without maps etc.
- *Integration of a Site Plan.* The EA process helped the contractor firm up the site plans. The 10-year Comprehensive Site Planning process and NEPA are actually going to be walking hand-in-hand. The two planning processes surely facilitate informed and sound decisionmaking!

continued on page 20

What Worked and Didn't Work in the NEPA Process

(continued from page 19)

Agency Planning and Decisionmaking

What Didn't Work

- *Lack of document specifics.* EA preparation costs could be cut by providing more up front specifics to contractors.

Guidance Needs Identified

- One respondent suggested that further guidance from DOE-HQ should be made available to help sites determine when an issue constitutes a level of national significance that requires an EA to be announced in the *Federal Register*.
- One respondent suggested that guidance on facility disposition projects is needed. The respondent noted that, although some disturbances occur during a disposition project, there is an overall environmental benefit to removing an excess structure and enabling nature to restore the site to its previous state.

Note: The NEPA Office will address these guidance needs in future issues of LLQR.

Enhancement/Protection of the Environment

- The approved activity will pull several thousand transuranic waste drums out of the ground.
- The environment was little changed directly by this impact analysis process...but indirectly the larger process will result in protection and enhancement of the environment.

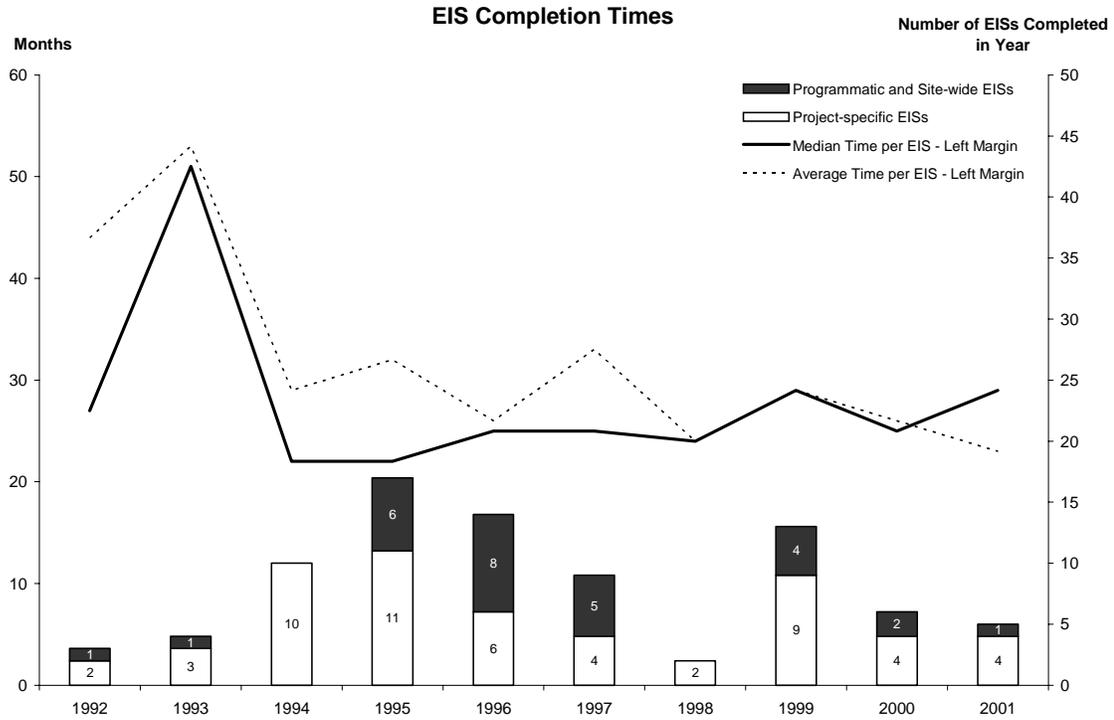
Effectiveness of the NEPA Process

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

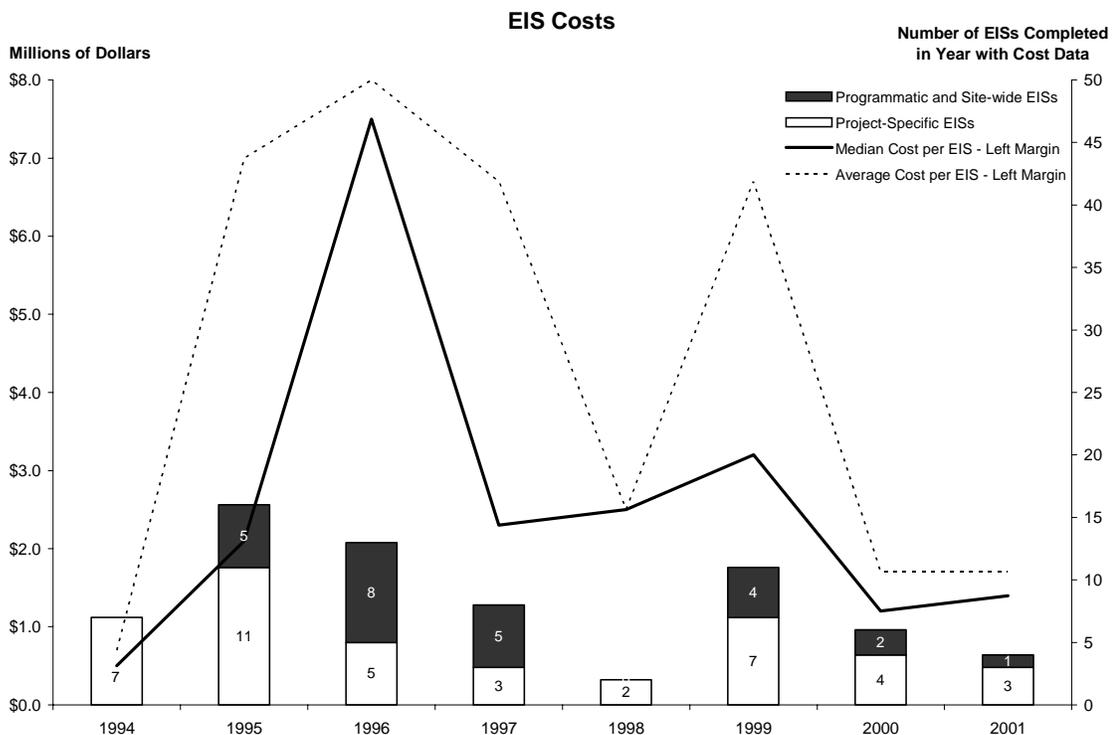
For the past two quarters in which there were nine EAs and one EIS, eight out of nine respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the decision may have been already made, but the NEPA process confirmed that this decision was the technologically sound and environmentally responsible way to go.
- One respondent who rated the process as "2" stated that the alternatives evaluated in the document were "black or white" with no in-between alternatives available.
- One respondent who rated the process as "3" stated that the NEPA process assisted in decision making for siting two new replacement facilities for existing plant processes.
- A respondent who rated the process as "2" explained that the project decision reflects a 30-year old DOE policy and a ROD from a previous EIS. **LL**

EIS and EA Cost and Time Trends

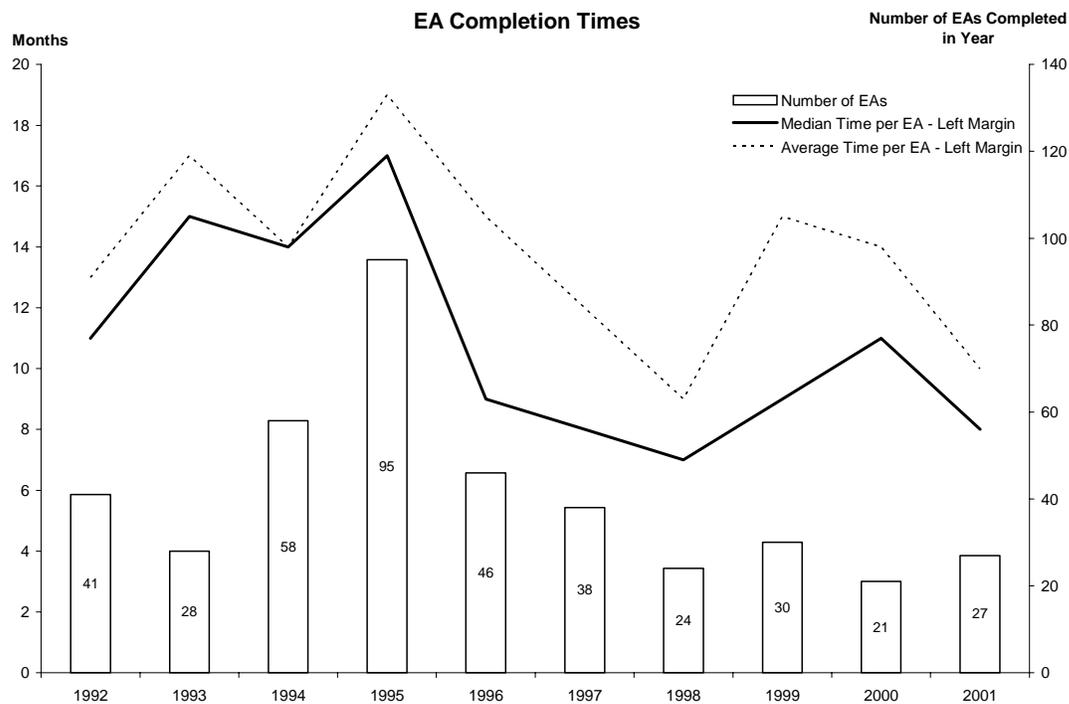


After peaking at a median of over 50 months in 1993, EIS completion times decreased in 1994, and have since remained relatively constant, with median completion times varying between 22 and 29 months.

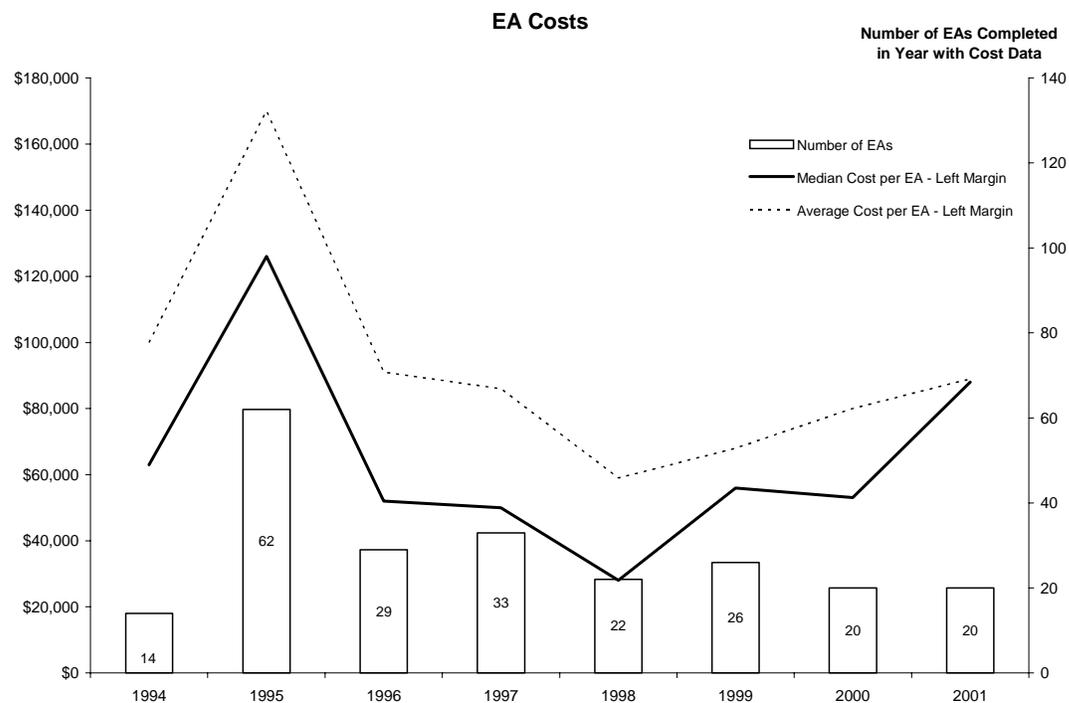


DOE started compiling cost data for its EISs in 1994. From 1994 to 2001, costs varied widely, from an average of \$732,000 per EIS in 1994, to an average of \$8,000,000 in 1996. Costs in 2000 and 2001 declined to the lowest values since 1994 (about \$2.6 million for programmatic and \$1.3 million for project-specific EISs), reflecting the completion of 25 programmatic and site-wide EISs.

EIS and EA Cost and Time Trends (continued from page 21)



Median EA completion times decreased substantially from a peak of about 17 months for documents completed in 1995, when the number of EAs peaked at 95, to about 8 months for 27 EAs completed in 2001.



DOE started compiling cost data for its EAs in 1994. The annual average cost to prepare an EA decreased from 1995 (about \$170,000) to 1998 (about \$60,000). During this period, the number of EAs completed each year also decreased from about 60 to 20. Since 1998 the number of EAs completed each year has remained about the same; however, the average cost per EA has been trending upwards, reaching \$89,000 in 2001. Reasons for the EA cost increase are unclear.

National Environmental Policy Act
**LESSONS
LEARNED**

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

September 3, 2002; Issue No. 32

Third Quarter FY 2002

NEPA Community Meeting Addresses Reform Initiatives

Challenged to “Reform and Re-energize NEPA Implementation,” more than 150 members of the DOE NEPA Community convened in Washington, DC, on July 16 and 17, 2002, at the annual meeting sponsored by the Office of NEPA Policy and Compliance. Highlights of the meeting included



James Connaughton, CEQ Chair, urged linking NEPA with EMS.

presentations by James Connaughton, Chair, Council on Environmental Quality (CEQ), and the senior environmental advisor to the President; and Robert Card, Under Secretary for Energy, Science and Environment.

Mr. Connaughton observed that 30 years ago NEPA was ahead of its time by incorporating the environment into the workings of government. “Now we must envision NEPA as a tool to get us to the next generation of environmental protection – better environmental stewardship at lower cost to society.” A new challenge in this regard, he noted, is to link NEPA with Environmental Management Systems (EMS).

In brief remarks, Under Secretary Card told DOE’s NEPA practitioners, “I can’t overemphasize how important the NEPA process is to what we get done, positively and negatively. It affects everything we do.”

NEPA Meeting Highlights

Environmental Management Approach	3
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Do-It-Yourself NEPA	6
NEPA and Security	7
EMS at DOE	8
EA Experiences	9
Lessons from Yucca Mountain	10
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Mr. Card focused on the original intent of NEPA: to make better decisions and protect the environment in an open public process. He advocated structuring the NEPA process to maximize flexibility in making decisions, accelerate risk reduction, and lower costs of implementing those decisions.

Citing some of his early experiences with NEPA at DOE, Mr. Card noted DOE’s “A+” defense record in NEPA litigation, but expressed frustration regarding overly long NEPA processes and documents filled with unnecessary detail. Raymond Berube, Deputy Assistant Secretary for Environment, responded that when EISs are prepared early in the planning process and with senior program managers involved, both problems can be avoided and project implementation need not be delayed. Mr. Card agreed that management plays a key role. (See box, page 12.)

Mr. Berube delivered the keynote address on behalf of Beverly Cook, Assistant Secretary for Environment, Safety and Health (EH). Her prepared remarks addressed the need for flexibility, consistency, accountability, and good communication in the NEPA process.

continued on page 3



Under Secretary Robert Card told the DOE NEPA community, “Your job is not easy.”

Inside *LESSONS LEARNED*

Welcome to the 32nd quarterly report on lessons learned in the NEPA process. Much of this issue is devoted to reporting on the July DOE NEPA Community Meeting. Also featured is new NEPA-related guidance. Please note the Cumulative Index beginning on page 29. We thank you for your continuing support of the *Lessons Learned* program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by November 1, 2002. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2002

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2002 (July 1 through September 30, 2002) 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 at tis.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 at tis.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

Printed on recycled paper 

27th NAEP Conference – Detroit 2002

“Environmental Stewardship: Rebuilding and Maintaining America’s Resources” was the theme of the annual conference of the National Association of Environmental Professionals (NAEP) held in Detroit in June. The conference focused on the issue of brownfield redevelopment – bringing abandoned and often contaminated industrial sites back into productive economic use and environmentally acceptable condition.

As is customary for the NAEP conference, the meeting also included many NEPA-focused sessions, such as those on NEPA tools and techniques, public participation, coordinating and integrating NEPA with other regulatory programs, and current legal perspectives. There was particular emphasis this year on the integration of NEPA with Environmental Management Systems (EMS). Jon Loney of the Tennessee Valley Authority spoke about integrating NEPA and EMS at the corporate level. Charles Eccleston, Environmental Planning and NEPA Services Corporation, and Judith Lee, Environmental

Planning Strategies, held workshops on general NEPA/EMS integration, and John Irving, Idaho National Engineering and Environmental Laboratory, presented a case study of how this integration is implemented there. Diana Webb, Los Alamos National Laboratory, spoke on “The Silent ‘E’ – Environment in Integrated Safety Management.” Abstracts for most sessions are available at the NAEP Web site (www.naep.org) and proceedings can be ordered by NAEP members.

Next Conference: San Antonio in June 2003

NAEP will hold its 28th annual conference June 22-25, 2003, in San Antonio, Texas. Abstracts for papers to be presented are due to NAEP by October 15, 2002, and may be submitted online at www.naep.org. This site will soon provide additional information on the 2003 NAEP Conference, including nomination forms for the NAEP Environmental Excellence Awards. 

NEPA Meeting Addresses Reform (continued from page 1)

Ms. Cook's remarks emphasized the value of guidance – a major theme of the meeting – in promoting both flexibility and consistency. Use the guidance developed

“DOE must do a better job of serving the needs of decisionmakers, while still doing a good job of protecting the environment,” said Assistant Secretary Cook.

by EH, she advised, but apply the sliding scale and use good judgment. (See related article, page 13.)

To ensure that NEPA documents serve decisionmakers, programs must take ownership of the NEPA

process and not isolate document preparers from decisionmakers, according to Ms. Cook. Consistent with this goal, EH has endorsed the NEPA recommendations of the Top-to-Bottom Review of the Environmental Management (EM) program and aims to apply them to all of DOE.

Presentations by Mr. Connaughton, Horst Greczmiel, CEQ Associate Director for NEPA Oversight, and Jessie Roberson, DOE Assistant Secretary for EM, as well as case studies by DOE managers, NEPA Compliance Officers (NCOs), and Document Managers shared common themes: making NEPA documents more flexible and useful, adopting an adaptive management approach that focuses on outcomes, and integrating environmental planning with implementation.



Carol Borgstrom, Director, Office of NEPA Policy and Compliance, welcomed “the very best and brightest” NEPA people to the meeting.

CEQ Chair Promotes Management Approach for the Environment

Mr. Connaughton noted that Executive Order 13148, *Greening the Government Through Leadership in Environmental Management*, mandates EMS implementation across the Federal government, and he challenged NEPA practitioners to get involved in the systems approach. “Think about how to take a NEPA document and turn it into a management program. Identify legal requirements and management plans, put in place operational controls, monitor your projects, and improve on goals as you learn.... Management deals with financial



Ray Berube, Deputy Assistant Secretary for Environment, related NEPA experiences from his 24 years at DOE, including former Secretary Watkins’s declaration: “Thank God for NEPA.”

planning and human resources management in this way – we should do it for the environment, too.” (See “EMS at DOE,” page 8.)

Follow-up monitoring and EMS:

Mr. Connaughton recommended increased agency commitment to follow-up monitoring, suggesting that an agency could monitor some environmental effects of a project

during implementation, instead of making all impact determinations before the project begins. “If monitoring indicates a problem, you can revise the action later. . . You can justify a decision based on today’s knowledge if you commit to revisit the decision in the future based on new data,” he said.

Cooperation and Collaboration: The initiative to foster cooperating agencies in the NEPA process is a priority for CEQ. (See “CEQ Encourages Agency Cooperation,” *LLQR*, March 2002, page 1.) Mr. Connaughton noted that investing up-front in cooperation “can be a royal pain in the neck,” but it pays off in the long run. “When people know that they can be involved, they will have a higher level of trust in Federal agencies, regardless of whether they avail themselves of the opportunity,” he said.

With regard to collaboration among Federal agencies, he said agencies should avoid adversarial relationships and use cooperative planning processes to achieve smart decisionmaking. “Expect your partner agencies to work with you in the planning process,” Mr. Connaughton said.

In encouraging state and local governments to be cooperating agencies, he said the Federal government should emphasize the building of environmental expertise at the state and local level. “We need to create the expectation that state and local agencies will have a civil service that understands and is sensitive to environmental decisionmaking,” he said. “Provide

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information to people who need information, but expect accountability from them in return.”

Mr. Connaughton said that public involvement is important, too, but advised NEPA practitioners to dedicate their energy to the public that has a real interest in the project, in some cases local communities instead of national interests. “Consider the environmental aspects of each proposal and who will be affected,” he advised.

Energy-project streamlining task force: When the Administration recently requested information from both the private sector and government agencies on energy projects that had run into obstacles, it learned of about 40 projects, only three of which were identified by sources inside the government. He said, “That’s not good. No one inside the government was saying things needed

operational management attention. When we looked at it, people started acting, and an energy project streamlining task force was set up at DOE.”

NEPA process improvement: Mr. Connaughton said he is a big fan of process improvement but not the long time it requires, noting that he sees the CEQ NEPA Task Force (below) as an important step in NEPA process improvement. “There may be a NEPA Task Force Two,” he observed, but he does not want an ongoing process. Thus, he cautioned, “Don’t look for a grand effort over three years to totally revamp NEPA. A good chunk of what we can do in NEPA is just old-fashioned management improvement and does not need new regulations.”

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CEQ’s NEPA Task Force Moving Forward

The Council on Environmental Quality (CEQ) is soliciting input from Federal agencies and the public on the proposed nature and scope of its NEPA Task Force activities, and particularly seeks examples of effective NEPA implementation practices for a publication of case studies (including examples of best practices). (See 67 FR 45510, July 9, 2002; also see *LLQR*, June 2002, page 11, and March 2002, page 17.)

At the request of interested parties, CEQ has extended the public comment period on its NEPA Task Force activities to September 23, 2002 (67 FR 53931, August 20, 2002). CEQ will publish all comments received on the Task Force Web site (<http://ceq.eh.doe.gov/ntf>). In response to CEQ’s solicitation, DOE’s NEPA Office will consolidate case studies from DOE’s NEPA Compliance Officers and requests submissions in the format developed by CEQ by September 17, 2002, to Carl Sykes, at carl.sykes@eh.doe.gov, call 202-586-9924, or fax 202-586-7031.

The NEPA Task Force is headed by Horst Greczmiel, CEQ’s Associate Director for NEPA Oversight. Anne Norton Miller, Director, Environmental Protection Agency (EPA) Office of Federal Activities, is a part-time agency representative serving as Deputy Director. Rhey Solomon, Assistant Director for Ecosystem Management Coordination, U.S. Forest Service, is the Assistant Director.

Other agency representatives to the Task Force include: Mark Colosimo, U.S. Army Corps of Engineers; Mary Gary and Patricia E. Haman, EPA; Lee Jessee, DOE; Matthew McMillen, Federal Aviation Administration; Michele McRae, U.S. Geological

Survey; Jordon Pope, Bureau of Land Management; and Ramona Schreiber, National Oceanic and Atmospheric Administration.

The NEPA Task Force is focusing on five key areas: technology and information management; interagency and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; agency procedures and documentation for promulgating categorical exclusions; and adaptive management. Representatives recently interviewed staff from DOE’s Office of NEPA Policy and Compliance about DOE’s experience with both programmatic EISs and categorical exclusions.



Cooperating Agency Reporting System

Lee Jessee reported at the NEPA Community Meeting that CEQ will soon begin operating a Web-based, government-wide data collection system for information on cooperating agency activity and related NEPA process information. She has been working with CEQ to develop a flexible intranet Cooperating Agency Reporting System (CARS).

CARS supports the semiannual Federal cooperating agency reports, described in the January 30, 2002, CEQ Memorandum for Heads of Federal Agencies, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,” and due to CEQ on October 31, 2002. Later this month, the DOE NEPA Office will advise NCOs on how to provide information for this report.

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CEQ NEPA Modernization Task Force Focuses on Process Improvements

Mr. Greczmiel presented an overview of issues that CEQ's NEPA Modernization Task Force is addressing. (See box, page 4, and related article, *LLQR*, March 2002, page 17.) He emphasized that the operative word for the Task Force is "improvement," not "streamlining." The Task Force began its work in May and plans to present its recommendations in November.

Adaptive management and monitoring: Monitoring is a focus of the Task Force because CEQ has observed that agencies rarely follow up to find out whether impacts predicted in a NEPA analysis were borne out by experience. Mr. Greczmiel noted that monitoring project impacts can improve the NEPA process by identifying predictive approaches that need to be changed to produce more accurate results. He added that, as a result of monitoring, an agency would have the opportunity to reduce adverse impacts by adjusting an action or undertaking additional mitigation.

Programmatic analyses: Mr. Greczmiel observed that programmatic assessments and tiering can enhance efficiency, noting, however, that these terms mean different things in different agencies. He stated that CEQ is concerned that agencies not overlook impacts of individual projects when using programmatic approaches to environmental impact assessment.

Categorical exclusions: Agencies have reported to CEQ that having more categorical exclusions would make their NEPA compliance more efficient and have wanted to "borrow" other agencies' categorical exclusions. Mr. Greczmiel cautioned that categorical exclusions must be agency-specific – an agency must have data to support a category for exclusion and must establish the exclusion as its own. He advised, however, that if another agency is doing the same type of activities it may be possible to use that other agency's data to help support establishing a categorical exclusion.

Federal and intergovernmental collaboration: In referring to its guidance on cooperating agencies, Mr. Greczmiel said that CEQ's motivation was repeated complaints from agencies about being excluded from a NEPA process. Now there are fewer complaints about being left out, but there is a need to explore how agencies, particularly non-Federal ones, can cooperate effectively. To encourage and track interagency and intergovernmental collaboration, CEQ has established a Web-based system for reporting cooperating agency information.

Technology and information management: Mr. Greczmiel said, "We need to consider better ways of accessing, processing, and using information," including geospatial data. A related issue is how to use technology (e.g., CD-ROM) to reduce the costs of distributing and storing large documents.

Science-based decisionmaking: Specific issues include model validation and ensuring that uncertainty is acknowledged appropriately.

Environmental Management's Response to the Top-to-Bottom Review

Assistant Secretary Roberson shared her enthusiasm and vision for an improved NEPA process throughout EM. Ms. Roberson emphasized that she did not want to change any NEPA requirements, but she wants to make EM's NEPA processes more effective. "NEPA should be a part of the decisionmaking process," she said, "not a stand-alone activity or an excuse not to take action."

She believes that NEPA can add value to solving



Jessie Roberson, EM Assistant Secretary, made a surprise visit to the NEPA Community Meeting.

problems, but management needs to become involved in the NEPA process early and stay engaged. She emphasized that a NEPA analysis "should contain information needed to establish fairly rigid boundary conditions,"

within which there will be flexibility to adapt to evolving technology and other changes over time.

Ms. Roberson looks forward to working with DOE's NEPA Community, telling the audience, "Of all the initiatives in the Top-to-Bottom Review, EM will truly carry out the NEPA initiative in partnership with Environment, Safety and Health and General Counsel."

Ms. Roberson was accompanied by Patty Bubar, EM's Associate Deputy Assistant Secretary for Integration and Disposition, who summarized the findings of the Top-to-Bottom Review (see "DOE Embraces Further NEPA Improvements," *LLQR*, March 2002, page 1) and described steps that EM is taking to effect the recommended changes in its NEPA program.

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Ms. Bubar noted that the NEPA recommendations from the Top-to-Bottom Review are aimed at providing the decisionmaker with better background analyses to support decisions. The Review identified a systemic problem with the way DOE was conducting environmental management activities in general – managing risk instead of reducing it. A change in EM’s approach to its NEPA process could support risk-reduction decisions. While EIS

preparers typically base identification of the preferred alternative on acceptability to the public and regulators, Ms. Bubar recommended that the EIS provide good information on technical risks and issues and let the decisionmakers make the political judgments.

Ms. Bubar described some EM initiatives to test the implementation of the NEPA recommendations from the

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Do-It-Yourself NEPA:

Writing a Programmatic EIS with a Federal Team

Suzanne Rudzinski spoke as Director of EM’s Office of Technical Program Integration and head of an EM team that is piloting a “Federal” approach to EM NEPA. (Ms. Rudzinski recently accepted a position at the Environmental Protection Agency.) This approach is being used to respond to recommendations in the Top-to-Bottom Review that EM senior management should become more involved in EISs. The Review also criticized the original planned Programmatic EIS as being too narrowly scoped.

A small team of Federal staff from EM, EH, and GC is preparing this EIS, which now has a broader scope than initially envisioned. Contractor support is limited to computer modeling and other areas where specialized technical expertise is needed.

Ms. Rudzinski expected substantial cost savings from the Federal approach. The original budget for contractor work on the project was \$4 million, but use of Federal staff as preparers has trimmed the contractor cost estimate to \$800,000, including costs for work completed before the Federal approach was adopted. (Costs for the Federal preparers are not yet determined.)

Because DOE staff will have closer control over both the analysis and the document content, the team aims to produce a 150-page EIS, in contrast with the 150-page outline that had been provided by a contractor. The team expects advantages in scheduling. Disadvantages to the approach identified to date include a lack of both hands-on experience and specialized technical expertise on the Federal team.

BPA’s NEPA Management Approach

Alexandra Smith, Bonneville Power Administration (BPA) Vice President for Environment, Fish and Wildlife, described some elements of BPA’s NEPA compliance program that have saved time and money while serving BPA’s needs and meeting the objectives of NEPA:

- ✓ NEPA review is done primarily by in-house environmental staff with only occasional, focused technical support by contractors. Ms. Smith believes that the availability of highly qualified, experienced staff is a key to success.
- ✓ Centralization of BPA’s environmental staff increases management involvement, enhances staff flexibility to respond to organization needs, and allows the environmental staff to work in closer cooperation with their clients.
- ✓ A suite of programmatic EISs has helped to control the NEPA workload, enabling BPA to issue numerous tiered supplement analyses and RODs for individual follow-on actions.
- ✓ Management recognition of the value of the NEPA process has been vital for success. The tiering approach required management support for “thinking outside the box.” Management recognizes that NEPA helps decisionmaking and does not delay projects and programs. For example, the programmatic EIS on the BPA business plan was ready before the plan itself was done.
- ✓ “Assume nothing” about the science literacy of a NEPA document reader. BPA uses simple visuals in an EIS to summarize impacts and tell whether they are small, medium, or large, relying on appendices for detailed information. BPA finds that the simple graphics developed for NEPA documents are useful to managers and for public relations activities.

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Top-to-Bottom Review. EM is treating two ongoing EISs – Hanford Solid Waste Program and Idaho High-Level Waste and Facilities Disposition – as pilot projects for technical analysts to provide flexibility to decisionmakers and for managers to stay involved throughout the process. A third, a programmatic EIS, is being prepared at DOE headquarters (see box, page 6). Looking toward the future, she reported that EM is considering how sites can implement results of the Top-to-Bottom Review and how NEPA can be used to help DOE do a better job in its decisionmaking.

NEPA and Security Post-9/11

The terrorist attacks of September 11, 2001, affected many areas of public activity, including NEPA. Eric Cohen, Office of NEPA Policy and Compliance, led a panel discussion on ways to manage nonclassified, sensitive information to meet the objectives and requirements of NEPA without jeopardizing homeland security. Panelists reviewed current policy direction regarding security-sensitive information and discussed approaches used in two recent DOE EISs.

For background, panelists referred to memoranda through which the Administration has been guiding agency action in light of heightened security concerns. Namely, memoranda from Attorney General Ashcroft (October 12, 2001) and former DOE Deputy Secretary Blake (October 26, 2001) (*LLQR*, December 2001, page 1) and, most recently, from White House Chief of Staff Andrew Card (March 19, 2002) directed close scrutiny of information made available to the public. Mr. Cohen noted that DOE's NEPA Community has responded by restricting electronic access to most NEPA documents and removing sensitive information from NEPA documents that were nearing completion. Early post-9/11



Drew Grainger, Savannah River NCO, poses a question at the NEPA Community Meeting, attended by NCOs, NEPA document managers, environmental attorneys, program managers, and contractors.

measures were largely based on independent determinations by Program and Field Offices that have not always been consistent, he said.

DOE is now working to define and implement consistent policy for managing sensitive information in a "post-9/11 world." Raymond Holmer, Office of Safeguards and



Ray Holmer, Office of Safeguards and Security Policy, stated that DOE must "find a balance between informing and protecting the public."

Security Policy, reported that a draft DOE directive on handling sensitive but unclassified information, DOE 471.X, "Identifying and Protecting Official Use Only Information," was in internal review at the time of the meeting. He also noted that a new Executive Order in preparation would address information handling requirements.

Mr. Holmer pointed out that DOE's knowledge on how to protect information comes from

its long experience with classified information, but the new category of sensitive-but-unclassified information presents new challenges. The conflict between openness and secrecy has been a continuing theme in the Department's history. Since September 11, some information that was previously public is being withheld.

Ethan Weiner, Office of the Chief Information Officer, said his office is drafting a new policy for publicly accessible Web sites that will address the particular challenges created by electronic information. Many of DOE's pre-publication review processes for printed material can be applied to publishing on the Web, but this has not been done consistently. The pending policy promotes the use of internal review processes to address security concerns. Mr. Weiner noted that once information is released on the Web, it is difficult to pull it back as the information can be "mirrored" by non-DOE sites around the world.

Panelists Steve Gomberg, Office of Civilian Radioactive Waste Management, and Drew Grainger, Savannah River NCO, shared their experiences with team reviews of sensitive information in the final EISs for the Yucca Mountain geologic repository and Savannah River Site (SRS) high-level waste tank closure, respectively.

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Mr. Gomberg explained that, for the Yucca Mountain EIS, a review team segregated sensitive information into a separate volume marked “Additional Information,” which will not be made available electronically or circulated with the rest of the EIS. The Program, however, plans to provide copies to people upon written request. Mr. Grainger described how the review team for the SRS EIS settled upon a similar approach for sensitive information. They designated the separate volume “Official Use Only” with the intent of distributing it in printed form only upon request.

Panelists had several recommendations:

Use a team to evaluate sensitive information for release. Include NEPA and Freedom of Information Act staff, and representatives from the Program, Security, General Counsel, and other affected offices in EA and EIS reviews. Mr. Holmer commented that NEPA staff know what information needs to be communicated. Security people need to ensure that this information will not damage security interests.

Ask whether potentially sensitive information is needed at all. Both Mr. Grainger and Mr. Gomberg said their EIS review teams found that some potentially sensitive information originally intended to be included in the EIS, actually was not needed for an adequate NEPA analysis. Mr. Grainger noted, however, that some sensitive information, such as facility locations relative to receptors and water tables, did need to be in the EIS for adequate disclosure. Mr. Gomberg pointed out that information about typical design features usually can be disclosed because it is not inherently sensitive.

Consider issuing some documents only as paper copies. Mr. Holmer recommended providing local public access through paper copies while preventing access by anonymous Internet users around the globe. A member of



Yardena Mansoor, Vivian Bowie, Steve Woodbury, Jim Sanderson, and Lee Jessee (l-r) covered a variety of topics, including information quality, NEPA metrics, EMS, the NAEP conference, and cooperating agency reporting.

the audience added that eliminating electronic access to information can slow down potential terrorists and make it more costly for them to obtain the information they seek.

Many concerns still need to be resolved. Meeting participants asked for guidance on several topics, including how to: document an accident analysis without releasing sensitive information; determine whether certain environmental information (such as wind roses) needs to be protected; and determine how much information about existing facilities and vulnerabilities to disclose.

Environmental Management Systems Developing at DOE

Referring to Mr. Connaughton’s earlier remarks, DOE Office of Environment speakers told how DOE is developing a systems approach to environmental protection and how NEPA can be linked to the EMS approach.

Steve Woodbury, Office of Environmental Policy and Guidance, and Jim Sanderson, NEPA Policy and Compliance, described how NEPA, EMS, and DOE’s Integrated Safety Management System (ISMS) can work together. They explained that ISMS combines all the basic requirements that apply to DOE facilities, including Federal, state, and local laws, regulations, and agreements; DOE orders and notices; and contractor policies and requirements on health, safety, and environment.

ISMS and EMS have the same core functions, they noted, essentially a “plan-do-improve” cycle. The three stages of planning in ISMS and EMS – defining the work scope, analyzing the hazards, and developing and implementing hazard controls – parallel the NEPA process. In ISMS, EMS, or NEPA, planning begins with an identified need, and then follows an iterative process that includes analyzing alternatives and developing ways to prevent identified hazards. If hazards cannot be avoided, possible mitigation measures are explored.

After reviewing several examples of how ISMS, EMS, and NEPA elements are being integrated within the DOE complex through use of environmental checklists, job hazard analysis, and other mechanisms, Mr. Woodbury and Mr. Sanderson invited the community to provide additional examples and also help define what guidance is needed on linking the environmental systems approaches. They noted that the *EMS Primer for Federal Facilities* is available on the Environmental Policy and Guidance Web site (<http://tis.eh.doe.gov/oepa>).

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For EAs, One Size/Shape Does Not Fit All

Three DOE NEPA practitioners shared recent experiences in meeting diverse challenges in preparing environmental assessments (EAs) for a site cleanup, transboundary transmission lines, and a land transfer. The discussion illustrated that one “size and shape” does not fit all EA situations.

Janet Neville, Oakland NCO, described an extensive public participation process for an EA being prepared for radiological cleanup and closure of the Energy Technology Engineering Center in Southern California. Anticipating controversy, DOE invited the public to help in EA scoping and extended the public review period on the draft EA from 45 days to 105 days in response to requests. The interested parties include EPA, several state agencies, the City of Los Angeles, Federal elected officials, and several local and national interest groups, as well as private citizens.

She explained that the proposed DOE cleanup is simple technically, but decisionmaking is complicated because it raises policy issues of “how clean is clean.” She described the alternatives in the EA, which are based on three cleanup endpoints for soil. DOE’s preferred alternative would result in an increased cancer risk of about 3×10^{-4} for a maximally exposed person, a level consistent with EPA’s policy under the Comprehensive Environmental Response, Compensation, and Liability Act for protecting human health. Another alternative would result in a lower increased cancer risk (1×10^{-6}) for the maximally exposed individual, but would cause increased traffic fatalities and community disruption from the larger number of truck trips required. The no action alternative would necessitate restrictions on site access.

Ms. Neville expects that DOE’s decision on cleanup levels will be controversial, but emphasized that document preparers should remember that, although political issues are important to decisionmakers, such issues are peripheral to a NEPA document. It is important to promote open dialogue on controversial issues during the public participation process, she said.

Tony Como, Deputy Director, Electric Power Regulation, Office of Fossil Energy, described experiences with an EA for proposed electric transmission lines that would bring power from Mexican plants across the U.S. border into California. He said that experience with similar projects indicated that there would be no potential for significant environmental impacts from the action, but issues that looked simple at first turned out to be difficult and controversial. Mr. Como concludes that “there is no way to bullet proof” an EA, but also believes that DOE should not prepare an EIS just because of controversy.

Mr. Como explained that potential air and water impacts in the United States from the Mexican power plants were of particular interest to stakeholders in California. Although analysis showed that impacts would not be significant, Mr. Como said that stakeholders wanted DOE to require mitigations on the Mexican plants, which DOE has no authority to do.

In addition, Mr. Como related that stakeholders also wanted DOE to prepare an EIS on a new pipeline that would supply natural gas from the United States to the Mexican power plants and to other Mexican and U.S. facilities. He explained that although the gas pipeline was related and complementary to the transmission line proposal, the pipeline was not “connected” to it in the NEPA sense (that is, the lines would serve a distinct function and could proceed separately from the pipeline). DOE issued a finding of no significant impact (FONSI) and permitted the transmission lines, but has since been sued. The case is before the U.S. District Court for the Southern District of California (*LLQR*, June 2002, page 13).

David Allen, Oak Ridge NCO, described an ongoing NEPA review for a proposal to transfer DOE land to a private group for industrial development. The group has partially developed the land under a lease for which DOE had prepared an EA and issued a mitigated FONSI in 1996. At that time, DOE considered transfer of the property an unreasonable alternative. Mr. Allen explained how changing circumstances have made land transfer a reasonable alternative and how stakeholders’ concerns about mitigations are contributing to DOE decisionmaking.

The private group leasing the land, he said, has found businesses hesitant to invest in the infrastructure needed for full development. A rule issued since the original EA was prepared – 10 CFR Part 770, *Transfer of Real Property*

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Janet Neville, Oakland NCO; Tony Como, Fossil Energy; and David Allen, Oak Ridge NCO, share experiences in preparing environmental assessments.

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at Defense Nuclear Facilities for Economic Development – now makes transfer of the land a reasonable alternative.

He explained that the potential environmental impacts of transfer of the property were not expected to differ from impacts for lease of the property because mitigations the leaseholder and DOE had committed to implement would be transferred to the new owners. The mitigated FONSI had excluded from development certain natural areas on the land (for example, floodplains, bottomland hardwood habitat, and historic sites) and had required monitoring before, during, and after development.

DOE needed to update information presented in the 1996 EA to account for land development so far, and to include monitoring results. The limited scope of updated information made an EA addendum an appropriate NEPA strategy, Mr. Allen said, and facilitated stakeholder input. Stakeholders' continuing concerns regarding protection of the natural areas has influenced DOE to change its proposed action from transfer of the entire land parcel to transfer of only the developable portions, so that DOE would retain control of the natural areas.

Mr. Allen stated, "This is a good example of DOE listening to stakeholder input and making changes that helped build consensus between business development and environmental conservation."

Lessons Learned from the Yucca Mountain EIS

Preparing an EIS for a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain has been challenging in many respects. The EIS addressed unprecedented issues, evaluated complex technical matters, involved many states and tribes, and elicited significant public controversy. Although several aspects of the EIS process were unique, many lessons learned can be applied to other NEPA reviews, noted Document Manager Jane Summerson. Ms. Summerson, who is now also the NCO, Yucca Mountain Site

Characterization Office (YMSCO), reviewed the project status, and with a panel of DOE staff and contractors who prepared the EIS, shared lessons learned with meeting participants.

The Final EIS was approved by the Secretary, accompanied his recommendation of the site to the President, and was made available to the public on the Internet in February 2002. Since approval of the site by the President in July, the Final EIS is in printing, to be distributed to the public and filed with EPA by October.

EIS preparation contractor Joe Rivers, Jason Associates Corporation, and Robin Sweeney, YMSCO, described several innovative uses of information technology in producing the EIS. A "virtual office" allowed efficient collaborations among geographically-dispersed technical analysts, EIS writers, and reviewers. A Web-based database was an effective tool for managing responses to more than 13,000 comments on the draft EIS and supplement.

Dave Lechel, a consultant with Lechel, Inc., described the internal process used to develop this challenging EIS and offered some observations on what helps different elements of the agency work together effectively. He recommended establishing and following some basic ground rules for interactions, but avoiding formal working agreements between internal organizations unless needed to ensure that offices allocate adequate resources to the project. Mr. Lechel, Ms. Sweeney, and Ms. Summerson urged project managers and document preparers to think of participants from DOE headquarters organizations as resources or "sounding boards," not as "internal regulators." Open discussions of issues among representatives of different DOE organizations often results in better solutions, Mr. Lechel noted. He recommended early establishment of "personal-professional" relationships to foster effective teamwork.

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Jane Summerson, Dave Lechel, Joe Rivers, Robin Sweeney, and Lee Morton (l-r) discussed lessons learned from the Yucca Mountain EIS that can be applied to other DOE NEPA reviews.

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Lee Morton, Bechtel SAIC Company, LLC, the management and operating (M&O) contractor for the Yucca Mountain Project, recounted some interactions between his organization and the EIS team. He noted that the M&O technical personnel were unfamiliar with the NEPA process, and when they were asked for information, they typically supplied far too much technical material. To promote more efficient interactions between EIS preparers and technical resource people, Mr. Morton recommended using a “sliding scale” approach to avoid gathering too much information. He advised developing EIS planning documents that clearly indicate the desired scope of each analysis. He also emphasized the need to maintain rigorous control of last minute changes and document distribution lists.

Ms. Sweeney outlined several lessons learned from the comment-response process, including things she would do differently next time for an EIS receiving so many comments. One such lesson learned is to use skilled writers with a good understanding of the NEPA process to prepare early draft responses, then use technical people to advise and review as needed. This would temper, she felt, the tendency of technical experts to sometimes delve into more detail than necessary.

A measure that she said worked particularly well was development of “issue papers.” The issue papers presented carefully considered discussions of topics that were known to be key issues. “Approved” language from the issue papers was used to prepare responses to comments, saving time and ensuring consistency. Ms. Sweeney noted that issue papers are most effective when developed early in the comment-response process.

Perspectives on NEPA Legal Matters

Attorneys from the Office of General Counsel provided an up-to-the-minute report on DOE NEPA litigation and answered questions on legal topics. Assistant General Counsel for Environment William Dennison chaired the discussion.

Steve Ferguson, Deputy Assistant General Counsel for Environment, discussed the recent U.S. District Court ruling on South Carolina Governor Jim Hodges’ challenge to plutonium shipments into his state. The Hodges case showed that a programmatic EIS can serve as the basis for a site-specific decision if there is enough information in the programmatic EIS for that decision, Mr. Ferguson said. (See related article, page 19.)

Dan Ruge, also Deputy Assistant General Counsel for Environment, outlined the NEPA issues that the State of Nevada had raised to date in its legal challenges to the designation of the Yucca Mountain site for a geologic

repository for spent nuclear fuel and high-level radioactive waste. (See *LLQR*, March 2002, page 19.)

Janet Masters, trial attorney in the office of the Assistant General Counsel for Federal Litigation, discussed the U.S. District Court ruling in the case brought by the Regional Association of Concerned Environmentalists (RACE) seeking to require the Department to prepare a site-wide EIS for the Paducah Gaseous Diffusion Plant. (See *LLQR*, September 2001, page 19.)

“In NEPA litigation, it helps to have good facts to defend,” meaning good NEPA documents, Janet Masters told the audience.

Ms. Masters also outlined the current status of ongoing litigation in the Sierra Club

challenge to gravel mining at the Rocky Flats Environmental Technology Site (*LLQR*, June 2002, page 14) and the Tri-Valley CARES challenge of DOE’s plans to ship plutonium composite parts from the Rocky Flats site to the Lawrence Livermore National Laboratory (*LLQR*, March 2002, page 19).

When asked to provide a metric regarding a percentage of NEPA documents in litigation that would indicate that DOE was taking the right amount of risk in its pursuit of innovative NEPA strategies, Mr. Dennison responded that percentages of documents in litigation are not a good metric. “It’s a free country,” he said. “Anyone can challenge anything.” He said the best metric regarding NEPA litigation is a rate of winning in court that is as near as possible to 100 percent.

Mr. Ferguson added that DOE should not be taking the types of risks that could compromise the adequacy of a document. He reminded the audience that, “Innovative

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A panel from the Office of General Counsel – Bill Dennison, Steve Ferguson, Dan Ruge, and Janet Masters (l-r) – provided litigation updates and addressed legal questions from the audience.

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approaches to assessment should not require you to violate the law.”

In response to a question about the importance of the administrative record in successfully defending an EIS, Mr. Ferguson stated that a good administrative record is very important, as few judges will probe outside the record to evaluate the adequacy of DOE’s impact assessments. Mr. Dennison agreed, but observed that a good record helps “only if you did a good NEPA review in the first place.”

When asked for advice on addressing the potential impacts of malevolent acts, Mr. Dennison pointed out that NEPA documents are supposed to disclose reasonably foreseeable events and their potential impacts. He observed that in the aftermath of September 11, 2001, “We can no longer deny that these acts are reasonably foreseeable.” He urged the DOE NEPA Community to

“take initiative to decide how to most responsibly address issues that people are going to demand be addressed.” If appropriate analyses of terrorism and sabotage are already included in existing safety documents, he suggested that the NEPA document could incorporate the existing analyses by reference.

Concluding Remarks

Carol Borgstrom ended the meeting by encouraging participants to take advantage of the flexibility inherent in NEPA and its implementing regulations. “Stretch NEPA, but don’t break it,” she said. She asked participants to report on their best practices (as both CEQ officials and Under Secretary Card had asked for good examples to be shared). She reminded participants to continue to communicate their needs and ideas for additional guidance. **LL**

Under Secretary Card Praises Efforts to Improve NEPA Implementation

Following the DOE NEPA Community Meeting, Under Secretary Robert Card sent a note to Beverly Cook and Ray Berube, thanking them for “making a serious effort to improve our NEPA process.” Referring to his comments at the meeting, Mr. Card wrote:

“...our goal is to maintain our stellar defense record while coming closer to what I think was the spirit of the original legislation – that is to maximize environmental benefits and an open public process. When much of our work is to reduce existing hazard ...speed is of the essence... It is also important to bound reasonable permutations and combinations of remedies to give the public a broad perspective on what may happen and give the implementers freedom to accelerate risk reduction and reduce cost during the project delivery phase.”

New Guidance Issued, More Underway

Guidance that facilitates consistency in DOE NEPA compliance – while preserving appropriate flexibility to respond effectively to differing circumstances – is a priority for the Office of Environment, Safety and Health (EH) and was a dominant theme of the July NEPA Community Meeting.

Eric Cohen and Carolyn Osborne, Office of NEPA Policy and Compliance, described new guidance on Accident Analysis and CERCLA/RCRA/NEPA policies, issued by Assistant Secretary Beverly Cook in early July, and the status of several ongoing guidance efforts. In addition, meeting participants suggested topics for future guidance, such as how to address responsible opposing views and how to prepare comment-response documents.



Carolyn Osborne discusses July 2002 memorandum on CERCLA/RCRA/NEPA policies and other guidance activities at NEPA Community Meeting.

The NEPA Office is evaluating these suggestions and will be pursuing further guidance.

In a similar vein, Under Secretary Card and CEQ Chair Connaughton solicited case studies highlighting what worked and didn't work in the NEPA process so that the NEPA community can benefit from the experiences of others. Such examples can provide the basis for future guidance.

The Accident Analysis guidance, described in more detail on page 16, clarifies and supplements *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements*, which EH issued in 1993. The guidance is the result of extensive coordination within the DOE NEPA Community.

The CERCLA/RCRA/NEPA guidance memorandum, prepared in response to Environmental Management's recent Top-to-Bottom Review recommendations, reiterates and clarifies existing policies for streamlining environmental review of actions to be taken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). In brief, CERCLA actions and RCRA corrective actions generally do not require a separate NEPA analysis.

Under DOE's 1994 CERCLA/NEPA Policy, DOE relies on the CERCLA process for review of actions to be taken

under CERCLA – there is ordinarily no separate NEPA document or process. DOE's policy is based on a Department of Justice determination that there is a statutory conflict between the two Acts: NEPA allows judicial review before an agency takes action, while CERCLA seeks to achieve expeditious cleanups and generally bars such "pre-enforcement" review.

In contrast, DOE's approach to NEPA review for RCRA corrective actions is project-specific. The Department of Justice has not identified any conflict between RCRA and NEPA, so DOE cannot establish a broad RCRA/NEPA policy that parallels the DOE CERCLA/NEPA policy. Most RCRA corrective actions, however, qualify for categorical exclusion; in the rare instance where a proposed corrective action does not qualify for categorical exclusion, DOE may be able to rely on the CERCLA process if a compliance agreement for a site on the CERCLA National Priorities List integrates the requirements of RCRA and CERCLA such that the requirements are largely inseparable in a practical sense.

DOE's CERCLA/NEPA and RCRA/NEPA policies are not based on the concept of "functional equivalence," a phrase coined by the District of Columbia Circuit Court concerning the Environmental Protection Agency's role under NEPA and based on that agency's mission of environmental protection.

The guidance is available on DOE's NEPA Web at tis.eh.doe.gov/nepa under Guidance, Other.

Contact: Carolyn Osborne
(carolyn.osborne@eh.doe.gov or 202-586-4596)

Ongoing Guidance Efforts

Proposed Revisions to DOE Floodplain and Wetland Regulations

The NEPA Office expects to publish proposed revisions to 10 CFR Part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements*, for public comment in early Fall 2002. DOE has completed consultations with CEQ and the Federal Emergency Management Agency. The Office of Management and Budget has concurred with DOE's determination that the proposed regulatory action is non-significant and non-major. All Secretarial Officers and Heads of Field Organizations have concurred in the proposed revisions, which are now undergoing review by General Counsel (GC).

The proposed revisions, based on experience in implementing existing DOE regulations enacted in 1979, would streamline existing procedures and add no new requirements. For example, certain actions would be

continued on next page

New Guidance (continued from page 13)

exempt from assessment – site characterization, environmental monitoring, ecological research activities, and facility modifications to improve safety or environmental conditions. Under this revision, about half of the floodplain and wetland assessments prepared by DOE since 1994 would not have been required.

Several other proposed revisions are also notable. Public notice procedures would be simplified by emphasizing local media instead of the *Federal Register* for actions with effects of primarily local concern. The review process under CERCLA would be an alternative mechanism to the NEPA process for complying with the floodplain and wetland requirements. Immediate action could be taken in an emergency. In addition, a conforming change to the DOE NEPA regulations (10 CFR Part 1021) is proposed to allow for issuance of a floodplain statement of findings within a final EIS or separately.

Contact: Carolyn Osborne
(carolyn.osborne@eh.doe.gov or 202-586-4596)

Interim Actions

Interim actions are actions within the scope of an EIS taken before the record of decision is issued. Interim actions should be pursued if risks or program costs would be reduced or adverse impacts mitigated. The NEPA Office is developing interim action guidance to assist DOE in determining whether an action that is within the scope of an ongoing EIS may proceed before the NEPA review is completed.

The NEPA Office circulated draft guidance on March 1, 2002, to NEPA Compliance Officers (NCOs) for review and comment. (See related article, *LLQR*, March 2002, page 6.) NEPA Office staff have been discussing NCO comments with them and expect to recommend that the Assistant Secretary for Environment, Safety and Health issue the guidance this Fall.

The guidance reviews the CEQ criteria for interim actions, discusses the application of these criteria to DOE actions covered by project-specific or programmatic (including site-wide) EISs, provides case studies, and discusses procedures for making an interim action determination. In general, interim actions of relatively limited scope or scale that have only local utility can be taken before a record of decision.

Contact: Brian Mills
(brian.mills@eh.doe.gov or 202-586-8267)

“216” Process

The “216” process refers to DOE procedures under 10 CFR 1021.216 of its NEPA implementing regulations, “Procurement, financial assistance, and joint ventures.” This section of the regulations provides for consideration of environmental factors in the early stages of competitive selections (awards), before an EA or EIS is prepared. The “216” process is not a substitute for the NEPA process.

Draft guidance, which the NEPA Office staff is preparing with GC staff, in coordination with Procurement staff, acknowledges and addresses challenges to full and timely NEPA compliance in situations involving proprietary information, reliance on the private sector to propose alternatives, and fair competition requirements. The draft guidance addresses what environmental information should be submitted in competitive proposals, how DOE prepares a confidential “environmental critique” to compare potential environmental impacts among offerors’ proposals, and how DOE makes environmental information publicly available in an “environmental synopsis” and subsequent NEPA review.

The NEPA Office is now addressing comments from DOE’s NEPA Community on earlier (1997 and 1998) drafts of the guidance and plans to provide a preliminary final document for a quick turn-around review by DOE’s NEPA Community later this Fall.

Contact: Brian Mills
(brian.mills@eh.doe.gov or 202-586-8267)

Alternatives Analysis

The NEPA Office is consolidating and augmenting mini-guidance articles on analyzing alternatives from *Lessons Learned Quarterly Reports*. The objective is to help DOE prepare NEPA documents that better meet the Department’s needs for flexible decisionmaking in light of technology and policy changes. The EM Top-to-Bottom Review found that initial alternatives analyzed in its NEPA documents may not be adequate to support DOE decisionmaking goals, requiring reanalysis.

The alternatives guidance will build on CEQ’s regulations and guidance concerning alternatives analysis, focusing on what is a “reasonable alternative” – that is, an alternative that is practical or feasible from a technical and economic standpoint and using common sense (“Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” amended, 51 FR 15618, April 25, 1986; available on DOE’s NEPA Web at tis.eh.doe.gov/nepa, under Guidance, Compliance Guide).

continued on next page

New Guidance (continued from page 14)

The guidance will then draw on DOE experience to illustrate practical applications. For example, previous *LLQR* articles have shown how changed circumstances can make practical what seemed impractical (*LLQR*, March 2001) and how unauthorized alternatives can be reasonable and provide needed flexibility in decisionmaking (*LLQR*, March 2002). Also, the guidance will address the use of conservative assumptions and analytical methods to bound – that is, capture the upper and lower range of – potential environmental impacts. This approach may be appropriate and necessary in some circumstances, but should not be so broad as to prevent comparison of the impacts of alternatives or consideration of mitigation (*LLQR*, June 1996).

Contact: Yardena Mansoor
(yardena.mansoor@eh.doe.gov or 202-586-9326)

Compliance Guide

The NEPA Office plans to update the 1998 DOE NEPA Compliance Guide, a two-volume compendium of DOE NEPA guidance and NEPA-related resources from other agencies, including CEQ and the Environmental Protection Agency (EPA). (The 1998 Guide is available on the DOE NEPA Web at tis.eh.doe.gov/nepa under Guidance, Compliance Guide.)

The NEPA Office will be asking NCOs for their preferences and advice on how to accomplish an update in a way that is most useful and cost-effective and for assistance in developing distribution plans. The Office expects to add about 25 items issued since 1998, including Executive Orders and NEPA-related guidance documents from CEQ, EPA, and DOE. The Office is considering issuing the revised Compliance Guide on CD-ROM and providing paper updates to those with hard copies of the 1998 guidance notebooks.

Contact: Yardena Mansoor
(yardena.mansoor@eh.doe.gov or 202-586-9326)

Supplement Analyses

The NEPA Office is developing guidance for documenting supplement analyses. Such guidance is especially important in light of the increased use of supplement analyses. (See related article, page 27.)

Contact: Jeanie Loving
(jeanie.loving@eh.doe.gov or 202-586-0125)

Guidance Topics Being Considered

The NEPA Office always welcomes suggestions on topics for additional guidance that would well serve the DOE NEPA Community and an indication of what issues the guidance should address. Participants at the July DOE NEPA Community meeting had several such suggestions, which the NEPA Office is now considering. These include how to:

- address operational security and sensitive information in NEPA documents (including sabotage and terrorism issues)
- address responsible opposing views
- prepare comment-response documents
- link EMS and NEPA
- build and maintain a good administrative record
- address environmental justice issues, and
- determine when issues or environmental impacts are of national significance.

Activity toward developing guidance on these or other topics will be covered in future issues of *Lessons Learned Quarterly Report*. **LL**

18th Edition of Stakeholders Directory Issued

The Office of NEPA Policy and Compliance issued the 18th edition of the *Directory of Potential Stakeholders for DOE Actions under NEPA* in July 2002. In addition to contact and address updates, this semiannual directory includes information provided by government agencies and nongovernmental organizations on which subjects are of interest to them, the number of copies of NEPA documents requested for review, and preferences regarding receipt of paper, electronic, or CD-ROM document formats. NEPA Document Managers should use the most recent *Directory*, which is available online at tis.eh.doe.gov/nepa under Guidance, Public Participation, to supplement lists of local stakeholders compiled for specific programs, projects, or facilities. For questions or copies, contact Katherine Nakata, katherine.nakata@eh.doe.gov or 202-586-0801.

Analyze Maximum Reasonably Foreseeable Accidents in Comparing Alternatives

The Assistant Secretary for Environment, Safety and Health issued final guidance entitled *Recommendations for Analyzing Accidents under the National Environmental Policy Act* on July 10, 2002. The Office of NEPA Policy and Compliance developed this guidance to



Eric Cohen, Office of NEPA Policy and Compliance, said the guidance provides “a great deal of flexibility for document preparers” who “will need to make judgments.”

foster consistency among NEPA documents while providing document preparers with substantial flexibility in approach. As a supplement to *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements*

(*Recommendations*, May 1993), the accident analysis guidance provides a general policy framework and clarifies past issues on the topic. It is not intended to serve as a technical manual

for analysts, but rather as a guide for NEPA Compliance Officers and Document Managers.

Accident analyses under NEPA are often necessary for a reasoned choice among alternatives and appropriate consideration of mitigation measures. Document preparers must exercise considerable judgment to determine the scope of accident analyses. In this regard, the guidance provides examples and references to help NEPA document preparers make appropriate judgments. It encourages use of the sliding-scale principle (as described in *Recommendations*) in determining the appropriate range and number of accident scenarios to consider, level of analytical detail, and degree of conservatism. (See box.)

A key recommendation is to analyze a sufficient range of reasonably foreseeable accident scenarios to adequately inform about the risks of a proposed action and alternatives. NEPA documents should analyze *maximum reasonably foreseeable accidents* (i.e., accidents with the most severe consequences that can reasonably be expected to occur, typically with very low probabilities of occurrence) and other accidents that contribute importantly to risk. Scenarios with frequencies of 10^{-6} to 10^{-7} per year should be considered if the consequences may be very large; scenarios with frequencies less than 10^{-7} rarely need to be examined. The guidance further recommends that document preparers consider analyzing accident scenarios in which the public

has expressed interest, even if the scenario is not reasonably foreseeable. Do not analyze impossible scenarios, however, and always explain why a scenario of interest to the public was not analyzed.

Another key recommendation is to present separately accident consequences and probabilities – both factors are needed for an informative analysis; the product of these factors, referred to as “risk,” may also be presented. The probability that adverse consequences will occur during the lifetime of a proposed action and alternatives should be presented rather than only the annual frequency of initiating events (e.g., earthquakes, floods).

Key factors to consider in applying the sliding-scale principle to accident analyses

- probability that accidents will occur
- severity of potential consequences
- context of the proposed action and alternatives
- degree of uncertainty of the accidents
- level of technical controversy.

The guidance recommends analyzing radiological and non-radiological impacts, commensurate with significance, on human health and the environment. As with any analysis of human health impacts, accident analyses should consider potential impacts to maximally exposed individuals and the collective population for three categories of people – involved workers, non-involved workers, and members of the public. The guidance recommends using appropriate current radiological dose-to-risk conversion factors that have been adopted by cognizant health and environmental protection agencies. (See box, page 17.) The environment includes biota and environmental media such as land and water.

Using information from existing safety documents can help streamline the NEPA process and foster consistency. To encourage the use of safety documentation, the guidance explores the different purposes for accident analyses in NEPA and safety documents, and it provides recommendations to ensure appropriate use of safety information in NEPA documents.

An attachment to the guidance discusses a related issue: intentional destructive acts (i.e., terrorism and sabotage). Although such acts are not accidents, DOE has experience evaluating them in NEPA documents, and the guidance provides examples of useful approaches. One

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Revised Radiological Dose-to-Risk Conversion Factors Available

Estimation of the potential risk from low levels of ionizing radiation requires application of dose-to-risk conversion factors to an estimate of the dose. The Interagency Steering Committee on Radiation Standards (ISCORS) recently issued guidance on calculating radiation risk estimates from dose ("A Method for Estimating Radiation Risk from TEDE," ISCORS Technical Report No. 1, July 2002; available at www.iscors.org).

The guidance provides dose-to-risk conversion factors applicable where doses are estimated using total effective dose equivalent (TEDE). The Office of Environmental Policy and Guidance (OEPG) issued an information brief (DOE/EH-412/0015/0802, August 2002) that supports the cautious use of the recommendations in the ISCORS guidance, and notes that the new risk factors are principally suited for comparative analyses (e.g., comparing risk among alternative actions, such as in NEPA documents), where it would be cost prohibitive to calculate risk using the radionuclide-specific risk coefficients in the Environmental Protection Agency Federal Guidance Report No. 13, "Cancer Risk Coefficients for Environmental Exposure to Radionuclides" (EPA 402-R-99-001, September 1999).

Relevant reference materials are available on the OEPG Web site at www.eh.doe.gov/oeпа in the "focus areas" under "Dose and Risk Assessment." The OEPG contact for this guidance is Hal Peterson (Harold.Peterson@eh.doe.gov).

The ISCORS guidance recommends using a conversion factor of 6×10^{-4} fatal cancers per TEDE rem for the general population. Estimates should not be stated with more than one significant figure.

The Office of NEPA Policy and Compliance recommends using these new dose-to-risk conversion factors in new NEPA documents.

For documents in the late stage of preparation, we do not recommend that calculations necessarily need to be revised, because the small changes in environmental impacts are unlikely to be significant. Rather, we recommend that such documents note the new factors and, as appropriate, explain the presumably small differences in impacts that would result from using the new factors. It is not anticipated that existing completed NEPA documents will require supplementation.

Accident Analyses (continued from page 16)

significant difference between intentional destructive acts and accidents is that it is not possible to credibly estimate the likelihood of a malevolent act. The consequences of such acts, however, would be similar to those resulting from accidents. The guidance recommends that when intentional destructive acts are reasonably foreseeable, a qualitative or semi-quantitative discussion of the potential consequences of such acts could be included in an accident analysis.

The accident analysis guidance is available on the DOE NEPA Web at tis.eh.doe.gov/nepa under Guidance, Document Preparation. For additional information or requests for paper copies, contact Eric Cohen at eric.cohen@eh.doe.gov or 202-586-7684. **LL**

Agencies Discuss Indian Sacred Sites

The Advisory Council on Historic Preservation (ACHP) and the Department of the Interior, Office of American Indian Trust, sponsored a meeting on August 14, 2002, of the American Indian/Alaskan Native Task Force, which is part of the Federal Interagency Working Group on Environmental Justice. About 70 agency representatives discussed the roles and responsibilities of Federal agencies in protecting Indian tribal sacred sites. The Task Force will determine next steps based on input from the meeting.

Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, said that the NEPA process can provide a mechanism for integrating the activities of Historic Preservation Officers, cultural resources coordinators, and Indian tribal liaisons. Referring to CEQ's January 30, 2002, guidance memorandum on cooperating agencies in the NEPA process, he emphasized that CEQ encourages Federal agencies to reach out to States and Indian tribes as cooperating agencies in NEPA document preparation.

Daniel Gogal, EPA's Office of Environmental Justice, said that EPA will assist agencies in addressing environmental justice issues in the NEPA process and is working with the ACHP on training opportunities. **LL**

e-NEPA: Security Certification Needed

The DOE NEPA Web Site now contains a revised DOE NEPA Document Certification and Transmittal Form (*tis.eh.doe.gov/nepa*, under Guidance, Electronic Publishing) for use by NEPA Compliance Officers or NEPA Document Managers when transmitting the



Denise Freeman, Office of NEPA Policy and Compliance, introduced the new NEPA Web site and explained new security review procedures for Web publication.

electronic files of a completed EIS, EA, or other NEPA document for posting on the Web Site. The Certification Form now includes a section labeled *Security Review*, which states: "This document has been approved by appropriate security officials and authorized for web publication in

its entirety or in part (specify in 'Comments' below)."

This certification allows the DOE NEPA Webmaster to establish the level of accessibility, because at this time the general public does not have access to all of the NEPA documents on the DOE NEPA Web Site. If the NEPA Document has been determined to contain no security-sensitive information, then the document would be made available to the general public on the Web. If the completed certification indicates that the document should not be available to the general public on the Web due to security issues, then it will only be accessible to DOE personnel or DOE NEPA contractors with a User ID and password. For further information, contact DOE NEPA Webmaster Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879. **LL**

NEPA Detailee Sought

The U.S. Institute for Environmental Conflict Resolution seeks an experienced NEPA professional for a 12-18 month detail, beginning in October 2002, as NEPA Program Coordinator. The coordinator will develop a national program seeking out collaborative opportunities for NEPA implementation.

The Institute, located in Tucson, Arizona, was created by Congress as part of the Morris K. Udall Foundation. Information is available on the Web at www.ecr.gov. (See also *LLQR*, September 2001, page 8.)

DOE Issues Draft Information Quality Guidelines

DOE's Chief Information Officer has issued draft "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public by the Department of Energy" (67 FR 47777; July 22, 2002) – a topic discussed at the July NEPA meeting. The DOE draft guidelines were prepared pursuant to Office of Management and Budget information quality guidelines (67 FR 8452; February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

DOE's draft guidelines would apply to a wide variety of information disseminated to the public in hard copy or through the Internet, including NEPA documents. The draft guidelines provide procedures by which a member of the public may request correction of information DOE has disseminated.

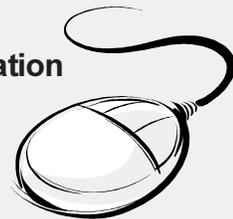
Of particular interest to NEPA practitioners, the draft guidelines state that, "With respect to information set forth or referenced in ... a final Environmental Impact Statement (and related Record of Decision), a member of the public may only file a request for correction of information in the form of ... a petition for a supplemental (EIS) under 10 CFR Part 1021."

In addition, under the draft guidelines, if DOE has made information available for public comment *through a notice in the Federal Register*, then a member of the public must request correction within the designated comment period and follow procedures specified in the guidelines.

According to the draft guidelines, the DOE Information Quality Guidelines will become effective on October 1, 2002. For further information, contact Ms. Deborah Henderson, Office of the Chief Information Officer, at cio.webmaster@hq.doe.gov. **LL**

DOE NEPA Web

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Litigation Updates

Appeals Court Upholds DOE in South Carolina Plutonium Disposition Challenge

The U.S. Court of Appeals for the Fourth Circuit on August 6, 2002, upheld a lower court decision in support of DOE's plans to implement its plutonium disposition program. South Carolina Governor Jim Hodges had appealed a district court ruling in his lawsuit challenging the adequacy of the Department's NEPA compliance in regard to the shipment of plutonium from the Rocky Flats Environmental Technology Site in Colorado to the Savannah River Site (SRS) in South Carolina. Governor Hodges claimed changes to the surplus plutonium disposition record of decision (ROD) announced by DOE in April had not undergone sufficient NEPA review. (See "South Carolina Sues to Stop Plutonium Shipments to Savannah River Site," *LLQR*, June 2002, page 13.)

The central DOE action at issue was the change from a proposal to construct a new plutonium packaging and storage facility at SRS to modifying one of the closed reactor buildings at the Site. The proposed new facility had been reviewed under NEPA for its ability to safely store plutonium for 50 years. Governor Hodges challenged whether DOE had adequately considered the risks of long-term storage in the modified facility. The Appeals Court's analysis focused on whether DOE's

proposed changes to its ROD raised the potential for any significant impact that had not been adequately addressed in a previous NEPA review. The court determined that DOE's February 2002 *Supplement Analysis for Storage of Surplus Plutonium Materials in the K-Area Material Storage Facility at the Savannah River Site*, with its reference to previous NEPA documents, was in fact sufficient.¹

This Appeals Court decision supports the ongoing shipment of plutonium from Rocky Flats to SRS and underscores the validity of DOE's procedures for using tiered NEPA reviews and supplement analyses. The positive outcome demonstrates the potential flexibility afforded by NEPA when analysis in an environmental impact statement is sufficiently well-structured and comprehensive to address changing circumstances.

¹ A supplement analysis is a DOE document used to determine whether a supplement to an existing EIS should be prepared pursuant to 40 CFR 1502.9(c) or to support a decision to prepare a new EIS. DOE procedures for a supplement analysis are found at 10 CFR 1021.314(c) in DOE's NEPA implementing regulations. **LL**

Plaintiffs Ask DOE to Defer Implementation of Savannah River Tanks ROD

Plaintiffs in a lawsuit challenging DOE Order 435.1, Radioactive Waste Management, requested in an August 22, 2002, letter that the Department provide them a schedule for implementing the record of decision (ROD) for the *Savannah River Site High-Level Waste Tank Closure Final EIS* (DOE/EIS-0303) and that DOE agree not to implement the ROD until the U.S. District Court for the District of Idaho has an opportunity to decide the merits of their case. The Natural Resources Defense Council wrote the letter on behalf of the Snake River Alliance, the Confederated Tribes and Bands of the Yakama Nation, and the Shoshone-Bannock Tribe following an August 9, 2002, decision in which the Idaho

court denied DOE's motion to dismiss, thus allowing plaintiffs' challenge to the waste incidental to reprocessing (WIR) provisions of the DOE Order to proceed.

The ROD calls for a continuation of DOE's plans for tank closure that would involve determining whether waste remaining in the HLW tanks meets the WIR technical and cost-effectiveness criteria. If so, the tanks would be filled with grout and closed in place. (See "CX Claim Dropped from Challenge to DOE Radioactive Waste Management Order," *LLQR*, June 2000, page 17.) **LL**

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Litigation Updates (continued from page 19)

Lawsuit Challenges Proposed LANL Biosafety Lab

On August 29, Nuclear Watch of New Mexico and two citizens filed a lawsuit against DOE claiming violations of NEPA and asking the court to grant an injunction preventing the National Nuclear Security Administration (NNSA) from initiating construction for the proposed biosafety level 3 (BSL-3) laboratory at the Los Alamos National Laboratory (LANL). The complaint also requests that the court order DOE to withdraw its finding of no significant impact (FONSI) for the EA for *The Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EA-1364) and require that DOE prepare an EIS for the laboratory and its associated program, NNSA's Chemical and Biological National Security Program (CBNP).

The BSL-3 laboratory would allow NNSA to expand its research activities at LANL on biological warfare agents, such as anthrax. Currently, LANL has a BSL-2 laboratory,

in which research is limited to work on dead organisms. The BSL-3 laboratory would allow for research on certain live biological agents under carefully controlled conditions. Typical research activities would include work on identifying and tracking strains of biological warfare agents and developing equipment to detect biological warfare agents.

NNSA issued the draft EA for the BSL-3 laboratory on October 30, 2001. The original comment period ended on November 19, 2001, but an additional comment period was provided between December 17, 2001 and January 15, 2002, due to public interest in the EA. A final EA and FONSI were issued on February 26, 2002. The EA concluded, in part, that the CBNP "consists of projects too diverse and discrete" to require a programmatic analysis. Design of the project has already commenced and construction could begin as early as the end of September. **LL**

DOE-wide NEPA Contracts Update

By: David A. Gallegos, *DOE-Wide NEPA Contract Administrator*

At the July NEPA Community Meeting, I presented key metrics associated with use of the current DOE-wide NEPA contracts. Updated through August, these metrics include:

Number of task orders issued:	103	Number of task orders competed:	72
Total value of task orders:	\$57 million	Value of task orders competed:	\$52 million
Number of issuing offices:	24	Performance evaluations received:	32
Average procurement lead time:	24 days	Overall contractor rating:	4.1 (Excellent)

Meanwhile, the Department continues working toward issuance of the new DOE-wide NEPA contracts. The DOE-wide NEPA contracts with Tetra Tech, Inc., and Science Applications International Corporation were extended to September 30, 2002, and another extension may be needed if the new contracts are not awarded by then. The current contract with Battelle Memorial Institute is available until March 12, 2003. Each of these three contracts can still be used to acquire contractor NEPA document support.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see March 2002, page 13, and the cumulative index (under "Contracting, NEPA") beginning on page 29 of this issue of *Lessons Learned Quarterly Report* or on the DOE NEPA Web at tis.eh.doe.gov/nepa. For questions, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
NREL South Table Mountain Site-wide EA	Maureen Jordan 303-275-3248 maureen_jordan@nrel.gov	3/18/02	SAIC
Supplement Analysis of the Y-12 SWEIS	Scott Cannon 865-574-2942	5/8/02	Tetra Tech, Inc.
EIS for the Proposed Chemistry and Metallurgy Research Building Replacement Project at LANL	Elizabeth Withers 505-667-8690 ewithers@doeal.gov	5/23/02	SAIC
SNL Center for Integrated Nanotechnologies EA	Mark Sifuentes 505-845-5175 msifuentes@doeal.gov	6/5/02	Tetra Tech, Inc.
SNL Test Capabilities Revitalization EA	Mark Sifuentes 505-845-5175 msifuentes@doeal.gov	6/5/02	Tetra Tech, Inc.
Site-wide EIS for NNSA at LLNL	Tom Grim 925-422-0704 tom.grim@oak.doe.gov	6/27/02	Tetra Tech, Inc.
Modern Pit Facility Siting EIS	Jay Rose 202-586-5484 james.rose@ns.doe.gov	8/20/02	Tetra Tech, Inc.

Training Opportunities

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

- **Overview of the NEPA Process**
Portland, OR: September 17
Fee: \$195
- **Reviewing NEPA Documents**
Portland, OR: September 18-20
Fee: \$795
- **Cumulative Impacts Analysis and Documentation**
Las Vegas, NV: September 18-19
Portland, OR: November 13-14
Fee: \$595
- **Overview of the Endangered Species Act and Section 106 of the National Historic Preservation Act**
Phoenix, AZ: September 26
Las Vegas, NV: December 5
Fee: \$245
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Las Vegas, NV: October 8-11
Jacksonville, FL: December 10-13
Billings, MT: December 10-13
Las Vegas, NV: January 14-17, 2003
Boise, ID: February 25-28, 2003
Fee: \$995
- **Project Management for NEPA Specialists**
San Francisco, CA: October 21-22
Las Vegas, NV: February 10-11, 2003
Fee: \$495
- **Clear Writing for NEPA Specialists**
San Francisco, CA: October 23-25
Las Vegas, NV: February 12-14, 2003
Fee: \$795

The Shipley Group
Phone: 888-270-2157 or 801-298-7800
ben@shipleygroup.com
www.shipleygroup.com
- **The Law and NEPA**
Durham, NC: September 25-27
Fee: \$750
- **Socioeconomic Impact Analysis under NEPA**
Durham, NC: October 9-11
Fee: \$670 (\$750 after September 9)
- **Implementation of NEPA on Federal Lands and Facilities**
Durham, NC: October 28 – November 1
Fee: \$990 (\$1,090 after September 30)
- **Accounting for Cumulative Effects in the NEPA Process**
Durham, NC: February 5-7, 2003
Fee: \$670 (\$750 after January 6)

Nicholas School of the Environment and Earth Sciences
Levine Science Research Center
Duke University
919-613-8063
sea3@duke.edu
www.env.duke.edu/cee/execed.html
- **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 from other agencies. Services are available to Federal agencies through GSA Contract No. GS-10F-0163L (899-3).

Environmental Training & Consulting International Inc.
Phone: 720-859-0380
info@envirotrain.com
www.envirotrain.com

EAs and EISs Completed, April 1 to June 30, 2002

EAs

Albuquerque Operations Office

DOE/EA-1407 (4/23/02)

Proposed TA-16 Engineering Complex Refurbishment and Consolidation at Los Alamos National Laboratory, Los Alamos, New Mexico

Cost: \$105,000

Time: 8 months

Carlsbad Field Office

DOE/EA-1404 (6/19/02)

Actinide Chemistry Laboratory for the Waste Isolation Pilot Plant, Carlsbad, New Mexico

Cost: \$116,000

Time: 11 months

Golden Field Office

DOE/EA-1378 (5/31/02)

The National Renewable Energy Laboratory's National Wind Technology Center, Golden, Colorado

Cost: \$137,000

Time: 16 months

National Energy Technology Laboratory

DOE/EA-1417 (5/13/02)

Gas-to-Liquids Fuel Production and Demonstration Project, Rogers County, Oklahoma

Cost: \$40,000

Time: 5 months

EIS

Savannah River Operations Office/ Environmental Management

DOE/EIS-0303 (67 FR 38199, 3/31/02)

(EPA Rating: EC-2)

Savannah River Site High-Level Waste Tank Closure, Aiken, South Carolina

Cost: \$689,000

Time: 41 months

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost of 4 EAs was \$105,000; the average was \$94,000.
- Cumulatively, for the 12 months that ended June 30, 2002, the median cost for the preparation of 22 EAs was \$80,000; the average was \$75,000.
- For this quarter, the median and average completion time of 4 EAs was 10 months.
- Cumulatively, for the 12 months that ended June 30, 2002, the median completion time for 22 EAs was 10 months; the average was 12 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended June 30, 2002, the median cost for the preparation of 6 EISs for which cost data were applicable was \$1.0 million. The average cost was \$1.5 million.
- Cumulatively, for the 12 months that ended June 30, 2002, the median completion time for 6 EISs was 30 months; the average was 35 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 EPAWeb site at:
www.epa.gov/Compliance/nepa/comments/ratings.html.)

Recent EIS-Related Milestones (June 1 to August 31, 2002)

Notices of Intent

Albuquerque Operations Office/National Nuclear Security Administration – Defense Programs
DOE/EIS-0350
Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico
July 2002 (67 FR 48160, 7/23/02)

Bonneville Power Administration
DOE/EIS-0349
Cherry Point Cogeneration Project
July 2002 (67 FR 45961, 7/11/02)

Oakland Operations Office/National Nuclear Security Administration – Defense Programs
DOE/EIS-0348
Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory
June 2002 (67 FR 41224, 6/17/02)

Richland Operations Office/Environmental Management
DOE/EIS-0189-S1
Supplemental Environmental Impact Statement for Disposal of Immobilized Low-Activity Wastes from Hanford Tank Waste Processing
July 2002 (67 FR 45104, 7/8/02)

Draft EIS

Bonneville Power Administration
DOE/EIS-0344
Grand Coulee-Bell 500-kV Transmission Line Project
August 2002 (67 FR 51849, 8/9/02)

Final EIS

Bonneville Power Administration
DOE/EIS-0330
Wallula Power Project, Walla Walla County, WA
August 2002 (67 FR 53581, 8/16/02)

Records of Decision

Albuquerque Operations Office/National Nuclear Security Administration – Defense Programs
DOE/EIS-0293
Amended Record of Decision, Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
July 2002 (67 FR 45495, 7/9/02)

Savannah River Operations Office/Environmental Management
DOE/EIS-0220
Supplemental Record of Decision, Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina
July 2002 (67 FR 45710, 7/10/02)

DOE/EIS-0303
Savannah River Site High-Level Waste Tank Closure, Aiken, South Carolina
August 2002 (67 FR 53784, 8/19/02)

Supplement Analyses

Bonneville Power Administration

System Operation Review (DOE/EIS-0170)

DOE/EIS-0170/SA-1
Non-Treaty Storage Agreement Contract Extension
(Decision: No further NEPA review required)
June 2002

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246/SA-25
Purchase of Fisher River Conservation Easement Years 2002-2004, Lincoln County, Montana
(Decision: No further NEPA review required)
June 2002

continued on next page

Recent EIS-Related Milestones (June 1 to August 31, 2002) (continued from page 24)

Supplement Analyses (continued)

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

DOE/EIS-0285/SA-44

Morrow County Noxious Weed Management Along BPA Rights-of-Way
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-47

Garfield County Noxious Weed Management Along BPA Rights-of-Way
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-48

Umatilla County Noxious Weed Management Along BPA Rights-of-Way
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-49

Vegetation Management for 56 Substations and Nonelectric Facilities in the Eugene Region
(Decision: No further NEPA review required)
April 2002*

DOE/EIS-0285/SA-50

Vegetation Management along the Grizzly-Summerlake (Structures 102 to 104/2) and Grizzly-Captain Jack (Structures 103/1 to 140/4) Transmission Line Corridors
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-67

Vegetation Management on Sections of the Walla Walla – North Lewiston Transmission Line Right-of-Way
(Decision: No further NEPA review required)
May 2002*

DOE/EIS-0285/SA-76

Toledo-Wendson #1 Access Road and Structure Clearing
(Decision: No further NEPA review required)
June 2002

DOE/EIS-0285/SA-79

Portions of the Paul-Olympia, Paul Satsop, Olympia-White River, and Olympia-Grand Coulee Transmission Lines
(Decision: No further NEPA review required)
June 2002

DOE/EIS-0285/SA-80

Rangeland Drill/Watershed Restoration and Enhancement in the Grande Ronde Basin
(Decision: No further NEPA review required)
June 2002

*Not previously reported in LLQR

DOE Cancels Nevada Wind Farm EIS

DOE's National Nuclear Security Administration has accepted an Air Force recommendation that no wind farm be constructed at the Nevada Test Site (NTS). The Air Force expressed concerns that the proposed wind turbines would be incompatible with unique missions of their nearby Nevada Test and Training Range. As a result, DOE cancelled the *Wind Farm at the Nevada Test Site EIS* (DOE/EIS-0335) (Notice of Intent: 66 FR 38648; July 25, 2001).

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, 2002.

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.

Data Collection/Analysis

What Worked

- *Help from laboratory personnel.* Good participation from laboratory personnel helped to identify issues to be analyzed in the EA.

Schedule

Factors that Facilitated Timely Completion of Documents

- *A committed team.* A committed team facilitated timely completion of the EA.
- *Good communication with contractors.* Good communication with contractors about their schedule concerns, and changes in their scheduling needs, facilitated timely completion of the document.

Factors that Inhibited Timely Completion

- *New issues identified during the process.* New issues identified during the NEPA process required additional time for analysis in the EA.
- *Changes in the proposed action.* Changes in the definition of the proposed action made it necessary to rewrite portions of the EA.
- *Document length.* The large size of the EA inhibited timely completion.
- *Starting the process late.* The total time that the EA process required was reasonable, but it started too late for timely completion.

Teamwork

Factors that Facilitated Effective Teamwork

- *Electronic communication.* Teleconferences and exchange of information via electronic mail facilitated effective DOE teamwork on the EA.
- *Cross-organizational meetings.* Launching the NEPA process with cross-organizational meetings helped establish open communications.
- *An effective NEPA Compliance Officer.* Extremely competent work by the NCO ensured a timely EA review process.
- *Honest and early communication.* Honest and early communication from the NCO about NEPA process requirements and contractor schedule concerns facilitated effective teamwork.

Process

Successful Aspects of the Public Participation Process

- *Public meeting at the project site.* A public meeting on the proposed project site allowed the public to see the proposed location in relation to their homes.
- *Meetings and tours.* Public interest in the project focused on commercial activities located adjacent to the project site; meetings and tours of the site provided forums for open communication.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

Usefulness

Agency Planning and Decisionmaking – What Worked

- *Stimulating thinking about future needs.* The NEPA process helped stimulate thinking about the kinds of experiments that may be needed.
- *Enhancing awareness and future planning.* The NEPA process enhanced environmental awareness of the project site and will improve future site planning and development.
- *Contributing to comprehensive site planning.* The project was proposed in the context of a comprehensive review of facility operations. This assisted the contractor in completing site plans and will ensure coordination of comprehensive site planning and the NEPA process.
- *Focusing and defining the project.* The NEPA process helped define the proposed project.

Enhancement/Protection of the Environment

- *Protecting endangered species.* The NEPA process helped DOE and its M&O contractor plan the project and protect potential habitat of endangered species.

- *Not necessarily direct, but indirect enhancement and protection.* The environment was little affected directly by the particular document, but the overall NEPA process will protect the environment.

Other Issues

- *Amending DOE's NEPA implementing regulations.* It would be useful to examine trends in the actions analyzed in EAs and determine how this information could be used to amend DOE's NEPA regulations, particularly the lists of categorical exclusions.

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 this quarter, in which there were 4 EAs and 1 EIS, 3 out of 4 respondents rated the NEPA process as "effective."
- A respondent who rated the process as "1" stated the NEPA process will likely play very little role in the decisionmaking process, because the impacts of all the alternatives are similar.
- One respondent who rated the process as "5" stated that the NEPA document will serve as a planning tool for future site development. **LL**

Supplement Analyses on the Rise

The Department has completed 218 Supplement Analyses (SAs) in the last six years, up sharply from the decade prior (1985-1995) when DOE completed only 15 SAs. Bonneville Power Administration (BPA) leads the way with its 184 SAs, but NEPA document managers throughout DOE increasingly are turning to SAs to determine whether to prepare a supplemental EIS or a new EIS.

Many of BPA's SAs are linked to one of two programmatic EISs. Over 60 SAs were done as follow-up reviews to the *Watershed Management Program in Oregon, Idaho, Washington and Montana EIS* (DOE/EIS-0265); over 40 are associated with the

Transmission System Vegetation Management Program EIS (DOE/EIS-0285).

For all but two of the 233 SAs completed since 1985, the Department concluded that an EIS was not required. Both exceptions involved activities at the Savannah River Site – one SA for reactor operations and the other for waste disposition. (See related article, page 19.)

SAs by DOE Program Office (1985 - June 2002)					
BPA	EM	NNSA (DP/MD)	NE	SC (ER)	WAPA
184	20	14	6	5	4

Food for Thought: Are DOE EISs Overweight?

Have you ever thought that DOE's EISs are too big? Sure, DOE EISs deal with technically complex matters and controversial issues, but do they really need to be so long?

Data compiled by EPA's Office of Federal Activities (OFA) for draft and final EISs issued by selected Federal agencies in 1996 show that DOE was the leader in terms of the size of its EISs. Indeed, DOE stood way above the other agencies in this regard. (See chart below.)

For all agencies measured, the average draft EIS page length was 198 (range 55 to 1,622 pages). The corresponding average page length for final EISs was 204 (range 12 to 1,638 pages). Yes, that is correct – only 12 pages of text (59 total pages, counting correspondence) for the *Pecos National Historical Management Plan and Development Concept Plan Final EIS*, prepared by the National Park Service (NPS). (OFA counted only text pages. Cover sheets, tables of contents, and correspondence were not counted.)

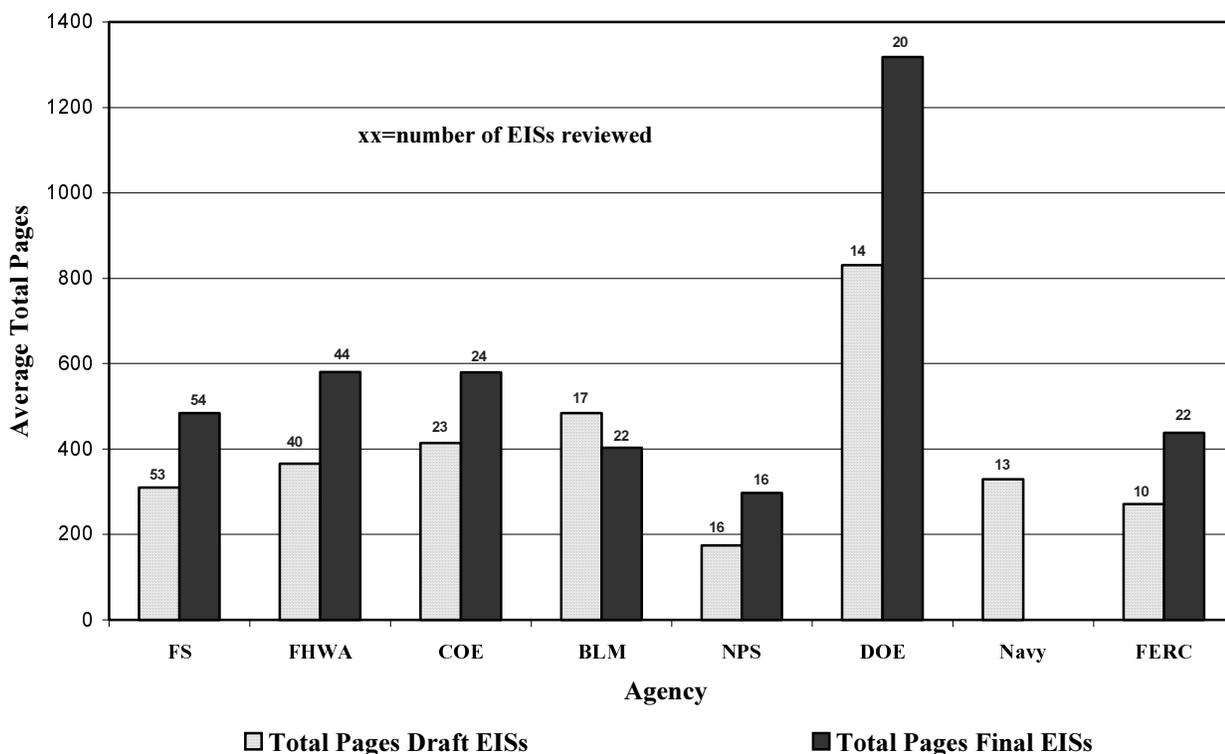
According to OFA, for DOE, the average length of draft EISs filed with EPA in 1996 was about 800 pages; the average length of final EISs was about 1,300 pages. That's twice as long as those of any other individual agency in the survey, and for final EISs, six times the collective average.

The data shown in the graph below reflect 1996 documents from selected agencies having issued a large number of EISs. These agencies include the Forest Service (FS), Federal Highway Administration (FHWA), Corps of Engineers (COE), Bureau of Land Management (BLM), NPS, Navy, Federal Energy Regulatory Commission (FERC), and DOE. (The overall survey covered 31 agencies.)

One reason why DOE EISs were lengthy is that more than one-half of the DOE EISs completed during the reporting period were major programmatic (e.g., Stockpile Stewardship, Weapons-Usable Fissile Materials Disposition, Highly-Enriched Uranium Disposition, Foreign Research Reactor Policy) and site-wide (e.g., Pantex and Nevada Test Site) documents. These documents addressed highly complex and controversial issues; several programmatic documents addressed multiple DOE sites.

Although many DOE EISs need to be substantially longer than those of other agencies, these data suggest that there may be opportunities to shorten our documents. We plan to review more recent documents and report on our findings. **LL**

EIS Page Length (1996 Data, Selected Agencies)



Source: EPA

LESSONS LEARNED

December 2, 2002; Issue No. 33

Fourth Quarter FY 2002

CEQ Asks How to Improve NEPA Implementation; Responses Vary Widely

In response to questions from the Council on Environmental Quality's (CEQ's) NEPA Task Force, Federal, state, local, and tribal agencies, environmental

While it's true that efficiency improvements can be made in the NEPA process, I simply cannot agree that an "analysis paralysis" or "process gridlock" exists...[I]n order to do a good job of soliciting public input and doing meaningful effects analysis, it will take effort, time, and dollars. – NEPA coordinator, Nez Perce National Forest

Collectively, the comments cover nearly every aspect of NEPA implementation. They range from strong support for the value of the NEPA process to sharp criticism, especially of project delays associated with NEPA

Amend CEQ regulations to "eliminate environmental assessments," "eliminate the programmatic EIS," "delete consideration of cumulative effects," and "tighten the definition of 'new information' that requires a supplemental EIS," and also "end judicial review of the regulations." – American Forest Resource Council

and business groups, and individual citizens have weighed in during the past few months with opinions on how to improve NEPA implementation. CEQ also sought and received examples of best practices and case studies.

compliance. Most comments suggest improvements in NEPA guidance or routine practices. Many comments were agency- and project-specific, providing criticism and recommendations for how a specific proposal should be altered. The NEPA

Task Force is reviewing all the comments along with other information, including interviews with Federal agencies, and expects to issue a best-practices handbook and a report with draft recommendations early in 2003.

"We're reviewing these responses to CEQ, with an eye toward those suggestions that might make DOE's NEPA implementation more efficient," said Carol Borgstrom, Director of DOE's Office of NEPA Policy and Compliance. "The NEPA Office also is cognizant of recent Executive Orders and proposed legislation that encourage faster completion of environmental reviews." (See text box, page 6, for a summary of these related activities.)

Task Force Gathers NEPA Advice

During the summer of 2002, CEQ's NEPA Task Force solicited comments on effective NEPA implementation practices and case studies. Following coordination with the DOE NEPA Community,

Ray Berube, Deputy Assistant Secretary for Environment and Senior NEPA Liaison for the Department, provided comments, dated September 23, 2002, which contained "several case studies that demonstrate the flexibility in the existing NEPA procedures and illustrate successful NEPA implementation." (See text box, page 4, for a summary of the CEQ questions and DOE responses.) In addition, DOE's NEPA staff addressed the Department's experiences with programmatic EISs and categorical

DOE agrees that it is useful to examine ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. – Ray Berube, DOE

continued on page 5

Inside *LESSONS LEARNED*

Welcome to the 33rd quarterly report on lessons learned in the NEPA process. Have you noticed that NEPA has been in the news a lot lately? Although this issue of *LLQR* is longer than usual, I encourage you to read all the news, views, and lessons learned. We thank you for your continuing support of the *Lessons Learned* program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by February 3, 2003. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 3, 2003

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2003 (October 1 through December 31, 2002) should be submitted by February 3, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa under 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 at tis.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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DOE Submits Cooperating Agency Report to CEQ

DOE responded on October 30, 2002, to the Council on Environmental Quality's (CEQ's) request for Federal agencies to report biannually on cooperating agency activities in new EISs and EAs, with the first report to address NEPA reviews started between March 1 and August 31, 2002. This request was initiated in the January 2002 CEQ memorandum entitled "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Protection Act." (See *LLQR*, March 2002, page 1.)

CEQ has developed a Web-based tool, the Cooperating Agency Reporting System (CARS), for transmitting the requested information. DOE's Office of NEPA Policy and Compliance asked NEPA Compliance Officers to enter their respective data. The NEPA Office reviewed the results and transmitted them to CEQ, marking a successful use of electronic media for internal information reporting.

Of the five EISs that DOE initiated during the six-month period (that is, for which DOE issued a notice of intent), two EISs each have two cooperating agencies. Of the 23 EAs that DOE started during the reporting period, one EA has five cooperating agencies. CEQ is evaluating the information submitted by the agencies and will later announce plans for using the cooperating agency information and any refinements to CARS.

DOE staff are encouraged to consult their NEPA Compliance Officers for questions on the information provided in the first biannual cooperating agency report. For information on cooperating agency reporting, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE Proposes Revisions to Floodplain and Wetland Regulations to Streamline Procedures, Add Flexibility

Based on over 20 years of experience with its existing regulations for floodplain and wetland environmental reviews (10 CFR Part 1022, first issued in 1979), DOE is proposing revisions that would reduce documentation, streamline procedures, and add flexibility to its environmental protection program. The revisions would continue to fulfill the substantive provisions of the 1977 Executive Orders for floodplain management (E.O. 11988) and protection of wetlands (E.O. 11990) and would add no new requirements.



This baldcypress-water tupelo swamp lies in a floodplain at the Savannah River Site.

The proposed revisions, issued by the Assistant Secretary for Environment, Safety and Health, were published

November 18, 2002 (67 FR 69480), for a 60-day public comment period that ends January 14, 2003.

More classes of action would be exempt from assessment procedures

DOE proposes that four classes of actions – site characterization, environmental monitoring, ecological research activities, and facility modifications to improve safety or environmental conditions – normally would be exempt from the requirement to prepare a floodplain or wetland assessment. The proposed rule states conditions under which an exemption would be appropriate. Under this revision, about half the assessments prepared by DOE since 1994 would not have been required. DOE has normally exempted routine maintenance from assessment since its regulations were first issued.

Public notification procedures would be simplified

Under the proposed revisions, DOE would emphasize local notification (e.g., via newspapers, radio, mailings) of its proposed floodplain and wetland actions rather than requiring publication in the *Federal Register*. However,

for proposed actions with effects of national concern, DOE would require *Federal Register* publication as well as local notification.

In providing the National Nuclear Security Administration's concurrence on the proposed revisions, James Mangeno, NEPA Compliance Officer, noted, "We agree with your efforts to streamline the floodplain and wetlands

environmental review process and make it easier for the field operations offices to conduct routine actions."

The proposed changes would substantially reduce the administrative burdens associated with floodplain and wetland environmental review without sacrificing public involvement or environmental protection. – Stephen Wright, Administrator, Bonneville Power Administration

Reviews could be coordinated under CERCLA or NEPA

The proposed revisions would identify the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as an alternative mechanism to the NEPA process for meeting the floodplain and wetland review requirements. This revision would update the regulations to be consistent with DOE's current policy and practice regarding environmental reviews under CERCLA. (See *LLQR*, September 2002, page 13.) "We are pleased with the greater flexibility the proposed revisions offer, and the ability to use the CERCLA documentation to meet the requirements," stated Keith Klein, Manager, Richland Operations Office, in his concurrence response.

Other proposed changes would facilitate taking emergency actions and using the regulations

Proposed revisions would allow emergency actions to be taken immediately, with follow-up documentation of impacts and further consideration of mitigation measures. Updates are proposed to the list of resources that can be used to identify whether an action would be in a floodplain or wetland. The proposed revisions would make the rule easier to use by reordering sections to parallel the assessment process and by eliminating outdated provisions.

Please send written comments on the proposed revisions to Carolyn Osborne, Office of NEPA Policy and Compliance, by e-mail to carolyn.osborne@eh.doe.gov or fax to 202-586-7031. Questions may be addressed to her also at 202-586-4600 or leave a message at 800-472-2756. 

NEPA Task Force Questions

The NEPA Task Force queries focus on six key areas, with subtopics. (67 FR 45510, July 9, 2002; also see *LLQR*, March 2002, page 17; June 2002, page 11; and September 2002, page 5.)

- **Technology, information management, and information security:** information sources, barriers to using information technology and to quality information, databases and protocols, information management and retrieval tools, use of technology (for communicating, document distribution, public involvement, and decisionmaking), and balancing openness and information security
- **Federal and inter-governmental collaboration:** effective cooperative relationships and processes, barriers and challenges, and training
- **Programmatic analysis and tiering:** suitability of issues to programmatic analysis, avoiding duplication in tiered analyses, and linkage to environmental management systems
- **Adaptive management/monitoring and evaluation plans:** factors considered in deciding to use the approach, analysis structure, aspects that may require further NEPA analyses, and factors to consider for determining monitoring techniques and intensity
- **Categorical exclusions:** basis for establishing, influence of other agencies' exclusions, and improvements in promulgation process
- **Additional areas for consideration**

DOE's Responses

DOE's September 23, 2002, submittal to the NEPA Task Force, summarized below, is available at <http://ceq.eh.doe.gov/ntf>.

- DOE uses a wide variety of **information sources** in document preparation. Barriers to public use of information technology include lack of high-speed Internet access, restrictions due to security concerns, and challenges in verifying currency of posted information. Technology for ensuring integrity of electronic information is available. The DOE NEPA Web is a key resource.
- DOE examples of successful **interagency cooperation** emphasize early continuous involvement and finding ways to express differing views in a NEPA document. Challenges include agreeing on respective responsibilities and authorities, determining the length and intensity of cooperation needed, committing to address issues, and agreeing on schedules. Training should emphasize communication. Memoranda of Understanding were provided.
- DOE's successful **programmatic and tiered NEPA reviews** have addressed interrelated activities at multiple sites or site-wide environmental impact analysis for multi-program activities at large DOE sites. NEPA and Environmental Management Systems are complementary approaches.
- DOE has incorporated flexibility for decisionmaking by analyzing a full range of reasonable alternatives. DOE also addresses aspects of **adaptive management** in a supplement analysis, supplemental EIS, or amended record of decision. Management buy-in, cost, and stakeholder acceptance are key factors in considering which adaptive management steps to adopt in a project.
- DOE's preferred basis for establishing a **categorical exclusion** is a history of environmental reviews that show a pattern of no significant impacts. Care is needed in considering other agencies' categorical exclusions because context of an activity is important in determining significance.
- DOE believes that CEQ's NEPA implementing regulations for environmental assessments afford adequate flexibility regarding the appropriate content and format.

CEQ Asks for Input *(continued from page 1)*

exclusions during interviews with NEPA Task Force representatives.

CEQ has published all comments received, including DOE's, on the NEPA Task Force Web site, <http://ceq.eh.doe.gov/ntf>, identifying 14 sets of comments from Federal agencies, 46 from state, local, and tribal officials, almost 150 from organizations, and over 250 from individuals. The summary that follows is intended to reflect the diversity of viewpoints contained in comments submitted to CEQ.

Technology, Information Management, and Information Security

A substantial portion of the comments to CEQ addressed the use of information technology, the related issue of

Since NEPA is an interdisciplinary process, it would be beneficial to have data sources compatible with each other. – Federal Aviation Administration

public access to information, and information quality.

Information technology is “adding great value to the NEPA process,” according to the Western Governors Association, which advocates that Federal

agencies adopt “a single technology template that would allow for consistency in how all agencies engage state and local governments and the public.”

Limits on information access drew fire from some quarters. “Increased security concerns are seriously diminishing the quality of information available to the public,” wrote the Oak Ridge (Tennessee) Local Oversight Committee

Regional staff have indicated difficulty in reconciling how to achieve targeted, straightforward, and short environmental analyses...in the face of recent court decisions that place emphasis on use of a greater number of action alternatives and on more in-depth analyses of environmental impacts. – National Oceanic and Atmospheric Administration

Citizens’ Advisory Panel (CAP). The panel criticized “censorship” of “maps that have already been widely disseminated in the public domain” and claimed that deleted information makes documents “difficult to

interpret.” Concerned Citizens for Nuclear Safety in Santa Fe, New Mexico, similarly felt the public has been encumbered by the removal of documents from the Internet and the increasing difficulty in getting paper copies of many documents.

Use of protected information in NEPA analysis can represent the best compromise, suggested the Coast Guard, referring to the conflict between using protected information in impact analysis and thus not being able to fully disclose the bases of the analysis, or not using the protected information and thereby limiting the scope of analysis.

Where should agencies “draw analytical boundaries?” asked the Federal Aviation Administration (FAA), in light of “increasing demand for more information and analyses because we have the technical ability to produce it.” Environmental documents may be larger, FAA noted, “without necessarily adding commensurate value in terms of identifying significant effects.”

Federal and Inter-governmental Collaboration

Several commenters encouraged Federal agencies to better cooperate with state, local, and tribal governments. Commenters claimed that involving governments in only the external review process is

insufficient. Government entities at all levels often prefer an opportunity to be involved in the environmental analysis so as to,

in the words of the Chairman of the Custer County (Idaho) Commissioners, “have a better understanding of the ‘whys.’” Other commenters pointed to the valuable information available through non-Federal government agencies, including information on socioeconomic, zoning, planning, cultural and historical resources, and natural resources.

Commenters had several suggestions to encourage inter-governmental cooperation. Federal agencies “should share their resources with tribes to encourage tribal participation as cooperating agencies” suggested the Natural Resources Defense Council (NRDC). Others emphasized allowing sufficient time for cooperating agencies to provide quality responses to documents and recognizing the deliberative needs of government entities. A NEPA consultant encouraged states to “adopt ‘little NEPA’-type laws to provide the common framework to make NEPA more successful throughout the nation.” Additional comments requested guidance on incorporating state and local requirements into NEPA documents and coordinating multiple state and Federal environmental review requirements.

Reasonable deviations from the established timetable may need to be accommodated at times, in the interest of encouraging substantive, informed input from the cooperators. – Crook County (Wyoming) Board of Commissioners

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CEQ Asks for Input (continued from previous page)

One example of why improved Federal-state coordination is needed was presented by the Edison Electric Institute (EEI). “The linear nature of electric transmission facilities poses unique challenges for NEPA analysis and permitting processes,” wrote EEI. Transmission lines cross multiple jurisdictions and bring “a larger number of landowners and agencies to the table as potential stakeholders than generation facilities located on discrete parcels.” Moreover, “alternative routes are often limited” because of the need to connect with existing equipment. “[C]oordinated, cooperative reviews and decisions could shorten by years the licensing and permitting process for generation plants and transmission lines,” EEI stated.

Concerns about obstacles to the effectiveness of inter-governmental cooperation also were raised, one being differences in agency missions. “Resource agencies do not want to be associated with WisDOT on projects that affect resources under their jurisdiction,” wrote the Wisconsin Department of Transportation (WisDOT). The National Oceanic and Atmospheric Administration

To have an effective “cooperating agency” relationship, those involved agencies must agree to cooperate in achieving the purpose and need of the project. – U.S. Navy

provided what might be a partial rationale for this dynamic, noting that in several instances where other agencies had cooperating status, the public

“misinterpreted” this to indicate that the National Marine Fisheries Service was “abrogating certain responsibilities as the regulating agency.” The Forest Service framed the problem this way: regulatory agencies focus on short-term impacts, for example on air and water quality during forest thinning operations, while the Forest Service focuses on long-term environmental objectives, such as preventing wildfires and associated impacts.

The Forest Service also asserted that NEPA itself discourages collaboration. “While a collaborative process builds on and incrementally shapes a proposal to meet mutual interests as the parties work toward a decision,” the NEPA process encourages various interests to “weigh in and comment on the alternatives they support. There is no incentive built into the NEPA process to work toward a single solution that accommodates multiple interests.”

Programmatic Analysis and Tiering

Programmatic reviews are appropriate, commented the Environmental Protection Agency (EPA), for “Classes of actions in which impacts stay the same from project to project (e.g., specific impacts from renewal of licenses for nuclear power plants that can be analyzed generically)

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Executive Orders, Proposed Legislation Promote Faster Environmental Reviews

President Bush and some Members of Congress strongly advocate streamlining government decisionmaking processes, especially for significant infrastructure projects such as those associated with energy supply and transportation. To date, none of their efforts change NEPA requirements, but they do send a strong message about accelerating environmental reviews.

Two Executive Orders (E.O.s) signed by President Bush carry this message to Federal agencies. E.O. 13274, *Environmental Stewardship and Transportation Infrastructure Project Reviews*, signed on September 18, 2002, directs the Secretary of Transportation to designate high-priority projects and chair an interagency task force to facilitate measures that streamline the review process. The E.O. directs that “agencies shall to the maximum extent practicable expedite their reviews for relevant permits or other approvals, and take related actions as necessary, consistent with available resources and applicable laws, including those relating to safety, public health, and environmental protection.”

This language is similar to that in E.O. 13212, *Actions to Expedite Energy-Related Projects*, signed by the President on May 18, 2001. That E.O. established an interagency energy task force headed by James Connaughton, Chair of CEQ. It also instructed agencies, consistent with law and regulation, to “expedite their review of permits or take other actions as necessary to accelerate the completion” of projects that will increase the production, transmission, or conservation of energy. (See article, page 21, on a recent energy task force workshop and *LLQR*, June 2001, page 12, for information on E.O. 13212.)

Members of Congress also have sought faster decision processes for infrastructure improvements. Legislation was introduced earlier this year that would require expedited environmental review of airport expansion plans for the Chicago area. Separate proposed legislation would establish deadlines for agency comments during the NEPA process for highway construction projects. There also were legislative proposals during 2002 that would curtail the applicability of NEPA to certain forest management activities, including proposals to remove material that could fuel wildfires on Federal lands.

CEQ Asks for Input *(continued from previous page)*

...[and] when doing a broad-based analysis off of which individual projects will be tiered (e.g., a corridor-based analysis from which specific road segments will be tiered).”

Tiering works when each new level of review addresses new issues only...rather than revisiting each issue in its entirety at each successive tier. – Washington Department of Natural Resources

The Wildlife Management Institute also stated a value to programmatic reviews in that “where

the same project is being replicated on different planning units,” a programmatic analysis “provides the public with a digestible overview of the task at hand while explaining what the cumulative impacts would be on the environment and society.”

On the other hand, programmatic reviews should be limited, according to the American Loggers Council, suggesting that CEQ exclude from NEPA review those “pre-decisional planning or other documents that cover such broad geographical areas and so many unknown projects as to be unsusceptible or poorly susceptible to NEPA-related environmental analysis.”

Other commenters pointed to limitations inherent in programmatic reviews. The Forest Service noted that although programmatic analyses have been useful, they are “costly to efficiency and budgets.” The Forest Service

cautioned that as information in programmatic analyses becomes outdated or circumstances change, site-specific efforts can be stopped “until the programmatic decisions can be refreshed.

All too often tiered analyses are seen as an “easy out.” Instead of making a good faith effort to evaluate and ground-truth the underlying assumptions of the programmatic analysis, site-level analyses utilize the original document as a stamp of approval for going forward with a given project. – Individual, Eugene, Oregon

Another time-consuming aspect

of programmatic decisionmaking is the uncertainty of future actions and conditions associated with broad programmatic decisions. Much time is spent trying to provide detailed effects analyses for these somewhat speculative efforts.”

Programmatic reviews also were criticized by the Wildlife Management Institute as “rarely” complete due to a lack of site-specific information. The Institute added that in

some cases, tiering “leads to confusion and a lack of trust among the public,” in part because related information is split between documents.

Adaptive Management/ Monitoring and Evaluation Plans

Many commenters praised the adaptive management approach. As a learning process, adaptive management requires feedback to tie expectations, such as those expressed in a NEPA document’s predictive analysis, to actual performance (related articles, pages 8 and 10).

The EPA noted that adaptive management “is appropriate in situations where scientific information is incomplete, there is systemic variability, or political consensus does not exist.” The State of Washington Department of Natural Resources similarly stated that adaptive management “fills the gaps when management action is needed, but scientific information is limited.”

NRDC called for greater emphasis on monitoring and mitigation after a decision has been made through the NEPA process.

Whenever possible, adaptive management should be utilized, but the process must be kept open and the public notified of changes that take place. – Dairy Producers of New Mexico

Another non-governmental organization, the Oak Ridge CAP, went further, writing, “To ensure follow-through, compliance with decisions made under NEPA should be legally enforceable by regulatory or oversight agencies.”

The U.S. Navy encouraged maintaining boundaries between the NEPA process and the adaptive management systems related to a proposed action. “NEPA should not evolve into an adaptive management process... [NEPA] requires a definite ending of either a Finding of No Significant Impact [FONSI] or a Record of Decision in order to proceed with the proposed action. Other follow-on adaptive management systems can result from mitigation committed to in the NEPA process, but the NEPA process itself should not be continuous.”

Adaptive management measures are not always quantifiable, making it “difficult to determine whether environmental degradation has occurred,” commented the Western Land Exchange Project. Under a “cynical view,” the project suggested, agencies would rely on “adaptive management measures to support FONSI and assuage public concerns, proceeding with a proposed action, and later realizing that significant impacts have occurred but refusing to implement the proposed adaptive management measures.”

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Adaptive Management and the NEPA Process: Responding to New Information

By: Clifford S. Duke, Ph.D., *The Environmental Company, Inc.*

Adaptive management – modifying actions based on environmental monitoring data or other new information – is not a new concept to NEPA practitioners nor to DOE. How adaptive management works is shown in the flow diagram below, which was taken from a 1997 Council on Environmental Quality (CEQ) report. How best to implement adaptive management during and after the NEPA process presents challenges, however, and the CEQ NEPA Task Force recently solicited input in this regard (related article, page 1).

DOE Input to CEQ on Adaptive Management/Monitoring and Evaluation Plans

As a result of CEQ’s previous exploration of the role of adaptive management in NEPA practice, the Council concluded that “an adaptive management approach may be the best means of attaining both NEPA’s goals and an agency’s mission.” By incorporating adaptive management into NEPA analyses, “agencies can move beyond simple compliance and better target environmental improvement,” CEQ stated.

CEQ’s NEPA Task Force asked commenters to address four questions regarding adaptive management. DOE’s responses are summarized below. (For the complete text of DOE’s responses, see <http://ceq.eh.doe.gov/ntf>.)

1. What factors are considered when deciding to use an adaptive management approach?

DOE listed several factors, including environmental risks, uncertainties, stakeholder opinions, regulators’ support, and flexibility, among the factors to be considered, noting that what factors to consider depends (in part) on regulatory requirements and potentially affected parties. Educating all parties on the need for action and involving them in the process for selecting the adaptive management approach could increase the likelihood of stakeholder acceptance of the action to be taken.

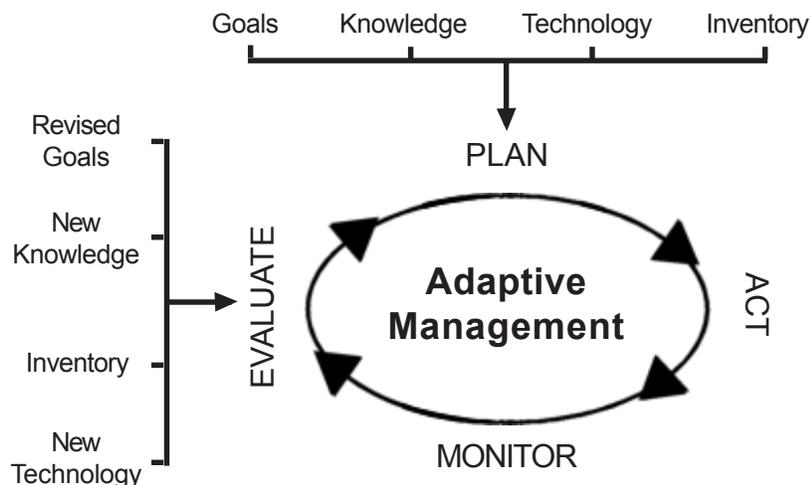
2. How can environmental impact analyses be structured to consider adaptive management?

DOE’s response emphasized broadening the range of alternatives to be analyzed in the NEPA review – both

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What is Adaptive Management?

CEQ’s 1997 report, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-Five Years*, defined adaptive management as “a process of adjusting management actions and directions in light of new information about the ecosystem and its bearing on ecosystem goals. When new information becomes available, project management is reevaluated. Adaptive management recognizes the limits of knowledge and experience and moves iteratively toward goals in the face of uncertainty.” The CEQ report included the diagram below of the adaptive management cycle from Interagency Ecosystem Management Task Force, *The Ecosystem Approach: Healthy Ecosystems and Sustainable Economies, Volume I – Overview*, 1995.



Adaptive Management and the NEPA Process

(continued from previous page)

developing alternatives that provide flexibility to deal with change and analyzing alternative technologies that might not be fully developed or authorized. DOE stated that one way to accomplish this is to focus more on the outcome of the alternatives, not the specific solutions. As an example, DOE provided a case study on a record of decision (ROD) (67 FR 45710, July 10, 2002) for the *Interim Management of Nuclear Materials Environmental Impact Statement* (DOE/EIS-0220, October 1995).

3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?

DOE noted that subsequent NEPA analyses will be required if there are either substantial changes in the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed actions or its impacts. DOE explained that it uses supplement analyses, supplements, and amended RODs to address these issues. DOE also described a recent EIS process (*Savannah River Site Salt Processing Alternatives Supplemental EIS*, DOE/EIS-0082-S2, June 2001) that incorporated flexibility in both the analysis of reasonable alternatives and the ROD (66 FR 52752, October 17, 2001).

4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

DOE replied that the same factors that can be considered when deciding whether to use an adaptive management approach (in question 1) may be considered in determining monitoring technology and intensity. DOE emphasized the importance of stakeholder involvement but acknowledged that cost and “buy-in” from upper management would appear to be the most important factors.

Use of Adaptive Management in DOE

Applying an adaptive management approach can provide decisionmakers with flexibility in the face of uncertain and changing information. DOE often applies adaptive management principles as part of its existing management systems. For example, DOE’s Integrated Safety Management System has as one of its five core functions, “Provide Feedback and Continuous Improvement,” in which “[F]eedback information on the adequacy of controls is gathered, [and] opportunities for improving the

definition and planning of work are identified and implemented.” (See <http://tis.eh.doe.gov/ism>; also see *LLQR*, September 2002, page 8.)

The adaptive management approach is often applied in environmental management systems (EMS). As noted by CEQ Chair James Connaughton and Office of Management and Budget Director Mitchell Daniels (April 1, 2002, Memorandum to Heads of Federal Agencies), one objective of EMS is continuing improvement in environmental stewardship through integration of environmental performance into daily business decisions. They emphasized the importance of developing EMS at Federal facilities. Recently, Mr. Connaughton linked EMS to the NEPA process, challenging DOE’s NEPA practitioners to “take a NEPA document and turn it into a management program.” (See “CEQ Chair Promotes Management Approach for the Environment,” *LLQR*, September 2002, page 3.)

DOE’s Strategic Petroleum Reserve program has integrated its EMS and NEPA processes (as discussed in DOE’s submittal to the CEQ NEPA Task Force, referenced above) and as a result has streamlined and combined parallel environmental activities in a synergistic manner. (Also see related article, page 10.)

Looking Ahead

The adaptive management approach presents challenges, however. Flexibility must be built into actions when first proposed and analyzed under NEPA, so that additional NEPA review is not needed each time the action is modified in response to new information. The flexibility that adaptive management provides must be balanced with the NEPA-related requirement to take a “hard look” at the environmental impacts of a proposed action. To the extent that a proposed action is less well-defined, differences in environmental impacts among alternatives may become obscured.

As an approach to coping with the scientific uncertainty and limited knowledge inherent in many NEPA analyses, adaptive management can be a tool to build upon the requirements of 40 CFR §1502.22 to disclose when information relevant to significant adverse impacts is incomplete or lacking. (See “When We Don’t Know, Say So,” *LLQR*, March 1999, page 6.) That is, in addition to disclosing the existence of incomplete or unavailable information, the decisionmaker can develop a plan to modify the proposed action as new information becomes available. **LL**

Impact Mitigation at Los Alamos: NEPA Functions as an Environmental Management System

By: Carl Sykes, *Office of NEPA Policy and Compliance*

Although it is not labeled as such, DOE has merged its NEPA process and the core elements of an environmental management system (EMS) in the process of fulfilling commitments made in the Mitigation Action Plan (MAP) for the 1999 Los Alamos National Laboratory (LANL) Site-wide EIS (DOE/EIS-0238, January 1999). As explained below, the EMS concepts of planning, implementation, and feedback are reflected in the continuing MAP process related to natural and cultural resources management at LANL. The end result is efficient and effective protection of environmental and historical resources with minimal or no disruption to site operations.

Integrated Natural and Cultural Resources Management Plan

The LANL Site-wide EIS analyzed the impacts on natural and cultural resources at the 43-square-mile national laboratory in northern New Mexico. The Record of Decision (ROD) for the LANL Site-wide EIS established commitments to mitigate potential impacts to these resources. Following the ROD, DOE created the MAP, a DOE management document that establishes planned actions and schedules to carry out each mitigation commitment made in the ROD (10 CFR §1021.331). The

Integrated Natural and Cultural Resources Management Plan for LANL (IRMP) is a MAP commitment that builds upon existing programs and controls, while developing additional measures to efficiently mitigate impacts of continuing LANL operations.

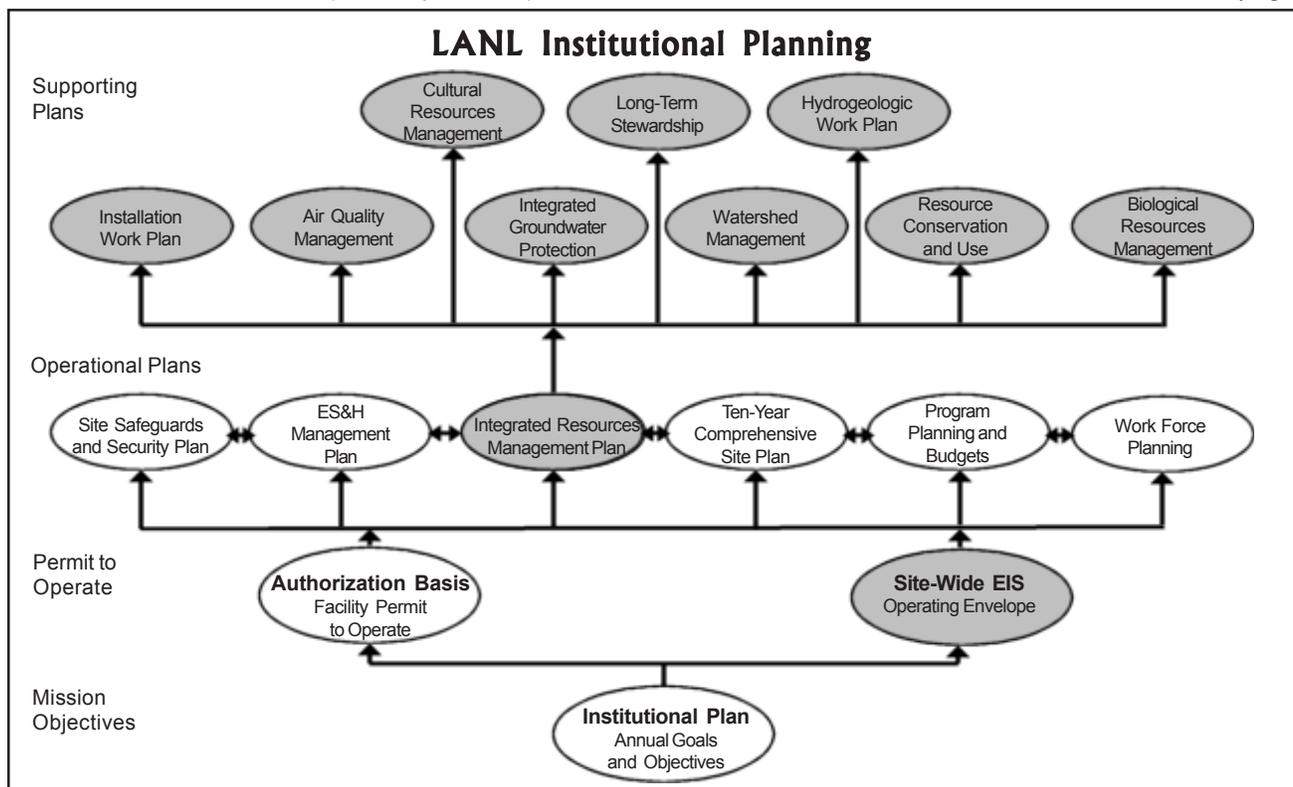
EMS Core Elements

- **Policy:** Establish environmental policy
- **Planning:** Ensure impacts considered in setting environmental objectives
- **Implementation and Operation:** EMS effectively implemented and maintained
- **Feedback:** Checking, corrective action and continuous improvement
- **Management Review**

Source: ISO 14001

“The IRMP is the culmination of a lot of hard work,” said Elizabeth Withers, NEPA Compliance Officer, Los Alamos Site Operations. “Its implementation will provide a process that enables environmental resources to be

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This figure, taken from the IRMP, illustrates how the NEPA process has been integrated into the institutional planning at LANL. The IRMP, a commitment in the MAP, is a key operational plan at LANL.

Impact Mitigation at Los Alamos *(continued from previous page)*

protected with minimum disruption to the laboratory mission.”

The IRMP recognizes that it is desirable to integrate laboratory missions with natural and cultural resource stewardship; its goal is to provide a process that minimizes conflict and develops solutions that advance both mission and stewardship cost-effectively. The IRMP integrates resource-specific protection and compliance programs covering a wide array of resources, including cultural (e.g., prehistoric ruins, historic buildings), groundwater, air quality, biological, watershed, and long-term land stewardship. DOE directed LANL to utilize the existing Integrated Safety Management System¹ to implement the IRMP; environmental values will be similarly incorporated in the planning stages of work activities, with appropriate controls identified and implemented.

Use of Resource-Specific Plans

The resource-specific plans in the IRMP will be (or already have been) developed to protect, mitigate, or attain compliance, refining the cumulative picture of the resource protection provided in the Site-wide EIS, and prioritizing the protection of the most valuable of sensitive resources. When new and ongoing work is planned, an evaluation will be made of how the activity would affect the resource. Although the LANL Site-wide EIS provides a cumulative picture of impacts, it often has been challenging to gauge the significance of impacts of proposed activities on certain resources. Because the IRMP resource-specific plan will have already assessed the overall site impact to the resource and prioritized controls and protections, the activity-specific evaluation need only be compared to the IRMP resource-specific plan to determine the degree of impacts, the appropriate level of controls, and if the NEPA analysis is adequate. Having resource-specific plans in the IRMP will aid in the streamlining of these processes.

The preservation of historic buildings is one example of how the IRMP will facilitate the streamlining of impact assessment while providing overall protection. In addition to the vast number of prehistoric sites at LANL, there are hundreds of buildings that date from the Manhattan Project and Cold War, as well as a limited number of homesteader cabins that pre-date the laboratory. To comply with the National Historic Preservation Act (NHPA), an assessment must be made prior to any Federal activity to ensure that impacts to historical structures are

¹ Integrated Safety Management Systems are the systematic ways in which safety values are incorporated in the planning stages of work, ensuring that all hazards are analyzed, proper controls are identified and implemented, and feedback is generated for future activities.

assessed and minimized. In the past, these assessments were made on a case-by-case basis, and it was difficult to gauge the relative significance of the various historic buildings on site. This made decisions on the appropriate level of mitigation difficult and occasionally resulted in delays to mission activities (while determining appropriate mitigation measures). The IRMP has the potential to greatly streamline NHPA compliance because its resource-specific plan will provide an overall assessment of historic buildings, identify priority protection of the most significant buildings, and allow the integration of the protection for these buildings in the initial stages of LANL institutional planning. Additionally, when a mission activity threatens to impact a historic building of lesser importance, the assessment and identification of mitigation, if any, will be streamlined, because the cultural resources portion of the IRMP will provide a perspective on why the building may or may not warrant more extensive mitigation measures.



This pueblo site at LANL is an example of a cultural resource that would be evaluated by the IRMP.

IRMP and EMS

The IRMP is an example of how NEPA can be integrated into an EMS. Previous *LLQR* articles have explained that an EMS is a way to fully leverage NEPA in the planning process of Federal agencies (see *LLQR*, September 2002, page 1). The IRMP shares several functions and achieves some of the core elements of an EMS. The IRMP itself is an establishment of environmental policy at LANL. The IRMP facilitates the protection of environmental resources in the planning stages of work, ensuring the impacts to resources are considered and protection objectives are set. The IRMP has EMS-like mechanisms to ensure it is effectively implemented. Finally, the IRMP also provides feedback to the Site-wide EIS and its MAP, ensuring that the Site-wide EIS is kept up-to-date and remains pertinent; such feedback is a key attribute of an effective EMS.

For more information on the MAP or IRMP, or if you are interested in getting a copy of either document, please contact Elizabeth Withers at ewithers@doeal.gov or 505-667-8690. 

CEQ Asks for Input *(continued from page 7)*

Categorical Exclusions

Some commenters encouraged casting a “broader net” to approve more categorical exclusions. Most comments in favor of adding categorical exclusions point to the three decades of experience implementing NEPA. “The historical record, including previous EAs showing no impact, and the effects of monitoring of these activities,” commented the Lemhi County (Idaho) Board of Commissioners, “will often speak for themselves.” The Forest Service suggested that agencies “be able to use another agency’s categorical exclusion once approved” by CEQ.

“Because the establishment of any categorical exclusion is likely to be scrutinized by select interest groups,” cautioned the Wildlife Management Institute, “it is imperative that its consideration occurs in an open, collaborative manner from start to finish.”

Other commenters were more skeptical of categorical exclusions. Some cited high costs for preparing categorical exclusions, making them seemingly as

expensive and complex as preparing an EA. An individual from Eugene, Oregon, commented that many activities that are categorically excluded “do in fact create environmental impacts. Perhaps individually the impacts are not significant, but the cumulative effects are unknown because no environmental analysis is required.”

“Rather than support additional categorical exclusions, CEQ should undertake a review of existing agency categorical exclusions and determine whether the individual and cumulative environmental impacts are indeed minimal,” commented the Wise Use Movement from Seattle, Washington.

This sampling of comments demonstrates the diversity of views expressed to CEQ on five topics. CEQ also requested input on any other NEPA topics of interest. This generated similarly diverse comments on public participation, cumulative impacts, and many other issues. CEQ’s and DOE’s consideration of these comments will be discussed in future issues of *LLQR*. ■■

Institute for Environmental Conflict Resolution Establishes NEPA Advisory Committee

The U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation in October 2002 established a Federal advisory committee to advise on future program directions for the Institute.

The 26 committee members, intended to represent a cross section of viewpoints on environmental issues and environmental conflict resolution, were selected from the Federal government (Federal judiciary; Council on Environmental Quality; Departments of Agriculture, Defense, Interior, and Justice; Environmental Protection Agency; Federal Highway Administration); state, tribal, and local governments; academia; environmental groups; and the private sector.

The Committee’s first meeting took place on November 19 and 20, 2002, in Tucson, Arizona, the seat of the Institute. Members discussed the role of the Institute in achieving section 101 of NEPA and future program

direction. Three subcommittees were established to look further at these questions and also to consider how the Institute can more effectively engage all stakeholders, particularly those who are underrepresented or disenfranchised, in environmental conflict resolution.

The Institute recently named a NEPA Program Coordinator. Jo Barnier, Public Service Team Leader, Superior National Forest, is detailed to the Institute for 18 months.

Additional information, including the list of Advisory Committee members, is available on the Institute’s Web site, www.ecr.gov, or by contacting Melanie Emerson at 520-670-5299 or usiecr@ecr.gov. The Foundation and the Institute were both established by Congress to further environmental policy and practice. (See related articles in *LLQR*, September 2001, page 8 and June 2001, page 9.) ■■

Office of Science Promotes Early Integration of NEPA Process with Project Planning

By: Clarence Hickey, *NEPA Compliance Officer, Office of Science*

“Are environment, safety, and health considerations being properly addressed, given a project’s current state of development?” This is the focus of new NEPA-related guidance issued by the Construction Management Support Division in response to a May 2002 directive from Office of Science Director Dr. Raymond Orbach to incorporate consistent project management practices into Science’s project initiatives. Specifically, the directive called for lessons learned on improving front-end planning and conceptual design reports.



Clarence “Corky” Hickey promotes early NEPA planning.

The September 2002 guidance identified five most frequently recurring difficulties in Science’s environment, safety, and health performance during the early planning stages of several new projects and provided suggestions for improvements. All are directly or indirectly related to Science’s NEPA program: management responsibility and accountability for environment, safety, and health; scope and content of preliminary hazard

analysis reports; integration of the NEPA process and project schedules; NEPA review for project partners and collaborators; and early involvement of regulators and the public.

Keeping NEPA off the Critical Path

The guidance notes that most Science projects consider NEPA compliance during conceptual design. Sometimes, however, delays in determining the appropriate level of NEPA review may result in a NEPA schedule that is not fully integrated with the project schedule, putting NEPA on the “critical path” that could delay progress. Well-integrated schedules, on the other hand, “contribute to compliance with NEPA requirements, such that the documentation can be prepared in a manner that is timely and cost effective for the Project, while meeting DOE’s expectations for quality, adequacy, and completeness in the NEPA documentation.”

The guidance encourages project managers to consider data on completion times for DOE NEPA documents (such as found in *Lessons Learned Quarterly Reports*). In the face of uncertainty about whether to prepare an EA or EIS, the guidance suggests it may be useful to prepare a draft project schedule that integrates both EA and EIS review schedules. The project schedule could be adjusted

readily after determining which NEPA document will be prepared. In this way, the project manager will be better prepared to start the NEPA process irrespective of which NEPA document is needed.

Working as Partners

Assuring that NEPA documentation is properly planned and completed for projects that involve collaborations or partnerships among several national laboratories is another focus for NEPA process improvement. These projects often involve one national laboratory that hosts a project, while other laboratories collaborate to conduct aspects of the research and development for the host site or fabricate components or equipment.

The guidance recommends that the hosting laboratory and its local DOE office “work with the partners and collaborators, and their local DOE offices, to ensure that DOE’s NEPA requirements are met for all project related work, including at the partners’ sites.” The Project and local DOE Office do not need to conduct the NEPA process for the partners, but rather ensure that it is conducted and completed according to the procedures in place for the partners’ sites. If appropriate, the work being done at the partners’ sites could be included in the NEPA documentation for the Project at the host site. This should be discussed between the Project, the partners, and DOE early in the Project Planning Phase.

While this guidance was written for the Office of Science, it also may be useful to other organizations. I will be pleased to discuss this guidance with my DOE NEPA colleagues. Entitled *Environment, Safety and Health Considerations for Planning and Reviewing SC Projects (CD-1 and CD-2)*¹, the guidance (along with Dr. Orbach’s May 2002 directive entitled *Office of Science Direction on Project Management*) is available on the Internet at www.sc.doe.gov/sc-80/sc-81/docs.html#sc. I can be reached at clarence.hickey@science.doe.gov or 301-903-2314. 

¹ CD-1: Critical Decision-1, Approve Preliminary Baseline Range; CD-2: Critical Decision 2, Approve Performance Baseline. A prerequisite for CD-2 is completion of NEPA review. (Source: DOE O 413.3, Program and Project Management for the Acquisition of Capital Assets, Attachment 4; October 13, 2000; www.directives.doe.gov).

Site-Wide EA Improves Planning at Wind Research Center

By: Roselle Drahushak-Crow, *NEPA Document Manager, Golden Field Office*

Using a site-wide EA to consider the environmental effects of site development is “business as usual” for DOE’s Golden Field Office and National Renewable Energy Laboratory (NREL). In May 2002, the Office issued its *Final Site-Wide Environmental Assessment of National Renewable Energy Laboratory’s National Wind Technology Center* (DOE/EA-1378) for the 305-acre National Wind Technology Center, replacing a November 1996 site-wide EA of similar title (DOE/EA-1127). Located between Golden and Boulder, Colorado, the wind research center is one of the two NREL campuses that support energy efficiency and renewable energy research.

“The NEPA process requires us to plan several years out, to envision the impacts of our actions, and to plan for mitigating those impacts,” said John Kersten, Manager of the Golden Field Office, which administers the management and operating contract for NREL. “The result is that projects are better planned and more likely to be completed on schedule.”

Management Involvement Improves Effectiveness

The NEPA team ensured that the new EA would be useful by encouraging ownership among managers and other decisionmakers. The Golden Field Office initiated the

The NEPA process has proven to be a valuable planning tool for our office and for NREL.

– John Kersten, Manager, Golden Field Office

process by working with NREL to organize a multidisciplinary team of both organizations’ managers, site operations personnel, and environment, safety, and health staff.

This team conducted internal scoping to identify the components of the proposed action in the EA, which is to operate the wind research center for alternative energy research with new and improved capability. The proposed action includes permanent physical improvements such as buildings and equipment, utilities, and other infrastructure. It also includes activities that do not require permanent facilities or infrastructure, such as research programs, facility operations, management practices, and maintenance activities. By examining this broad set of proposals and activities, the team improved the quality of the EA and ensured its relevance. Team members also provided feedback into other processes, such as the site development plan and program planning, that sparked additional analysis.

“Through the EA, we proactively identified the need to reroute a natural gas pipeline installation to avoid an environmentally sensitive area, thereby saving time and costs on the project,” said Randy McConnell, Director of Environment, Safety, and Security for NREL. This pipeline would tap into an existing supply line and extend approximately two-thirds of a mile across privately owned property adjoining the site. The environmentally sensitive area is a drainage basin that potentially could serve as habitat for the Prebles Meadow Jumping Mouse, a threatened species.

Integrating NEPA and Site Planning

Although site-wide EAs typically have a five-year shelf life, the multidisciplinary team elected to address both short-term (five years) and long-term (up to 20 years) site improvements. This approach not only extends the document’s useful life, but also broadens the scope of the analysis to take into account the unpredictable nature of frequently changing priorities in Federal program funding.

For a “reality check,” the team worked with the NREL budget planning office to review the activity and improvement descriptions. Short-term projects that were in a relatively more advanced planning stage, including facility modifications and construction, infrastructure improvements, site activities, and routine maintenance, were analyzed in greater detail. Fewer details were available for the long-term projects (ranging from facility construction to research, development, and testing), but including these projects helped planners and managers to think about options for future improvement scenarios.

These various scenarios were incorporated into a bounding analysis approach for analyzing the potential environmental impact. The site was partitioned or “zoned” according to possible future uses such as new facilities,

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The site-wide EA evaluated the impacts of adding more test turbines like this one at the site.

Lesson Learned: Keep Your Options Open

By: Jay Rose, Deputy NEPA Compliance Officer and NEPA Document Manager, National Nuclear Security Administration



Jay Rose shares his experiences.

Sometimes, at the start of the NEPA process, DOE knows what it wants to do and is able to identify a preferred alternative from among the reasonable alternatives in the notice of intent (NOI) or draft EIS. Ultimately, DOE may select that preferred alternative in the record of decision (ROD). Usually, however, the NEPA process isn't so predictable, and the

NEPA Document Manager must effectively manage the inevitable uncertainties and changes that arise. Such was the case with the TA-18 EIS that I managed.

In April 2000, then-Secretary of Energy Bill Richardson announced that DOE would prepare an *Environmental Impact Statement for the Proposed Relocation of Technical Area 18 Capabilities and Materials at the Los Alamos National Laboratory* (LANL), DOE/EIS-0319 (TA-18 EIS). He stated that a new TA-18 facility at LANL was the preferred alternative for the proposed relocation. Based on an earlier site-screening study that had been prepared by the National Nuclear Security Administration's (NNSA's) Office of Defense Programs, the Secretary also stated that the EIS would consider as reasonable alternatives relocating TA-18 missions to the Sandia National Laboratory, the Nevada Test Site, and the Idaho National Engineering and Environmental Laboratory.

The TA-18 houses the Nation's only facilities capable of performing general-purpose nuclear materials handling and criticality experiments. These experiments provide unique training to a variety of Federal agencies in areas such as nuclear materials safety, emergency response in support of counterterrorism activities, and safeguards and arms control for programs aimed at controlling excess nuclear materials. The TA-18 buildings and infrastructure are near the end of their useful life. DOE believes that it is important to maintain these capabilities in a manner that reduces the costs for safeguards and security over the next 25 years.

Following the Secretary's announcement, the NEPA folks sprung into action. We drafted the NOI, held scoping meetings at each of the candidate sites, and started preparing the draft EIS. We ensured that the draft EIS evaluated all site alternatives with the same detail and depth of analysis, even though many people felt that the

preferred alternative was a "done deal" and would be selected in the ROD. In fact, we even worked with the TA-18 experts at LANL to identify another alternative: upgrading the existing TA-18 facilities. We were trying to think ahead, which generated a number of questions: What if budgets got tighter than expected? Would NNSA still be able to afford a new facility? If the mission remained at TA-18, would an upgrade alternative provide some partial benefits?

We completed the draft EIS in August 2001 and scheduled the public hearings in September. On September 11, 2001, having flown to Idaho the day before, I awoke to the horrific news. Needless to say, our public meetings were delayed for several weeks.

Note that the TA-18 EIS considered the impacts of sabotage in a classified appendix. While there is still some uncertainty regarding this analysis issue, we had decided prior to September 11 to analyze sabotage scenarios in the EIS. Since the TA-18 EIS supports a siting decision for a facility that stores approximately two tons of special nuclear material, we felt the decisionmaker should be aware of the potential environmental differences at each site if sabotage occurs.

After the public hearings on the draft EIS, we began preparing the comment-response document and the final EIS. Before approval of the final EIS, Dr. Everet Beckner, who had recently become the Deputy Administrator for NNSA/Defense Programs, asked his staff to take a fresh look at the TA-18 project. Dr. Beckner wasn't convinced a new facility at LANL should be DOE's preferred alternative. The fresh look confirmed his suspicion, and when the final EIS was issued in September 2002, the preferred alternative had changed. Based upon cost, technical, environmental, and mission factors, the Nevada Test Site was designated the preferred alternative. A ROD is expected in December.

From a NEPA standpoint, it is gratifying to know that we had evaluated the full spectrum of reasonable alternatives and analyzed each in the same amount of detail. This enabled the NNSA Administrator to designate a new preferred alternative without unnecessarily delaying the proposed action in order to prepare a supplement to the draft EIS. The lesson to be learned: when it comes to NEPA alternatives, it is much better to err on the side of "inclusive" rather than "exclusive."

For more information, contact me at james.rose@ns.doe.gov or 202-586-5484. **LL**

Early “Agency Scoping” Targets Coordination of Airport Modernization Issues

By: Michael W. MacMullen, *Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office*



Seeking earlier, more structured, and more informed involvement of governmental agencies in a complex EIS, the Federal Aviation Administration (FAA) has developed new scoping approaches for the modernization program for Chicago O’Hare International Airport. With the expectation that early consultation will save time and resources in later EIS phases, the new scoping elements are:

- Organizing pre-scoping meetings for key resource agencies to orient them to the upcoming project and its EIS.
- Hosting informational meetings for mayors and municipal officials during scoping to orient them to the NEPA process and enable them to participate more effectively.
- Holding “agency scoping meetings” for potentially interested Federal, state, and local government agencies – separately from (and in addition to) the traditional scoping meetings for the public. FAA sought informed agency input on potential alternatives, environmental conditions, relevant studies and analytical methodologies, and ancillary plans and projects to be coordinated with the airport modernization.

- Conducting one-on-one follow-up meetings with each commenting agency to explain FAA’s interpretation and proposed accommodation of the agency’s comments.

These innovations in pre-scoping, scoping, and follow-up were instituted to both increase the information content of agency comments and reduce potential disagreements between FAA and other agencies before the draft EIS is issued.

MOU to Address Agency Roles in EIS, Integrate Wetlands Review with NEPA

Twelve agencies responded to the announcement of public and agency scoping meetings in the notice of intent (67 FR 47029; July 17, 2002):

Federal: U.S. Army Corps of Engineers, Fish and Wildlife Service, Environmental Protection Agency, and Federal Highway Administration

continued on next page

O’Hare Modernization Program: EIS Overview

The O’Hare Airport modernization program would involve an expenditure of about \$6.5 billion in phased construction over eight years, while maintaining operations. Significant impacts are expected – as is typical for airport projects – and have already engendered controversy and litigation.

Preliminary Purpose and Need:

- To modernize and improve Chicago O’Hare International Airport

Proposed project may include:

- Build, relocate, and extend runways
- Provide new terminal facilities
- Provide new ground traffic and rail access to airport
- Acquire approximately 540 housing units, 110 businesses, and 430 acres of property

Range of reasonable alternatives may include, in addition to proposed project:

- “No-Build/Do-Nothing”
- Use other existing or proposed airports
- Alternative number or configurations of O’Hare runways
- Demand-management alternatives

Key environmental issues identified include:

- Noise
- Air quality
- Surface transportation
- Wetlands impacts and mitigation
- Social and socioeconomic factors

Early “Agency Scoping” (continued from previous page)

State: Illinois Environmental Protection Agency, Department of Transportation (Highways, Rails, and Aeronautics Divisions), Toll Highway Authority, Department of Natural Resources, and State Historical Preservation Office

Local: Regional Transportation Authority; municipalities of Bensonville, Park Ridge, and Elk Grove Village

FAA has drafted a Memorandum of Understanding (MOU) to clarify expectations with these agencies, which are likely to be involved with FAA throughout the EIS process. The MOU would require agencies to commit adequate staff resources for timely review of the EIS as it is drafted (but not to provide direct financial support for its preparation) and to comment on and concur in the statement of purpose and need and the list of alternatives to be analyzed in detail in the early stages of EIS preparation. FAA will likely ask the agencies to concur in the identification of the preferred alternative before the final EIS is issued.

The draft MOU also incorporates integration of the NEPA process with the review process needed for permits under Section 404 of the Clean Water Act (e.g., for wetland involvement). Although MOUs for NEPA/Section 404 integration are typically used for interagency review of complex highway projects in the State of Illinois, FAA’s past practice has been to conduct these two review processes separately and sequentially. Both NEPA and Section 404 project reviews involve stating the purpose and need, identifying alternatives to be evaluated in detail, and selecting an agency-preferred alternative. Once the MOU is signed, it would represent the first instance of

an interagency agreement to merge the NEPA/404 processes for an airport project.

Next Steps

Now, after the close of the scoping period, FAA is conducting a follow-up meeting with each commenting agency to discuss the scoping comments and provide an opportunity to react to the draft MOU. The draft EIS is in initial preparation stages, with work proceeding on the draft noise and air quality impact assessment protocols and also on characterization of the existing environment.

Significant advantages are expected from this new approach of involving agencies from the beginning of the EIS process:

- Identifying key agency resources for timely participation throughout the EIS process
- Identifying relevant information, issues, and problem areas early
- Accommodating agency scoping comments efficiently and responsively
- Facilitating ongoing key agency involvement throughout the EIS process
- Consensus building

Information on the O’Hare Modernization Program, including a NEPA overview, is available online at <http://modernization.ohare.com>. For additional information, contact Michael MacMullen at michael.w.macmullen@faa.gov or 847-294-7522. 

Site-Wide EA Improves Planning (continued from page 14)

test pad locations for wind turbines and other technologies, and “no-build” or conservation management areas. The zones provided a framework for quantifying future activities and potential impacts, such as the amount of ground to be disturbed and the square footage of improvements. It also helped the program to plan for long-term priorities such as the capability to test one megawatt and larger wind turbines. Such an analysis will provide a guide for planning future projects and activities.

The benefits of enlisting an integrated site planning approach in the site-wide EA process will become more

apparent during the document’s five-year life expectancy and beyond. When site managers grapple with decisionmaking, the site-wide EA will be a resource to help determine which areas of the site are best suited for a proposed activity, what environmental sensitivities need to be considered, how a proposal compares with original plans, and what has changed on the site. Ultimately, the planners and managers who use this document to assess the environmental implications of site development initiatives will measure the success of this process. For further information, please contact me at roselle_drahushak_crow@nrel.gov or 303-275-4775. 

DOE Issues Information Quality Guidelines

DOE published its final guidelines to ensure and maximize the quality of information it disseminates to the public and to provide mechanisms for the public to request corrections to that information on October 7, 2002 (“Final Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines,” 67 FR 62446; also see *LLQR*, September 2002, page 18). DOE’s guidelines include provisions specific to NEPA as well as broader policies and procedures of interest to DOE’s NEPA Community. The DOE guidelines are required by the Office of Management and Budget (OMB) (67 FR 8452, February 22, 2002). The Council on Environmental Quality (CEQ) (67 FR 65354, October 24, 2002) also has published information quality guidelines that are relevant to DOE’s NEPA activities.

Congressional Direction

In section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Congress required OMB to build upon existing information quality provisions through guidelines “to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”

Section 515 requires each Federal agency subject to the Paperwork Reduction Act to issue agency-specific guidelines within one year of OMB’s government-wide guidance. Agencies’ guidelines are to “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the [OMB] guidelines.” On a fiscal year basis, beginning with the first report, which is due on January 1, 2004, each agency must report annually to the Director of OMB what complaints are received about information quality and how those complaints are handled.

OMB Guidelines

The OMB guidelines establish basic information quality requirements applicable to Federal agencies. Briefly summarized, the key OMB requirements are:

- adopt a basic standard of information quality as a performance goal and incorporate information quality criteria into their information dissemination practices,
- review and substantiate the quality of information before it is disseminated (applies to information first disseminated on or after October 1, 2002), and
- establish administrative mechanisms, including appeal procedures, allowing affected persons to obtain timely correction of information that does not

comply with OMB or agency guidelines (applies to information disseminated on or after October 1, 2002, regardless of when it was first disseminated).

Central to these provisions is OMB’s definition of information quality, determined by objectivity, utility, and integrity. An agency’s efforts to assure information quality should be commensurate with the nature and timeliness of the information, with some information being handled in a routine manner and so-called influential information being sufficiently transparent to be reproducible by qualified third parties. The OMB guidelines define “influential information” as information an “agency can reasonably determine” will have “a clear and substantial impact on important public policies and important private sector decisions.” However, the OMB guidelines authorize each agency to “define ‘influential’ in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.”

OMB Definitions

- **Objective** information is “accurate, reliable, and unbiased” and is presented in an “accurate, clear, complete, and unbiased” manner.
- **Utility** “refers to the usefulness of the information to its intended users, including the public.”
- **Integrity** is an indicator that the information has been protected from “unauthorized access or revision.”

OMB “encourages agencies to incorporate the standards and procedures required” by its guidelines “into their existing resources management and administrative practices rather than create new and potentially duplicative or contradictory processes.” OMB points to its Circular A-130, which outlines many procedural requirements aimed at ensuring effective dissemination of quality information. In compliance with the OMB circular and other Federal requirements, OMB reports that agencies “already have in place well-established information quality standards and administrative mechanisms that allow persons to seek and obtain correction of information” and that serve as the foundation for implementing the new requirements.

CEQ regulations implementing NEPA are one example of these pre-existing mechanisms. CEQ regulations require that information used in the NEPA process “must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA” (40 CFR §1500.1(b)).

continued on next page

Information Quality Guidelines *(continued from previous page)*

CEQ Guidelines

CEQ's information quality guidelines apply to its internal mechanisms for implementing the OMB guidance. The CEQ guidelines point out, though, that much of the information CEQ disseminates originates with other Federal agencies. Consequently, before disseminating information originating from or based on information from another Federal agency, "responsible CEQ staff will obtain a written statement from the agency submitting the information attesting that the information meets the agency of origin's information quality guidelines."

DOE Guidelines

DOE's information quality guidelines are modeled on the OMB guidelines, with modifications specific to DOE. For example, DOE included its own definition of "influential" that, when used in the "context of scientific, financial or statistical information," means information that is (1) subject to embargo because of potential market effects, (2) the "basis for a DOE action that may result in an annual effect on the economy of \$100 million or more," or (3) "designated by a DOE Element as 'influential.'"

Another definition unique to the DOE guidelines is the determination of when something is subject to public comment. While DOE has many mechanisms for soliciting public comment, for purposes of the information quality guidelines, information is only "subject to public comment" if its availability for comment has been published in the *Federal Register*. When public comment has been solicited through a *Federal Register* notice, any request for correction must be made as part of a comment that is filed during the public comment period. The guidelines also apply this use of the public comment period to all EISs and rulemaking notices. Otherwise, a

request for correction must be filed with the Office of the Chief Information Officer.

DOE's guidelines place several requirements on a request for correction. Among these requirements are that the request must (1) specifically identify the information and document(s) in question, (2) explain with specificity why the information is inconsistent with the DOE or OMB guidelines, (3) present substitute information, and (4) justify the necessity for the requested correction. The burden of justification for correcting the information falls upon the member of the public requesting correction.

Information Quality Guidelines on the Web

CEQ: www.whitehouse.gov/ceq

DOE: cio.doe.gov/informationquality

OMB: www.whitehouse.gov/omb/info/qigq_oct2002.pdf

DOE's guidelines state that, with regard to dissemination of information containing analyses of risks to human health, safety, and the environment, it is DOE policy to apply criteria adapted from the Safe Drinking Water Act Amendments of 1996. These criteria include: (1) using best-available peer-reviewed science and data collected by accepted methods; (2) presenting information that is comprehensive, informative, and understandable; and (3) specifying to the extent practicable: (a) the population addressed by any risk estimate, (b) the expected risk or central estimate of risk for the population addressed, (c) upper-bound or lower-bound estimate of risk, (d) significant uncertainties identified in the assessment of risk, and (e) peer-reviewed studies that support, are relevant to, or fail to support estimates of risks and the methodology used to reconcile inconsistencies in the scientific data.

For further information about DOE's guidelines contact Ms. Deborah Henderson, Office of the Chief Information Officer, at toby.henderson@hq.doe.gov or 202-586-5606.

Implications for NEPA Implementation

NEPA documents have always required high quality information, and DOE EISs and EAs are generally subject to public review. OMB notes in its guidelines that public review can help ensure information quality. Consequently, it is likely that compliance with NEPA generally will assure compliance with the new guidelines. **LL**

NEPA-Related Provisions of DOE Guidelines

- Challenges to information in a final EIS or a record of decision must be included in a petition for a supplemental EIS if the "petitioner asserts that [there] are significant new circumstances or information" to require a supplemental EIS per 40 CFR §1502.9(c)(1)(ii); otherwise, the concerned member of the public must raise questions about information in the final EIS through already established processes.
- For documents other than EISs and rulemaking notices that are not announced in the *Federal Register*, including most EAs, requests for correction must be directed to the Office of the Chief Information Officer.

DOE Sets Graded Approach for Biota Evaluations

In response to public and regulator interest, and reflecting an international trend away from using human radiation standards to assess ecological impacts for certain exposure scenarios, DOE has issued a final technical standard, "A Graded Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota" (DOE-STD-1153-2002). The standard is to be used for demonstrating compliance with DOE Order 5400.5, "Radiation Protection of the Public and the Environment," and is useful in the conduct of ecological risk assessments, including those prepared for NEPA documents.

"[The standard] provides users with a tiered approach for demonstrating compliance with biota dose rate guidelines that is cost-effective and easy to implement; it allows for the use of measured radionuclide concentrations in environmental media typically collected as part of DOE routine site environmental surveillance programs; it incorporates ecological risk assessment concepts; and it provides guidance for site-specific biota dose assessments where needed," wrote Andrew Lawrence,

Director of the Office of Environmental Policy and Guidance, in distributing the standard throughout the Department.

The technical standard establishes a screening process and provides "Biota Concentration Guides (BCGs)" for controlling impacts to biota. If needed, additional tiers of analysis provide users with methods to conduct a more rigorous dose assessment. Companion software, the RAD-BCG Calculator, facilitates the evaluation of site-specific data. The standard was developed by DOE's Biota Dose Assessment Committee (BDAC) and reflects responses to comments from headquarters and field Federal and contractor staff. Among the changes from the interim standard (*LLQR*, September 2000, page 7) are refinements of several screening values and the addition of specific implementation guidance on the evaluation of radiation as a stressor within ecological risk assessments.

The BDAC Web site provides the standard and related materials (<http://homer.ornl.gov/oeпа/public/bdac>). For further information contact Stephen Domotor at stephen.domotor@eh.doe.gov or 202-586-0871. 

Protected Species Report Issued

DOE's Office of Environmental Policy and Guidance has issued a report entitled, *Federally Protected Animal and Plant Species on DOE-Owned Lands*. The October 2002 report updates a similarly titled April 6, 2000, memorandum, which was the first attempt by DOE to document all Federally protected species observed on its sites.

The report includes information on the 16 DOE sites with verifiable sightings of Federally protected species and provides an inventory of protected species with photographs, brief ecosystem and habitat descriptions,

and a discussion of protective measures undertaken by DOE. It is available at <http://tis.eh.doe.gov/oeпа>.

The report may be useful to NEPA Document Managers as a supplemental resource on potentially affected, threatened, and endangered species. Document Managers also may need to consult with the U.S. Fish and Wildlife Service Endangered Species Program.

For further information, contact Mr. Lee Banicki at leroy.banicki@eh.doe.gov or 202-586-5193. 

Transportation Risk Assessment Handbook

The Transportation Risk Assessment Working Group, formed under DOE's National Transportation Program, recently distributed *A Resource Handbook on DOE Transportation Risk Assessment*.

Representatives from DOE's program offices, Office of General Counsel, several of the national laboratories, and contractors knowledgeable in risk assessment of transporting radiological waste and materials participated on the Working Group.

The handbook includes a review of the most frequently used routing and risk assessment models and methodology, along with a summary of current legal requirements and related DOE guidance. Discussions of technical factors important in developing risk estimates

for both routine and accident conditions are based on the collective experience of analysts having practical expertise in DOE transportation programs.

While providing information specifically useful to NEPA reviews, the handbook contains resource information applicable to transportation risk assessments in general. The National Transportation Program distributed the Handbook to NEPA Compliance Officers and other interested individuals in August 2002 and has made it accessible at www.ntp.doe.gov.

To request information on future updates or to suggest additional topics, contact: Ashok Kapoor, DOE Albuquerque Operations, at akapoor@doeal.gov or (505) 845-4574. 

Workshop on Energy Right-of-Way Permitting Highlights Interagency Agreement

The White House Task Force on Energy Project Streamlining held a two-day workshop in October 2002 on “Energy Right-of Way Permitting: Federal Land Procedures and Streamlining Initiatives” at the Bureau of Land Management’s Training Center in Tucson, Arizona. The aim was to exchange information among Federal agencies, electric industries, and environmental interest groups on Federal permitting requirements and seek ways to expedite natural gas, oil, and electricity proposals.

Workshop discussion highlighted the interagency agreement, signed by ten Federal agencies including DOE, on early coordination of environmental and historic preservation reviews for interstate natural gas pipelines certificated by the Federal Energy Regulatory Commission (FERC). The May 2002 agreement was followed by development of a draft implementation plan, explained Richard Hoffmann, Director, Division of Environmental and Engineering Review, Office of Energy Projects, FERC. The agreement is consistent with the goals of Executive Order 13212 on expediting energy-related projects (related text box, page 6). The ten agencies have agreed to initiate discussions earlier in the permitting process and to perform simultaneous rather than concurrent reviews. The agreement also serves as a vehicle to explore the agencies’ willingness to implement FERC’s new NEPA Pre-Filing Process (see *LLQR*, September 2001, page 12) and can serve as a model for other types of energy projects. The agreement is available at www.etf.energy.gov.

Ellen Russell, DOE NEPA Document Manager and Associate Deputy Director for Electric Power Regulation in the Office of Fossil Energy (FE), led a panel discussion on processing electric transmission line applications, with a focus on international transmission facilities that require a Presidential Permit from DOE. Panel members included Tony Como, FE’s Director for Electric Power Regulation; a representative of the Public Service Company of New Mexico, which is seeking a Presidential Permit from DOE for transmission facilities across the Arizona-Mexico border; and a member of the Arizona Corporation Commission, which has state siting authority. (See *LLQR*, September 1999, page 1, for additional information on the NEPA process for the Arizona project.) These and others at the Workshop spoke of the important coordination and planning role that the NEPA process can play in permitting actions.

In providing an overview of the National Environmental Policy Act (“NEPA 101”), Dinah Bear, General Counsel, Council on Environmental Quality, pointed to the “least used provision” of the CEQ regulations implementing NEPA (40 CFR §1501.8(a)) under which applicants could require Federal agencies to establish a schedule for an EIS.

For further information on the Workshop, contact Carolyn Osborne, Office of NEPA Policy and Compliance, at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Transitions Energy Efficiency and Renewable Energy

Gary T. Staffo, Energy Efficiency and Renewable Energy (EERE) Safety and Occupational Health Manager, now also serves as acting NEPA Compliance Officer (NCO). As the principal technical expert and policy advisor to senior management on safety and health issues, he has represented EERE on various DOE and external working groups, boards, and committees. Before joining DOE in 1994, he was the first civilian Safety and Environmental Health Officer for the National Science Foundation’s U.S. Antarctic Program (USAP), where he managed many environmental improvement actions, including an update of the USAP EIS. Mr. Staffo can be reached at gary.staffo@ee.doe.gov or 202-586-9577.

The former NCO, Othalene Lawrence, has taken a new EERE position as Technical Manager in the Office of Industrial Technology Programs. 

Online Access to DOE NEPA Documents Extended to Governmental Officials

The Office of NEPA Policy and Compliance is providing governmental officials access to documents on the DOE NEPA Web. Governmental officials (including Federal, state, local, and tribal officials) may request a password account to access all of the NEPA documents on this Web site by completing the electronic form at tis.eh.doe.gov/nepa (then go to “DOE NEPA Documents”). For information on DOE’s NEPA Document Access System, implemented in November 2001 in response to security concerns, see *LLQR*, June 2002, page 5. If you have any questions, please contact Denise Freeman, Webmaster, at denise.freeman@eh.doe.gov or 202-586-7879. 



Litigation Updates

DOE Sued to Prevent Shutdown of Fast Flux Test Facility

Benton County, Washington, has sued DOE in the U.S. District Court for the Eastern District of Washington, alleging that DOE violated NEPA by not analyzing the impacts of decontaminating and decommissioning (D&D) the Hanford Reservation's Fast Flux Test Facility (FFTF), a 400-megawatt nuclear test reactor that has been in standby status since 1992. Benton County has been a strong supporter of restarting FFTF, in part because of its potential usefulness in making medical isotopes for cancer research and contributing employment and revenue for the local economy.

In May 1995, the Department issued an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) with respect to the shutdown of FFTF. This analysis covered the impacts from deactivation but not final D&D. DOE subsequently included the shutdown of FFTF as one of the alternatives it considered in its *Programmatic EIS for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of FFTF* (DOE/EIS-0310, December 2000). After completion of the Programmatic EIS, Secretary of Energy Bill Richardson issued a record of decision that included deactivation of FFTF (66 FR 7877; January 26, 2001). The decision to deactivate was later reviewed and affirmed by

Secretary Spencer Abraham. As part of that deactivation, DOE's Richland Operations Office was scheduled to begin draining the liquid sodium on November 11, 2002, which would have precluded restarting the reactor.

On November 8, 2002, Benton County filed its suit to stay the sodium extraction. The complaint alleges that DOE violated NEPA by failing to prepare an EIS that addressed all three phases of the shutdown of FFTF, and that DOE's failure to conduct NEPA analysis of D&D constitutes improper segmentation. Benton County also takes issue with the fact that responsibility for the D&D of FFTF had been transferred from DOE's Office of Nuclear Energy to the Office of Environmental Management, and that DOE's contractor, Fluor Hanford, had proposed an accelerated D&D program to be integrated with deactivation. Benton County alleges that DOE has gone beyond deactivation (that is, has begun decommissioning) before conducting appropriate NEPA analysis. After initially agreeing to a two-week delay, DOE has now agreed to halt any deactivation work until March 12, 2003, while the parties file court papers and present oral argument to the Court. *LLQR* will provide additional information as this litigation progresses.

Yucca Litigation Consolidated; Schedule Announced

The U.S. Circuit Court of Appeals for the District of Columbia Circuit has consolidated lawsuits filed by the State of Nevada regarding Yucca Mountain, including petitions for review of the Department's EIS, site suitability guidelines (10 CFR Part 963), and the Secretary's recommendation of the Yucca Mountain site to the President and the President's subsequent recommendation of the site to Congress (see *LLQR*, March 2002, page 19). Separately, the Court is also considering State of Nevada lawsuits challenging

regulatory standards for Yucca Mountain issued by the Environmental Protection Agency (40 CFR Part 197) and the Nuclear Regulatory Commission (10 CFR Part 63). Under the Court's schedule, the State of Nevada's brief is due on December 2, 2002, DOE's response to Nevada's brief is due February 14, 2003, and the State's reply brief is due on April 29, 2003. Oral argument of the DOE case is scheduled for September 2003.

continued on next page

Litigation Updates *(continued from previous page)*

South Carolina Governor Appeals Court Decision to the Supreme Court

On October 3, 2002, South Carolina Governor Jim Hodges petitioned the Supreme Court to review the August 6, 2002, decision by the U.S. Court of Appeals for the Fourth Circuit upholding a lower court decision in support of DOE's plans to implement its plutonium disposition program. (See "Appeals Court Upholds DOE in South Carolina Plutonium Disposition Challenge," *LLQR*, September 2002, page 19.) Governor Hodges was attempting to stop the shipment of plutonium from the Rocky Flats Environmental Technology Site (RFETS) to the Savannah River Site (SRS) for long-term storage pending final disposition.

In his petition to the Supreme Court, Governor Hodges restates his claims from the original lawsuit and appeal that the changes to the surplus plutonium disposition record of decision announced by DOE in April had not undergone sufficient NEPA review. (See "South Carolina Sues to Stop Plutonium Shipments to Savannah River Site," *LLQR*, June 2002, page 13.) Following the August 6 ruling by the Court of Appeals, DOE commenced shipping plutonium from RFETS to SRS; the shipping campaign will take several months to complete. The Department's reply to the petition is due by December 9, 2002.

Other Agency NEPA Cases

Navy Sued over Sonar Projects

A coalition of environmental groups led by the Natural Resources Defense Council (NRDC) sued the U.S. Navy in September 2001 to require the Navy to prepare a programmatic EIS on its Littoral Warfare Advanced Development (LWAD) activities. LWAD tests a variety of technologies including sonar systems, some of which have been shown to cause injury and death to whales, dolphins, seals, and other marine mammals. NRDC claimed that LWAD violates NEPA, the Administrative Procedure Act, Marine Mammal Protection Act, Endangered Species Act, and Magnusen-Stevens Fishery Conservation and Management Act.

The Navy sought dismissal of the case, claiming in part that NEPA does not apply to government actions in the "exclusive economic zone" of the ocean, the region from 3 to 200 miles offshore. In an order entered on September 19, 2002, the Federal District Court (Central District of California, Western Division) found that NEPA does apply to LWAD activities in the offshore exclusive economic zone, but that the program, as distinct from its component parts, is not subject to programmatic challenge under NEPA or the Endangered Species Act. The plaintiffs are considering pursuit of NEPA claims related to individual LWAD tests.

NRDC is also lead plaintiff in another NEPA-related lawsuit filed in August 2002 against the Navy and the National Marine Fisheries Service. This suit seeks to block peacetime training, testing, and routine operations

of a new Navy sonar system, known as Surveillance Towed Array Sensor System Low Frequency Active (LFA) sonar, which uses loud, low-frequency sound to detect submarines at great distances. The plaintiffs claimed that the project violates the Marine Mammal Protection Act, Endangered Species Act, and NEPA.

The Federal District Court (Northern District of California) found on October 31 that the plaintiffs are likely to prevail in showing irreparable injury to marine mammals and a future violation of the Endangered Species Act, and on their NEPA claim. Considering the public interest in both national security and in protecting marine mammals and endangered species, the Court instructed plaintiffs and defendants to negotiate precise terms of a preliminary injunction that will permit use of the low-frequency sonar for testing and training in a variety of ocean conditions but provide additional safeguards to reduce the risk to marine mammals and endangered species.

The parties entered into Court-ordered mediation and arrived at a settlement over the scope of the preliminary injunction. Under that settlement, as stipulated by the Court on November 15, testing of the LFA system while the case is pending will be confined to a discreet area of ocean east of Japan and northeast of the Philippines. A hearing on the merits of the arguments is scheduled for June 2003.

LLQR will continue to provide updates on these cases. 

New DOE-wide NEPA Contracts Awarded

By: David A. Gallegos, *DOE-wide NEPA Contract Administrator*

The Albuquerque Operations Office has awarded six indefinite delivery/indefinite quantity (task order), five-year contracts for DOE-wide NEPA support services, including preparation and review of EISs, EAs, environmental reports, and other documentation required by the Nuclear Regulatory Commission and other environmental tasks (such as wetland assessments). The new contracts, which replace four contracts issued starting in June 1997, are designed to provide DOE Program and Field Offices, including the National Nuclear Security Administration (NNSA) and Federal Energy Regulatory Commission (FERC), with high-quality NEPA document support on short notice. The contracts promote a faster and less expensive NEPA process and provide for timely start of work, cost saving incentives, and performance incentives.

Contracts under full and open competition were awarded on September 24, 2002, to:

Battelle Memorial Institute
Program Manager: Lucinda Low Swartz
swartzl@battelle.org, 301-933-4668

Jason Associates Corporation
Program Manager: Ernie Harr
eharr@jason.com, 301-432-4414

Science Applications International Corporation
Program Manager: Patricia Wherley
wherleyp@saic.com, 301-353-8346

Tetra Tech, Inc.
Program Manager: Thomas Magette
thomas.magette@tetrattech.com, 703-931-9301

Two small business contracts were awarded on November 5, 2002, to:

AGEISS Environmental, Inc.
Program Manager: Jeffrey B. Lawrence
jeffl@ageiss.com, 303-674-7819

Potomac-Hudson Engineering, Inc.
Program Manager: David C. McGaw
dave@phe.com, 301-907-9078

The contracts awarded to small businesses are identical in scope to those awarded under full and open competition.

The proposals were evaluated against identical criteria, and the Source Evaluation Team is confident that these small businesses are capable of performing all elements of the statement of work.

The DOE Office of NEPA Policy and Compliance will soon distribute a revised "Brief Guide: DOE-wide Contracts for NEPA Documentation" (guidance last revised in August 1998) and add a contracting module to the DOE NEPA Web. For additional information, contact David Gallegos, NNSA Albuquerque Operations Office, at dgallegos@doeal.gov or 505-845-5849.

LLQR has reported on the DOE-wide NEPA contracts in almost every issue since the first set of contracts were issued in June 1997. For a listing of articles on the contracts or of tasks issued, see the cumulative index, September 2002, page 29. LL

Thanks for a Job Well Done

On behalf of DOE's NEPA Community, Beverly Cook, Assistant Secretary for Environment, Safety and Health, recently expressed appreciation for the important work done by DOE staff in the timely award of the new NEPA contracts. In memoranda to the heads of their organizations, she recognized: Andrew Grainger, Savannah River Operations Office, chair of the Source Evaluation Team; Hitesh Nigam, NNSA, and William (Skip) Harrell, Albuquerque Operations Office, team members; and Gary Gilliland and Anh Nguyen, Albuquerque Operations Office, advisors to the team on cost/price and legal matters, respectively. She also recognized the significant contributions of David Gallegos in administering the contracts and organizing and overseeing the recent procurements.

Assistant Secretary Cook emphasized that the contracts are a key component of continuing efforts to make the DOE NEPA process more cost-effective and efficient. As a result of the staff's activities, she said, DOE Program and Field Offices nationwide, including NNSA and FERC Offices, "will continue to enjoy access to excellent contractors capable of performing a wide range of NEPA document support tasks on short notice."

A Seat at the Table: Sharing Information with NEPA Contractors

The Savannah River Operations Office NEPA Compliance Officer (NCO), Drew Grainger, invites representatives of firms holding the DOE-wide contracts to monthly meetings of the Operations Office and management and operating contractor NEPA staffs. These meetings are intended to review ongoing NEPA actions, keep everyone current on plans and upcoming NEPA reviews, and share lessons learned. In the NCO's view, these meetings have helped both the contractors and the Savannah River Operations Office.

Training Opportunities

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

- **Clear Writing for NEPA Specialists**
Utah State University: December 9-11
Philadelphia, PA: January 21-23, 2003
Las Vegas, NV: February 12-14, 2003
Fee: \$795
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Jacksonville, FL: December 10-13
Salt Lake City, UT: December 10-13
Las Vegas, NV: January 14-17, 2003
Boise, ID: February 25-28, 2003
Fee: \$995
- **Project Management for NEPA Specialists**
Utah State University: December 12-13
Las Vegas, NV: February 10-11, 2003
Fee: \$495
- **Cumulative Impact Analysis and Documentation**
Albuquerque, NM: January 15-16, 2003
Utah State University: February 6-7, 2003
Fee: \$595
- **Cultural and Natural Resource Management**
Las Vegas, NV: January 28-29, 2003
Portland, OR: March 11-12, 2003
Fee: \$595
- **Overview of the NEPA Process**
Boise, ID: March 4, 2003
Fee: \$195
- **Reviewing NEPA Documents**
Boise, ID: March 5-7, 2003
Fee: \$795

The Shipley Group
Phone: 888-270-2157 or 801-298-7800
ben@shipleygroup.com
www.shipleygroup.com
- **Accounting for Cumulative Effects in the NEPA Process**
Durham, NC: February 5-7, 2003
Fee: \$670 (\$750 after January 6)

Nicholas School of the Environment and Earth Sciences
Levine Science Research Center
Duke University
919-613-8063
sea3@duke.edu
www.env.duke.edu/cee/execed.html
- **NEPA One-Day Workshop**
Monterey, CA: March 28, 2003
Fee: \$205

University of California Extension
740 Front Street, Suite 155
Santa Cruz, CA 95060
408-427-6600
(Offered by TetraTech through UC Extension)
nepaclass@ttsfo.com
www.ttsfo.com/services/nepa/class.htm
- **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 from other agencies. Services are available to Federal agencies through GSA Contract No. GS-10F-0163L (899-3).

Environmental Training & Consulting International Inc.
Phone: 720-859-0380
info@envirotrain.com
www.envirotrain.com

EAs and EISs Completed, July 1 to September 30, 2002

EAs

Albuquerque Operations Office

DOE/EA-1408 (8/7/02)

Flood Retention Structure Disposition, Los Alamos, New Mexico

Cost: \$195,000

Time: 12 months

DOE/EA-1409 (7/30/02)

Natural Gas Line, Los Alamos, New Mexico

Time: 11 months

[**Note:** The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

DOE/EA-1429 (8/23/02)

Proposed Access Control and Traffic Improvements at Los Alamos National Laboratory, Los Alamos, New Mexico

Cost: \$114,000

Time: 5 months

Golden Field Office

DOE/EA-1396 (8/27/02)

Exergy/Americulture Field Verification of a Small-Scale Geothermal Plant, New Mexico

Cost: \$82,000

Time: 19 months

Grand Junction Project Office/Environmental Management

DOE/EA-1399 (8/13/02)

Groundwater Compliance at Gunnison, Colorado

Cost: \$12,600

Time: 14 months

Idaho Operations Office/Environmental Management

DOE/EA-1448 (9/20/02)

Big Lost River – 8 Trenching Project at Idaho National Engineering and Environmental Laboratory, Idaho Falls, Idaho

Cost: \$11,000

Time: 2 months

Nuclear Energy, Science and Technology

DOE/EA-1438 (8/30/02)

Relocation of the Heat Source/Radioisotope Power System Assembly and Test Operations from the Mound Site, Miamisburg, Ohio

Cost: \$156,000

Time: 3 months

Oakland Operations Office/National Nuclear Security Administration – Defense Programs

DOE/EA-1439 (9/25/02)

East Avenue Security Upgrade at Lawrence Livermore National Laboratory, Livermore, California

Cost: \$40,000

Time: 4 months

Oak Ridge Operations Office/Environmental Management

DOE/EA-1317 (8/27/02)

Transportation of Low-Level Radioactive Mixed Waste from the Oak Ridge Reservation to Offsite Treatment or Disposal Facilities, Oak Ridge, Tennessee

Cost: \$75,000

Time: 44 months

DOE/EA-1414 (8/6/02)

Implementation of the Authorized Limits Process for Waste Acceptance at the C-746-U Landfill, Paducah Gaseous Diffusion Plant, Paducah, Kentucky

Cost: \$76,000

Time: 23 months

Office of Science

DOE/EA-1384 (7/13/02)

Proposed Improvements to the Thomas Jefferson National Accelerator Facility, Newport News, Virginia

Cost: \$78,000

Time: 17 months

Western Area Power Administration

DOE/EA-1450 (8/29/02)

Blythe Energy Project Site Expansion, Blythe, California

Time: 6 months

[**Note:** The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

continued on next page

EAs and EISs Completed, July 1 to September 30, 2002

(continued from previous page)

EISs

Albuquerque Operations Office/National Nuclear Security Administration – Defense Programs

DOE/EIS-0319 (67 FR 59284, 9/20/02)

(EPA Rating: EC-2)

*Proposed Relocation of Technical Area 18
Capabilities and Materials at Los Alamos National
Laboratory, Los Alamos, New Mexico*

Cost: \$2,200,000

Time: 29 months

Bonneville Power Administration

DOE/EIS-0330 (67 FR 53581, 8/16/02)

(EPA Rating: EC-2)

*Walla Walla Power Project, Walla Walla County,
Washington*

Time: 17 months

[**Note:** The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.]

DOE/EIS-0332 (67 FR 55838, 8/30/02)

(EPA Rating: EC-2)

*McNary-John Day Transmission Line Project, Oregon
and Washington*

Time: 15 months

[**Note:** The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.]

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost of 12 EAs, excluding 2 EAs for which costs were paid for by the applicant, was \$77,000; the average was \$84,000.
- Cumulatively, for the 12 months that ended September 30, 2002, the median cost for the preparation of 27 EAs excluding 7 EAs for which costs were paid for by the applicant, was \$77,000; the average was \$80,000.
- For this quarter, the median completion time of 12 EAs was 12 months; the average was 13 months.
- Cumulatively, for the 12 months that ended September 30, 2002, the median completion time for 27 EAs was 11 months; the average was 13 months.

EIS Costs and Completion Times

- For this quarter, the median completion time of three EISs was 17 months; the average was 20 months.
- Cumulatively, for the 12 months that ended September 30, 2002, the median cost for the preparation of the 3 EISs for which cost data are appropriate was \$2.2 million. The average cost was \$2.1 million.
- Cumulatively, for the 12 months that ended September 30, 2002, the median completion time for 6 EISs was 23 months; the average was 25 months.

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

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

Recent EIS-Related Milestones (September 1 to November 30, 2002)

Notice of Intent

National Nuclear Security Administration – Defense Programs

DOE/EIS-0236-S2

Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility
September 2002 (67 FR 59577, 9/23/02)

Draft EIS

Western Area Power Administration

DOE/EIS-0323

Sacramento Area Voltage Support Project
November 2002 (67 FR 69216, 11/15/02)

Final EISs

Idaho Operations Office/Environmental Management

DOE/EIS-0287

Idaho High-Level Waste and Facilities Disposition
October 2002 (67 FR 63421, 10/11/02)

Office of Civilian Radioactive Waste Management

DOE/EIS-0250

Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada
October 2002 (67 FR 65539, 10/25/02)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Cliffs Energy Project
September 2002 (67 FR 59498, 9/23/02)

DOE/EIS-0324

Umatilla Generating Project
October 2002 (67 FR 62704, 10/8/02)

DOE/EIS-0332

McNary-John Day Transmission Line Project
November 2002 (67 FR 68112, 11/8/02)

Environmental Management

DOE/EIS-0200

Revised Record of Decision, Waste Management Program: Treatment and Storage of Transuranic Waste
September 2002 (67 FR 56989, 9/6/02)

DOE/EIS-0026-S2

Amended Record of Decision, Disposal of Certain Rocky Flats Plutonium-Bearing Materials at the Waste Isolation Pilot Plant
November 2002 (67 FR 69512, 11/18/02)

Western Area Power Administration

DOE/EIS-0352

Modification and Construction of Transmission Lines for the U.S. 93 Hoover Dam Bypass Project
October 2002 (67 FR 61619, 10/1/02)

Supplement Analyses

Bonneville Power Administration

Yakima/Klickitat Fisheries Project (DOE/EIS-0169)

DOE/EIS-0169/SA-5

Yakima/Klickitat Fisheries Project Hatchery Control Line
(Decision: No further NEPA review required)
September 2002

Business Plan (DOE/EIS-0183)

DOE/EIS-0183/SA-5

Boise Diversion Dam - Amendment to Capital Investment Sub-Agreement, Contract Number DE-MS79-94BP94618
(Decision: No further NEPA review required)
October 2002

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246/SA-29

Blue Creek Winter Range - Spokane Reservation (Acquisition of Smith and Parsons Properties)
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0246/SA-30

Horkley Property Fee Simple Acquisition
(Decision: No further NEPA review required)
October 2002

continued on next page

Recent EIS-Related Milestones (continued from previous page)

DOE/EIS-0246/SA-31
Allen Property Fee Simple Acquisition
(Decision: No further NEPA review required)
October 2002

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265/SA-90
Naches River Water Treatment Plant Intake Screening Project
(Decision: No further NEPA review required)
September 2002

DOE/EIS-0265/SA-91
Hood River Fish Habitat (Evans Creek Culvert Replacement)
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-92
Asotin Creek Six-Year Direct Seed Program
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-93
Couse/Tenmile Creeks Six-Year Direct Seed Program
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-94
Yakima Basin Side Channels Project, Browitt Property Acquisition
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-95
Libby Creek Channel Stabilization Project
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-96
Grave Creek Stabilization Project
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-97
Couse and Tenmile Creeks Riparian Restoration Program
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0265/SA-98
Hood River Habitat Project
(Decision: No further NEPA review required)
November 2002

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

DOE/EIS-0285/SA-106
Vegetation Management along the SnoKing Tap to the Monroe-Samamish Transmission Line from Structure 8/1 through Structure 20/6
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0285/SA-110
Vegetation Management along the Covington-Columbia No.3, 230kV Transmission Lines from Structure 1/1 through 12/1
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0285/SA-111
Vegetation Management for the Fairview-Bandon #1, Fairview-Bandon #2, and Fairview-Rogue #1 Transmission Lines
(Decision: No further NEPA review required)
September 2002

DOE/EIS-0285/SA-112
Vegetation Management for Portions of the Ross-Alcoa Transmission Lines 230kV and 115kV and Bonneville-Alcoa 115kV
(Decision: No further NEPA review required)
October 2002

DOE/EIS-0285/SA-113
Remedial Management for Keeping Vegetation a Safe Distance from Electric Power Facilities and Controlling Noxious Weeds Near the Big Eddy-Ostrander Transmission Corridor
(Decision: No further NEPA review required)
October 2002

Mid-Columbia Coho Reintroduction Feasibility Project (DOE/EA-1282)

DOE/EA-1282/SA-3
Artificial Production of Coho Salmon in the Wenatchee and Methow Rivers by BPA and the Yakima Nation
(Decision: No further NEPA review required)
November 2002

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 July 1 and September 30, 2002.

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.

Data Collection/Analysis

What Worked

- *Additional data collection during a public comment period.* Additional archeological data collection during the public comment period on the EA helped DOE reach a memorandum of agreement with the State Historic Preservation Officer.

Scoping

What Worked

- *Use of a site screening report.* A site report was prepared prior to the start of the NEPA process to determine reasonable alternative sites for the proposed action.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Experienced personnel.* An experienced NEPA document manager and contractor team facilitated timely completion of the EIS.
- *Cooperation and efficiency.* Good cooperation between DOE and contractors at the site, combined with quick turnaround on document reviews and comment resolutions, facilitated timely completion of the EA.
- *Document preparation by DOE employees.* The EA was prepared by DOE employees with broad support from management, with a deadline for EA completion set by the document manager.
- *An interagency memorandum of agreement.* A memorandum of agreement, developed to address impacts to a historic site, facilitated timely completion of the EA.

- *Agency coordination.* Regular coordination with the joint lead agency facilitated timely completion of the EIS.
- *An abbreviated Final EIS.* Use of an abbreviated Final EIS, containing only text changes and comment responses, reduced document handling and review time, facilitating timely completion of the EIS. [Note: See 40 CFR §1503.4(c) for applicable requirements.]

Factors that Inhibited Timely Completion

- *Missing information.* Lack of design information for the alternatives made timely completion of the EIS difficult.
- *Problems with other agency consultation.* A biological opinion from the U.S. Fish and Wildlife Service needed to be amended, and issues related to a dump site that is eligible for the National Register of Historic Places needed to be resolved before completion of the EA process.
- *Competing staff priorities.* Staff working on the EA had other responsibilities that caused delays at times, but additional funds were not provided for the NEPA analysis.
- *Distance between the project site and the Operations Office.* The distance between the DOE Operations Office and the site of the proposed action delayed incorporation of comments on the EA.
- *Changing circumstances.* Rapidly changing conditions in the energy market caused changes in the project proposal, which slowed completion of the EIS.
- *Coordinating with a State agency.* Meeting the requirements of a State agency as joint lead on the EIS made timely completion difficult.
- *Late comments.* Late comments on the Draft EIS from other agencies slowed completion.

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What Worked and Didn't Work in the NEPA Process

(continued from previous page)

Teamwork

Factors that Facilitated Effective Teamwork

- *A motivated staff.* The NEPA Compliance Officer served as the document manager and used an interdisciplinary staff who were very interested in the subject of the EA and the environmental issues addressed.
- *Ease of contractor procurement.* The ease of procuring a contractor for the EIS facilitated teamwork.

Factors that Inhibited Effective Teamwork

- *Premature applicant actions.* The applicant did not consult with DOE before conducting tests within a historic dump site, and the tests were later determined to have an adverse effect on the site.
- *Moving offices during the project.* Moving all the project engineers, GIS personnel, and maps to a different building half way through the project detracted from teamwork.

Process

Successful Aspects of the Public Participation Process

- *E-mailed comments.* Using electronic mail for comment submittal was a successful strategy.
- *Use of business reply postcards.* Business reply postcards were mailed to a stakeholder mailing list; subsequently, there no public comments concerning lack of notification or opportunity for involvement.
- *One-on-one meetings.* Open house public meetings followed by one-on-one meetings with people on their affected properties helped DOE understand public concerns.

Unsuccessful Aspects of the Public Participation Process

- *Misunderstanding of the consultation process.* The local tribal group did not fully understand what Federal agencies are required to do and have latitude to do on Federal lands, and were strongly displeased with a strict interpretation of "consultation" under the National Historic Preservation Act.
- *Relying on another agency's procedures.* DOE relied on an involved state agency to carry out the public participation process, and they may not have solicited input from all affected parties, including interested tribes.

Usefulness

Agency Planning and Decisionmaking – What Worked

- *Affecting the choice of alternatives.* We actually changed the preferred alternative through the EIS process.
- *Solving related problems.* The proposed action had been delayed by difficulties in resolving consultation under the National Historic Preservation Act. The EA became the basis for consultation and negotiation among DOE, affected tribes, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation.
- *Identifying significant impacts.* The EA was used to inform the decisionmaker whether there would be a significant impact to cultural resources that could not be mitigated.
- *Addressing changes in an approved action.* A change was made in an action previously found to have no significant impacts; a new EA was prepared to address the change and ensure that the previous conclusions about impacts were still valid.
- *Helping control project costs.* The NEPA process helped identify the most cost effective alternative for the proposed action.

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What Worked and Didn't Work in the NEPA Process

(continued from previous page)

- *Identifying the alternative with the lowest impacts.* The EIS process helped identify the alternative with the lowest impacts, avoid conflicts with landowners, and identify mitigation measures to further reduce impacts.

Enhancement/Protection of the Environment

- *Incorporation of mitigation measures in the EA.* The EA incorporated archeological surveys and avoidance of sensitive areas as mitigation; monitoring found that no cultural materials were observed in the area where the proposed action was carried out.
- *Protection of natural and historic resources.* As a result of the NEPA process, DOE will contribute to a habitat mitigation bank for the endangered desert tortoise, and a historic site will be protected.
- *Avoiding potential impacts.* The route of an electrical transmission line was altered to avoid potentially significant impacts identified through the EIS process.
- *Highlighting potential cumulative impacts.* A cumulative analysis of air quality impacts has highlighted a regional haze issue in a sensitive area, and spurred the need for a meeting of various agencies to discuss potential solutions to the problem.

Other Issues

- *Guidance need identified.* There is a need for guidance on addressing sabotage and terrorism issues in DOE NEPA documents. [Note: Attachment 1 to *Recommendations for Analyzing Accidents under the National Environmental Policy Act*, July 2002, provides such guidance. The NEPA Office is considering the need for further guidance.]

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 this quarter, in which there were 12 EAs and 3 EISs, 6 out of 7 respondents rated the NEPA process as “effective.”
- A respondent who rated the process as “3” stated that the project applicant viewed the process as just another permit needed before they could begin the proposed action.
- One respondent who rated the process as “4” stated that NEPA helped the decisionmaker focus on the relevant factors needed to make a quality decision.
- A respondent who rated the process as “1” concluded that decisions usually have already been made before the NEPA process is completed. LL



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

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

March 3, 2003; Issue No. 34

First Quarter FY 2003

New DOE Order Focuses on EMS, Supports Basic NEPA Principles

A new DOE Order aims to embed environmental principles more fully into the Department's day-to-day activities. DOE Order 450.1, Environmental Protection Program, issued January 15, 2003, requires DOE sites and facilities to implement an Environmental Management System (EMS) as part of their existing Integrated Safety Management System (ISMS).

The Order emphasizes many principles long championed by the NEPA community, including systematic planning, early identification of potential adverse environmental impacts, and mitigation to reduce the consequences of unavoidable impacts.

"If you have an EMS in place, it can help your performance under NEPA," said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), at a February 2003 DOE workshop on the new Order. A vibrant EMS gives you a

wealth of information that informs the NEPA process, he explained.

Mr. Greczmiel told the workshop audience that the CEQ NEPA Task Force, which he directs, has looked at ways EMS could improve NEPA implementation. An EMS can improve relations with local communities, especially with regulators, who appreciate the Federal effort to address environmental issues systematically, he said. Another benefit of an EMS, he noted, is that it can provide methods for following up NEPA's predictive analysis.



"DOE has long been a leader in the EMS field," said the Federal Environmental Executive, John Howard, at the DOE workshop.

continued on page 3

Few Comments Received on Proposed Floodplain / Wetlands Rule Changes

DOE is evaluating the three sets of public comments received – from a state government, a county government, and a member of the public – on the changes it proposed to its regulations for environmental review of actions in a floodplain or wetland. Revisions to 10 CFR Part 1022, *Compliance with Floodplain/Wetlands Environmental Review Requirements*, were proposed on November 18, 2002 (67 FR 69487), with a public comment period ending January 17, 2003. The revisions would streamline requirements (e.g., reduce the number of required assessments through new exemptions, emphasize publication of notices locally rather than through the

Federal Register), and add no new requirements. (See *LLQR*, December 2002, page 3.)

Commenters generally supported the proposed changes, but one commenter objected to streamlining on the grounds that it would make it easier to sabotage environmental protection. Other comments emphasized the need for DOE to ensure compliance with the full suite of Federal and state laws applicable to its proposed actions, underscored the importance of distributing notices and other information related to floodplain and

continued on next page

Inside *LESSONS LEARNED*

Welcome to the 34th quarterly report on lessons learned in the NEPA process. We are pleased to feature the synergy between NEPA and the new DOE Order 450.1, Environmental Protection Program. Thank you for your continuing support of the Lessons Learned program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by May 1, 2003. Contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2003

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2003 (January 1 through March 31, 2003) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa under 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 at tis.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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China Promulgates Environmental Impact Assessment Law

The Ninth National People's Congress, China's legislature, has passed a Law on Environmental Impact Assessment (EIA), which will become effective September 1, 2003. Its passage establishes a national framework for environmental compliance and encourages public participation in the EIA process. The law addresses the preparation of EIAs to support land use, development, and construction project plans.

Documentation specified under the law ranges from an environmental impact registration form for projects with small potential impacts to a comprehensive analysis for projects with potentially major environmental impacts. Air and water pollution prevention and control provisions also are incorporated into this law.

In developing this law, high-level Chinese officials in October 2000 conducted a study tour of EIA practices in the United States, hosted by the U.S. Environmental Protection Agency. Eric Cohen, Office of NEPA Policy and Compliance, briefed the Chinese delegation on aspects of DOE's NEPA program in which the delegation had expressed interest, including public participation, use of programmatic NEPA documents, tracking mitigation commitments, and analyzing cumulative

impacts. Chinese officials stated that these were areas of weakness to be addressed in the new law.

The new law is announced on the Web site of the United Nations Environment Programme, International Environmental Technology Centre, at www.unep.or.jp/ietc/announcements/EIA_China.asp. 

Few Comments Received

(continued from page 1)

wetland environmental reviews to all interested parties, and requested clarification of the exemptions and of certain terms within the rule.

The Office of NEPA Policy and Compliance is preparing the final rulemaking package, including a preamble that responds to public comments. The NEPA Office plans to have the final rule ready for Department-wide concurrence in March, with publication in late spring. The rule would become effective 30 days after publication. DOE initially promulgated 10 CFR Part 1022 in 1979. For more information contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

New DOE Order Focuses on EMS

(continued from page 1)

In a later panel discussion of EMS experiences at DOE, Teresa Perkins, Director, Environmental Technical Support Division, Idaho Operations Office, agreed that EMS helps with follow up of NEPA commitments. (Also see *LLQR*, September 2002, pages 1 and 8.)

EMS Well-Established at DOE

“EMS is not something new to you,” Beverly Cook, Assistant Secretary for Environment, Safety and Health, told DOE and contractor personnel gathered at the Forrestal Building in Washington, DC, and participating

An EMS is a continuing cycle of planning, implementing, evaluating, and improving processes and actions undertaken to achieve environmental goals.

remotely from 28 DOE sites. DOE has been involved with EMS for several years, and both DOE headquarters and field offices have contributed to its growth. EMSs at

nine DOE sites either have been certified for conformance with the ISO 14001 international environmental management system standard or have been recognized by the Environmental Protection Agency’s (EPA’s) National Environmental Performance Track program.

John Howard, the Federal Environmental Executive, applauded DOE’s performance in being among the first Federal agencies to implement EMS both at local sites and as Departmental policy. He further congratulated the Department for integrating EMS with safety, health, and security programs. (The position of the Federal Environmental Executive was created in 1993 by Executive Order 12873 to help the President promote recycling and waste prevention among Federal agencies. Today, the Office has evolved its mission to promoting sustainable environmental stewardship throughout the Federal government.)

DOE Order 450.1 strives to implement sound stewardship practices:

- that are protective of the air, water, land, and other natural and cultural resources impacted by DOE operations; and
- by which DOE cost effectively meets or exceeds compliance with applicable environmental, public health, and resource protection laws, regulations, and DOE requirements.

Elliott Gilberg, EPA’s Associate Director, Office of Federal Facilities Enforcement, similarly praised DOE for its EMS efforts. “Environmental compliance is very costly,” he said. “Anytime you can come up with things that improve the ‘system,’ that’s good for the government and good for the taxpayer.”

Performance-Based Management

President Bush wants the Federal Government to lead by example, according to Mr. Howard, as “wise fiscal stewards” as well as “wise environmental stewards.” EMS is an effective tool that can help us achieve this vision, he said. The most important benefit from EMS is an “unforeseeable and positive dynamic synergy that will flow” from bringing people together from across the organization to “work together on a shared vision.”

Ms. Cook described Order 450.1 as a “giant step” taking the Department from a 50-plus page command-and-control style Order to a nine page performance-based Order. [DOE Order 450.1 supercedes DOE Order 5400.1, General Environmental Protection Program (November 9, 1988), and DOE Notice 450.4, Assignment of Responsibilities for Executive Order 13148, Greening the Government Through Leadership in Environmental Management (February 5, 2001).]



Integrated, Systematic Planning and Execution

Andy Lawrence, Director of the Office of Environmental Policy and Guidance, which

Andy Lawrence suggested two take-home messages: “Compliance is a given,” and “Leave no legacy.”

hosted the two-day workshop, said the Order moves DOE toward environmental best practices. Under the Order, when integrating an EMS into an ISMS, DOE and contractors must consider such factors as conformity of proposed actions with state plans to maintain ambient air quality standards, implementation of a watershed approach for surface water protection, implementation of a site-wide approach for groundwater protection, protection of natural resources including biota, fire protection for site resources, and protection of cultural resources. DOE and contractors also must promote long-term stewardship of a site’s natural and cultural resources, ensure early identification of and appropriate responses to adverse

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Interior and Forest Service Jointly Propose New Categorical Exclusions



The Department of the Interior and the Forest Service, U.S. Department of Agriculture, jointly have proposed to modify their agencies' respective NEPA procedures to include two new categorical exclusions (CXs) (67 FR 77038; December 16, 2002).

The agencies state that the proposed CXs are intended to enable timely response to forest health problems and improve consistency between agency actions by the use of identical management tools.

The proposed CXs, one for fuels reduction and one for rehabilitation and stabilization of lands and infrastructure impacted by wildfire or wildfire suppression, are based on the agencies' experience involving a large number of NEPA reviews. The agencies reviewed over 3,000 fuel reduction and rehabilitation/stabilization projects completed from 1998 to 2002. Over half of these projects were the subject of an EA, and fewer than 50 were the

subject of an EIS. The remaining projects were categorically excluded. Of the EISs, only 12 projects were predicted to have significant environmental effects from these activities. A summary of the review of NEPA documents is available at www.fs.fed.us/projects/HFI.shtml.

The proposed rehabilitation CX would apply only to activities in the aftermath of a wildfire. The fuels reduction CX would not apply to activities that do not have fuel reduction as their primary purpose. Neither CX would apply in situations with extraordinary circumstances.

The two agencies are now considering about 1,900 individually written comments and about 37,000 "campaign" comments received on the proposed CXs, whose comment period closed on January 31, 2003. For further information contact Dave Sire, USDA Forest Service, Ecosystem Management Coordination, at 202-205-2935, or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance, at 202-208-3891. 

New DOE Order Focuses on EMS

(continued from previous page)

environmental impacts, and ensure pollution prevention and improved energy efficiency.

Responsibilities for implementing the Order are assigned to the Assistant Secretary for Environment, Safety and Health and headquarters, site, and field offices, and flow down to management contractors and their subcontractors. The Order does not require adoption of a particular EMS framework, such as ISO 14001, but rather gives programs and sites the flexibility to determine the framework best suited to their objectives. A site's ISMS may serve this purpose, said Steve Woodbury, Office of Environmental Policy and Guidance, if it encompasses the scope and requirements of the Order.

The Office of Environmental Policy and Guidance is discussing guidance needs to support the new Order with headquarters and field staff. Among topics being considered are: what constitutes an EMS, how to implement specific elements of an EMS, pollution prevention, and watershed management. DOE Order 450.1 is available on the Web at www.directives.doe.gov and tis-nt.eh.doe.gov/oeqa/workshop/order450_1.html.

A video of the workshop will be available. For more information, contact Larry Stirling at john.stirling@eh.doe.gov or 202-586-2417. 

Significance under NEPA and EMS

Mr. Horst Greczmiel, CEQ, pointed to one potential inconsistency between NEPA and EMS that can be accommodated. Something that is significant in one context may not be significant in the other. The evaluative process required to develop and implement an EMS might identify significant environmental issues that are not significant in the NEPA context of requiring an EIS, he explained. On the other hand, a potentially significant impact discussed in an EIS might be resolved through the NEPA process or subsequent mitigation and therefore not be a significant issue for the EMS. Michael Green, National Aeronautics and Space Administration (NASA), who summarized his agency's EMS approach at the workshop, noted that NASA uses the term "priority impacts" rather than "significant impacts" in EMS to avoid confusion with significance under NEPA. (Also see *LLQR*, December 1997, page 7.)

Potential Resources for NEPA Practitioners

EPA Issues Community Culture Guide

The U.S. Environmental Protection Agency's Office of Wetlands, Oceans, and Watersheds has issued *Community Culture and the Environment: A Guide to Understanding a Sense of Place* (EPA 842-B-01-003, November 2002). The *Guide* and related training provide the tools for working with community groups to protect the environment.

The *Guide* provides a toolkit and guidance on conducting a community assessment process that includes pre-project planning, defining the community and the appropriate goals of the assessment, identifying a range of community characteristics (e.g., community boundaries, economic conditions and employment, environmental awareness and values), selecting appropriate assessment methods (e.g., using census data results, maps, and geographic research), and analyzing the results of the

community assessment. The *Guide* also includes sample worksheets and 15 community case studies.

The EPA *Guide* may be useful to DOE's NEPA Community and others during preparation of public participation plans, cultural resource plans, or incorporating environmental justice considerations into the NEPA process.

Copies of the *Guide* may be obtained from the National Center for Environmental Publications and Information at (513) 489-8190, (800) 490-9198, or by mail to NCEPI, U.S. EPA Publications Clearinghouse, P.O. Box 42419, Cincinnati, OH, 45242, or by e-mail to ncepiwo@one.net. For further information, contact: Theresa Trainor at trainor.theresa@epamail.gov or 202-566-1250. 



EPA Web Site Offers Information and Tools for Pollution Prevention

In support of EPA's newest pollution prevention initiative, the National Waste Minimization Partnership Program, the EPA Office of Solid Waste has created a Web site that provides information and tools NEPA practitioners can use when considering pollution prevention as part of the NEPA process. (See *LLQR*, December 1999, page 9.)

The Web site, www.epa.gov/epaoswer/hazwaste/minimize/index.htm, supports a voluntary waste-reduction program focused on wastes containing 27 organic chemicals and three metals (cadmium, lead, and mercury) that EPA has identified as the highest priorities for waste

minimization (Waste Minimization Priority Chemicals). The Web site offers resources to serve the needs of Federal, state, and local government agencies, commercial entities, nongovernmental agencies, and consumers. Web site users can learn about sources of these priority chemicals, find guidance on identifying waste minimization priorities, use data and analysis tools, and explore technical assistance resources.

DOE's contact for Pollution Prevention is Jane Powers, Office of Environmental Policy and Guidance, at jane.powers@eh.doe.gov or 202-586-7301. 

EIA Guidelines for Statistical Graphs Available Online

The Energy Information Administration (EIA), the independent statistical agency of the Department of Energy, has posted online a potentially useful reference for NEPA document preparers and reviewers. *EIA Guidelines for Statistical Graphs (Second Edition)* provides detailed guidance for choosing the type of graph that will best present your data.

Based on the *Guidelines*, the first decision to make is to determine the message the graph will communicate (the purpose). The second decision is to determine who the audience is and what they will expect or extract from the

graph. Once these decisions are made, the question of graph format and design can be answered. Good design supports the data rather than the data supporting the design. A well-designed graph displays the minimum design and the maximum data. To further aid the user, the *Guidelines* provides excellent examples of graphs with detailed explanations, several helpful URLs, and other references. The *Guidelines* are available at www.eia.doe.gov/neic/graphs/preface.htm. 



A View from the Trenches: EA Enables Project to Proceed

By: Roger Twitchell, NEPA Compliance Officer, Idaho Operations Office

To further compliance with NEPA and the National Historic Preservation Act, the DOE Idaho Operations Office recently prepared an environmental assessment (EA) even though a categorical exclusion (CX) approach initially seemed appropriate. Formalizing the consultations with the State and Tribal Historic Preservation Officers within the EA process alleviated delay after controversy had stalled the project.

The Idaho Nuclear Technology and Engineering Center is a 250-acre compound at the Idaho National Engineering and Environmental Laboratory (INEEL). It is located close to the channel of the Big Lost River, an intermittent stream that flows into an undrained desert basin.

To establish a basis for estimating potential future flood flows at the Center, the Idaho Operations Office decided to examine the geologic record left by past floods. Geologists proposed digging a series of trenches along the Big Lost River at four sites with unique geological and topographical characteristics.

Review of cultural resource surveys for the proposed trenching sites led DOE to eliminate one proposed trenching site and realign the proposed trenches at the three other sites to try to avoid cultural resources. The Idaho Operations Office NCO applied DOE's categorical exclusion B3.1 for site characterization to activities at two of the three sites, allowing DOE immediately to carry out the trenching under the oversight of INEEL and Tribal cultural resource specialists.

Controversy Signals CX May Be Inappropriate

At the third proposed site, which geologists deemed likely to provide the most definitive evidence of past floods, cultural resources could not be avoided. These resources included buried artifacts and a traditional cultural place of the Shoshone-Bannock Tribes that is potentially eligible for listing on the National Register of Historic Places because it "has yielded or may be likely to yield information important in prehistory or history." The Idaho Operations Office Cultural Resource Coordinator initiated consultation under section 106 of the National Historic Preservation Act with the State Historic Preservation Officer and invited the Advisory Council on Historic Preservation to comment.

The Idaho Operations Office NCO, Cultural Resource Coordinator, and Chief Counsel's staff anticipated that the consultation would result in a Memorandum of Agreement supporting a finding of no adverse effect under section 106 of the National Historic Preservation Act. Such a finding would have allowed trenching at this location to be categorically excluded. After 14 months, however, the parties had not been able to finalize the Memorandum.

EA Process Provides "A Reasonable Opportunity" to Comment

DOE then decided to prepare an EA to publicly and formally document its compliance efforts with respect to section 106 of the National Historic Preservation Act. On August 6, 2002, the NCO notified the Shoshone-Bannock Tribal Business Council, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation that DOE would meet its section 106 obligations for the proposed trenching through the EA process as provided for under the National Historic Preservation Act implementing regulations (36 CFR 800.8).

The Idaho Operations Office issued an EA, "Geomorphologic Investigations of the Big Lost River at Site BLR-8 on the Idaho National Engineering and Environmental Laboratory" (DOE/EA-1448), in August 2002 for a 30-day public review. Appended to the draft EA was a draft Memorandum of Agreement between the State Historic

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A tribal representative monitors trenching operations for cultural resources at a site near the Big Lost River.

Fossil Energy Launches EIS Process Improvement Team

DOE Fossil Energy's (FE) Office of Environment, Security, Safety, and Health hosted a workshop in Washington, DC, on February 13, to explore ways to streamline the EIS process for FE projects. The workshop concept was developed in response to a break-out discussion at the Department's December 2002 Executive Safety Summit.

Office of NEPA Policy and Compliance and General Counsel staff and the NEPA Compliance Officers (NCOs) for the Offices of Energy Efficiency, Nuclear Energy, FE, and the National Environmental Technology Laboratory participated as process improvement team members, along with other FE staff. Workshop participants examined the process involved in completing a recent Clean Coal

Technology Program project EIS, with the goal of developing suggestions for process improvements. The NEPA Document Manager and a representative of the EIS preparation contractor contributed to the discussions. Participants also considered factors that contributed to timely completion of complex EISs for other programs.

Process improvement team members expect that the recommendations developed will facilitate the timely and efficient completion of several new EISs for upcoming Clean Coal Technology Program projects. Team members plan to share the recommendations and lessons learned with the DOE NEPA community when they are finalized. 

A View from the Trenches

(continued from previous page)

Preservation Officer and DOE supporting a finding of no adverse impact to cultural resources. The State Historic Preservation Officer commented on the draft Memorandum of Agreement in the draft EA, effectively resolving the State issues. With the State issues resolved, the Advisory Council chose not to participate in formal consultation.

DOE also initiated government-to-government consultation regarding the proposed action with the Shoshone-Bannock Tribal Business Council. The Tribes strongly disagreed with the National Historic Preservation Act's narrow definition of cultural resources, holding that

it should include the viewshed, vegetation, and spiritual setting. They also disputed other requirements of the Act, such as curating collected artifacts in a museum instead of leaving them in place or returning them to the collection site.

DOE and the State Historic Preservation Officer signed the Memorandum of Agreement to mitigate potential adverse effects of the proposed action on cultural resources on September 17, 2002, but the Tribes chose not to concur. DOE issued a finding of no significant impact for the EA on September 20, 2002, initiated the proposed action three days later, and completed the

trenching the following day. Only two arrowheads were collected and mitigation was effective in preventing impacts to cultural resources as defined under the National Historic Preservation Act. The trenches will remain open for a year of observation and analysis to help delineate the floodplain.

DOE prepared this EA and finding of no significant impact in compliance with NEPA and the National Historic Preservation Act to implement an important action that had been stalled by "unresolved conflicts concerning alternate uses of available resources (10 CFR 1021.410(b)(2))." This unresolved conflict created the "extraordinary circumstances" that rendered the CX inappropriate. For more information, contact Roger Twitchell at twitchrl@id.doe.gov or 208-526-0776. 



The Idaho Operations Office studied past flooding of the Big Lost River, an intermittent stream.

Second Report on Cooperating Agencies Due to CEQ on April 30

DOE, along with other Federal agencies, will soon start to prepare its second biannual report on cooperating agency involvement in its NEPA process. The second report, due to the Council on Environmental Quality (CEQ) on April 30, 2003, will list EISs and EAs that DOE initiated from September 1, 2002, to February 28, 2003, and will update information on EISs and EAs started between March 1 and August 31, 2002, which were included in the first biannual report.

The Agencies' NEPA contacts met on December 17, 2002, to hear Horst Greczmiel, CEQ Associate Director for NEPA Oversight, discuss the information agencies provided for the first report. He also described possible changes for

future reports, including improvements to the Cooperating Agency Reporting System (CARS), CEQ's Web-based information system. Further guidance is anticipated and will be forwarded to NEPA Compliance Officers to help them enter information for their office's NEPA reviews directly into CARS. For more information on cooperating agency reporting, see *LLQR*, December 2002, page 2, and March 2002, page 1, or contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326. 



Report on CEQ NEPA Task Force Planned for Spring 2003

For the past year LLQR has reported on the progress of the Council on Environmental Quality NEPA Task Force, from planning (March 2002, page 17) to establishment (June 2002, page 11), soliciting examples of effective NEPA implementation (September 2002, page 4), and the responses of government agencies and the public (December 2002, page 1). This update focuses on the anticipated results of the Task Force's undertaking.

The members of the NEPA Task Force discussed their work with James Connaughton, Chair of the Council on Environmental Quality (CEQ), and Joshua Bolten, Assistant to the President and Deputy Chief of Staff for Policy, on January 16, 2003. A report of the NEPA Task Force findings and recommendations to CEQ is being prepared and will be available in the spring of 2003 in hard cover and on the NEPA Task Force Web site, ceq.eh.doe.gov/ntf.

"The information gained and disseminated by the NEPA Task Force should help Federal agencies update their practices and procedures and better integrate NEPA into Federal agency decisionmaking," according to Horst Greczmiel, Director of the NEPA Task Force. A publication highlighting case studies and useful practices will also be available in 2003. 



The CEQ NEPA Task Force, pictured clockwise from front center: Patricia E. Haman, EPA; Michele McRae, U.S. Geological Survey; Anne Norton Miller, EPA and Task Force Deputy Director; Dr. Mark Colosimo, Corps of Engineers; Jordon Pope, Bureau of Land Management; Horst Greczmiel, CEQ Associate Director for NEPA Oversight and Task Force Director; Lee Jessee, DOE; Matthew McMillen, Federal Aviation Administration; Ramona Schreiber, National Oceanic and Atmospheric Administration; and in the center Mary Wilke, CEQ intern. Not pictured are: Mary Gary, EPA; and Rhey Solomon, Assistant Director of the Task Force, U.S. Forest Service (retired).

Innovative, Efficient EIS Distribution Saves Yucca Mountain Project \$200,000

Rather than distribute paper copies of the entire 5,000-page Yucca Mountain Final EIS, the Yucca Mountain Project primarily distributed CD-ROMs and paper copies of the EIS Summary. The CD-ROMs contained the entire EIS* as well as images of more than 13,000 EIS comments, which were not part of the EIS. The Project also distributed about 75 paper copies of the entire document to certain Federal, state, and local agencies, and other people known to want it.

Before circulating the Final EIS, DOE consulted with the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA), who agreed that DOE's planned distribution procedures were an appropriate way to meet the requirements of 40 CFR 1502.19. In the initial distribution of about 6,200 CD-ROM/paper Summary sets, the Project told recipients how to request paper copies of the entire document, with an option to call a toll-free telephone number. DOE also used commercial express service to fulfill such requests. (The NEPA Document Manager received fewer than 40 requests for paper copies.) After initial distribution of the CD-ROM/paper Summary sets,

DOE waited an extra week before filing the EIS with EPA so that people who wanted the complete document could receive it before DOE filed the EIS (67 FR 65539; October 15, 2002) and EPA published a Notice of Availability (October 25, 2002).

The Project produced about 10,000 CD-ROM/paper Summary sets. Each set cost about \$3 to produce and \$4 to distribute. To be prepared for requests for paper copies of the entire EIS and to meet future needs, the Project also produced about 2,500 paper copies of the entire document. Each complete EIS paper copy cost about \$19 to print and \$25 to distribute by commercial express service.

The total production and distribution cost was slightly more than \$100,000. If the Project had decided to circulate primarily paper copies of the entire EIS, then the costs to produce enough documents and distribute 6,200 copies would have been well over \$300,000.

* The CD-ROMs did not include EIS Volume IV, which contains nonclassified, security-sensitive information that is available only in paper copy upon written request. L

Recommended Radiation Risk Factors Updated

The Office of Environmental Policy and Guidance (OEPG) recently issued a revised Air and Radiation Information Brief, *Estimating Radiation Risk from Total Effective Dose Equivalent (TEDE), ISCORS Technical Report No. 1* [DOE/EH-412/0015/0802 rev.1 (January 2003)] to correct a numerical error and provide a recommended dose-to-risk conversion factor for workers, in addition to members of the public, applicable where doses are estimated using TEDE. The factors are recommended for estimating radiation risk for comparison purposes (e.g., comparing risk among alternatives) and are appropriate for most DOE NEPA documents.

OEPG first circulated its Info Brief and the technical report from the Interagency Steering Committee on Radiation Standards (ISCORS) in August 2002. The report (*A Method for Estimating Radiation Risk from TEDE, ISCORS Technical Report No. 1*, July 2002; available at www.iscors.org) contains guidance on calculating radiation risk from dose. The ISCORS guidance recommends that agencies use a conversion factor of 6×10^{-4} fatal cancers per TEDE (rem) when making qualitative or semi-quantitative estimates of risk from radiation exposure to members of the

general public. (OEPG advises that such estimates should not be stated to more than one significant digit.) We reported on this guidance in the September 2002 issue of *Lessons Learned* and recommended use of the new factor in new DOE NEPA documents.

OEPG's January 2003 revised Info Brief now provides a recommended risk factor for workers. Noting uncertainties in risk estimates, OEPG recommends that the factor 6×10^{-4} fatal cancers per TEDE (rem) also could be used for workers. In addition, the revised Info Brief corrects a numerical error in the original Info Brief: the risk factor for morbidity applicable to the general public should be 8×10^{-4} (not 8×10^{-6}).

The revised Info Brief and related materials are available on the OEPG Web site at www.eh.doe.gov/oepa in the "focus areas" under "dose and risk assessment." The OEPG contact for this guidance is Hal Peterson (harold.peterson@eh.doe.gov).

The Office of NEPA Policy and Compliance recommends using this factor, i.e., 6×10^{-4} fatal cancers per TEDE (rem), for workers and members of the public in new NEPA documents. L

NRC Rules Terrorism Reviews Not Required For Its Actions Under NEPA

“What is an agency’s responsibility under NEPA to consider intentional malevolent acts, such as those directed at the United States on September 11, 2001?”

The Nuclear Regulatory Commission (NRC) asked this question in reviewing four cases raising terrorism-related issues referred to it by NRC’s Atomic Safety and Licensing Board (Licensing Board). The Commission answered the question in four corresponding orders issued on December 18, 2002, each holding that NEPA does not require NRC to consider the impacts of terrorism in rendering licensing decisions.

DOE, on the other hand, has not expressed a conclusion regarding whether or not such analyses are required under NEPA. As described below, DOE sometimes conducts such analyses at its discretion when it judges them useful.

The Commission provided a detailed rationale for its conclusion in the order that involved Private Fuel Storage L.L.C.’s (PFS) proposal to build an independent spent fuel storage installation on the Skull Valley Goshute Indian Reservation in Utah. (The proposed facility would store spent nuclear fuel from commercial nuclear power plants pending disposal in a repository.) In abbreviated orders issued for the other three “companion” cases, the Commission refers to its rationale expressed in the PFS order.

One of the companion cases involved Duke Cogema Stone & Webster’s proposed licensing of the Mixed Oxide (MOX) Fuel Fabrication Facility at DOE’s Savannah River Site in South Carolina. The Commission’s order in the MOX case reversed a Licensing Board decision to admit for licensing hearing an intervenor’s contention that NEPA requires NRC to evaluate terrorism impacts at the proposed MOX facility. The Licensing Board had stated: “Regardless of how foreseeable terrorist acts that could cause a beyond-design-basis accident were prior to the terrorist attacks of September 11, 2001, it can no longer be argued that terrorist attacks ... are not reasonably foreseeable”

Basis for the Commission’s Conclusion

As explained in the PFS case, the Commission concluded that **“the possibility of a terrorist threat ... is speculative and simply too far removed from the natural or expected consequences of agency action to require a study under NEPA [emphasis added].**... As a practical matter, attempts to evaluate that threat even in qualitative terms are likely to be meaningless and consequently no use in the agency’s decision making.”

In reaching this conclusion, the Commission noted two Federal court of appeals decisions that addressed the issue of terrorism and NEPA in the area of nuclear regulation. Both decisions upheld, as reasonable, an agency refusal to consider terrorism under NEPA (*Limerick Ecology Action v. NRC* [869 F.2d 719, 743-44 (3rd Cir. 1989)]; and *City of New York v. U.S. Department of Transportation* [715 F.2d 732, 750 (2nd Cir. 1982), appeal dismissed and cert. denied, 465 U.S. 1055 (1984)]).



Further, the Commission observed that the risk of a terrorist attack (generally thought of as the product of the probability of an occurrence and the consequences) cannot be adequately determined because “the likelihood of attack cannot be ascertained using any state-of-the-art methodology.” The State of Utah, an intervenor in the PFS proceedings, asked the Commission to assume an attack with a large jumbo jet and to analyze the consequences without consideration of probability. The Commission, however, concluded that such an analysis “...amounts to a form of ‘worst case’ analysis, which the Supreme Court, in *Robertson v. Methow Valley Citizens Council* [490 U.S. 332 (1989)], determined is not required under NEPA.” Under Utah’s approach, the Commission wrote, “... presumably all other kinds of terrorism, if conceivable, would require NEPA review as well Such an open-ended approach to NEPA is unworkable As the Supreme Court noted in *Robertson*, it is always possible to ‘conjure up’ progressively more disastrous scenarios.”

“In our view, the public interest would not be served by inquiries ... into where and how nuclear facilities are vulnerable ...”
— Nuclear Regulatory Commission

NRC’s Security Concerns

In further arguments that NEPA is not an appropriate forum for considering terrorism, the Commission noted, “The public aspect of NEPA processes conflicts with the need to protect certain sensitive information In our

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Planning Summaries Posted on DOE NEPA Web

The Office of NEPA Policy and Compliance is posting Program and Field Office annual NEPA planning summaries on the DOE NEPA Web to assist in making them available to the public. The annual planning summaries are posted as they are received and are available through two locations within the NEPA Web site (tis.eh.doe.gov/nepa): in the pull-down menu of topics on the front page and the *DOE NEPA Document Status & Schedules* module (tis.eh.doe.gov/nepa/planningsummaries.html).

In addition to alerting the public to ongoing and future NEPA documents, the primary purpose of the annual planning summaries is to ensure that senior DOE managers are involved early in the NEPA process and can allocate

monetary and staff resources appropriately. Knowing the schedules of all the EISs also helps the NEPA Office in its planning, that is, making staff resources available to review and assist in the preparation and approval of the EISs. Additionally, identifying all EAs and EISs being prepared or planned throughout the Department helps the NEPA Office identify trends and crosscutting issues.

Based on a preliminary review of the 23 annual NEPA planning summaries received to date, approximately 32 new EAs and 9 new EISs are scheduled in the next 12 to 24 months. In addition, there are 38 EAs and 25 EISs that are ongoing. 

NRC Rules Terrorism Reviews Not Required Under NEPA

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view, the public interest would not be served by inquiries ... into where and how nuclear facilities are vulnerable ... and what consequences would ensue if security measures failed at a particular facility. Such NEPA reviews may well have the perverse effect of assisting terrorists seeking effective means to cause a release”

The Commission did not close the door to analyzing terrorism in NEPA documents, and wrote in a footnote, “This is not to suggest that an environmental review should never consider threat of terrorism In fact, the NRC has briefly considered, as a matter of discretion, the issue of terrorism in generic environmental reviews [for nuclear power plant license renewal].”

DOE Practice

DOE sometimes finds it appropriate to consider potential environmental impacts of intentional destructive acts (acts of sabotage or terrorism) in its NEPA documents, although the Department has not expressed a conclusion regarding whether or not such analyses are required under NEPA.

In *Recommendations for Analyzing Accidents under the National Environmental Policy Act* (July 2002), DOE stated, “In identifying the reasonably foreseeable impacts of a proposed action and alternatives, past DOE NEPA documents have addressed potential environmental impacts that could result from intentional destructive acts. Analysis of such acts poses a challenge because the potential number of scenarios is limitless and the likelihood of attack is unknowable.”

The Guidance further states, “Intentional destructive acts are not accidents. Nevertheless ... the consequences of an act of sabotage or terrorism could be discussed by a comparison to the consequences of a severe accident When intentional destructive acts are reasonably foreseeable, a qualitative or semi-quantitative discussion of the potential consequences of intentional destructive acts could be included in the accident analysis.” The Guidance provides two examples of qualitative discussions of intentional destructive acts that might be appropriate in an EIS.

Regarding security concerns, DOE conducts security reviews of its environmental documents to ensure that security sensitive information is protected. For example, some DOE EISs have contained a nonsensitive summary of the results of an analysis of intentional destructive acts. In these cases, details of the analysis, which may contain nonclassified security-sensitive information, were segregated into a separate EIS appendix whose distribution was appropriately limited. For a further discussion of related EIS security matters, see *LLQR*, March 2002, page 9, and December 2001, page 1.

Further Information: The Commission’s rulings can be found on the NRC Web site (Utah ruling: www.nrc.gov/reading-rm/doc-collections/commission/orders/2002/2002-25cli.html; MOX Fabrication Facility ruling: www.nre.gov/reading-rm/doc-collections/commission/orders/2002/2002-24cli.html). DOE’s guidance on accident analyses can be found on the DOE NEPA Web site: tis.eh.doe.gov/nepa under Guidance. 



Litigation Updates

Supreme Court Declines to Review South Carolina Plutonium Disposition Challenge

On January 13, 2003, the Supreme Court denied former South Carolina Governor Jim Hodges' petition to review the August 6, 2002, decision by the U.S. Court of Appeals for the Fourth Circuit upholding a lower court decision in support of DOE's plans to implement its plutonium disposition program. (See *LLQR*, September 2002, page 19.) Governor Hodges was attempting to stop the

shipment of plutonium from the Rocky Flats Environmental Technology Site to the Savannah River Site for long-term storage pending final disposition. The Supreme Court's denial of the Governor's petition for review of the case marks an end to his challenge to the plutonium shipments.

Court Rules in Favor of Sierra Club in Rocky Flats Case

The U.S. District Court for the District of Colorado ruled on November 22, 2002, that DOE violated NEPA and the Endangered Species Act by categorically excluding a road easement granted by the National Wind Technology Center to a private mining company to expand its mining activities in the Rocky Flats buffer zone. DOE was ordered to void the 1995 road easement and comply with NEPA and the Endangered Species Act regarding any future road easement and development of the mine.

In February 2001, the district court had dismissed the Sierra Club complaint as premature because of the many procedural steps yet to be completed before the mining company would decide whether to construct the road (*LLQR*, March 2001, page 13). The Sierra Club appealed the dismissal, and in June 2002, the appeals court remanded the case to the district court, finding that the plaintiff's claims were ripe for review and that the Sierra

Club had standing to raise those claims (*LLQR*, June 2002, page 14).

On remand, the district court found that DOE's categorical exclusion A7 is limited to property transfers where the property use remains unchanged and therefore without new impacts. The court held that construction and use of a road to access the mine constituted a new use of the property that would impact the environment. Furthermore, the court determined that the easement and the mining are connected actions, and that DOE therefore was required to consider and evaluate the mine's impacts on the environment. The district court also determined that at the time the easement was granted, the mine expansion was a reasonably foreseeable action and that DOE also should have considered both actions in determining the appropriate level of NEPA documentation.

Other DOE NEPA-related Litigation Developments in Brief

Benton County v. DOE (E.D. Wash.) challenging DOE's decision to deactivate the Fast Flux Test Facility pending preparation of additional NEPA documentation: oral argument on the parties' cross-motions for summary judgment was held on February 25, 2003. At the conclusion of the hearing, the judge indicated that a written ruling in favor of DOE would be forthcoming by March 3, 2003. In addition, the court granted the plaintiff's request to extend DOE's self-imposed injunction on draining the sodium from the reactor until 30 days after issuance of the written opinion, to allow the plaintiff to decide whether to appeal. (See *LLQR*, December 2002, page 22.)

Nevada v. DOE (D.C. Cir.) concerning the recommendation of Yucca Mountain to Congress as a geologic repository, DOE's

site suitability guidelines, and DOE's final EIS: DOE filed its brief on February 21, 2003. (See *LLQR*, March 2002, page 19, and December 2002, page 22.)

NRDC v. Abraham (D. Idaho) challenging DOE Order 435.1 on radioactive waste management: DOE requested an extension to March 6, 2003, to file its cross-motion for summary judgment. (See *LLQR*, March 2000, page 16; June 2000, page 17; and September 2002, page 19.)

Border Power Plant Working Group v. DOE (S.D. Calif.) challenging two Presidential Permits for the construction of electric transmission lines crossing the international border with Mexico: DOE's cross-motion for summary judgment is due March 7, 2003. (See *LLQR*, June 2002, page 13.)

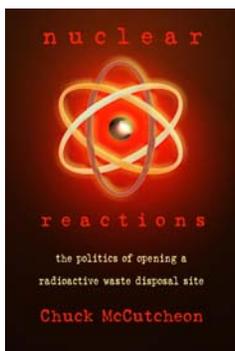
Book Review: A History of WIPP

By: Jeanie Loving, Office of NEPA Policy and Compliance

Nuclear Reactions: The Politics of Opening a Radioactive Disposal Site

Chuck McCutcheon
Albuquerque, New Mexico:
University of New Mexico Press; 2002
Phone: 800-249-7737
Internet: www.unmpress.com
ISBN 0-8263-2209-3; 231 pages; \$24.95

Subtitled “**The Politics of Opening a Radioactive Disposal Site**,” *Nuclear Reactions* traces the highly controversial policy, environmental, judicial, and legislative debates surrounding the development of the Waste Isolation Pilot Plant (WIPP), from its earliest conception in the 1950s to the present. WIPP – the world’s first deep geologic repository for transuranic nuclear waste disposal – opened in 1999 near Carlsbad, New Mexico, to dispose of waste generated by defense-related activities at DOE sites across the country.



Although *Nuclear Reactions* does not focus on NEPA *per se*, the book examines the environmental issues that played a major role in how WIPP was developed. Readers who followed or were involved in the NEPA reviews for WIPP (which included a final EIS in 1980 and supplemental EISs in 1990 and 1997), may find the book adds other dimensions to their knowledge and will no doubt

recall that the NEPA process provided a significant forum for the WIPP debates. Readers concerned with other

aspects of national energy policy may gain some insights into the importance of public values and dialogue between Federal agencies and their host constituents to the decision making process – both part of the fundamental principles of NEPA.

Mr. McCutcheon, who reported for the *Albuquerque Journal* (1986-1995), has written a thoroughly referenced summary of WIPP’s history in nontechnical, easily readable language. He achieves his stated purpose: “neither to advocate nor oppose WIPP.” Although his descriptions of the pro-WIPP views and their opposition are balanced and matter-of-fact, the author succeeds in conveying the intense passion with which many individuals on both sides approached their arguments.

The first few pages of the book acquaint the reader with WIPP’s basic layout, engineered in salt deposits nearly a half-mile beneath the desert, and explain the kind of waste WIPP is designed to accept. The introduction lays out the roles played by the executive, legislative, and judicial branches of Federal government, and the influence on the debates exerted by State, regional, and local politicians, as well as by a strong and active cadre of environmentalists.

Subsequent chapters weave a true tale of conflict, dramatic oratory, high-level political actions, and grassroots environmental opposition. The author’s research includes interviews with and character sketches of key environmental, congressional, and governmental figures, ranging from past Secretaries of Energy, to current DOE officials involved in the WIPP program, past and present influential Governors, and members of Congress still very much concerned with DOE and national energy issues. Although WIPP has now received hundreds of shipments, the controversy over nuclear waste disposal continues, and Mr. McCutcheon’s book sends a message to “Stay tuned.”

19th Edition of Stakeholders Directory Issued

The Office of NEPA Policy and Compliance issued the 19th edition of the Directory of Potential Stakeholders for DOE Actions under NEPA in January 2003. In addition to contact and address updates, this Directory includes information provided by government agencies and nongovernmental organizations on subjects of interest to them, the number of copies of NEPA documents requested for review, and preferences regarding receipt of paper, electronic, or CD-ROM document formats. NEPA Document Managers should use the most recent Directory to supplement lists of local stakeholders for specific programs, projects, or facilities. The NEPA Office has distributed the Directory to the DOE NEPA Community

and made it available online at tis.eh.doe.gov/nepa/ under Guidance, Public Participation. For questions or copies, contact Katherine Nakata at katherine.nakata@eh.doe.gov or 202-586-0801.

Transitions

Energy Efficiency: Othalene Lawrence

Othalene Lawrence has resumed serving as NCO for Energy Efficiency and Renewable Energy. She may be reached at othalene.lawrence@ee.doe.gov or 202-586-9577.

DOE-wide NEPA Contracts Update

Brief Guide to Be Issued

Staff from the Offices of Environment, Procurement and Assistance Management, and National Nuclear Security Administration (NNSA) Procurement and Assistance Management, with the assistance of the NNSA Service Center, have prepared a new *Brief Guide: DOE-wide National Environmental Policy Act Contracts* to replace a 1998 Guide of similar title. The *Brief Guide* provides information on how to use the six new indefinite delivery/indefinite quantity (task order) contracts that the NNSA Service Center, on behalf of the Department, issued in late 2002 to provide support services for NEPA document preparation and related environmental tasks. (See *LLQR*, December 2002, page 24.)

The *Brief Guide* would be issued by the three preparing Offices to Secretarial Officers and Heads of Field Organizations with NEPA responsibilities. The Office of NEPA Policy and Compliance plans to distribute the *Brief Guide* to the DOE NEPA Community and will make it available on the DOE NEPA Web site. For more information on use of the DOE-wide NEPA Contracts, contact the DOE-wide NEPA Contracts Administrator, David Gallegos, NNSA Service Center, at dgallegos@doeal.gov or 505-845-5849.

DOE-wide NEPA Contracting Resources Available on DOE NEPA Web Site

To aid potential users of the DOE-wide NEPA contracts, relevant information discussed in the *Brief Guide* has been posted on the DOE NEPA Web site at tis.eh.doe.gov/nepa under a link entitled "DOE-wide NEPA Contracting." Resources provided on this Web page are:

- ✓ **Guidance and Information:** the contracts' statement of work, the contractor points of contact, and the *Brief Guide* (when issued)
- ✓ **Forms and Tools:** the Request for Task Proposal/Task Order Form, the Performance Evaluation Form, and an Incentive Fee Calculator
- ✓ **Background Documents:** DOE Contracting Reform Guidance of December 1996, and a Secretary of Energy Policy Statement (September 25, 2002) and NNSA memorandum (August 29, 2002), both on contracting with small business

Please direct questions or suggestions concerning the contents of this Web page to Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

First Task Issued under the New Contracts

The following task has been awarded under the new DOE-wide NEPA contracts. For questions, including information on the tasks awarded on the initial set of DOE-wide NEPA contracts, contact David Gallegos (contact information above).

Task Description	DOE Contact	Date Awarded	Contract Team
Retrieval, Treatment, and Disposal of Tank Wastes and Closure of Single-Shell Tanks at the Hanford Site	Mary Burandt mary_e_burandt@rl.gov 509-373-9160	12/24/02	SAIC

LL

Training Opportunities

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

- **Cumulative Impact Analysis and Documentation**

Logan, UT: March 20-21
Denver, CO: April 23-24
Minneapolis, MN: May 14-15
Fee: \$595

- **Overview of the NEPA Process**

Boise, ID: March 4
Phoenix, AZ: March 11
Washington, DC: March 11
Minneapolis, MN: May 12
Billings, MT: May 13
Fee: \$195

- **Reviewing NEPA Documents**

Boise, ID: March 5-7
Phoenix, AZ: May 6-8
Logan, UT: May 19-21
Fee: \$795

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

4-Day Course

Reno, NV: April 8-11
Jacksonville, FL: May 6-9
Philadelphia, PA: June 24-27
Fee: \$995

3-Day Course

Washington, DC: March 12-14
Portland, OR: May 26-28
Anchorage, AK: June 17-19
Fee: \$795

- **Clear Writing for NEPA Specialists**

Logan, UT: March 17-19
Spokane, WA: March 25-27
Washington, DC: April 15-17
Salt Lake City, UT: May 20-22
Fee: \$795

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

- **Workshop on NEPA in Indian Country**

Denver, CO: March 19-20
Fee: \$450

International Institute for Indigenous Resource Management
303-321-6666
iirm@iirm.org
www.iirm.org

- **Tribal Consultation**

Durham, NC: May 7-9
Fee: \$750

- **The Law of NEPA**

Durham, NC: May 28-30
Fee: \$750

- **Making the NEPA Process More Efficient: Scoping and Public Participation**

Durham, NC: August 6-8
Fee: \$750

Nicholas School of the Environmental and Earth Sciences
Levine Science Research Center
Duke University
919-613-8082
sea3@duke.edu
www.env.duke.edu/cee/NEPA.html

- **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 GSA Contract No. GS-10F-0163L (899-3).

Environmental Training & Consulting International Inc.
720-859-0380
info@envirotrain.com
www.envirotrain.com

EAs and EISs Completed, October 1 to December 31, 2002

EAs

Albuquerque Operations Office/Environmental Management

DOE/EA-1452 (11/29/02)
Groundwater Compliance at the Durango, Colorado, UMTRA Project Site, Durango, Colorado
Cost: \$280,000
Time: 4 months

Albuquerque Operations Office/National Nuclear Security Administration

DOE/EA-1430 (12/12/02)
New 20 Mw Turbine at TA-3 Steam Plant, Los Alamos, New Mexico
Cost: \$80,000
Time: 9 months

Chicago Operations Office/Office of Science

DOE/EA-1437 (10/25/02)
Design, Fabrication, and Operation of the National Compact Stellarator Experiment at Princeton Plasma Physics Laboratory, Princeton, New Jersey
Cost: \$25,000
Time: 5 months

Naval Petroleum Reserve/Fossil Energy

DOE/EA-1434 (10/9/02)
Sunrise II Power Plant, Kern County, California
Time: 6 months
[Note: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

Nonproliferation and National Security/National Nuclear Security Administration

DOE/EA-1442 (12/16/02)
Construction and Operation of a Bio-Safety Level-3 Facility at Lawrence Livermore National Laboratory, Livermore, California
Cost: \$86,000
Time: 7 months

Oak Ridge Operations Office/Environmental Management

DOE/EA-1339 (11/5/02)
Waste Disposition Activities at the Paducah Site, Paducah, Kentucky
Cost: \$227,000
Time: 33 months

Oak Ridge Operations Office/Environmental Management

DOE/EA-1393 (10/16/02)
Storage, Transportation and Disposition of Potentially Reusable Uranium Materials, Oak Ridge, Tennessee
Cost: \$180,000
Time: 18 months

Oak Ridge Operations Office/Office of Science

DOE/EA-1451 (10/18/02)
USEC Centrifuge Research and Development Project at ETTP, Oak Ridge, Tennessee
Cost: \$156,000
Time: 2 months

Richland Operations Office/Environmental Management

DOE/EA-1412 (11/6/2002)
Expansion of the Hazardous Materials Management and Emergency Response Facility, Richland, Washington
Cost: \$65,000
Time: 14 months

EISs

Environmental Management/Idaho Operations Office

DOE/EIS-0287 (10/11/02)
(EPA Rating: EC-2)
Idaho High-Level Waste and Facilities Disposition, Idaho Falls, Idaho
Cost: \$15,000,000*
Time: 61 months

* This cost includes substantial expenses for project activities whose cost normally would not be attributed to the NEPA process, including engineering and detailed conceptual design, characterization studies, and program policy development/coordination. Such costs could not be distinguished in this case.

Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0318 (12/13/02)
(EPA Rating: EC-2)
Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Kentucky
Cost: \$675,000
Time: 32 months

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EAs and EISs Completed, October 1 to December 31, 2002

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EISs (continued)

Office of Civilian Radioactive Waste Management/Yucca Mountain Site Characterization Office

DOE/EIS-0250 (10/25/2002)

(EPA Rating: EC-2)

*Geologic Repository for the Disposal of Spent
Nuclear Fuel and High-Level Radioactive Waste
at Yucca Mountain, Nye County, Nevada*

Cost: \$44,000,000*

Time: 86 months

*Does not include Federal employee costs.

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(For a full explanation of these definitions,
see the EPA 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 of 8 EAs completed was \$121,000; the average was \$137,000.
- Cumulatively, for the 12 months that ended December 31, 2002, the median cost for the preparation of 32 EAs, excluding 5 for which costs were paid by the applicant, was \$89,000; the average was \$103,000.
- For this quarter, the median completion time of 9 EAs was 7 months; the average was 11 months.
- Cumulatively, for the 12 months that ended December 31, 2002, the median completion time for 32 EAs was 11 months; the average was 13 months.

EIS Costs and Completion Times

- The costs for 3 EISs completed this quarter were \$675,000, \$15,000,000, and \$44,000,000.
- Cumulatively, for the 12 months that ended December 31, 2002, the median cost for the preparation of 5 EISs for which cost data were applicable was \$2.2 million; the average was \$12.5 million.
- The preparation times for 3 EISs completed this quarter were 32, 61, and 86 months.
- Cumulatively, for the 12 months that ended December 31, 2002, the median completion time for 8 EISs was 31 months; the average was 37 months.

Note: These numbers far exceed the Department's goal of completing EISs in 15 months (median). The median completion time in the preceding reporting period, which ended September 30, 2002, was 23 months. Statistics for the 8 EISs completed in this cumulative reporting period are substantially influenced by two documents with unusually long completion times. One of these, the Yucca Mountain EIS, was stopped for more than one year for budgetary reasons.

Recent EIS-Related Milestones (December 1, 2002, to February 28, 2003)

Notices of Intent

Environmental Management/Idaho Operations Office

DOE/EIS-0355
Remediation of the Moab Uranium Mill Tailings Site in Grand County, Utah
December 2002 (67 FR 77969, 12/20/02)

Environmental Management/Richland Operations Office

DOE/EIS-0356
Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, Washington
January 2003 (68 FR 1052, 1/8/03)

Other Notice*

Environmental Management/Richland Operations Office

DOE/EIS-0286
Hanford Site Solid (Radioactive and Hazardous) Waste Program, Richland, Washington
February 2003 (68 FR 7110, 2/12/03)

*This Notice of Revised Scope announces DOE's decision to incorporate the scope of the Tank Waste Remediation System Supplemental EIS for the Disposal of Immobilized Low Activity Wastes from Hanford Tank Waste Processing into the scope of the EIS for the Solid Waste Program (DOE/EIS-0286). DOE will not issue a separate Supplemental EIS for immobilized tank waste, as was announced July 8, 2002 (67 FR 45104).

Draft EIS

Bonneville Power Administration

DOE/EIS-0317-S1
SEIS Kangley-Echo Lake Transmission Line, King County, Washington
January 2003 (68 FR 1458, 1/10/03)

Final EISs

Bonneville Power Administration

DOE/EIS-0333
Maiden Wind Farm, Benton County, Washington
January 2003 (68 FR 365, 1/3/03)

DOE/EIS-0325
Schultz-Hanford Area Transmission Line Project, Washington
January 2003 (68 FR 5019, 1/28/03)

Records of Decision

Bonneville Power Administration

DOE/EIS-0344
Grand Coulee-Bell 500 kV Transmission Line, Washington
January 2003 (68 FR 3030, 1/22/03)

Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0318
Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Kentucky
February 2003 (68 FR 5628, 2/4/03)

National Nuclear Security Administration/Defense Programs

DOE/EIS-0319
Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions, Los Alamos, New Mexico
December 2002 (67 FR 79906, 12/31/02)

Supplement Analyses

Bonneville Power Administration

Watershed Management Program EIS (DOE/EIS-0265)

DOE/EIS-0265/SA-101
Restoration of Anadromous Fish Access to Hawley Creek, Idaho
(Decision: No further NEPA review required)
January 2003

DOE/EIS-0265/SA-102
Yakima Tributary Access and Habitat Program — Ellensburg Water Company/Cooke Creek, Washington
(Decision: No further NEPA review required)
January 2003

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Recent EIS-Related Milestones (December 1, 2002, to February 28, 2003)

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Supplement Analyses

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

DOE/EIS-0285/SA-115

*Vegetation Management Along the Shelton Fairmount
#1-4 230 kV & 115 kV Transmission Lines Corridor
From Structure 34/3 Through Structure 60/2,
Jefferson County, Washington*

(Decision: No further NEPA review required)

December 2002

DOE/EIS-0285/SA-116

*Vegetation Management Along the Allston-Clatsop
230 kV Transmission Line and Along Portions of Six
Adjacent Lines, Oregon*

(Decision: No further NEPA review required)

January 2003

DOE/EIS-0285/SA-117

*Vegetation Management for the Non-Electric Portions
of the BPA's Ross Complex, Clark County,
Washington*

(Decision: No further NEPA review required)

January 2003

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2002.

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

- *Early stakeholder input.* A “brown bag” public meeting provided early public input into the process. The NEPA Document Manager communicated regularly with local stakeholders, who had a chance to provide comments before the EA was prepared.
- *Controlled scope.* The conciseness of the EA was innovative – 13 pages. Technical details associated with the pre-existing facility were not rehashed.

What Didn't Work

- *Inadequate scoping.* Inadequate internal EIS scoping led to difficulty in determining data requirements and poorly defined data requests.

Data Collection/Analysis

What Worked

- *On-the-ground data collection.* A “windshield survey” of the area and visits to local Bureau of Land Management offices to look for information about potential impacts were useful.
- *Focused reanalysis.* The analysis for the Supplement to the Draft EIS focused on important changes in the proposed action.

What Didn't Work

- *Information gathering.* Difficulty in obtaining necessary environmental information from our industrial partner resulted in delays.
- *Regulatory uncertainty.* Waste data were difficult to finalize because regulatory interpretation of the definition of waste types continually changed.

- *Stale data.* Tracking data changes during the lengthy EIS process was difficult. As data changed, reanalysis was required.
- *Unnecessary analyses.* A desire to be flexible to cover all program contingencies resulted in analyses that were not needed.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Contractor incentives.* Completion of the EA and FONSI on schedule was a performance measure for the contractor's award fee.
- *Timely reviews.* The Document Manager made follow-up visits and telephone calls to encourage timely review of the draft document.
- *Use of automated tools for review.* Using redline-strikeout features to highlight changes in drafts focused reviewers' attention, and Web-based editing meetings facilitated timely completion.
- *Real-time review.* The willingness of a core team of EIS reviewers to meet on-site for two weeks to do a real-time review and make changes was critical. The final core team review was facilitated by preliminary chapter-by-chapter reviews by relevant DOE offices.
- *Master schedule.* A schedule of the critical activities and assumptions helped everyone involved know what needed to be done to meet the schedule.
- *Revision process.* Delegating the revision control process to a contractor rather than having every change approved by the DOE Document Manager helped keep the document on schedule.

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What Worked and Didn't Work in the NEPA Process

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Schedule (continued)

Factors that Inhibited Timely Completion

- *Iterative processes.* There were too many iterative efforts in the document review process. Limiting the number of field and headquarters reviews would help.
- *Lack of Department-wide definitions.* All issues and definitions of terms related to high-level waste had to be addressed and settled in the context of EIS preparation. That is, the EIS project staff had to force the rest of DOE to confront issues and definitions of terms.
- *State interactions.* The host state was a cooperating agency and did not have to observe DOE protocols regarding lines of communication. This led to the state going “answer shopping.” Anyone trying to influence the conduct of the preparation of an EIS should be forced to go through the NEPA Document Manager.
- *Late decisions.* Failure to make timely decisions, such as agreeing upon the proposed action, led to the addition of a supplement to the draft EIS, additional review cycles, comment period extensions, and additional problems in maintaining consistency with other major program documents.

Teamwork

Factors that Facilitated Effective Teamwork

- *Teamwork.* EH and GC were made a part of the EIS team (rather than being viewed as regulators or enforcers), and they reacted positively.
- *Open-door policy.* The NEPA Document Manager’s open-door policy and quick response to e-mails and phone messages facilitated teamwork and open communication.
- *Cooperation.* Close cooperation between the project site, headquarters, and the area office, beginning with the project kickoff meeting, led to schedules being beaten and budgets met.
- *Stakeholder involvement.* The DOE area office and the project site encouraged involvement of stakeholders during the entire process. This was crucial to both the quality of the NEPA document and maintaining the schedule.

- *Initial training.* NEPA training at the project start improved team members’ understanding of the EIS process and goals. Training on technical topics was useful, but should have been lengthened and formalized.
- *Roles, responsibility, and authority.* Identifying DOE and contractor leads, with associated responsibility and authority, facilitated effective teamwork.
- *Problem-solving meeting.* An off-site meeting with DOE, the M&O, and the NEPA contractor staff identified problems and cleared the air, and participants came away committed to making the process work.

Factors that Inhibited Effective Teamwork

- *Other organizations’ priorities.* EIS concurrence review and comment periods had to be extended because some DOE elements had other priorities. To get the job done, the Document Manager must build relationships and work within the time constraints of other organizations.
- *Concurrence process.* The concurrence of EH or GC staff had no apparent bearing on gaining concurrence from EH or GC management, so staff involvement was useful only insofar as they were knowledgeable, ran interference at headquarters, helped with correspondence, and provided an extra pair of eyes to help proofread.
- *Geographic dispersion.* The EIS preparation team was too large and too widely spaced. The remote location of many analysts posed difficulties; however, use of teleconferences and electronic communications helped.

Resource Issues

Staffing and Support Issues

- *Staff retention.* There was high turnover in project management (three DOE NEPA Document Managers and four contractor EIS managers) during the long time to complete the EIS.
- *Matrixed staff.* DOE staff were not assigned but “matrixed” to the NEPA Document Manager. When the work on the EIS got hard, the matrixed staff just walked away.

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What Worked and Didn't Work in the NEPA Process

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Resource Issues (continued)

- *Contractor roles.* Contract management training by DOE Contracts staff will enable better understanding of the role of contractors and better implementation of contract management procedures.

Process

Successful Aspects of the Public Participation Process

- *Cooperating agency involvement.* Having the cooperating agency integrally involved in the public participation process worked well and conveyed the message that we were working together to solve a problem.
- *Ongoing meetings.* Meetings between the public and site staff were held regularly. This created an atmosphere of trust and even ownership.
- *Document presentation.* The writing style and level of technical detail in the EA were determined with the public in mind. Complex science was communicated successfully to non-technical readers.
- *Native American involvement.* Native American comments regarding the right to participate in the processes, perspectives with respect to land ownership, and government-to-government relationships were valuable. There were multiple tribes involved in the Native American Writers group.
- *Meeting location.* It was useful to begin public meetings with the location expected to be of lowest conflict, allowing us to fine-tune our presentations and “work out the bugs.”
- *Evolving mailing list.* It helped to keep an accurate “evolving” mailing list to accurately track what information had actually been distributed to commenters.
- *Color in documents.* The use of color was beneficial and useful to the public as well as DOE. Congressional staff and members of the public indicated that color helped them understand the EIS.

Unsuccessful Aspects of the Public Participation Process

- *Hearing format and number.* While the Q&A sessions went well in general, they were not on the record, and the public resented it. There were too many public hearings, and the number of hearings and changing comment periods seemed to confuse and irritate the public.
- *Sensitivity to public desires.* The public participation process did not engage stakeholders, and there were no cooperating agencies, workshops, or town hall forums. Going to the counties and getting them to help shape the public participation process would have helped.
- *Comment response issues.* The public was frustrated by the lack of response (or the time it took for DOE to respond) to comments. The original comment team was too large, and this led to difficulties in maintaining consistency in tone, style and level of detail in response, and in maintaining consistency with the final EIS.
- *Database development.* The use of a database for comment response development was invaluable and the job of responding to thousands of comments could not have been accomplished without it. A new comment response database system was built from the ground up. It worked, but may not have been a good use of DOE resources.
- *Multiple mailing lists.* A comment period had to be extended because we omitted some people from the EIS mailing list. Using a single mailing list database would have avoided that problem.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Expert input.* The NEPA process provided an opportunity for numerous scientists to review and comment on DOE's proposed action. As a result, several changes were made – primarily associated with groundwater analyses.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

Usefulness (continued)

Agency Planning and Decisionmaking : What Didn't Work

- *Issuance of addendum.* The amount of additional information needed for a final EIS appeared to be very small, so, to save money, we planned to prepare an addendum only and not reprint all the material and appendices contained in the draft EIS. This was a mistake: compared to trying to highlight all the changes that occur between draft and final, printing is cheap. In the end, we prepared a full final EIS.

Enhancement / Protection of the Environment

- The environment will be protected due to the identification of sensitive issues and the application of avoidance and mitigation measures.
- The NEPA process assisted DOE in identifying waste management needs across projects.

Other Issues

Guidance Needs Identified

- One respondent suggested that further guidance be made available regarding the requirements for preparation of a comment response document, what is to be included in the final EIS (e.g., comment letters), the format for transmittal letters, and the concurrence process.
- One respondent stated that environmental justice analysis guidance would have been helpful.
- One respondent noted that draft guidance on administrative records exists, and needs to be updated to account for the existence of personal computers. The guidance needs to deal with what goes into the administrative record, how to handle electronic documents and references to sources found on the Internet, etc.

- One respondent requested guidance on how to handle responsible opposing views – i.e., the difference between a “responsible opposing view” and an “area of controversy.”
- One respondent suggested guidance be made available on how to handle homeland security issues.

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 3 questionnaire responses were received for EAs and 5 responses were received for EISs, 7 out of 8 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “2” stated that the wastes being analyzed were already highly regulated at both Federal and state levels.
- A respondent who rated the process as “4” stated that DOE had considered a categorical exclusion but, due to scope and cost of the experiment, decided that preparation of an EA would be a prudent step. Successful completion of the EA provided confidence that environmental and human health issues had been fully identified and addressed.
- A respondent who rated the process as “4” stated that some decisionmaking has been done without benefit of the NEPA process; for example, plant siting usually is determined by site availability. However, the NEPA process does contribute greatly to informed decisions – analysis of the physical site and technology is very helpful in determining associated impacts. 

LESSONS LEARNED

Responding to Comments Is Work, But It Makes the NEPA Process Work

Considering comments received on a draft EIS, and responding to those comments appropriately in the final EIS, can be a daunting task. Even a “great” draft EIS can generate lots of public comment. At times, the process of collecting, sorting, reviewing, and responding to public comments is complex and time-consuming.

“...expert agency comments and public scrutiny are essential to implementing NEPA” (40 CFR 1500.1(b))

Sometimes comments cause the Department to do more analytical work. Sometimes comments cause DOE to change direction. Because the comment-response process is such a crucial

part of the NEPA process, and may presage the ultimate success of a proposal, it is prudent to examine how best to manage this effort.

DOE has responded to some 45,000 comments on draft EISs from about 19,000 commentors in the last five years. Comments range from statements of support for or opposition to DOE’s proposed action, to detailed critiques of DOE’s analyses and suggestions for new alternatives to study.

*What did DOE get from all those comments?
What did the public get from DOE’s responses?*

Comments on DOE’s draft EISs have led the Department to revise or add alternatives, modify decision criteria, reevaluate impacts, better target mitigation plans, change its preferred alternative, and improve the completeness, clarity, and accuracy of final EISs.

A good example of comments on a draft EIS resulting in changes in the final EIS, as well as prompting DOE action, is illustrated in the 1999 Los Alamos National Laboratory

(LANL) Site-wide EIS (DOE/EIS-0238). (See *LLQR*, June 2000, page 1.) In this case, comments from a local forester on the accident analysis in the draft EIS focused attention on the possibility of a wildfire. Not only was the analysis improved in the final EIS, but DOE also immediately began to take action to reduce the wildfire risks at certain key facilities. These actions reduced the severity of the impacts of the 2000 wildfire on LANL.

“When done well, the comment-response process is useful to the decisionmaker and the public,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. “Thoughtful consideration of comments may *continued on page 3*”

Ray Berube Retires



Beverly Cook, Assistant Secretary for Environment, Safety and Health, wishes Deputy Assistant Secretary for Environment Ray Berube well on his retirement. See tribute on page 19.

Inside *LESSONS LEARNED*

Welcome to the 35th quarterly report on lessons learned in the NEPA process. We are pleased to include in this issue three new mini-guidance articles. Thank you for your continuing support of the Lessons Learned program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 1, 2003. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 1, 2003

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2003 (April 1 through June 31, 2003) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at tis.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 tis.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

Printed on recycled paper



NAEP Conference to Feature 14th Annual NEPA Symposium

“No Borders: One Globe, One Environment” is the theme of this year’s annual conference of the National Association of Environmental Professionals (NAEP). The conference, which always attracts a large contingent of NEPA practitioners, will be held June 22-25 in San Antonio, Texas.

The conference’s NEPA Symposium includes 10 panel discussions, a poster session, and a luncheon with Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), who will provide an update on CEQ’s NEPA Task Force (*LLQR*, March 2003, page 8, and this issue, page 15).

Panel topics include *The 4Ps of NEPA: Policy, Program, Plan, and Project*; *NEPA and Homeland Security*; and *NEPA at DOE National Laboratories*, as well as the traditional *NEPA Lessons Learned, Innovative Approaches*, and *NEPA Legal Issues*. As a member of a

panel on *30 Years of NEPA: Is It Time for a Change?*, Carolyn Osborne, Office of NEPA Policy and Compliance, will speak on *Exclusions and Assessments: How Much Is Enough?* In a session on *Innovative Approaches*, Jay Jones, Office of Civilian Radioactive Waste Management, will speak on *The Yucca Mountain Radioactive Waste Program: Status and Environmental Impacts*. Many DOE NEPA contractors will chair panels and serve as panelists.

Three half-day NEPA training courses also are offered during the conference: *Conducting Quality Cumulative Impact Analyses*, *NEPA for New Managers*, and *Tools and Techniques for Solving Problems in NEPA and Environmental Planning*.

Additional conference information, including a registration form, is available on the NAEP Web site at www.naep.org. 

Abstracts are due August 31, 2003, for the 2004 NAEP conference, the theme of which is “Building Bridges in a Changing World.” The event is scheduled for April 25-28 in Portland, Oregon. Further information is available at www.naep.org at the link to the 2004 conference page.

DOE NEPA Community Meeting Set for July 15-16

Focus: Are We There Yet?

The Office of NEPA Policy and Compliance will host a DOE NEPA Community Meeting on July 15 and 16 in Washington, DC, and telecast it to 21 remote DOE locations. The theme for the meeting – “Are We There Yet?” – focuses on whether the Department has largely achieved its goals in improving the NEPA process or whether further steps are needed to address inefficient or ineffective practices.

The agenda will likely include discussion of the recommendations of the Council on Environmental Quality NEPA Task Force, DOE performance metrics, comment-response guidance, handling security sensitive information, e-government opportunities, and the floodplain and wetland rule. Horst Greczmiel, the Council on Environmental Quality’s Associate Director for NEPA Oversight and Director of the NEPA Task Force, will be a featured speaker.

This will be the first DOE NEPA meeting to offer the option of participating through teleconferencing. To accommodate four time zones, a four-hour session is planned for each day. Consistent with the Environmental Protection Agency’s Green Meetings Conference Initiative, this format will be one of several features of the DOE NEPA meeting designed to limit travel costs and to use less paper and more technology to disseminate information.

NEPA Compliance Officers will coordinate the meeting attendance and participation planning for their office’s NEPA Document Managers, Field Counsel, NEPA Contacts, and NEPA contractors. For additional information, contact Jim Sanderson at jim.sanderson@eh.doe.gov or 202-586-1402. 

Responding to Comments

(continued from page 1)

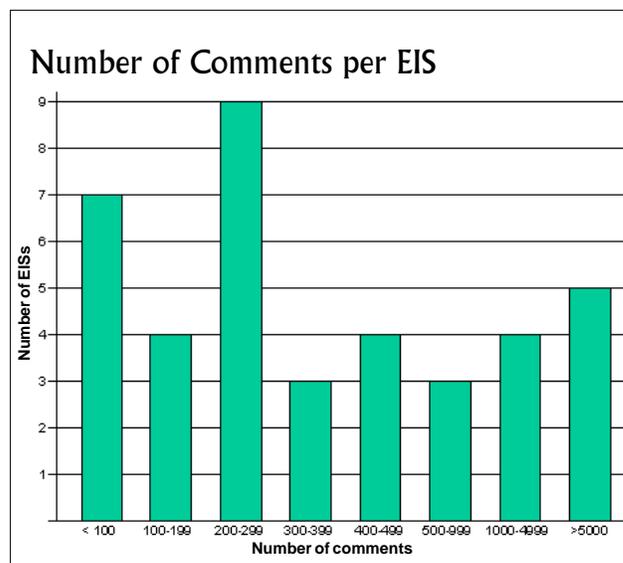
result in a better decision and improved DOE credibility with its stakeholders, increasing the likelihood of successful project implementation. Good responses help the public know its voices were heard and can enhance public understanding of DOE activities.”

Review of Comments and Responses in Recent Final EISs

The Office of NEPA Policy and Compliance is reviewing comment-response sections in recent final EISs prepared by DOE and other Federal agencies and will use the findings to draft guidance to improve the efficiency and usefulness of the comment-response process.

The review includes 39 DOE final EISs (all final EISs issued by DOE since January 1, 1998, and two earlier programmatic EISs – for waste management and for stockpile stewardship and management). A dozen final EISs from other Federal agencies are also being reviewed. The review of other agency EISs has yet to reveal any approach that is sharply different from those used by DOE.

“We want to share techniques that have been successful,” Ms. Borgstrom continued. “We also will address common questions, such as how to handle large numbers of comments generated by public campaigns and through the Internet. The diversity of DOE’s NEPA activities doesn’t permit a one-size-fits-all approach to



The NEPA Office is reviewing the comment-response sections of 39 DOE final EISs, which received a wide range of public comments.

responding to comments. Ultimately, NEPA Document Managers must tailor their approach to fit individual circumstances.”

The DOE guidance will build upon NEPA regulations and guidance by the Council on Environmental Quality (CEQ). CEQ guidance explains that the final EIS must “contain the agency’s responses to comments on the draft EIS. These responses will be primarily in the form of changes to the document itself, but specific answers to each significant comment should also be included.” (“Forty

continued on page 14

Multiple RODs Offer Decisionmaking Flexibility

DOE occasionally issues more than one record of decision (ROD) for an EIS. This practice reflects the fact that some EISs result in multiple decisions, not all of which need be, or can be, made at the same time. Also, DOE may change a decision announced in a ROD based on new information or circumstances. A case in point is the EIS for Interim Management of Nuclear Materials (IMNM), for which DOE has published eight RODs. (The RODs for three EISs, including the IMNM EIS, are described in the table on page 5. These RODs illustrate several of the circumstances in which multiple RODs are appropriate.)

An advantage of multiple RODs is flexibility. NEPA does not require that the outcome of an EIS be a single, unchangeable decision.

For a given EIS, any ROD subsequent to the first one either changes some aspect of a prior ROD, adds to an earlier decision without changing a prior ROD, or both. Most often DOE has referred to this

subsequent ROD as an “amended ROD” or “supplemental ROD,” though the Department has also used “revision to the ROD” and “second ROD.” The Office of NEPA Policy and Compliance recommends the consistent use of the terms amended ROD or supplemental ROD.

Supplemental and Amended RODs

The distinction between a supplemental and an amended ROD is whether the new ROD changes any aspect of a prior ROD. A supplemental ROD does not alter the original ROD for an EIS. A supplemental ROD announces one or more decisions that were not included in an earlier ROD or it adds to an earlier decision, building upon rather than altering the prior ROD. A supplemental ROD would announce a decision that was deferred in the original ROD, perhaps to allow time for the collection of additional information, such as cost or policy considerations. For example, five of the eight RODs for the IMNM EIS announced decisions regarding stabilization of materials that were deferred in the initial ROD.

An amended ROD reports a change in DOE’s decision. The new decision might reflect changes in circumstances and priorities or new information. If DOE selects a different alternative to implement after issuing a ROD, an amended ROD would announce the new decision. For example, the

National Nuclear Security Administration recently published an amended ROD for its Surplus Plutonium Disposition EIS to implement a change in the quantity of plutonium to be dispositioned by use as fuel in a nuclear reactor.

Other Types of RODs

DOE occasionally has reason to apply a different label to a ROD. For example, DOE published a “consolidated ROD” that announced related decisions associated with four NEPA documents regarding tritium production. One decision within this consolidated ROD supplemented an earlier ROD, while the others were the first decisions for their respective EISs (64 FR 26369; May 14, 1999). Another example is the waste management programmatic EIS, with its four RODs each labeled by waste type.

The EIS Still Defines Bounds

An amended or supplemental ROD announces a decision that remains within the parameters of a final EIS. For example, the alternative being selected was analyzed in the EIS, even though it was not selected in the initial ROD. In clear-cut cases such as this, the amended or supplemental ROD usually does not require further NEPA documentation. Further NEPA documentation would be required, however, when it is unclear whether the final EIS provides adequate evaluation, for example, of impacts from an alternative or from activities not explicitly presented in a final EIS. A supplement analysis would be prepared to determine if the existing analysis is adequate or if a new or supplemental EIS is required. Such determinations are made in accordance with the criteria in 10 CFR 1021.314(c).

Adapting in a Changing World

The ability to respond to new information and changing circumstances is at the heart of effective management. The NEPA process is not intended to lock DOE into decisions. It is a dynamic process, allowing decisions to be reconsidered as the need arises. The option to issue multiple RODs based on one or more NEPA documents is one mechanism for implementing effective and adaptive management in the NEPA process. (See a related article on adaptive management and NEPA in *LLQR*, December 2002, page 8.) 

Examples of Multiple RODs from One EIS

Waste Management Programmatic EIS (DOE/EIS-0200, May 1997)	
Treatment and Storage of Transuranic Waste ROD (63 FR 3629; January 23, 1998)	Announces decisions for the management of one waste type. Published with a ROD for the <i>Waste Isolation Pilot Plant Disposal Phase Final Supplemental EIS</i> (DOE/EIS-0026-FS2, September 1997).
Non-wastewater Hazardous Waste ROD (63 FR 41810; August 5, 1998)	Announces decisions for the management of one waste type.
Storage of High-Level Radioactive Waste ROD (64 FR 46661; August 26, 1999)	Announces decisions for the management of one waste type.
Treatment and Disposal of Low-Level Waste and Mixed LLW ROD (65 FR 10061; February 25, 2000)	Announces decisions for the management of two waste types. Includes an amended ROD for the <i>Final Environment Impact Statement for the Nevada Test Site and Off-Site Locations in Nevada</i> (DOE/EIS-0243, December 1996) with conforming changes.
Revision to the ROD* (65 FR 82985; December 29, 2000)	Based on a supplement analysis, changes the decisions regarding where and how some waste will be stored and treated.
Revision to the ROD* (66 FR 38646; July 25, 2001)	Based on a supplement analysis, changes the decisions regarding where and how some waste will be stored and treated.
Revision to the ROD* (67 FR 56989; September 6, 2002)	Referencing three NEPA documents, in addition to the WM PEIS, changes storage and transportation plans for managing some waste at two DOE sites.
* "Revision to the ROD" would be an "amended ROD" per currently recommended terminology.	
Interim Management of Nuclear Materials EIS (DOE/EIS-0220, October 1995)	
ROD (60 FR 65300; December 19, 1995)	Announces decisions for means to stabilize some categories of material. Defers decisions on other categories pending further study. Announces a different preferred alternative for some material categories than was indicated in the final EIS and states that DOE will wait at least 30 days before making a decision on the new preferred alternative.
Supplemental ROD (61 FR 6633; February 21, 1996)	Selects new preferred alternative for two categories of material.
Supplemental ROD (61 FR 48474; September 13, 1996)	Announces a decision regarding stabilization of two categories of material.
Supplemental ROD (62 FR 17790; April 11, 1997)	Based on a supplement analysis, increases the amount of a particular material that will be stabilized using one of the alternatives described in the EIS.
Supplemental ROD (62 FR 61099; November 14, 1997), also serves as Amended ROD	Supplements a previous ROD by adding a method for stabilizing a particular material. Amends the initial ROD by changing the selected stabilization method for other materials, noting that the selected method was analyzed in the final EIS.
Amended ROD (66 FR 7888; January 26, 2001)	Based principally on cost analysis available after the initial ROD, changes the facility in which to perform certain stabilization activities.
Amended ROD (66 FR 55166; November 1, 2001)	Based on cost, schedule, and program requirements, changes the facility for stabilizing some materials and changes the decision for stabilization of other material.
Supplemental ROD (67 FR 45710; July 10, 2002)	Based on cost, schedule, and program requirements, selects an additional alternative to be implemented for stabilization of some materials.
Surplus Plutonium Disposition EIS (DOE/EIS-0283, November 1999)	
ROD (65 FR 1608; January 1, 2000)	Announces decisions regarding six aspects of the plutonium disposition program.
Amended ROD (67 FR 19432; April 19, 2002)	A single notice amends RODs for this EIS and the <i>Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environment Impact Statement</i> (DOE/EIS-0229, December 1996) to account for program changes involving storage and disposition options.
Amended ROD (68 FR 20134; April 24, 2003)	Based on a supplement analysis, the amended ROD changes the quantity of plutonium to be dispositioned as mixed oxide fuel rather than immobilized.

Effective and Efficient EIS Distribution

By: Yardena Mansoor, Office of NEPA Policy and Compliance

The utility of an EIS, like beauty, is in the eye of the beholder. It can be valuable to the issuing agency and its stakeholders; once access is granted, the reader, like Aladdin, can tap a wealth of project and environmental information. But an EIS may not always be well received; like water to the sorcerer's apprentice, documents may keep coming whether they are wanted or not. A resource that is valuable in targeted doses becomes burdensome when one would rather not receive it.

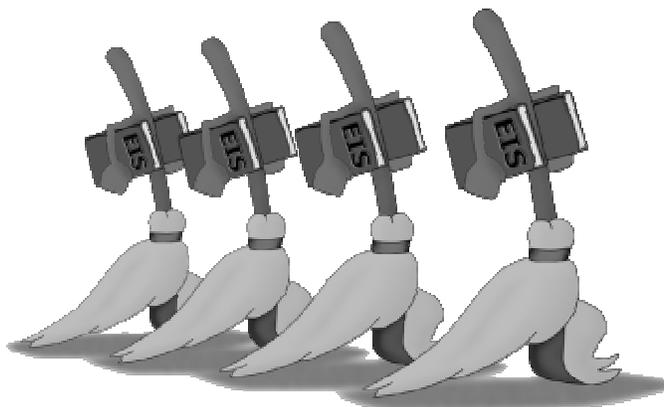
This observation is prompted in part by the experience of the DOE Office of NEPA Policy and Compliance. As DOE's corporate point of contact for NEPA matters, the NEPA Office receives each week from other agencies, a number of EISs and EAs, some quite hefty, often delivered by expensive express services. In the absence of DOE jurisdiction or special expertise with respect to environmental impacts or any other DOE interests in the action, resource constraints prevent DOE from doing more than discarding the document for recycling. This experience prompts us to consider how to ensure that all who are entitled or interested in receiving a NEPA document for review are given that opportunity, and at the same time avoid sending it to persons who do not wish to receive it.

To gain more insight into approaches to EIS distribution, the NEPA Office polled several DOE NEPA Document Managers. We also requested information from some other agency NEPA contacts. (See text box on page 7.) The responses described a range of approaches to EIS distribution. While the guidance in this article addresses EIS distribution, recommendations may also apply to EAs.

Tailor the Distribution List for the Specific Document

- ✓ EIS distribution typically includes Federal, state, and local government entities, tribes, organizations, and individuals. Most DOE Programs and sites have active public participation lists, and the NEPA Office provides a Stakeholders Directory. These are the starting points for every EIS. Even when there is a high level of confidence that a distribution list used for a recent EIS is still useful – for example, because of a geographically close location or similar subject matter – it is still appropriate to confirm that recipients of the past document are interested in the current document and to identify new interested or potentially affected parties.

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Circulation of the Environmental Impact Statement

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

- (a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.
- (b) The applicant, if any.
- (c) Any person, organization, or agency requesting the entire environmental impact statement.
- (d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

*CEQ NEPA Implementing Regulations,
40 CFR 1502.19*

Effective and Efficient EIS Distribution

(continued from previous page)

Start Planning During Scoping

- ✓ Several agencies report using interactions with the public during the scoping period as the foundation of the distribution list. In the notice of intent, readers are invited to respond to an EIS contact with a request to be placed on the future distribution list, and sign-up sheets are provided at scoping meetings.

Confirm Interest in the Draft EIS and Verify Addresses

- ✓ Several offices responded that they send out postcards to individuals and organizations on a preliminary distribution list to ask whether they would like to remain on the distribution list and receive a copy of the document currently under preparation. This mailing also offers an opportunity to verify addresses of the existing distribution list. As appropriate, the postcard can offer the choices of receiving the summary or the full EIS, and as a paper copy or compact disk (CD). It helps to state the expected length of the EIS, and whether it will also be publicly available online. (See also below.)
- ✓ The number of copies of the document to be produced can be based on responses to the distribution list inquiry and partly on other factors influencing need, such as future public meetings and potential controversy.
- ✓ Particularly if significant time passes between scoping and the draft EIS, some agencies renew their efforts to compile the distribution list shortly before publishing the draft EIS.

Confirm Interest in Receiving a Final EIS

- ✓ Although any person, organization, or agency who submits substantive comments on a draft EIS must be sent the final EIS, it does not follow that parties who received the draft but did not submit comments should automatically receive the final EIS. Some agencies reported that substantial numbers of noncommentors on a draft EIS later asked not to receive the final.

Determine Preferences Regarding Summary/Full Document

- ✓ The CEQ regulations permit an agency to circulate an EIS summary, except to certain groups who must

continued on next page

Lessons from Experience

Before distributing the 3,000-page Revised Draft Hanford Solid Waste EIS, we used sign-up sheets from public meetings and a postcard campaign to determine stakeholder interest in reviewing the EIS. Combining this information with our usual distribution list, we sent about 100 people a paper copy of the summary and 285 people a paper copy of the full EIS. We sent over 760 individuals a paper summary and a full EIS on CD, and only 5 of these then requested (and received) a paper copy of the full EIS.

*Mike Collins, NEPA Document Manager
DOE Richland Operations Office*

We develop a new distribution list for each EIS from a variety of sources, including individuals and organizations expressing previous interest in the EIS topic or similar topics, known stakeholder lists, contacts made through the scoping process, parties expressing interest in the EIS, participants in public meetings, and respondents to the *Federal Register* notice of intent or to the draft EIS. This list is developed and maintained by either the EIS project leader or the writer-editor. The list is, of necessity, dynamic and constantly changing.

A low-demand EIS may involve production of only 10 percent more documents than the original distribution list. A broad national programmatic EIS addressing complex and controversial issues may involve production of 40 to 50 percent more documents than the original distribution list.

*David Bergsten, NEPA Coordination Contact
Animal and Plant Health Inspection Service*

Prior to release of the draft EIS, we circulate an executive summary of the EIS (and the project) to those individuals on the project mailing list and ask if they wish to receive the draft EIS; oftentimes the summary is enough for most readers. A similar summary and notice is also published as a feature article in our monthly newsletter.

*John Pelka, NEPA Compliance Manager
Presidio Trust*

For some EISs, we send a letter back to those who received the draft but did not comment and provide a Web site where the final EIS is posted and a contact point for requesting a hard copy.

Kebby Kelley, U.S. Coast Guard

Effective and Efficient EIS Distribution

(continued from previous page)

receive the entire document. (See text box on page 6.) This approach can cause a 15-day delay, however, if a recipient of the summary then requests the full document. If this would inconvenience the Agency, to reduce the likelihood of this potential delay, an office should make advance inquiries of interested parties regarding their preference for receiving the summary or the full document. To allow for economy in printing, such a survey should optimally occur before deciding how many copies of the EIS are needed. The potentially interested party will be better able to respond if the inquiry includes information on the size of the document and whether a full copy will be posted online or in local information centers, such as a library.

Provide Options Regarding Paper Copy, Compact Disk, or Web Posting

- ✓ It is now feasible to make an EIS available in paper copy, CD, and Web publication. By some measures, the relative rankings of these alternatives is clear. It is most expensive to provide an additional stakeholder with a paper copy (the marginal cost is highest) due to printing and mailing costs, less expensive to provide a CD, and least expensive to provide access via the Web, which has a marginal cost of zero. In other measures, such as convenience to the reader, there is no such unequivocal ranking.
- ✓ Some stakeholders, including the U.S. Environmental Protection Agency when an EIS is filed, require paper copies. Others prefer CDs (or other electronic means) because of their compact size and transportability, and the reader's ability to search text electronically to find specific topics. The Department of the Interior, for example, requires one paper copy and allows the balance of the multiple copies it needs in either paper or CD. For documents available on the Internet, that Department requires one paper copy and the location on the Internet where the document can be found. Still other stakeholders are content to inspect a document online, although new procedures for security reviews may make this option less useful for providing review opportunities to the general public.
- ✓ Please note, however, that EPA and CEQ procedures have not changed regarding EIS circulation. Document preparers should not presume that electronic distribution of EISs alone is adequate to meet the EIS distribution requirements of 40 CFR §1502.19. A NEPA Document Manager should

attempt to determine recipients' preferences. However, if no response is received to an inquiry of preferences for an EIS, the "default" option – that a paper copy is preferred – should be assumed.

- ✓ For the Yucca Mountain final EIS, DOE consulted with EPA on distribution procedures before circulating primarily summaries and CDs. DOE told people how to request copies of the entire document, with an option to call a toll-free telephone number, and waited an extra week before filing the EIS with EPA so that people who wanted the complete document could receive it before DOE filed the document and EPA published a Notice of Availability. EPA agreed that these distribution procedures met the CEQ requirements. (See *LLQR*, March 2003, page 9.)
- ✓ Each way of making an EIS available to an interested party has advantages and disadvantages. Agencies have noted that offering choices in distribution mode results in better stakeholder relations, and offering online access and/or CDs typically reduces the requests for paper copies.

Conclusion: Plan Ahead, Offer Options

A common thread in the responses to our inquiry is that DOE offices and other agencies' NEPA programs are trying new approaches to improve EIS distribution. Approaches that may have been adequate and appropriate in the past may not be optimal now because we have more options for fulfilling the distribution function, and because the identity and preferences of the recipients of EISs change over time. Being more responsive to recipients' preferences enhances the EIS review process and can result in significant savings, but requires advance planning and the additional steps needed to identify recipients' preferences.

Related LLQR Articles

- March 2003, page 9: *Innovative, Efficient EIS Distribution Saves Yucca Mountain Project \$200,000*
- June 2002, page 8: *Interior Department Welcomes "Electronic" EISs*
- March 2001, page 4: *Saving \$ on EIS Distribution*
- December 1999, page 8: *CD-ROM – A Useful Complement to Printed NEPA Documents?*
- March 1996, page 4: *EIS Distribution: Common Sense Approaches*

Keep the Public Informed When EIS Plans Change

Keeping regulators, cooperating agencies, and the general public informed of the proposed schedule and status of EIS preparation is a good management practice, allowing participants in the NEPA process to plan for effective involvement.

Notification of changing EIS plans promotes good public participation and good public relations and should be standard DOE practice.

Occasionally, DOE's plans change after issuance of a Notice of Intent to prepare an EIS. Although there is no regulatory requirement to notify the public when plans for an EIS change, there are situations where NEPA Document Managers should ensure that the

public is kept informed – EIS cancellations, suspensions, reactivations, or redirections in scope.

In general, such notification promotes good public participation and good public relations and should be standard DOE practice. (Although the *Schedules of Key DOE EISs* are posted on the DOE NEPA Web site at tis.eh.doe.gov/NEPA under Document Status and Schedules, this mechanism alone may not provide adequate notification to interested or affected parties.)

The mechanisms available for communicating changes such as these to the public are the same mechanisms as are used throughout the NEPA process. Notifications might involve *Federal Register* notices, notices in local publications and on DOE Web sites, and targeted mailings. In some instances, public notification is only one step in the public participation process accompanying changes to an EIS process. Substantial changes in the proposed action or alternatives or significant new information after a lengthy hiatus in EIS activity may call for additional scoping.

Following are descriptions of good practices and illustrations of how DOE has notified the public of such changes.

Cancelling an EIS

Two recent EIS cancellations illustrate different approaches to public notification. The National Nuclear Security Administration (NNSA) decided in July 2002 to cancel its *Wind Farm at the Nevada Test Site EIS* (DOE/EIS-0335; see *LLQR*, September 2002, page 25). NNSA issued a news release explaining that the cancellation was due to concerns raised by the U.S. Air Force that the wind turbines could interfere with radar.

NNSA also wrote to interested stakeholders, including the State of Nevada and American Indian tribes with cultural affiliation to the Nevada Test Site. In January 2003, DOE published a notice of withdrawal of the notice of intent to prepare the wind farm EIS, which terminated the NEPA process (68 FR 1448; January 10, 2003).

In another case, the Bonneville Power Administration (BPA) cancelled an EIS on the proposed Blackfoot Wind Project that was to be located in Glacier County, Montana, because BPA decided not to purchase power from the project. BPA notified the public of the cancellation by letter, a copy of which was placed on BPA's Web site at www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/blackfeet. BPA committed to complete funding of biological studies begun during the EIS's preparation and to provide the resulting data to the Blackfoot Tribe.

Suspending and Reactivating an EIS

Sometimes, without actively deciding to suspend EIS preparation, an EIS process is delayed for consideration of scoping comments, comments received on a draft EIS, new information on technologies or cost, or other, unanticipated factors. It is good practice to keep stakeholders informed on a regular basis when delays are occurring.

Once an EIS process that had been suspended is resumed, it would be good practice to inform stakeholders of the status. Depending on the length of the hiatus in EIS activity, or if there have been many enquiries about the status of the EIS and the proposed action, it may be in DOE's best interest to reopen scoping for the EIS.

Redirecting an EIS after a Suspension or Cancellation

DOE recently notified stakeholders of a change in its approach for the NEPA review on the EIS for Depleted Uranium Hexafluoride Conversion Facilities. In an April 28, 2003, *Federal Register* notice (68 FR 22368), DOE explains that the change is in response to the *2002 Supplemental Appropriations Act* (Public Law 107-206). DOE initially planned to prepare a single EIS, but as a result of specific requirements in the Act directing DOE to build two plants, DOE decided to prepare two EISs, one for the plant proposed for the Paducah, Kentucky, site and one for the plant proposed for the Portsmouth, Ohio, site.

In another example, BPA started an EIS in 1993 on the Eastern Washington Main Grid Support Project, but cancelled the project in 1994 for fiscal reasons before issuing a draft EIS. When the project was reactivated

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DOE Updates Public Participation Policy

DOE has reaffirmed its commitment to public participation in its revised Public Participation and Community Relations Policy (DOE Policy 141.2), issued on May 2, 2003. The policy reinforces the importance of broad, ongoing dialogue between DOE and its host communities and replaces DOE Policy 1210.1, Public Participation.

“Because public participation is an important component of the NEPA process, DOE NEPA practitioners should be aware of Departmental policies and guidance on this subject,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance.

“DOE has made real progress in developing effective public participation programs across the complex, and is recognized as a leader within the Federal government,” said Betty Nolan, Office of Congressional and Intergovernmental Affairs, who has championed the Department’s efforts since 1993. “The challenge now is to

evolve our project-focused public participation activities into a broader-based, community dialogue that ensures that DOE is truly a good neighbor in the communities that support our missions,” she added.

The revised policy authorizes Lead Program Secretarial Officers to designate senior site officials responsible for this policy. It also adds the goal of periodic review of site public participation and community relations efforts.

The guidance entitled “Effective Public Participation under the National Environmental Policy Act” (the “Gold Book,” revised August 1998) was issued to help implement the Department’s initial policy and remains applicable to the updated policy.

DOE Policy 141.2 is available on the Web at www.directives.doe.gov under DOE Directives. NEPA public participation guidance is available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under Guidance. 

Keep the Public Informed When EIS Plans Change

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and redirected in 2002, BPA published a notice of intent in the *Federal Register* that referred to the earlier NEPA activity and announced preparation of an EIS on the Grand Coulee–Bell 500 kV Transmission Project (67 FR 1746; January 14, 2002). BPA also posted a fact sheet on its own Web site that explained how the current EIS would build on the previous EIS studies and would be supplemented by new technical studies (www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/GrandCouleeBell). 

Recommendations

When an EIS is cancelled, suspended, reactivated, or redirected, the NEPA Document Manager should:

- ✓ Consider timely publication of notices in the *Federal Register* and on DOE Web sites, and local announcements or mailings as a courtesy to all potentially affected and interested stakeholders.
- ✓ Consider rescoping when an EIS is reactivated after a long suspension or redirected after any suspension.

Observations on Annual NEPA Planning Summaries

One of the Department's most useful NEPA tools is the annual planning summary, in which each Program and Field Office charts its upcoming NEPA activities. The annual NEPA planning summary was intended to ensure that senior management officials are involved in their organization's NEPA planning process, help in allocating resources for timely NEPA compliance, and inform the public of DOE's NEPA plans. However, it appears that DOE is not taking full advantage of this tool.

DOE Order 451.1B, National Environmental Policy Act Compliance Program, paragraph 5a(7), provides that each Secretarial Office and Head of Field Organization shall, for matters under the Office's purview, submit an annual NEPA planning summary to the Assistant Secretary for Environment, Safety and Health (EH-1) by January 31 of each year and make it available to the public.

A total of 25 annual NEPA planning summaries were submitted to EH-1 in 2003. Based on the information presented in the summaries, there are 72 ongoing NEPA activities, 11 projected EISs (plus four supplement analyses), and 36 projected EAs. The Office of NEPA Policy and Compliance made this year's annual planning summaries available on the DOE NEPA Web site at tis.eh.doe.gov/nepa as they were received.

A number of procedural deficiencies were observed in this year's annual planning summaries. Of the 25 summaries submitted, 11 were transmitted under the signature of the NEPA Compliance Officer (NCO) or another individual rather than the Secretarial Officer or Head of Field Organization as intended by the Order. Only 18 of the 25 summaries were submitted by January 31. Three

An annual NEPA planning summary must briefly describe:

- The status of ongoing NEPA compliance activities
- Any EAs expected to be prepared in the next 12 months
- Any EISs expected to be prepared in the next 24 months
- The planned cost and schedule for completion of each NEPA review identified.

DOE Order 451.1B, paragraph 4d

organizations have yet to finalize their planning summaries. Few summaries contained cost information, but most did contain schedule information.

The primary beneficiaries of the annual planning summaries are the program and field office managers and the public. In addition, knowing the schedules of all the EISs helps the NEPA Office manage its staff resources. Identifying all EAs and EISs being prepared or planned throughout the Department also helps the NEPA Office identify trends and crosscutting issues.

The Office of NEPA Policy and Compliance is continuing to analyze summary information and may issue guidance later this year. Two NCOs have suggested that guidance or a revision to the Order is warranted because of internal restructuring and reorganizations. For further information regarding annual NEPA planning summaries or assistance in preparing a summary, contact Lee Jessee at lee.jessee@eh.doe.gov or 202-586-7600. 

Three Offices Join in Issuing "Brief Guide" to the DOE-wide NEPA Contracts

The Office of Environment, Office of Procurement and Assistance Management, and National Nuclear Security Administration (NNSA) Office of Procurement and Assistance Management jointly issued *Brief Guide: DOE-wide National Environmental Policy Act Contracts* on May 2, 2003. This guidance was prepared with the assistance of the NNSA Service Center (Albuquerque) and replaces a 1998 document of similar title. The Guide provides information about the contracts (e.g., why they were established, who may use them, what are the small business contracting considerations) and how to use them (e.g., preparing a statement of work, establishing a task under the contracts).

The Guide has been distributed to the DOE NEPA community and procurement directors and is available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under a link entitled DOE-wide NEPA Contracting, along with other resources to aid potential users of these contracts. Additional information is available from the DOE-wide Contracts Administrator, David Gallegos, NNSA Service Center, at dgallegos@doeal.gov or 505-845-5849. (See *LLQR*, December 2002, page 24, for the announcement of the contract awards and March 2003, page 14, for information on DOE-wide NEPA contracting resources available online.) 

Not Meeting CAA General Conformity Requirements Can Lead to Project Delays

By: Ted Koss, *Office of Environmental Policy and Guidance*

Under the Clean Air Act (CAA), Federal actions cannot thwart state and local efforts to remedy longstanding air quality problems that threaten public health (i.e., problems associated with the criteria pollutants – ozone, nitrogen dioxide, sulfur dioxide, particulate matter, carbon monoxide, and lead). To underscore DOE's responsibilities concerning compliance with the ambient standards for the criteria pollutants, the Office of Environmental Policy and Guidance recently issued the Information Brief, "Compliance with the General Conformity Regulations" (March 2003).

The Information Brief supplements the April 2000 DOE guidance, "Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process," to give further perspective on the conformity requirements and their importance when analyzing DOE proposed projects. The new Brief presents the overall requirements of the general conformity regulations and identifies the types of DOE actions that may be subject to conformity. Addressing conformity requirements is emphasized in the new DOE O 450.1, "Environmental Protection Program," as an element of DOE's Environmental Management System.

Because projects are vulnerable to legal challenges and delays if conformity is not appropriately addressed during the NEPA process, the Information Brief also highlights some litigation experiences of other agencies and some concerns expressed by the Environmental Protection Agency (EPA) in its review of draft EISs, as described below.

Potential Delays When Conformity Not Addressed During NEPA Process

These three examples illustrate the potential for delay from legal challenges.

- In March 1991, the U.S. Air Force closed Pease Air Force Base in New Hampshire. The Air Force had issued a draft EIS on the disposition and reuse of the base in February, a final EIS in June, and a record of decision containing a conformity determination in August 1991. In March 1992, the Air Force issued a memorandum that updated the conformity determination in light of new information. The Conservation Law Foundation then filed a citizen's suit under Section 304 of the CAA against the Air Force alleging, in part, that the final EIS was inadequate because it did not contain a conformity analysis. The Federal District Court agreed and directed the Air Force

to prepare a supplemental EIS to address several CAA issues, including conformity. This case suggests that a general conformity compliance demonstration needs to be completed and taken into account in NEPA documentation.

- In 1996, the U.S. Marine Corps was planning to transfer aircraft from two locations to Air Station Miramar in southern California due to base realignment. The analysis of emissions for the conformity review for this relocation was contained in an appendix to the project's final EIS. Residents near the Miramar Station, concerned about potential safety and noise impacts of military helicopters flying near their homes and businesses, requested an injunction to halt the realignment, charging in part that the Marine Corps had not met general conformity requirements. Although the court denied the group's initial motion, the Marine Corps and community representatives settled out of court. One of the terms of the settlement was that the Marine Corps would reexamine and redo its conformity analysis for the Miramar realignment. More information is available at: www.afcee.brooks.af.mil/ms/msp/center/VOL7No3/13.asp.
- In 1997, the Las Vegas District Office of the Bureau of Land Management (BLM) was attempting to sell sand and gravel rights to BLM land. A lawsuit was filed contending that the proposed sale did not consider general conformity requirements. The sale was delayed until conformity was demonstrated in the EA for this BLM action.

EPA Raises Concerns in Reviews of EIS General Conformity Analyses

EPA reviews draft EISs prepared by Federal agencies under authority granted in Section 309 of the CAA. As a result of these reviews, EPA has in the past, with regard to other agency's actions:

- Expressed concerns that, for proposed aircraft facilities, air quality mitigation measures required under the conformity rule were conceptual in nature and lacked definitiveness (63 FR 12466; March 13, 1998)
 - Urged finalization of a conformity review before completion of a final EIS for a proposed flood protection project (63 FR 27082; May 15, 1998)
 - Objected to a proposed groundwater storage program based on potential significant air quality impacts and
- continued on next page*

CAA General Conformity Requirements

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the lack of a conformity determination, and recommended that a draft determination be issued before issuing the final EIS (65 FR 11574; March 3, 2000)

- Expressed concern that a draft EIS for a proposed flood control project did not address air quality mitigation measures that may be necessary under the general conformity rule and recommended that the final EIS provide additional information concerning conformity with the State Implementation Plan (65 FR 57336; September 22, 2000)
- Stated the need for a conformity determination for a proposed flood control project (65 FR 64438; October 27, 2000).

For additional information on CAA general conformity requirements, contact Ted Koss, Office of Environmental Policy and Guidance (EH-41), at theodore.koss@eh.doe.gov or 202-586-7964. Mr. Koss has assisted a number of DOE organizations in addressing conformity, reviewed conformity studies in EAs and EISs, and provided interpretations of conformity regulatory issues. 

Documents on the Web

The Information Brief is available on the DOE Office of Environmental Policy and Guidance Web site at tis.eh.doe.gov/oepa/guidance/caa/conformbrf.pdf.

The April 2000 guidance is available on the DOE NEPA Web site at tis.eh.doe.gov/nepa/tools/guidance/caaguidance.pdf; also see *LLQR*, June 2000, page 8.

Update on Revisions to Floodplain and Wetland Environmental Review Requirements

Office of NEPA Policy and Compliance staff is coordinating with General Counsel (GC) staff to obtain GC-1 concurrence in the final rulemaking, now that all other concurrences by Secretarial Officers and Heads of Field Organizations have been obtained. The NEPA staff is also coordinating with the Council on Environmental Quality (CEQ) concerning the conforming change to the DOE NEPA regulations. Coordination has been completed

with the Federal Emergency Management Agency. Following CEQ coordination, GC concurrence, and approval by the Secretary, the Assistant Secretary for Environment, Safety and Health would issue the final rule, which would be effective 30 days after publication in the *Federal Register*. (See *LLQR*, December 2003, page 3, and September 2002, page 13.) 

Comment Response Process Makes NEPA Work

(continued from page 3)

Most-Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," Question 25a; 46 FR 18026; March 23, 1981.)

DOE has received anywhere from a handful of comments on one draft EIS to some 11,000 comments on another. In nearly every final EIS, DOE provided commentors a specific reply to each of their individual comments. Usually, this was done by adding the response, or a code number associated with the response, to the reproduction of the original comment document. In half the EISs, DOE also separately summarized and responded to major themes repeated throughout the comments.

DOE's EISs make readers aware of changes made to the text of an EIS in several ways: by describing text changes in the response to individual comments, marking changes throughout the document with a vertical bar in the page margin, and summarizing changes in a single section, such as the introductory chapter of the final EIS. The latter approach makes it possible for readers to see the breadth of changes in one location.

Number of comments received is not a predictor for the length of time required to complete an EIS

DOE uses several techniques to help readers understand the comment-response process and find comments by particular individuals or organizations or on specific topics. The clearest approach, used in several EISs, is to briefly describe the process by which comments were received,

providing a breakdown of comment formats (e.g., written, oral) and the source of comments (e.g., government agencies, individuals). Sometimes, a few paragraphs accompanied by one or two tables may be sufficient to convey the essential information about the process for receiving public comments on the draft EIS.

The most user-friendly EISs also provide clear guidance for how readers can find comments by particular individuals or organizations, or on specific topics. Comments are indexed by commentor name and also by topic.

Most EISs present some count of the number of comments and commentors, but do so differently. In some EISs, oral comments are lumped into a single summary of the public meeting, making the meeting count as a single commentor. In other EISs, the public meeting transcript is evaluated sentence-by-sentence in the same manner as written comments.

EISs differ, too, in whether they respond to a written comment read at a public meeting as a single comment or

as two. In the latter case, DOE responds to the comment once among written comments and again with the public meeting transcript.

Another difference among EISs is the treatment of petitions, mass-produced postcards, and similar publicly organized comments. Generally, a single response is provided because the comment is the same. There is a difference, though, in how the number of commentors is counted. Some EISs attribute the comment only to the first signatory while others record the name of each signatory.

In reviewing estimates of the number of comments received on draft EISs, the NEPA Office found no correlation with the time of completion from draft to final EIS. A possible explanation for this lack of correlation is that even when the total number of comments runs into the thousands, after sorting, the number of unique issues that must be responded to is a typically less than a hundred. This highlights the importance of the sorting, or "binning," process, summarizing comments, and tailoring responses to comments.

Guidance in the Works

The NEPA Office will incorporate the results of its review of final EISs into draft guidance to be circulated to the DOE NEPA community for comment. The Office expects to address a broad range of topics from the tone of responses (e.g., writing responses that are not defensive) to what information to report (e.g., should an EIS report the total number of commentors and if so how should the number be counted) to strategies for sorting and summarizing comments.

Suggestions and questions about this guidance, or comment-response issues generally, should be directed to Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

What's a comment?

In forthcoming guidance, the NEPA Office will encourage the consistent use of terms when describing public comments and DOE's responses, including:

- A **comment** is a discrete remark about a particular topic.
- A **commentor** is an individual or organization making one or more comments.
- A **comment document** is the written version of comments submitted by a commentor (e.g., a letter, postcard, e-mail, or transcript of oral comments).

CEQ NEPA Task Force Report Expected This Summer

The findings and recommendations of the Council on Environmental Quality (CEQ) NEPA Task Force will be available this summer, according to Horst Greczmiel, CEQ's Associate Director for NEPA Oversight and NEPA Task Force Director. The Task Force was created in April 2002 to seek ways to improve and modernize NEPA implementation. (See *LLQR*, March 2003, page 8.)

Mr. Greczmiel briefed Beverly Cook, Assistant Secretary for Environment, Safety and Health, and other DOE officials on May 6, 2003, providing a general overview of the Task Force's work and the status of its report. CEQ envisions the information gained and disseminated by the NEPA Task Force will help Federal agencies update their practices and procedures and better integrate NEPA into Federal agency decisionmaking. The report will soon

undergo interagency clearance review by agencies represented on the Task Force, according to Mr. Greczmiel, prior to general distribution this summer.

Lee Jessee, Office of NEPA Policy and Compliance, served on the NEPA Task Force as Agency Representative from DOE and Web site administrator, focusing primarily on information management issues to enhance the efficiency and effectiveness of NEPA implementation. The Office of Environment, Safety and Health also provided technical computer support to the Task Force Web site. The Task Force report will be available on the Web site at ceq.eh.doe.gov/ntf. 



DOE Submits Second Cooperating Agency Report

DOE responded on April 30, 2003, to the Council on Environmental Quality's (CEQ's) request for Federal agencies to report biannually on cooperating agency activities in new EISs and EAs. This second report covers DOE EISs and EAs initiated between September 1, 2002, and February 28, 2003. In that period, three EISs were initiated, including one with 12 cooperating agencies identified or invited, and 10 EAs were initiated, including four with one cooperating agency each.

In this second report, DOE also updated the status of cooperating agency activity reported earlier for NEPA documents initiated between March 1 and August 31, 2002, and added several EAs that were initiated during the period covered by the first report. The current profile of

DOE EISs and EAs initiated between March and August 2002 is that three EISs were initiated, including one with two cooperating agencies and one with seven cooperating agencies, and 25 EAs were initiated, including one with four cooperating agencies and one with one. (This is a revision of data provided in DOE's first report; *LLQR*, December 2002, page 2.)

DOE NEPA document preparation teams are encouraged to consider including potential cooperating agencies in their NEPA process and to consult with their NEPA Compliance Officer if questions arise on this subject. (See *LLQR*, March 2002, page 1.) For information on cooperating agency reporting, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NEPA Section 101 on Advisory Committee Agenda

The National Environmental Conflict Resolution (ECR) Advisory Committee of the U.S. Institute for Environmental Conflict Resolution will conduct its second meeting June 9-10, 2003, in Berkeley Springs, West Virginia. The meeting is open to the public. The advisory committee has three subcommittees, one of which is examining the relationship between Section 101 of NEPA and ECR. (See *LLQR*, December 2002, page 12, and June 2001, page 9.)

The NEPA Section 101 subcommittee will continue its examination of common principles between ECR and Section 101. The subcommittee also will discuss whether

ECR helps achieve aspects of the goals laid out in Section 101, even if unintentionally, and will continue developing a protocol for case studies to explore this topic more thoroughly. Documents produced by the subcommittee will be placed on the advisory committee's Web site at www.ecr.gov/necrac/index.html.

The other two subcommittees are addressing ways to broaden public participation from among affected communities and best practices in ECR. For further information about the advisory committee, contact Melanie Emerson at memerson@ecr.gov or 520-670-5299. 

e-NEPA: Are We Meeting Our Web Posting Goals?

By: Denise Freeman, Webmaster

The Department is much closer to meeting its Web publishing goals now than it was two years ago. But we are not there yet.

We (the DOE NEPA community) need to continue to improve if we are to meet our goals of Web publishing 100 percent of our EAs and EISs, and doing so in a timely manner. Our specific timeliness goals, which the Office of NEPA Policy and Compliance established in 2000 (*LLQR*, June 2000, page 11), are to post:

- Full texts of EISs when the Environmental Protection Agency (EPA) publishes the notice of availability in the *Federal Register*
- EAs and Findings of No Significant Impact within a week after the NEPA Office receives electronic files, which should be within two weeks of their availability (per DOE O 451.1B)
- Announcements and links to Notices of Availability, Notices of Intent, and Records of Decision on the same day that they are published in the *Federal Register*.

Why These Goals Are Important

Our 100 percent Web publication goal is based in the DOE NEPA Order, under which NEPA Compliance Officers (NCOs) have the responsibility to submit electronic files for completed NEPA documents. The DOE NEPA community relies on the electronic NEPA document archive on the NEPA Web site for many purposes. Documents in the archive are used for research and are frequently referenced in other NEPA documents. Maintaining a complete archive can streamline the process of preparing a new NEPA document. Moreover, posting a document in a timely manner facilitates the public participation process, especially the public comment process for a draft EIS. Stakeholders often search the DOE NEPA Web site, so it is important to post a document there in a timely manner even if a Program or Field Office posts the document on its own Web site.

Web Publishing Performance Metrics

Note: The following Web publication statistics refer to all EAs and EISs on the NEPA Web site, but not all of these documents are available online to members of the public. In response to security concerns in late 2001, we blocked access to all NEPA documents archived on the NEPA Web site. We have since restored online access to DOE personnel and, via a password system, to DOE contractors and state, local, and tribal governmental officials. (See related articles in LLQR, December 2002, March 2002, and December 2001.) We have not restored online public access to any of the documents originally blocked in 2001 because security reviews have not been completed for them. However, all newly completed EAs and EISs submitted to us since December 2001 are publicly available online (with the exception of an appendix for each of two EISs). Currently, of documents posted, 12 out of 77 final EISs and 31 out of 366 EAs are publicly available online.

EISs: Regarding the percentage of completed EISs that are Web published, we are doing well. Although we are missing one draft EIS issued in 2002, which NEPA Office staff intends to capture, we otherwise have posted all of the Department's draft and final EISs issued since January 2000 (see Table). This recent performance reflects continual improvement since we started Web publishing NEPA documents in 1994. From 1994 to 1998, we were posting only about 50 percent of our final EISs and very few draft documents. By 1998 we were posting about 90 percent of our EISs, and now we are posting essentially all of them.

Regarding timeliness, however, we need to improve if we are to meet our goals, especially for draft EISs. More often than not, draft EISs are not posted on the DOE NEPA Web site when EPA publishes the notice of availability. This happens because NCOs often do not submit a timely and complete Web publication package. In most cases,

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Recent Performance in the Number of EAs and EISs Web Published

	EAs			Draft EISs			Final EISs		
	No. Issued	No. Posted	% Posted	No. Issued	No. Posted	% Posted	No. Issued	No. Posted	% Posted
2000	20	18	90	2	2	100	6	6	100
2001	27	24	85	8	8	100	5	5	100
2002	31	24	77	4	3	75	8	8	100
2003*	10	5	50	4	4	100	2	2	100

* Through June 2, 2003

e-NEPA: Are We Meeting Our Web Posting Goals?

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draft EISs are posted within a week of the EPA Notice. In a few cases, a draft EIS was not posted until after the public comment period closed.

EAs: Regarding the percentage of EAs posted, we are not doing as well as we are with EISs. Although we have improved since 1998, when we were Web publishing only about 50 percent of completed EAs, recent performance has worsened. From January 2000 through December 2002, the number of EAs posted decreased from 90 percent to about 75 percent. The problem is a simple failure of NCOs to submit EAs for Web publication, as required by DOE O 451.1B. In 2002, no Web publishing package was submitted for seven out of 31 EAs, and, so far in 2003, only five of 10 completed EAs have been submitted for Web publication.

Regarding timeliness, when a complete Web package is submitted to the NEPA Office, the average time to post an EA is about 10 days, slightly exceeding our seven-day goal.

Announcements: With few exceptions, we are meeting our goal to post announcements and links on the NEPA Web site on the same day as *Federal Register* publication. We post such announcements under "What's New."

Reasons for Web Publishing Delays

- *Incomplete document package.* Most publication delays result from an incomplete Web publication package. The NEPA Office cannot publish documents on the NEPA Web site without a complete document package, which contains three elements: electronic file, NEPA Document Certification Form, and paper copies. The most frequently omitted element is the document certification form, which is needed to ensure the integrity of posted documents and for homeland security purposes, i.e., to identify whether some or all of the document should not be publicly available on the Internet.
- *Late submission (of a complete package).* On average, the NEPA Office requires about one week to process a complete package for an EIS. It is especially important to submit a draft EIS for Web publication early enough so that it can be posted before the start of the public comment period.
- *Failure to submit a package at all.* In some cases (especially EAs), no package is submitted.

- *Wrong address.* In a few cases, Web publication packages were sent to an incorrect mailing address. The correct address is in the text box, which summarizes e-file submittal procedures.

We urge NCOs and Document Managers to think of Web publication as an integral part of the NEPA document preparation process, and to build Web publication requirements into document milestone schedules.

Please address any comments or questions about Web publication or other comments regarding the DOE NEPA Web site to Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879. 

e-file Submittal Procedures

For draft and final EISs, After consulting with Office of NEPA Policy and Compliance staff, send the following as soon as available (preferably when the document is sent to the printer, but no later than seven days before EPA publishes a notice of availability) by overnight courier service to:

Attn: Ms. Rhonda Toms
ES&H Information Center
EH-72 270CC
1000 Independence Avenue, SW
Washington, DC 20585-0270

- ✓ One paper copy of the EIS*
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form (available at: tis.eh.doe.gov/nepa — click on the pull-down menu).

* Also send *two* paper copies of the EIS as soon as available to Carol Borgstrom at the Office of NEPA Policy and Compliance.

For EAs, FONSIs and other NEPA documents, send the following within two weeks of their availability to the Office of NEPA Policy and Compliance:

- ✓ Three paper copies of the EA and FONSI
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form.

DOE Celebrates Earth Day with an Emphasis on Pollution Prevention

Energy Secretary Spencer Abraham's Earth Day message this year focused on Environmental Management Systems (EMSs) and Pollution Prevention (P2). In his message to the Department, the Secretary stated, "DOE is committed to protecting the environment while conducting its important national security and energy-related missions. In support of this commitment, we are implementing formal environmental management systems at our facilities, thereby reducing the amount of waste we produce and release into the environment."

On Earth Day (April 22), Beverly Cook, Assistant Secretary for Environment, Safety and Health, presented the DOE 2003 P2 Awards. (See photo below.) The winning projects were submitted for the White House Closing-the-Circle Awards pollution prevention competition. There were 210 nominations from 19 Federal agencies in eight categories. A distinguished panel of judges from academia, industry, and government organizations selected a total of 26 winners. DOE was a winner in the category, "Sustainable Design/Green Buildings." The winning DOE entry was Sandia National Laboratory's "Sustainable Buildings Design Team, Incorporating Sustainability for New Buildings."

The Office of NEPA Policy and Compliance has long advocated the incorporation of pollution prevention



Seventeen projects sponsored by Environmental Management, Science, and the National Nuclear Security Administration were selected as winners of a 2003 DOE P2 Award. Beverly Cook, Assistant Secretary for Environment, Safety and Health, presented the awards to Raymond Orbach (on left), Director, Office of Science, and Brig. Gen. Ronald Haeckel, NNSA, Principal Assistant Deputy Administrator for Military Application, Defense Programs.



From left to right, Steve Woodbury, Don Lentzen, Larry Stirling, Beverly Cook, Jane Powers, Ray Berube, Andy Lawrence, and Tom Traceski, all of the Office of Environment, Safety and Health, demonstrate their commitment to Environmental Management Systems and Pollution Prevention in an Earth Day display.

principles into DOE's planning and decisionmaking. This is clearly stated in a 1992 memo on "Integrating Pollution Prevention with NEPA Planning Activities." DOE's memo was a precursor to the Council on Environmental Quality's guidance on pollution prevention (58 FR 6478; January 29, 1993), which encourages all Federal agencies to incorporate pollution prevention principles, techniques, and mechanisms into their NEPA planning, decisionmaking, and document preparation. In addition, in 1993 the Environmental Protection Agency issued guidance on "Incorporating EPA's Pollution Prevention Strategy into the Environmental Review Process" (EPA Memorandum, dated February 24, 1993).

"Incorporating pollution prevention into the NEPA process is a good practice," according to Jane Powers, Pollution Prevention Team Leader for DOE's Office of Environmental Policy and Guidance. "If pollution prevention approaches are considered in the early planning stages, it is more likely that they will be designed in once the environmental and economic benefits are understood," said Powers.

There are many ways that one can incorporate pollution prevention into the NEPA process, such as including it as a scoping topic in an EIS notice of intent, designing the proposed action and alternatives with pollution prevention approaches incorporated as project features, identifying recycling and energy recovery options that would be employed if the proposed action or alternatives were implemented, and identifying pollution prevention approaches that could be mitigation measures in an EA or EIS (*LLQR*, December 1999, page 9). 

Tribute to Raymond P. Berube

Retired Deputy Assistant Secretary for Environment



After 34 years of Federal government service, Deputy Assistant Secretary for Environment Raymond P. Berube retired on May 2, 2003, leaving a legacy of outstanding environmental stewardship that was well-grounded in NEPA

experience. Ray's first government position was with the Federal Highway Administration where he applied his education in civil engineering to NEPA reviews for highway proposals. He came to the Department of Energy soon after its creation and worked on the Department's NEPA implementing guidelines, floodplain and wetland regulations, and EISs for such critical projects as the restart of L-Reactor at the Savannah River Site and the Strategic Petroleum Reserve.

Ray became the Deputy Assistant Secretary for Environment in 1987, a new position created to respond to a wide range of complex environmental policy and implementation issues and a position that he held until his retirement. He applied strong leadership and problem solving skills to improve the Department's environmental compliance and credibility. Starting at Rocky Flats in 1989, he directed a series of Tiger Teams in independent assessments of environmental compliance at DOE sites. Ray retained strong technical skills and frequently was asked by senior management to participate in special projects. For example, he contributed to the Report to Congress on the Viability Assessment for the Yucca Mountain Site, particularly the review of the engineered barrier system.

Beverly Cook, Assistant Secretary for Environment, Safety and Health, presented Ray with a plaque upon his

retirement that praised his "sound judgment, integrity, and initiative in accomplishing the Department's goals and objectives." His career success is evidenced by many awards and commendations, including a Distinguished Presidential Rank Award, two Secretary of Energy Gold Medals, and a Silver Medal for Meritorious Service.

Ray frequently credited his early NEPA experience for the valuable knowledge it gave him of all environmental statutes and requirements. And he never lost sight of the essential role of NEPA in decisionmaking. One of his favorite stories concerns a proposal in the early 1990s to select and implement a new tritium production technology (the "new production reactor"). Then-Secretary James Watkins, after initially expressing some resistance to the NEPA process and especially the need to analyze a no-action alternative, exclaimed at a House Armed Services Committee meeting – "**Thank God for NEPA**, because there were so many pressures to make a selection for a technology that it might have been forced upon us and that would have been wrong for the country."

Under Ray's leadership, the NEPA process was streamlined, saving the Department \$25 million over five years. He inspired "NEPA Ninjas" throughout the Department to strive to make the process work better, cost less, and be more useful to decisionmakers and the public.

Ray will also be remembered for his prodigious institutional memory and comprehensive files. More than 60 boxes of handwritten notes, faxes, memorandum, and reports have been dubbed the "Berube Collection" by the DOE Historian.

We will miss Ray's stories, guidance, perspectives, and leadership.

Note: Andrew Lawrence, Director, Office of Environmental Policy and Guidance, has been named Acting Deputy Assistant Secretary for Environment. LL

Carl Sykes Included in Secretary's Project Management Awards

The Office of NEPA Policy and Compliance congratulates its staff member Carl Sykes on being recognized in the 3rd Annual Secretary's Project Management Awards, in which three winning teams were identified. In a ceremony on May 20, Deputy Secretary Kyle McSlarrow presented Carl and nine others with the Secretary's Award of Achievement for demonstrating "significant" results in completing a project within cost and schedule. Carl's contribution included his efforts while working at Rocky

Flats earlier in his career and, more recently, his review of the amended records of decision related to the Rocky Flats Building 371 Closure Project. The citation honors his "contribution to the successful planning, innovative, creative, and effective project leadership, and teamwork demonstrated on the Building 371 Closure Project that resulted in the successful completion ahead of schedule and more than \$11 million under budget." LL



Litigation Updates

Lawsuit Over Permits for U.S.-Mexico Transmission Lines

The U.S. District Court for the Southern District of California on May 2, 2003, found violations of NEPA and the Administrative Procedure Act in a suit brought by the Border Power Plant Working Group against DOE and the Bureau of Land Management (BLM). This case challenged the adequacy of DOE's EA and FONSI for permits for two transborder electric power transmission lines, *Presidential Permit Applications for Baja California Power, Inc., and Sempra Energy Resources* (DOE/EA-1391, December 2001; *LLQR*, June 2002, page 13). The transmission lines would allow power from new power plants in Mexico to be imported into the United States. BLM was a cooperating agency in preparation of the EA. The Court invited the parties – that is, the plaintiffs, DOE and BLM, and the defendant-intervenors, Baja California Power, Inc. and Sempra Energy Resources – to provide briefs on the question of an appropriate remedy or remedies and will hear argument on June 16, 2003.

The Court granted that part of plaintiff's motion for summary judgment "arising from the EA and FONSI's inadequate analysis of the following issues: (1) the potential for controversy; (2) water impacts; (3) impacts from ammonia and carbon dioxide; (4) alternatives; and (5) cumulative impacts." With regard to potential controversy, the Court referred to a recent case involving the Department of Transportation (see related article, page 22) and found that "the EA inadequately considered whether the substantial questions" raised in public comments "made the proposed actions controversial for purposes of determining the potential significance of the actions." The Court characterized the response to comments in the EA as rejecting the commentors' assertions without explaining "why the comments do not suffice to constitute a public controversy." It is the agencies' burden, the Court concluded, to demonstrate "the absence of a substantial public disagreement when they choose not to prepare an EIS."

The Court concluded that the EA's determination that water impacts would be insignificant was inadequate, in large measure because the affected resource is an "ecologically critical area" (the Salton Sea) already threatened from other sources, and the Court found the EA's analysis unconvincing. While accepting the adequacy of the EA's analysis of some potential air impacts, the Court faulted the EA for not analyzing potential impacts from ammonia and carbon dioxide even though the document acknowledges that these gases will be emitted.

The Court sided with plaintiffs that the EA could have evaluated an alternative, which was suggested in public comments, of conditioning the permits upon the ability of the power plants to meet certain air quality standards. The EA had rejected this alternative as outside the agencies' regulatory authority. The Court also found that the EA should have considered the combined impacts of future, specific power plants proposed for the region (which the EA considered to be "rumors") and cumulative impacts on water resources.

The Court found for DOE and BLM in regard to the other challenges to the adequacy of the EA and FONSI. The Court agreed that the scope of the EA appropriately included potential impacts in the United States from the operation of the Mexican power plants, even though the construction and operation of those plants was not part of the proposed action.

No decision will be made regarding a potential appeal of the District Court's ruling until the Court has decided upon a remedy.

[Case No. 02-CV-513-IEG (POR)]

Litigation Updates, continued:

Other DOE NEPA-Related Litigation in Brief

Preliminary Injunction Issued Against Transuranic Shipments to Hanford: In response to requests filed by the State of Washington and several environmental groups, Senior Judge Alan McDonald of the Eastern District of Washington on May 9, 2003, granted a preliminary injunction against the Department, prohibiting shipments of additional transuranic (TRU) waste to the Hanford Nuclear Reservation. The injunction prevents the resumption of shipments of TRU waste from Battelle Columbus Laboratories to Hanford. Claims for injunctive relief relating to shipments of TRU waste to Hanford from the Energy Technology Engineering Center in California, which had been completed before the plaintiffs filed their complaints, were moot.

In short, the Court found there were “serious questions” about whether the draft *Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement* (DOE/EIS-0286) for waste disposal at the Hanford site represented implicit acknowledgment by DOE that additional site-wide or project level NEPA analysis is required before off-site TRU waste can be stored and treated at Hanford, and whether reevaluation of transportation risk is required. The Court found the plaintiffs have raised “serious questions” whether there is a NEPA violation and “have at least a ‘fair’ chance of success on the merits” on their NEPA claims. The Court further found, however, that the State’s chance of success in alleging potential violations of state law relating to the applicability of land disposal restrictions under the Resource Conservation and Recovery Act to TRU mixed waste to be less than “fair.” The government’s answer to the State of Washington’s complaint is due June 5, 2003.

Benton County v. DOE (E.D. Wash): After the District Court issued a written opinion in favor of DOE in March

of this year, Benton County filed an appeal and a motion seeking an extension of the injunction to prevent DOE from deactivating the Fast Flux Test Facility (FFTF) pending the outcome of its appeal. The District Court denied the motion, and Benton County subsequently filed an emergency motion for an injunction pending appeal in the Ninth Circuit Court of Appeals. The Appeals Court denied the emergency motion and set a schedule for briefing the case on appeal. On May 8, 2003, Benton County dropped its appeal, noting that the fact that DOE had already begun draining the liquid sodium from the FFTF made it unlikely that the Court would be able to address its claims before they become moot. (See *LLQR*, December 2002, page 22, and March 2003, page 12.)

Nevada v. DOE (D.C. Cir.) concerning the recommendation of Yucca Mountain to Congress as a geologic repository, DOE’s site suitability guidelines, and DOE’s final EIS: The State of Nevada, et al., filed their final reply brief on the consolidated case on May 13. Oral arguments are scheduled on September 19, 2003. (See *LLQR*, March 2002, page 19, and December 2002, page 22.)

NRDC v. Abraham (D. Idaho) challenging DOE Order 435.1 on Radioactive Waste Management: DOE filed its reply memorandum in support of its cross-motion for summary judgment on May 16, 2003. The reply memorandum argues that the plaintiffs cannot demonstrate that the issuance and use of the order are arbitrary and capricious or in violation of existing law. Oral argument will be held June 23, 2003. The reply memorandum and other documents filed in this case are available online at www.id.uscourts.gov under Case Files, District, nonrestricted cases, case number 01-413. (See *LLQR*, March 2000, page 16; June 2000, page 17; and September 2002, page 19.) 

Transportation EA, Categorical Exclusion Rejected

The U.S. Court of Appeals for the Ninth Circuit ruled on January 16, 2003, that the Department of Transportation (DOT) must complete an EIS for three safety and inspection rules that must be in place before certain Mexican trucks can operate in the U.S. beyond specified border zones. DOT's Federal Motor Carrier Safety Administration (FMCSA) had prepared an EA and finding of no significant impact (FONSI) on two of the rules and considered the third to be categorically excluded. The Court rejected these NEPA reviews, basing much of its ruling on the question of significance and evaluating significance in terms of the context and intensity of potential impacts.

Significance in Terms of Context

For context, the Court looked at the question of national, regional, and local impacts and also at short- and long-term effects. DOT concluded in its EA that potential increases in emissions attributed to the Mexican trucks would be "very small relative to national levels of emissions." The Court criticized DOT for failing to analyze the potential for localized impacts near likely destinations and pointed out that comments submitted to the FMCSA during its rulemaking included analysis of publicly available data to predict the cities where impacts likely would be highest.

"The fact that commenters performed such an analysis does not indicate that their analysis was correct," the Court wrote, "but rather that it was possible to conduct such an analysis. DOT's failure to do so indicates that it did not take a sufficiently 'hard look' at the environmental effects of its actions or at the public comments it received."

The Court also criticized DOT for failing to "address adequately the long-term effects of its actions" in that the agency limited its analysis to impacts during a single year. Here again, the Court pointed out that public commenters had submitted long-term analysis, which should have prompted DOT, the Court wrote, to conduct its own long-term analysis or convincingly explain its absence.

Significance in Terms of Intensity

Regarding the intensity of potential impacts, the court examined four questions: public health and safety, uncertainty, threat of illegality, and controversy. In considering the effect on public health and safety, the Court wrote that even a "'marginal degradation' of the quality of the air we breathe" could be said to be "environmentally significant for purposes of this regulation." Also, it criticized "DOT's failure even to consider whether any negative health effects could be associated with increased diesel exhaust emissions."

The Court found uncertainty in the EA's assumptions regarding the number of Mexican trucks that would cross the border and the percentage of those that would meet U.S. air quality standards. The Court criticized DOT for failing to explain its underlying rationale and appearing to randomly select one value, "citing no authority or study for that number."



The Court then turned to the threat of illegality, where it concluded that DOT should have examined whether the proposed action might violate state air emissions regulations that are more stringent than Federal standards, as well as applicable Federal law (the Clean Air Act (CAA)).

On the question of the intensity of potential impacts, the Court concluded that public comment provided evidence of controversy. "A substantial portion of the negative comments offered real criticism of DOT's action," wrote the Court. "Because many of these criticisms have merit, and DOT failed to adequately account for its failure to act on them, its action is 'controversial' under the CEQ regulations and requires preparation of an EIS."

The Court's analysis of significance in terms of context and intensity was central to its decision against DOT on the adequacy of the EA and FONSI, which covered two proposed rules. DOT believed the third proposed rule could be categorically excluded. The Court found, though, that DOT could not identify any particular CX applicable to the third proposed rule and that the agency could not exempt the rule from the requirement to prepare an EA or EIS simply on the claim that it has no significant environmental impact. These findings were central to the Court's order that DOT prepare an EIS.

Conformity Determination Needed

In the same decision, the Court also found that DOT must prepare a conformity determination under the CAA. This determination would evaluate whether the proposed action conforms to state plans for implementing the CAA. DOT had argued that the EA provided evidence that emissions were below levels specified in regulations, but the Court rejected the adequacy of air emissions analysis in the EA. DOT also argued that rulemaking is exempt from the requirement to prepare a conformity determination, to which the Court replied that such an exemption would only apply to the "development and issuance" of regulations, not the substantive results of their promulgation and implementation." The conformity determination should draw upon the analysis to be prepared for the new EIS.

[Public Citizen v. Department of Transportation, 316 F.3d 1002 (9th Cir. 2003)] 

Training Opportunities

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

- **NEPA Three-Day Workshop**
San Francisco, CA: June 10-12
Fee: \$525
Natural Resources Regulations and Permitting One-Day Workshop
San Francisco, CA: June 13
Fee: \$195
Tetra Tech, Inc.
877-468-3872
www.ttsfo.com/services/nepa/news.htm
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
4-Day Course
Philadelphia, PA: June 24-27
San Diego, CA: September 9-12
Memphis, TN: October 7-10
Las Vegas, NV: October 21-24
Fee: \$995
3-Day Course
Logan, UT: September 15-17
Fee: \$795
Reviewing NEPA Documents
Jackson, WY: July 15-18
Fee: \$595
Clear Writing for NEPA Specialists
Charlotte, NC: July 29-31
Fee: \$795
Overview of the NEPA Process
Orlando, FL: August 14-15
Anchorage, AK: August 21-22
Fee: \$595
Cumulative Impact Analysis and Documentation
Boise, ID: September 2-3
Logan, UT: October 27-28
Fee: \$595
The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
- **Making the NEPA Process More Efficient: Scoping and Public Participation**
Durham, NC: August 6-8
Fee: \$750
Preparing and Documenting Environmental Impact Analyses
Durham, NC: September 15-19
Fee: \$1090
Implementation of NEPA on Federal Lands and Facilities
Durham, NC: November 3-7
Fee: \$1090
Nicholas School of the Environmental and Earth Sciences
Levine Science Research Center
Duke University
919-613-8082
sea3@duke.edu
www.env.duke.edu/cee/NEPA.html
- **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 GSA Contract No. GS-10F-0163L (899-3).
Environmental Training & Consulting International Inc.
720-859-0380
info@envirotrain.com
www.envirotrain.com

EAs and EISs Completed January 1 to March 31, 2003

EAs

Grand Junction Project Office/ Environmental Management

DOE/EA-1458 (3/13/03)
*Groundwater Compliance at the Slick Rock, Colorado,
UMTRA Project Site, Slick Rock, Colorado*
Cost: \$38,000
Time: 10 months

Oakland Operations Office/Office of Science

DOE/EA-1441 (3/7/03)
*Molecular Foundry Nanoscale Science Research Center
at Lawrence Berkeley National Laboratory, California*
Cost: \$40,000
Time: 11 months

Oak Ridge Operations Office/ Environmental Management

DOE/EA-1394 (2/24/03)
*Authorizing the Puerto Rico Electric Authority to Allow
Public Access to the Boiling Nuclear Superheat
(BONUS) Reactor, Roncon, Puerto Rico*
Cost: \$39,000
Time: 23 months

Sandia Site Office/National Nuclear Security Administration

DOE/EA-1457 (3/31/03)
*Center for Integrated Nano Technologies,
Sandia National Laboratories, Albuquerque,
New Mexico*
Cost: \$60,000
Time: 6 months

DOE/EA-1446 (1/31/03)
*Testing Capabilities Revitalization, Sandia National
Laboratories, Albuquerque, New Mexico*
Cost: \$118,000
Time: 8 months

EISs

Bonneville Power Administration

DOE/EIS-0325 (1/28/03)
(EPA Rating: EC-2)
*Schultz-Hanford Transmission Line Project, Hanford,
Washington*
Cost: \$1,030,000
Time: 25 months

DOE/EIS-0333 (1/3/03)

(EPA Rating: LO)
*Maiden Wind Farm Project, Benton
and Yakima Counties, Washington*
Cost: \$855,000
Time: 19 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 of 5 EAs completed was about \$40,000; the average was \$44,000.
- Cumulatively, for the 12 months that ended March 31, 2003, the median cost for the preparation of 26 EAs for which cost data were applicable was \$79,000; the average was \$97,000.
- For this quarter, the median completion time of 5 EAs was 10 months; the average was 11 months.
- Cumulatively, for the 12 months that ended March 31, 2003, the median completion time for 31 EAs was 10 months; the average was 12 months.

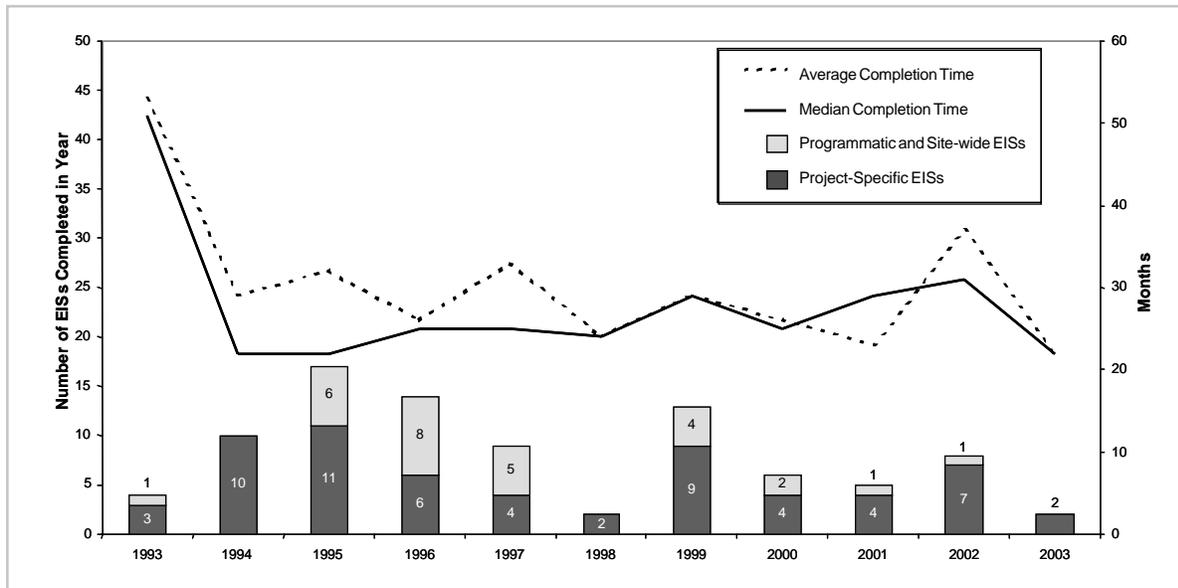
EIS Costs and Completion Times

- The costs for 2 EISs completed this quarter were \$1,030,000 and \$855,000.
- Cumulatively, for the 12 months that ended March 31, 2003, the median cost for the preparation of 7 EISs for which cost data were applicable was \$1,030,000; the average was \$9,207,000.*
- The preparation times for 2 EISs completed this quarter were 25 and 19 months.
- Cumulatively, for the 12 months that ended March 31, 2003, the median completion time for 9 EISs was 29 months; the average was 36 months.*

* *Note: These statistics should be interpreted with caution, in light of the small number of documents, because a single document (the Yucca Mountain EIS) significantly affected the values. See page 26 for a long-term view.*

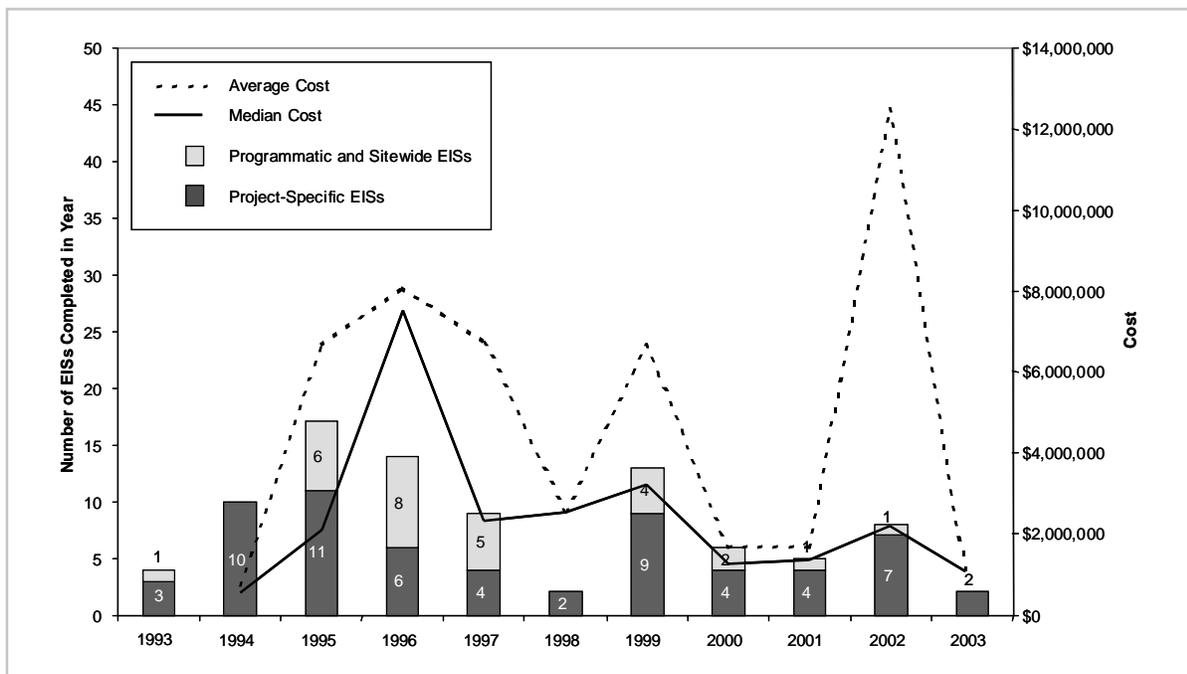
DOE EIS Metrics 1993 - Present*

EIS Completion Times and Number of EISs



After peaking in 1993, EIS completion times decreased and remained about the same. Since 1993, the average of the annual median completion times has been about 25 months.

EIS Costs and Number of EISs



DOE started compiling cost data for its EISs in 1994. From 1994 to 2002, costs varied widely. The average EIS cost of about \$8 million per EIS in 1996 reflects eight extraordinary programmatic EISs. Recent project-specific EIS costs are typically between \$1 million and \$2 million. (The high average cost in 2002 reflects the completion of a single document, the Yucca Mountain EIS.)

* Does not include adopted or cooperating agency EISs. Data through June 2, 2003.

Recent EIS-Related Milestones (March 1 to May 31, 2003)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0353

South Fork Flathead Watershed/Westslope Cutthroat Trout Conservation Program, Montana
May 2003 (67 FR 23705, 5/5/03)

Environmental Management/Ohio Field Office

DOE/EIS-0226-R

Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, West Valley, New York
March 2003 (68 FR 12044, 3/13/03)

Fossil Energy/National Energy Technology Lab

DOE/EIS-0357

Gilberton Coal-to-Clean Fuels Power Project, Gilberton, Pennsylvania
April 2003 (68 FR 17608, 4/10/03)

Other Notice

Environmental Management

DOE/EIS-0329

Depleted Uranium Hexafluoride Conversion Facilities, Paducah, Kentucky and Portsmouth, Ohio
April 2003 (68 FR 22368, 4/28/03)

This notice announces DOE's decision to prepare two separate EISs for the Depleted Uranium Hexafluoride (DUF6) Conversion Facilities Project, one for the plant proposed for the Paducah, Kentucky, site (DOE/EIS-0359) and a second for the Portsmouth, Ohio, site (DOE/EIS-0360).

Draft EISs

Bonneville Power Administration

DOE/EIS-0340

Grande Ronde-Imnaha Spring Chinook Hatchery Project, Wallowa County, Oregon
May 2003 (68 FR 28212, 5/15/03)

Environmental Management/Ohio Field Office

DOE/EIS-0337D

West Valley Demonstration Project Decontamination and Waste Management, West Valley, New York
May 2003 (68 FR 26587, 5/16/03)

Environmental Management/ Richland Operations Office

DOE/EIS-0286

Hanford Solid (Radioactive and Hazardous) Waste Program EIS, Richland, Washington (Revised Draft)
April 2003 (68 FR 17802, 4/11/03)

National Nuclear Security Administration/ Los Alamos Site Office

DOE/EIS-0350

Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico
May 2003 (68 FR 26296, 5/15/03)

Department of Defense/Defense Logistics Agency

DOE/EIS-0347

Mercury Management
April 2003 (68 FR 17786, 4/11/03)
DOE is participating as a cooperating agency.

Records of Decision

Bonneville Power Administration

DOE/EIS-0325

Schultz-Hanford Transmission Line Project, Washington
March 2003 (68 FR 14412, 3/25/03)

DOE/EIS-0330

Wallula Power Project, Walla Walla County, Pasco, Washington
March 2003 (68 FR 13696, 3/10/03)
On March 14, 2003, BPA notified the public that "construction of this project is currently on hold due to current market conditions."

National Nuclear Security Administration

DOE/EIS-0283

Surplus Plutonium Disposition Program Amended Record of Decision
April 2003 (68 FR 20134, 4/24/03)

Supplement Analysis

National Nuclear Security Administration

Surplus Plutonium Disposition EIS (DOE/EIS-0283)

DOE/EIS-0283-SA1

Supplement Analysis for Changes Needed to the Surplus Plutonium Disposition Program
(Decision: No further NEPA review required)
April 2003

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 January 1 and March 31, 2003.

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 Didn't Work

- *Establishing alternatives.* Determination of reasonable alternatives for this EA was particularly hard due to sensitive issues associated with the proposed action and disagreement among stakeholders.

Data Collection/Analysis

What Worked

- *Satisfying stakeholder concerns.* Conducting data collection during time periods when local stakeholders felt the natural habitat would be less impacted by data collection activities (even though our science said otherwise) appeased them and reinforced our initial findings.
- *Contractor interaction.* The contractor acted as a liaison between different players to ensure timely and accurate data were collected for the EA.

What Didn't Work

- *Loss of data.* A fire destroyed part of the data and made analyses difficult.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Cooperative planning.* Coordination among headquarters staff, site offices, and contractors helped keep the document on schedule.
- *Timely reviews.* Adequate responsiveness to short turn-around times facilitated timely production of the EIS.

- *Effective meetings.* Meetings involving all project participants were held. By working through comment resolution and integration together, this part of the process ran efficiently.

Factors that Inhibited Timely Completion of Documents

- *Complex subject matter.* The complexity of the analyses and multiple comments from various stakeholders impacted timely completion.
- *Disregard for response procedures.* Public groups ignored the intended public procedure by focusing comments on the documents related to the EA, but not necessarily on the EA itself.
- *Length of public comment period.* The EA comment period was extended due to numerous requests for additional time, which resulted in additional comments that needed to be resolved.
- *Numerous modifications to draft document.* A major rewrite was needed between the initial and final drafts. By the time the EIS was actually ready for review, the reasons for doing the project nearly disappeared and there was no rush to get it done.
- *Opposing viewpoints.* Working with five different cooperating agencies and three tribes made completing the EIS on time complicated due to varying opinions.
- *Document translation.* Significant effort and time were required to ensure that translation of the FONSI and EA was consistent with the English version.

Teamwork

Factors that Facilitated Effective Teamwork

- *Inclusive team.* Teamwork was successful because it included the DOE NEPA Compliance Officer, legal counsel, and project staff.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

- *Subject matter expertise.* Several additional people with NEPA knowledge were hired to work on the project just as it began. This created a working environment where staff members did not become overloaded; instead everyone received sufficient support.
- *Site office responsiveness.* Site offices responded quickly to facilitate the review process between all parties by covering all aspects of the EIS, from its initial draft through the resolution of the public comments and the final document preparation.
- *Distribution of resources.* The principal investigator was able to draw upon staff to provide the information required and worked well with the contractors to analyze the materials.
- *Established relationships.* Because headquarters and the contractors had worked together in the past, good relations were already established, which made working together easy.
- *Responsiveness.* The DOE NEPA Compliance Officer and the legal staff were cooperative and quick to respond to the project office's needs. This led to effective collaboration.
- *Detailed responses.* The contractor was willing to respond in great detail to any strongly held opinions until an issue was resolved.
- *Additional comment time.* Even though the decision to grant additional public review time delayed completion of the EA, this decision did not ultimately delay the project.
- *Open houses.* The open houses that were conducted during the process were successful tools in keeping the public informed.
- *Information exchange.* This project involved five cooperating agencies which were involved early and kept involved throughout the process.
- *Document translation.* The EA and FONSI were translated into Spanish.

Factors that Inhibited Effective Teamwork

- *Personality conflicts.* The combination of differing personalities and lack of experience working together created conflict. The EIS contractor was defensive when DOE staff asked for changes to their analyses. Keeping the document preparation in-house could avoid this problem next time around.

Process

Successful Aspects of the Public Participation Process

- *Customizing public meeting format.* The plan for the style of public meetings was changed so that attendees could speak one-on-one with project representatives. This kept the meeting much more orderly and less stressful.

Unsuccessful Aspects of the Public Participation Process

- *Competing documents.* The process was complicated by the fact that there was both a NEPA EA and a similar state document. The public groups focused their comments on the state document, rather than the EA. Therefore, the issuance of the EA was delayed somewhat to make sure that no changes to it were precipitated by the comments on the state's document.
- *Ineffective outreach.* Several attempts were made to reach out to the public by presenting information about the EA at existing citizen group meetings; however, there was little success.
- *Notification/distribution issues.* Despite the fact that project information was sent out in mass mailings to neighborhoods adjacent to the affected environment, commentators still asserted that public notification was inadequate.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Evaluation of results.* The EA process was used to assess the condition of the site and confirm the previous analysis that the cleanup level proposed is protective of human health and environment.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

- *Sound decisionmaking.* By using the EA process to evaluate certain design decisions, the project was forced to consider broad consequences of project alternatives. Rigorous analysis and documentation were used.
- *Complete participation.* The EA process ensured full and appropriate involvement by DOE, the contractor, and the public.

What Didn't Work

- *Low priority.* There was little funding for the EA because it was not directly tied to the organization's other activities. This resulted in low attention given to the project compared to other projects with regulatory milestones.

Enhancement/Protection of the Environment

- Though negotiating habitat mitigation with the state wildlife agency was difficult, if the project goes forward, the habitat will be replaced at a ratio much higher than through other projects of its kind.
- Many cultural resource sites were located and identified during this process, and the information was provided to Native American tribes and the state.
- The process confirmed previous assessments that DOE's proposed plan was protective of human health and the environment at the project site.
- Additional mitigations for habitat impact were identified through the EA process.

Other Issues

Guidance Needs Identified

- One respondent noted that there is no conceptual guidance in the 1993 guidance pamphlet that addresses the methodology or parameters that DOE considers important in preparing accident impact analyses involving biological materials.

[Note: "Recommendations for Analyzing Accidents under NEPA," issued in 2002, provides a conceptual framework for DOE accident analysis, but does not specifically consider biological materials.]

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 4 questionnaire responses were received for EAs and 5 responses were received for EISs, 7 out of 9 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process was highly constructive for a large number of project staff by adequately preparing them for other projects of this kind.
- A respondent who rated the process as "5" stated that the agency realizes the importance of NEPA and uses it as a true tool for decisionmaking. By joining the project engineering and design with the NEPA process, the project is anticipated to be a successful one.
- A respondent who rated the process as "3" stated that even though there was a solid effort to work with the stakeholders to find out if they had any issues with the project area in the beginning, it is still of utmost importance to collaborate very early on (even before the EIS process starts) to get a clear understanding of all concerns.
- A respondent who rated the process as "3" stated that even though this was a small project, the EA process affected the design and biological mitigation.
- A respondent who rated the process as "3" stated that to a certain extent, key decisions affecting the project were already made. However, the process required that the facts and analyses be documented and the case be made to support these decisions.
- A respondent who rated the process as "2" stated that the rating was not a reflection on the NEPA process, but rather a reflection of the project's low potential for affecting the human environment. LL

LESSONS LEARNED

September 2, 2003; Issue No. 36

Third Quarter FY 2003

DOE NEPA Community Gauges Progress In Its Continuing Pursuit of Excellence

"I believe we will never get to a point where we say this is done, there is nothing left to learn." – Beverly Cook



"Are We There Yet?" – that is, has DOE achieved its goals for NEPA process improvement? – was the theme of the DOE NEPA Community Meeting on July 15 and 16, 2003.

Participants considered DOE's NEPA performance with respect to multiple objectives using a variety of measures, finding both substantial progress and room for improvement. The meeting included presentations on metrics, case studies, litigation issues, guidance topics, e-government, and information security, and discussion on where we should be going and how we can get there. (See related articles, pages 4-12.)

Beverly Cook, Assistant Secretary for Environment, Safety and Health, set the stage by offering her definition of the overall goal of the DOE NEPA compliance program. We're *there*, she said, "when NEPA is an integral part of decisionmaking and not an add-on." We're not quite there, but we're getting close, she concluded.

The NEPA process should serve the Department's daily business as a "tool, not a barrier," to achieve better

decisions, Ms. Cook told more than 75 people at DOE headquarters in Washington, DC, and another 70 participating from 18 Field Offices linked by video.

Ms. Cook emphasized that while she is ultimately responsible for DOE's NEPA compliance program, she wants Program and Field Offices to assume greater ownership of the process. She foresees a day when she can delegate more authority for EISs. One measure of when DOE is *there*, she said, is when "I can delegate that authority and go on vacation," confident that the NEPA process will be implemented properly. "If something goes wrong, I am still accountable," she reminded the audience.

Ms. Cook said she wants DOE to get to the point that the Office of NEPA Policy and Compliance "will no longer review your documents word for word. They will come in so good and so accurate and comprehensive, that they will meet the decisionmaker's needs and the public's needs." The NEPA Office could then concentrate on crosscutting policy issues, sensitive matters, and sharing lessons learned, she said.

continued on page 3



Revised Floodplain and Wetland Regulations Approved, see page 2.

Inside *LESSONS LEARNED*

Welcome to the 36th quarterly report on lessons learned in the NEPA process. We are pleased to feature the July 2003 NEPA Community Meeting in this issue. Also, please note that the cumulative index, a useful reference tool, is printed in this issue. Thank you for your continuing support of the Lessons Learned program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices.

Draft articles for the next issue are requested by November 3, 2003. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 3, 2003

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2003 (July 1 through September 30, 2003) should be submitted by November 3, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at tis.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 tis.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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Floodplain and Wetland Regulations Effective September 26, 2003

To reduce procedural burdens and add flexibility to its environmental protection program, DOE has revised its regulations for *Compliance with Floodplain and Wetland Environmental Review Requirements*, 10 CFR Part 1022 (68 FR 51429, August 27, 2003, effective September 26, 2003). The revisions are based on over 20 years experience with the existing regulations, first issued in 1979.

Under the new regulations, more classes of action will be exempt from assessment; about half of the assessments prepared since 1994 would not have been required had these exemptions been in place. Public notice procedures are simplified by emphasizing local media instead of the *Federal Register* (unless an action may result in effects of national concern). The environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act is now an alternative to using the NEPA process for compliance with the regulations. Immediate action can be taken in an emergency. Other changes make the rule easier to use and update resources for identifying floodplains and wetlands. There are no new requirements in the revised rule. (The scope of the revisions was further described in *LLQR*, December 2002, page 3.)

Response to Comments Required No Substantial Revision to Proposed Rule

DOE received three sets of public comments on the proposed regulations (67 FR 69487, November 18, 2002). Responding to requests to clarify terms in the regulations, DOE added a definition of "effects of national concern," examples for actions exempt from assessment, and examples of government agencies to be notified and given documents. Responding to concerns about DOE's discretion to issue a floodplain statement of findings in a final EIS or separately, and the conforming change to the DOE NEPA regulations at 10 CFR 1021.313(c), DOE explained in the preamble that steps to mitigate impacts (that must be identified in the statement of findings) may not be determined until after a final EIS is issued.

For more information on the regulations or on implementation guidance being prepared, contact Carolyn Osborne, Office of NEPA Policy and Compliance, at carolyn.osborne@eh.doe.gov or 202-586-4596. 

DOE NEPA Community Meeting

(continued from page 1)

Reinforcing Ms. Cook's remarks, Eric Cohen, Unit Leader, NEPA Office, said that what matters is whether the NEPA process meets the needs of the Department, "not whether we do an EIS in 15 months."

Mr. Cohen proposed this goal for the DOE NEPA compliance program:

We have an effective NEPA process that meets the needs of the Department – enabling the timely accomplishment of DOE missions in a safe and environmentally sound manner. The process is cost effective; provides decisionmakers with objective, high-quality information; builds public trust; and is robust enough to withstand decision changes and legal challenges. The process encourages decisionmakers to use NEPA.

How Far Along?

Mr. Cohen then offered various measures of cost, time, quality, and effectiveness to gauge whether DOE is meeting this goal. (See related article, page 4.) The data support the conclusion that DOE's NEPA process is meeting the Department's needs. The process is flexible enough to accommodate programmatic and project needs. Further, when driven by strong management attention, EISs for complex proposals have been completed in 15 months or less, the goal established by DOE policy in 1994. Six program offices and two power administrations have achieved this goal for both controversial and programmatic EISs. In about half those EISs, the 15-month schedule was maintained while providing the public more than the minimum 45-day period for review and comment on the draft EIS.

"Most often, we have management intimately involved in the issues as they arise" when completing an EIS on a fast schedule, explained Mr. Cohen.



Eric Cohen, NEPA Office, assessed data on NEPA performance metrics collected over the past 10 years.

DOE takes more than 15 months to complete many EISs, though. The NEPA Office looked for underlying reasons for the longer schedules and concluded that most "were not on the critical path," according to Mr. Cohen. Moreover, he added, DOE intentionally extends the schedule for some EISs to satisfy program purposes such as changes in scope, completion of parallel studies, coordination among multiple programs or DOE sites, and inclusion of cooperating agencies in EIS preparation.

Mr. Cohen also addressed several indicators of the quality of DOE EISs. Although quality is inherently difficult to quantify, he said, Environmental Protection Agency ratings, reports of Lessons Learned Questionnaire respondents (on NEPA process usefulness, mitigation, and protection of the environment), and DOE's litigation record for EISs suggest that DOE is producing quality EISs that serve to protect the environment while meeting mission needs.

A Broader Perspective on "Where Is There?"

Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), provided an

DOE doesn't bring a lot of business to my desk, which means you're doing something right.

— Horst Greczmiel, CEQ

update on CEQ's NEPA Task Force, which he chairs. The Task Force was created in May 2002 to "seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public." The Task Force is preparing to issue its report. (See *LLQR*, December 2002, page 1.)

The Task Force will recommend to James Connaughton, CEQ Chair, several steps that could improve NEPA implementation and issues that deserve further study, Mr. Greczmiel said. The Task Force reviewed input from Federal staff; tribal, state, and local governments; non-profit and business groups; and the public at large.

The Task Force found that Federal agencies have been successful in handling security-sensitive information in the NEPA process, but that further review could lead to improved procedures, Mr. Greczmiel said.

The Task Force looked closely at the role of emerging information technology in the NEPA process and is expected to recommend ways to make better use of

continued on page 13

Metrics Show Progress in Meeting Goals

To assess DOE's progress in meeting its NEPA performance goals, Eric Cohen analyzed data on NEPA performance metrics collected over the past 10 years as part of the Lessons Learned process. His presentation, summarized below, focused on cost, time, quality, usefulness to the decisionmaker, protection of the environment, litigation, and flexibility.

Costs Are Decreasing

Ninety to 95 percent of DOE NEPA costs are associated with EISs (Figure 1). Since DOE began measuring NEPA document preparation costs in 1994, DOE's total annual NEPA costs have decreased substantially, from over \$100 million in 1995 and 1996, to less than \$10 million in recent years. (A spike in the cost for 2002 reflects the completion of a single, extraordinary document.)

Two primary reasons for the cost decrease include (1) the completion of 22 relatively more expensive programmatic and site-wide EISs (PEISs) from 1995 to 1999 (the median cost of a PEIS is \$8.8 million vs. \$1.3 million for a project-specific EIS) and (2) a decrease in the number of EISs completed each year from about 10 to five (Figure 2). Other probable contributors to the cost decrease include the fact that DOE began measuring and reporting costs in 1994 (an example of the so-called "Hawthorne Effect" in which the act of measurement influences the result), and efficiencies from the tiering of project-specific documents from PEISs.

DOE has made a major investment in PEISs. Although a few PEISs were quite costly, data show that NEPA process costs, including those for PEISs, are a small fraction – typically less than one percent – of estimated costs of associated programs and projects. Further, part of the costs reported for some PEISs were for project expenses that do not qualify as NEPA costs.

Overall, EIS costs are decreasing and are not an obstacle to mission implementation. We are "getting there." Nevertheless, DOE can do even better, such as by implementing suggestions to further reduce document preparation costs contained in mini-guidance articles in *Lessons Learned Quarterly Report*. (See the DOE NEPA Web site at tis.eh.doe.gov/nepa under Guidance.)

Completion Times Meet Needs

EIS completion time is an important NEPA process metric because decisionmakers often are concerned that the EIS process will delay implementing priority missions. For this reason, the Secretarial Policy on NEPA in 1994 established a median EIS completion time goal of 15 months, and DOE Order 451.1B, DOE NEPA Compliance Program, directed that EIS schedules, absent extraordinary circumstances, will provide for 15-month completion times. Completion time is measured from notice of intent to approval of the final EIS.

The median completion time for the 87 EISs completed from 1994 through May 2003 was 25 months (about 20 months for 60 project-specific documents and 31 months for 27 PEISs). The range was seven to 86 months. A time series presentation (Figure 3) shows a flat trend; completion times vary widely but have not

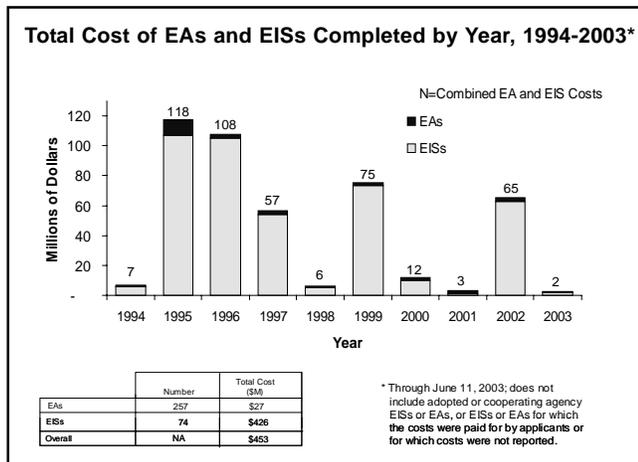


Figure 1

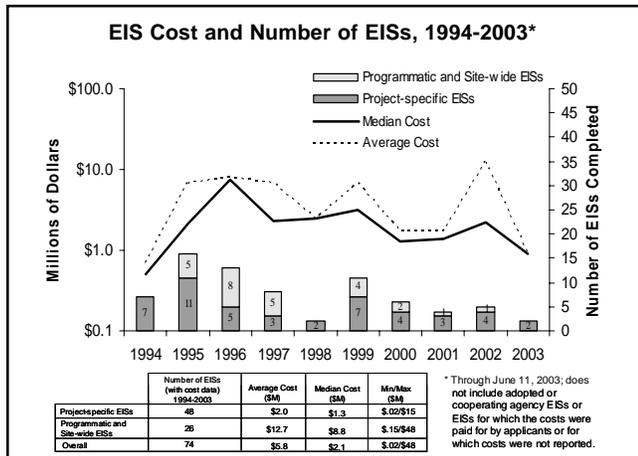


Figure 2

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Metrics

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increased or decreased significantly. Although DOE has not met the median 15-month completion time goal for the 87 EISs completed in the past 10 years, a closer look at the data shows that DOE is meeting its timing needs.

Figure 4 shows that the distribution of DOE EIS completion times is skewed. Most EISs have relatively short completion times; the mode, or most frequent completion time, is 15 months. However, the distribution has a long “tail” that includes a significant number of EISs with long completion times (greater than 40 months). Much can be learned from studying the EISs with long and short completion times.

Most EISs with long completion times met program needs and did not delay projects or missions. These EISs were not on the “critical path.” For example, several such EISs were for Power Marketing Administration program plans

and were completed when they needed to be. Many other EISs intentionally were prepared under schedules that exceeded 15 months to enable completion of associated studies, public participation, or accommodation of the needs of cooperating agencies. Further, many EISs are started and placed “on hold” because of project uncertainties; one document will be completed this year after being on hold for about seven years. (The NEPA Office recommends suspending and reactivating such EISs. See *LLQR*, June 2003, Page 9.) If these long completion time EIS outliers were discounted, the median completion time for the remaining documents would be close to 15 months.

What counts, however, is not whether DOE can complete an EIS in 15 months, but whether it can prepare a quality document in time to meet mission needs. Twenty-four of the 87 EISs were completed in 15 months or less. These included some of the Department’s most highly-complex and controversial EISs, including: *Dual Axis Radiographic Hydrodynamic Test Facility* (9 months; DOE/EIS-0228;1995); *PEIS for Tritium Supply and Recycling* (12 months; DOE/EIS-0161; 1995); *Disposition of Surplus Highly Enriched Uranium* (14 months; DOE/EIS-0240; 1996); *PEIS for Stockpile Stewardship and Management* (15 months; DOE/EIS-0236; 1996); and *PEIS for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, including the Role of the Fast Flux Test Facility* (15 months; DOE/EIS-0310; 2000).

The data show that when DOE needs to complete an EIS quickly, it can do so.

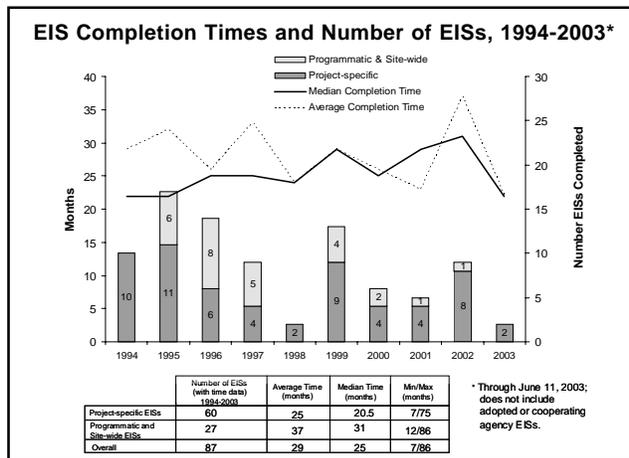


Figure 3

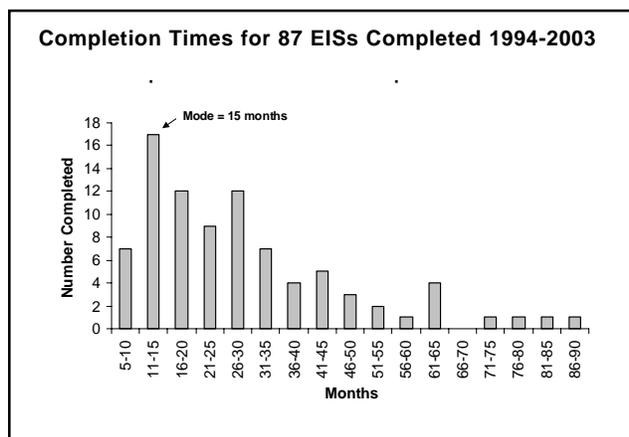


Figure 4

Preparing an EIS in 15 months does not require providing minimum public comment periods. Ten of the 24 EISs completed within 15 months had public comment periods ranging from 50 to 90 days. Experience shows that cutting corners on public participation is counter productive; in several cases, an initial short comment period was extended, exceeding the comment periods for arguably similar EISs with longer original comment periods. DOE extends the comment period for about 25 percent of its draft EISs; the average extension period is 30 days. The average draft EIS comment period is 65 days (80 days for PEISs and 60 days for project-specific documents).

What, then, are the most important factors that affect EIS completion times? Based on analysis of Lessons Learned Questionnaire responses, management attention is key. Other factors associated with short completion times

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Metrics

(continued from previous page)

include a strong preparation team with dedicated members and appropriate skills, and excellent communications among team members, including reviewers.

The most important factor associated with short EIS completion times is management attention to the scope, issues, and schedule.

On the other hand, factors associated with long completion times include poor scope definition (including changes in the proposal and late identification of analytical needs), the involvement of multiple sites and programs, and

the involvement of cooperating agencies. Experience shows that involving cooperating agencies improves the ability to implement proposed actions and offsets any loss of time.

Quality Indicators Show Strong Performance

Quality. Environmental Protection Agency (EPA) ratings offer one measure of quality. EPA data show that ratings for DOE draft EISs do not differ from those for other agencies: about 20 percent receive “LO,” 77 percent receive “EC-2,” and 3 percent receive “EO.” None of the 87 EISs received an EU rating. (See page 25 for an explanation of the ratings.)

Usefulness. Lessons Learned Questionnaire responses include a simple numerical rating from one to five for DOE NEPA documents in terms of effectiveness, including influence on decisionmaking. (See page 32 for a further explanation and the results for documents completed this quarter.) Most respondents (about 75 percent) have rated the NEPA process as “effective.”

Protection of the Environment. Questionnaire respondents also report on how the NEPA process served to protect the environment. Many respondents who stated that the NEPA process did not influence decisionmaking nonetheless noted that the process served to protect the environment, such as through identification of alternatives and consideration of mitigation.

Litigation. Last year Under Secretary Card praised DOE’s “stellar” EIS litigation track record. (See *LLQR*, September 2002, page 1.) Project delays have resulted from failure to prepare an EIS; no delays have resulted from DOE’s inability to defend a final EIS.

Flexibility Is Inherent in NEPA

Although some DOE managers have expressed concern that NEPA is too inflexible to accommodate small changes or advances in technology, experience shows that NEPA is an inherently flexible process. With regard to flexibility, we are *there* now. For example, by analyzing the full range of reasonable alternatives, decisionmakers have substantial flexibility to change their minds. A common misunderstanding is that an EIS ROD locks an agency to a particular decision. However, NEPA does not require that the outcome of an EIS be a single, unchangeable decision. (See *LLQR*, June 2003, page 4.)

One measure of flexibility is the number of RODs issued for an original EIS. DOE EISs have proven sufficiently robust that they can support multiple RODs (in some cases supported by supplement analyses [SAs]). For example, DOE has issued seven RODs for the *Waste Management FEIS for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste* (DOE/EIS-0200; 1997); nine for the EIS on *Interim Management of Nuclear Materials* (DOE/EIS-0220; 1995); and three for the *Surplus Plutonium Disposition FEIS* (DOE/EIS-0283; 1999).

Another measure of flexibility is the number of SAs issued that conclude that a supplemental EIS is not required. SAs are a DOE tool that substantially increases flexibility by helping to decide whether a new or supplemental EIS is warranted for small changes in a proposal. DOE programs such as Environmental Management and Defense Programs are making increasing use of this tool. The Bonneville Power Administration has issued about 200 SAs based on the EISs for *Watershed Management* (DOE/EIS-0265; 1997) and *Transmission System Vegetation Management Program* (DOE/EIS-0285; 2000).

Overall, although DOE has made substantial progress, when we ask the question “Are we *there* yet?” we always find something to improve on. **LL**

NEPA Trivia

(from the NEPA Community Meeting)

1. How much did the 1988 EIS for the Superconducting Super Collider weigh?

Answer on page 24.

Help in Getting from *Here* to *There*

Status of Guidance and Regulation Development

NEPA guidance will assist DOE Program and Field Offices in assuming greater ownership of their NEPA compliance programs. Carolyn Osborne, Unit Leader, Office of NEPA Policy and Compliance, presented the highlights of guidance recently issued and prepared in draft form by the NEPA Office.

Ms. Osborne also asked for input on priorities for preparation of additional guidance. “We need members of the DOE NEPA Community to tell us what their greatest guidance needs are,” she said.

Existing guidance and regulations are available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under Guidance.

Interim Actions

“Guidance Regarding Actions That May Proceed During the National Environmental Policy Act (NEPA) Process: Interim Actions” was issued by the Assistant Secretary for Environment, Safety and Health on June 17, 2003. The guidance explains how to apply Council on Environmental Quality criteria for interim actions for both project-specific and programmatic EISs. For example, to help apply correctly one of the criteria for project-specific EISs – that an interim action not have an adverse impact – the guidance defines “adverse” impact and distinguishes it from “negative” impact. The guidance, however, emphasizes the need for situation- and resource-specific judgment on whether an impact would be adverse. See *LLQR*, March 2002, page 6, concerning the scope of the guidance.

Revisions to 10 CFR Part 1022 Compliance with Floodplain and Wetland Environmental Review Requirements

The final regulation was approved on August 19, 2003. See related article, page 2.

Comment-Response Guidance

The NEPA Office is addressing NEPA Compliance Officer comments on the July 2003 working draft guidance and evaluating examples of best practices to include in the guidance. The NEPA Office plans to issue the guidance this fall. The guidance will recommend continued involvement and interaction among subject matter experts and EIS writers (from the receipt of comments through their resolution). The guidance also will address special issues that arise in our NEPA practice – e.g., receipt of mass comments and dealing

with responsible opposing views. The guidance will advocate the equal treatment of each substantive comment (whether expressed by one respondent or many) and emphasize that the comment-response process is not a vote-counting process.

See *LLQR*, June 2003, page 1, for preliminary results from an examination of comment-response sections in recent final EISs.

Guidance in Preparation

On Document Preparation

- Alternatives Analysis
- Environmental Justice Considerations in the NEPA Process
- How-to for NEPA Sections 102(2)(C)(ii), (iv), and (v)
- Qs and As on Floodplain and Wetland Regulations
- Supplement Analysis
- Update – Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements (1993)

On the NEPA Process

- Environmental Management Systems and NEPA Integration
- EIS distribution
- Stakeholder Database (to support document distribution)
- NEPA Process Brochures
- “Section 216” Guidance

On NEPA-related Reports and Guidance Collections

- Annual Planning Summaries
- Update – DOE NEPA Compliance Guide (1998)
- Update – Mini-guidance Articles from *Lessons Learned Quarterly Reports* (2000)

The NEPA Office continues to evaluate responses received from an informal survey of the DOE NEPA Community on guidance priorities and other options (e.g., training by the NEPA Office). NEPA Compliance Officers have indicated a priority need for guidance on preparing a Supplement Analysis and on using the new floodplain and wetland regulations. They also indicate an interest in additional categorical exclusions, EA format guidance, and changes to DOE Order 451.1B, NEPA Compliance Program. 

Case Studies: Lessons Learned Along the Way

Recent EISs were used to illustrate important themes at this year's NEPA Community Meeting. In a series of three panel discussions titled "Lessons Learned Along the Way," NEPA Compliance Officers (NCOs) and staff from the Offices of General Counsel and of NEPA Policy and Compliance described ways that analyzing a broad range of alternatives and utilizing innovative NEPA planning can maximize program flexibility. They also reviewed recent litigation and identified several valuable lessons learned.

EIS Flexibility and Decisionmaking

Hitesh Nigam, NCO for the National Nuclear Security Administration's (NNSA's) Office of Defense Nuclear Nonproliferation, described the NEPA history of the



Hitesh Nigam said that an amended ROD can be prepared by any Program Office within DOE; it doesn't have to be the one that originally prepared the EIS.

surplus plutonium disposition program. NEPA documents for the program include *Storage and Disposition of Weapons-Usable Fissile Materials* Programmatic EIS (DOE/EIS-0229; 1996), the tiered, project-specific *Surplus Plutonium Disposition* EIS (DOE/EIS-0283; 1999), and three supplement analyses. Together these documents examined dozens of plutonium storage and disposition alternatives.

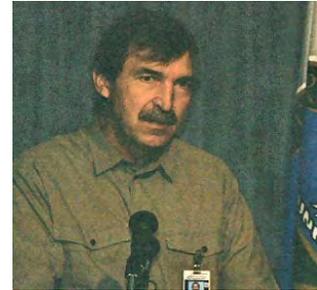
As budget and circumstances changed, the comprehensive nature of the NEPA reviews supported changes in NNSA program plans and

allowed storage and disposition project activities to proceed. Supplement analyses proved beneficial in examining whether the proposed changes were encompassed within existing NEPA documentation.

Drew Grainger, NCO for the Savannah River Operations Office, discussed how the *Interim Management of Nuclear Materials* (IMNM) EIS (DOE/EIS-0220; 1995) analyzed an array of alternatives, including some that did not necessarily seem reasonable at the time the IMNM EIS was prepared (e.g., discarding plutonium as waste – plutonium had always been considered a useful product by DOE). The range of alternatives has provided DOE substantial management flexibility to make, and even

change, several decisions in pursuit of stabilization of a wide assortment of nuclear materials without having to prepare additional EISs. (See *LLQR*, June 2003, page 4; also see 68 FR 44329, July 28, 2003, for the ninth record of decision [ROD] for the IMNM EIS).

Roger Twitchell, NCO for the Idaho Operations Office, described how the *Idaho High-Level Waste and Facilities Disposition* EIS (DOE/EIS-0287; 2002) was crafted to maximize future management flexibility. The broad proposed action sets goals, and the preferred alternative is not tied to a single narrow course of action. DOE intends to issue a series of phased or supplemental RODs as uncertainties are resolved.



Roger Twitchell discussed Idaho's desire to issue phased decisions.

Phased Strategy for Modern Pit Facility

Jay Rose, NEPA Document Manager for NNSA's *Draft Supplemental Programmatic EIS on Stockpile Stewardship and Management for a Modern Pit Facility* (MPF) (DOE/EIS-236-S2; May 2003), described the genesis of the MPF EIS. Mr. Rose anticipated that several benefits would result from the NEPA strategy of preparing the

Combining innovative NEPA planning with analysis of a comprehensively broad range of alternatives results in NEPA documents that provide a maximum degree of management flexibility – documents that will withstand future programmatic changes.

MPF EIS as the first of two EISs for the MPF project. The first EIS would support a programmatic decision on whether to construct the facility, and if so, where. The second EIS would focus on site-specific construction and engineering decisions. The benefits would include early identification of a preferred site, stronger political support for a site, and efficient coordination of the NEPA process with engineering design of the project.

Also speaking on the MPF EIS, Carl Sykes, NEPA Office, described how analyzing a broad range of alternatives in the *Waste Isolation Pilot Plant* (WIPP)

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Case Studies

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Disposal Phase Supplemental EIS (DOE/EIS-0026-S2; 1997) was helpful to preparation of the MPF EIS. The WIPP EIS’s analysis of 160-year lag storage of transuranic waste at generator sites provided analysis that is relevant to the MPF, which would generate transuranic waste past the operational time frame for WIPP.

Mr. Sykes also noted that the MPF Draft EIS analyzes an upgrade to the existing TA-55 facility at the Los Alamos National Laboratory in New Mexico, an alternative that is *barely* reasonable now but might well become reasonable should production requirements for new plutonium pits be reduced.

Lessons Learned from Litigation

Tony Como, Deputy Director for Electric Power Regulation, Office of Fossil Energy, and Richard Ahern, Office of the Assistant General Counsel for Environment, reviewed the recent litigation over the Presidential permits issued to Baja California Power, Inc., and Sempra Energy Resources for electric transmission lines that connect new power plants in Mexico with the California power grid. The Border Power Plant Working Group (plaintiff) successfully challenged DOE’s environmental assessment, and the U.S. District Court for the Southern District of California remanded the matter to DOE for additional NEPA review, though the court declined to

enjoin operation of the transmission lines while that review is underway. (See related article, page 22.)



Rick Ahern reported that the judge in the Baja litigation encouraged DOE to use its imagination in identifying alternatives.

Lessons learned include: (1) thoroughly understand the environmental issues of local interest (the Department initially underestimated the importance of impacts to the Salton Sea), (2) independently verify all work performed by the applicants and their experts, (3) always support and explain a conclusion that an impact is not significant – an unsupported conclusory assertion that an impact is “insignificant” is not sufficient for judicial review, and (4) consider evaluating known environmental impacts even when they are not identified as problem impacts, e.g., in this case, review the impacts of ammonia and carbon dioxide, even though these are not regulated as criteria pollutants or as toxic air contaminants. **LL**



Scenes from the NEPA Community Meeting. Top row (left to right): Carol Borgstrom, Director, NEPA Office; Tony Como, Fossil Energy; Jim Daniel, NEPA Office; and Andy Lawrence, Deputy Assistant Secretary for Environment. Bottom row (left to right): Raj Sharma, Nuclear Energy, Science and Technology; Nick Stas, Western Area Power Administration; Ed LeDuc, General Counsel; Jeanie Loving, NEPA Office; and Susan Absher, Environmental Protection Agency.

e-Government Approaches to EIS Distribution

“Distributing an EIS is a good time to apply e-government techniques to NEPA,” said Yardena Mansoor, Office of NEPA Policy and Compliance, at the July NEPA Community Meeting. While emphasizing the need to meet EIS distribution requirements under the Council on Environmental Quality (CEQ) regulations (40 CFR 1502.19, 1503.1, and 1506.6), she focused on the benefits to effective public participation and good will that can result by also meeting recipient’s EIS format needs and preferences. (Ms. Mansoor’s discussion was based in part on the related article in *LLQR*, June 2003, page 6.)

Joseph Montgomery, Director, NEPA Compliance Division, Office of Federal Activities, Environmental Protection Agency (EPA), added his observations on Web publication of EISs and other NEPA documents. He noted trends toward more use of the Web, but cautioned that agencies need to continue to provide paper copies.

Following is a summary of the meeting discussion, augmented with some additional guidance based on recent experience.

Federal Agency Responsibility

Federal agencies have an affirmative responsibility to solicit comments – from other Federal agencies that have jurisdiction by law or special expertise and from groups and individuals that the agency knows would be interested in or potentially affected by the proposed action (40 CFR 1503.1). If an agency attempts to confirm interest in a draft EIS or format preference for a draft EIS before EIS distribution, and such stakeholders do not respond, an agency still has the responsibility to solicit their comments by providing the draft EIS if the stakeholders subsequently express an interest. However, even when an interest is not initially given, an agency should be particularly solicitous of stakeholders identified by the CEQ regulations.

For the recent distribution of the *Draft Supplemental EIS on Stockpile Stewardship and Management for a Modern Pit Facility* (DOE/EIS-236-S2; May 2003) interested and potentially affected Pueblos did not respond to a postcard inquiry. After the start of the comment period, DOE nonetheless recognized its responsibility to send the Pueblos the EIS for comment, and DOE extended the comment period for Pueblos who received the EIS late.

Pros and Cons of Electronic Distribution

Ms. Mansoor noted that electronic-based approaches for EIS distribution offer potential advantages to the reviewer.



Compact Disks (CDs) and Web-posted documents can allow high-speed text searching and more convenient storage and portability than large paper volumes. In addition, Web posting can make an EIS available to the public faster than other forms of distribution; an interested party can have access as soon as a document is posted, without sending in a request and waiting for return delivery of the document.

As indicated in the meeting presentation on sensitive information in the NEPA process (see related article, page 12), a reviewer may face disadvantages in using an electronic format if security concerns limit the information available on CD and the Web. Also, a reviewer who initially planned to read an electronic version of the EIS but later decides to print a copy, may have difficulty printing a large document locally.

Assume Paper Unless Stakeholder Prefers Electronic

Under the policy expressed by CEQ in its 1997 Environmental Quality Report, agencies should follow a dual course of presenting information in traditional paper format as well as on the Web (because not all Americans have access to computer technology). CEQ expected requests for paper copies to decline as users became more accustomed to acquiring information through the Internet.

The NEPA Office recently asked the Department’s potential nationwide NEPA stakeholders their format preferences (results in text box). Over half the listed Federal agencies and nongovernmental organizations prefer CD format only.

Unless knowledge of a specific stakeholder’s preference indicates that electronic format would be acceptable, it is prudent for an agency to provide an EIS in paper format. In any inquiry on format preference, it is good practice to tell what DOE will do if the stakeholder does not respond. In its inquiries by mail, DOE has typically provided return postage to encourage responses but does not have data to know whether it receives more responses when stating that an EIS will – or will not – be sent if there is no response.

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EIS Distribution

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Ms. Mansoor emphasized that stepping away from the one-size-fits-all approach to distribution can enhance the EIS review process and result in a win-win situation, as long as an agency meets its obligation to solicit comments from all parties that it knows have jurisdiction or special expertise, or are interested or potentially affected. Satisfying these stakeholders' needs and preferences does not happen spontaneously and cannot be a last minute effort – it takes good judgment and early planning. And the planning should be repeated for each EIS as preferences may change over time.

EPA NEPA Compliance Director Shares Observations, Plans on e-NEPA Approaches

EPA's Joseph Montgomery shared his observations on the use of technology for disseminating EISs. He observed that about a quarter of EISs are posted on the Web, although the practice is less prevalent among agencies that prepare few EISs. Mr. Montgomery advised

thoughtfulness in posting documents on Web sites, particularly the need to ensure that the "official" version of an EIS (e.g., not a draft version) is provided. He also explained that EPA still requires five paper copies when an agency files an EIS because of concern that alternative technologies may become obsolete.

Mr. Montgomery also stated that EPA plans to post online all the information it now includes in a *Federal Register* notice of availability for an EIS, to allow users to search the information by agency, state, and topic. EPA is also planning to post all its EIS ratings and comment letters online.

He closed by observing that posting a document online can provide features that are not feasible in print, such as including video clips. When that practice comes widely into use, thought must be given to specifying what is the "official" version of an EIS. For questions, contact Joseph Montgomery at montgomery.joseph@epa.gov or 202-564-7157. **LL**

New DOE Stakeholder Directory Identifies Recipients' Format Preferences

The 20th edition of the *Directory of Potential Stakeholders for DOE Actions under NEPA* (dated July 2003) for the first time reports the format preferences of the listed points of contact, in addition to the subjects of interest and the number of copies requested.

- EPA's Office of Federal Activities requires 5 paper copies of an EIS for filing, but regional offices involved in reviewing an EIS each have their own preference for paper copies or CDs and the number of each requested.
- The Department of the Interior requests one paper copy and a URL for an EIS posted online, or one paper copy and CDs in place of the usual complement of paper copies when only paper is offered – ranging from 6 to 18 depending on the location and whether the document is a draft or final EIS.

Category	# of Contacts	CD	Paper	CD & Paper	Other*
Federal Agencies	104	55	32	13	4
States	73	18	25	21	9
Nongovernmental Organizations	170	92	52	25	1
Total	347	165	109	59	14

* Not applicable or no preference specified

The *Directory*, now published annually in July, has been distributed to the DOE NEPA Community and is available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under Guidance, then Public Participation. DOE NEPA Document Managers should use the most recent *Directory* to supplement lists of local stakeholders compiled for specific programs, projects, or facilities. For questions or copies, contact Katherine Nakata, katherine.nakata@eh.doe.gov or 202-586-0801.

Procedures Evolving for Sensitive Information

Panelists Eric Cohen, NEPA Office; Ray Holmer, Office of Safeguards and Security Policy; and Lauren O'Donnell, Federal Energy Regulatory Commission (FERC), Office of Energy Projects, addressed recent developments to better accommodate homeland security concerns in NEPA activities. (See *LLQR*, September 2002, page 7.)

Mr. Cohen reviewed existing DOE policy direction and current practices for addressing non-classified, security-sensitive information in NEPA documents. He noted that NEPA Document Managers screen out non-essential information and segregate sensitive but essential information. He described the general approaches that DOE Program Offices are considering in developing internal directives, including providing only EIS summaries on the Web, not entire documents; requiring people who request documents to sign nondisclosure agreements; and developing guidance for evaluating the sensitivity of information.

Mr. Holmer predicted that new DOE directives on Official Use Only (OUO) information will be helpful in deciding how to handle sensitive unclassified information under NEPA. DOE must continue to follow Freedom of Information Act rules (10 CFR Part 1004) and the Department's internal classification guidance (DOE Manual 475.1-1A, "Identifying Classified Information;" February 26, 2001, and current classification guides). Mr. Holmer recommended the internal classification guidance as "the best place we have for one-stop shopping on what security information we consider sensitive."

OUO Guidance Issued in April 2003:

- DOE O 471.3, Identifying and Protecting Official Use Only Information
- DOE G 471.3-1, Guide to Identifying Official Use Only Information
- DOE M 471.3-1, Manual for Identifying and Protecting OUO Information

Ms. O'Donnell described how FERC is categorizing and handling information in order to meet its NEPA responsibilities without jeopardizing security. FERC Order 630, "Final Rule on Critical Energy Infrastructure Information," (18 CFR Parts 375 and 388; 68 FR 9857, March 3, 2003) identifies "critical energy infrastructure information" (CEII), such as engineering specifications for natural gas pipelines, as a type of

information that is restricted from public release. FERC will provide CEII to tribal, state, and local officials or members of the public only if they show a need for the information and sign a nondisclosure agreement. (The preamble to the final rule indicates that state agencies will be presumed to have a need for information related to facilities in their state.) FERC makes sure that its NEPA documents do not contain CEII. (Such information is part of the administrative record for a proposal.)



Panelists discussed how to manage sensitive information in NEPA documents.

Internet." NIP includes location maps (e.g., 7.5-minute topographical maps) of pipelines and other energy projects, but not their technical details. FERC may include NIP in NEPA documents and will provide it in paper form upon request. However, the agency removes NIP from the electronic versions of NEPA documents provided on public Web sites. In its place there is an insert advising readers to request this material from the Public Reference Room. Ms. O'Donnell said, "This seems to have had minimal impact on the public – they are getting the information they need."

Mr. Cohen recalled that after September 11, 2001, DOE made 65 EISs and 335 EAs inaccessible to the public via the DOE NEPA Web site. None of these documents has since been reviewed for security purposes, and public access has not been restored. Because most of these documents "probably would be innocent" and might need to be referenced in new EISs and EAs, Mr. Cohen urged each office to review its documents to determine whether electronic access by the public can be restored. (A list of these documents, sorted by program, was included in the electronic meeting notebook.)

Mr. Holmer said that his office has resources to help with security reviews, noting that Program Offices need to request this assistance. Once documents have been cleared for public Web-posting, Denise Freeman, NEPA Webmaster, can arrange to place them in the public area of the DOE NEPA Web site. **LL**

Ms. O'Donnell explained that FERC created a second category, non-Internet public (NIP) information, as a "compromise" after consulting with other agencies that "were pulling all their maps and drawings off the

DOE NEPA Community Meeting

(continued from page 3)

Shortcuts are fine if they are within the limits of the law and if they make the process more effective and more efficient. Shortcuts are not fine if we start doing an analysis that is inadequate or that leaves issues off the table. – Horst Greczmiel

communications that are face-to-face. That will have to remain part of the mix.”

Links between adaptive management and NEPA were considered by the Task Force, including the potential

Web sites and other tools. This comes with an important caveat, though.

“Technology can never replace the typical ways in which we reach out to our publics. Not everybody has the capacity or ability to make use of the Internet or other tools in the technology arena,”

Mr. Greczmiel explained. “We can’t say we’ll do away with all hard copies and public meetings and

for ongoing monitoring to benefit the NEPA process. One area of possible benefit is improved understanding of the types of actions that qualify as categorical exclusions.

“CEQ has not done a good job of putting out sufficient guidance to the agencies to tell them how to establish the basis for new categorical exclusions,” Mr. Greczmiel said. One difficulty is that while an environmental assessment may conclude there will be no significant environmental impact, it is a predictive analysis. “Were there no significant impacts?” Mr. Greczmiel asked. “That’s the tough question.” Future work could involve consideration of monitoring and other ways of “plugging that gap.”

Recommendations on these and other topics will be reviewed by Mr. Connaughton. CEQ would only make changes in NEPA requirements or guidance after appropriate review, using normal decisionmaking processes, according to Mr. Greczmiel.

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Preview of CEQ NEPA Task Force Report

Horst Greczmiel previewed topics that were discussed by the CEQ NEPA Task Force for inclusion in its final report.

Technology, Information Management, and Information Security: The Task Force considered whether CEQ might pull together a working group to look more closely at how security-sensitive information can be managed more consistently between agencies and how to improve the handling of information that is sensitive for its archeological, cultural, or other value. The Task Force identified a need for more interaction between the NEPA Community and those responsible for information technology so that technology can enhance methods of communicating with the public about NEPA matters.

Federal and Inter-governmental Collaboration: The Task Force considered whether CEQ might sponsor training about how states and other government entities, and the public at large, can “interact successfully” in the NEPA process.

Programmatic Analysis and Tiering: The Task Force identified the need for CEQ guidance regarding preparation of a programmatic EIS for site-wide, regional, or watershed analysis, not only for a program. The Task Force also found the need to better clarify the relationship between programmatic and project-specific NEPA analyses.

Adaptive Management/Monitoring and Evaluation Plans: The Task Force discussed whether linking monitoring systems to the NEPA process could result in an “almost living type of NEPA analysis” in which new information is regularly evaluated.

Categorical Exclusions: The Task Force considered the need for additional guidance on establishing categorical exclusions (CXs) and whether monitoring results could help provide the basis for new CXs.

Other topics: The Task Force discussed ways to better integrate NEPA with other requirements so that compliance is done “as concurrently as possible rather than consecutively.” Other issues addressed by the Task Force include how to align the desire to better involve outside parties in refining alternatives with NEPA’s mandate to take a hard look at all reasonable alternatives, the need for guidance on preparing social and economic analyses, the role for dispute resolution during or after the NEPA process, and the possibility of an annual forum discussing NEPA legal issues.

DOE NEPA Community Meeting

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Taking Us There

“So, are we there yet?” asked Carol Borgstrom, Director, NEPA Office, as she brought the meeting to a close. “I suppose some of us are and some of us aren’t, sometimes we are and sometimes we aren’t. I think we probably do a better job on what are the more difficult EISs.”

“Get your senior management involved,” Ms. Borgstrom said, describing the path to a successful EIS. “Get a strong team involved in preparing it, lots of coordination, lots of planning and communication among all the involved offices.”

Ms. Borgstrom concluded by pointing to the success of the *Draft Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS-0350D; May 2003). (See related article, page 15)

Why did she judge it successful? It was of “high quality” when it came in, Ms. Borgstrom said. “We weren’t really faced with filling in major deficiencies or gaps in analyses. We could concentrate on the policy-level issues, which is our headquarters’ function.” **LL**

A NEPA “Green” Meeting

This year’s NEPA Community Meeting incorporated several aspects to reduce environmental impacts. The videocast reduced travel. The often heavy meeting binder of past years was replaced by an “electronic meeting notebook” maintained on the DOE NEPA Web site and distributed on CD-ROM. This change significantly reduced paper use while simplifying distribution.

Participants responded favorably to these changes. Over 80 percent of people participating from remote sites reported that they would do so again and would recommend use of videocasts in the future. Over half the remote participants reported that the technology and location did not interfere with their participation. There were several suggestions for improvements, though, and some participants did miss the face-to-face aspect of past meetings. The NEPA Office will consider all the feedback received in planning future meetings.

DOE-wide NEPA Contracts Update

The following tasks have been awarded under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under DOE-wide NEPA Contracting.

Task Description	DOE Contact	Date Awarded	Contract Team
Evaluation of Decommissioning EIS Schedule	Dan Sullivan daniel.w.sullivan@ww.doe.gov 716-942-4016	3/5/2003	Battelle
Clean Coal Power Initiative Great River Energy EA	Roy Spears rspear@netl.doe.gov 304-285-5460	5/13/2003	Jason
Clean Coal Power Initiative Colorado Springs Utilities Project EIS	Nelson Rekos nrekos@netl.doe.gov 304-285-4066	6/9/2003	Potomac-Hudson
Environmental Reviews and Documentation for Phase 5 Fiber Optic Cable Installations	Theodore Anderson tanderso@wapa.gov 406-247-7385	6/12/2003	Tetra Tech
Environmental Reviews and Documentation for Fiber Optic Cable Installations and Other Maintenance Work	Rodney Jones rjones@wapa.gov 970-461-7371	6/26/2003	AGEISS
NEPA Document Process Support	Susan Lacy slacy@doeal.gov 505-845-5542	7/16/2003	Tetra Tech

CMRR Draft EIS – A Lessons Learned Success Story

By: Elizabeth Withers, NEPA Document Manager and NEPA Compliance Officer, Los Alamos Site Office

A foundation of good NEPA documentation, a focused proposed action, and effective teamwork contributed to publication of a draft EIS that demonstrates some of the best in NEPA implementation. The *Draft Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (CMRR DEIS, DOE/EIS-0350D; May 2003) received positive response at all levels of the DOE review process and, after publication, the

“What first struck me was the readability of the CMRR Draft EIS – it made sense, was easy to read, and didn’t have a lot of mistakes.”

– Jim Daniel, Office of NEPA Policy and Compliance

Environmental Protection Agency’s highest rating (“LO,” Lack of Objections, meaning that EPA did not identify any potential environmental impacts requiring substantive changes to the proposal).

The 18-month EIS schedule has so far been smooth and steady, with just one small “bump in the road” when a scheduling conflict delayed briefing National Nuclear Security Administration (NNSA) senior management. Needless to say, the lesson learned from that little bump in the process is to coordinate project and EIS schedules a little better. As NEPA Document Manager, I can see that several factors have come together to make the process work so well.

Tiering Works, A Simple Project Helps

The *Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory* (DOE/EIS-0238; 1999) included information about the existing Chemistry and Metallurgy Research (CMR) Building. The Site-wide EIS drew upon the more than 60 years of CMR operating experience regarding the capabilities it supports and the functional processes conducted within it. Tiering from this Site-wide EIS was a huge help in preparation of the CMRR DEIS, which addresses a proposed replacement of the CMR Building.

The relative simplicity of the proposed action also helped make the CMRR DEIS a success. Many of DOE’s programs and projects are inherently complicated, and the NEPA analyses that are prepared for them are necessarily complicated, too! This one was, by comparison, a simple project.



Conceptual drawing of the CMRR Facility

It’s the Team that Matters Most

We have a good team of people from NNSA and other parts of DOE, and from contractors, who collected the technical information needed for the analyses, prepared the document, reviewed the Draft EIS, and supported the process.

The CMRR EIS is being prepared by Science Applications International Corporation (SAIC), one of the five firms that have been awarded DOE-wide contracts for NEPA support services. SAIC located their EIS project manager in Albuquerque to facilitate the process hands-on. While EISs can be written very adequately by people physically located anywhere in the world these days, having a central pivot person located in the same time zone as the project people and NEPA Document Manager is something I see as a real necessity.

The contractor brought considerable knowledge and experience with the preparation of NEPA documents to the process – and this shows in the quality of the Draft EIS. Even the very first cut “rough draft” we received from SAIC was more like cotton than burlap, and it just got better until the concurrence draft reached silky smoothness.

Also vital to the EIS preparation process were the ecological resources team and the CMRR project people at Los Alamos National Laboratory and NNSA’s Los Alamos Site Office. They really pulled together to provide information about the site, about natural and cultural resources in the Los Alamos area and at the Laboratory, and about the CMR Building and the proposed CMRR Project.

Teamwork from beginning to end made the Draft EIS successful, and we are continuing that strong teamwork now to complete the Final EIS this year.

The 46-day comment period on the CMRR Draft EIS closed June 30, 2003. About 200 comments were received from fewer than 20 individual commentors – not counting the two different campaign letters signed by multiple people. The Final EIS is scheduled to be issued this November. For more information, contact Elizabeth Withers at ewithers@doeal.gov or 505-667-8690. LL

Everyone from the site to headquarters worked to make the review and concurrence process go smoothly.

NEPA and Negotiation Combine to Prevent Blackouts while Protecting a Valuable Watershed

By: Gene Lynard, *NEPA Document Manager, Bonneville Power Administration*

The intent and spirit of NEPA again helped Bonneville Power Administration (BPA), DOE's power marketing organization in the Pacific Northwest, win support for a controversial 500-kilovolt transmission line through the City of Seattle's Cedar River Municipal Watershed. The preferred alternative, outlined in the *Kangley-Echo Lake Transmission Line Project Environmental Impact Statement* (DOE/EIS-0317-S1, June 2003), will help BPA keep the lights on in the Northwest.

"While we have disagreed over the best location of this proposed transmission line, the city understands the need to provide for power transmission reliability. We are pleased that we have been able to negotiate a proposed settlement with BPA that protects this critical source of our water supply and enhances our restoration activities."
— Mayor Greg Nickels, City of Seattle

Getting support for a new transmission line is never easy, but when your proposal threatens the drinking water of a major city and goes through pristine habitat for Federally-listed fish and wildlife, you had better be ready to deal. And BPA, through the NEPA process and lengthy negotiations with stakeholders, has successfully crafted a way for the environment to come out on top.

BPA identified a critical need in 1999, i.e., a weakness in the high-voltage transmission system in the Seattle area that could lead to brownouts, or even blackouts, during extremely cold periods when demand for power is highest, and as early as the winter of 2002-2003. Without some kind of fix, the area could go dark when people need power for electric heat. Planners started brainstorming solutions, and the NEPA staff began identifying the issues and concerns.

Potential Impacts to a Valuable Watershed

Seattle officials, tribal governments, national and local environmental groups, and some nearby residents opposed plans for the proposed transmission line when the Draft EIS was circulated for public review in the

summer of 2001. They thought any transmission line through the Cedar River Watershed, which supplies water to about 1.3 million people in the Puget Sound area, would harm water quality and fish and wildlife habitat. Just before the project was proposed, the City of Seattle had, through its own contentious process, finalized a Habitat Conservation Plan (HCP) under the Endangered Species Act for the northern spotted owl and marbled murrelet and for future returns of chinook salmon. The HCP allowed no commercial logging in the Watershed. BPA's new transmission line would require cutting about 90 acres inside the Watershed.



Melting snow and rain are gathered and stored in reservoirs such as this one created by the Masonry Dam. Other images of the Watershed are available in the virtual tour at Seattle Public Utility's Web site (www.cityofseattle.net/util/cedarwatershed).

The approximately 90,000-acre Watershed provides water of such purity that it need not be filtered. If construction or other activities contaminated the water, it could leave Seattle responsible for a \$100 million filtration system for its water supply in a time of tight municipal budgets.

Comments Lead to Supplement With Additional Alternatives

All action alternatives analyzed in the Draft EIS crossed the Watershed because going around the Watershed meant demolishing homes. Though of concern to local residents, the HCP stakeholders made it clear that they wanted alternatives outside the Watershed analyzed along with a completely different solution – a non-transmission alternative, such as conservation. And they wanted mitigation. They wanted all this in a Supplemental Draft EIS before any decision was made.

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Protecting a Valuable Watershed

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BPA reopened scoping and prepared a Supplemental Draft EIS that evaluated four routes that went around the Watershed, new information about the preferred alternative, and a non-transmission alternative. The non-transmission alternative included incentives to reduce peak demand, energy efficiency, and alternate generation sources, which provided some benefits, but only delayed the need for additional transmission capacity for a few years.

Negotiations and a Commitment to Mitigation Result in Broadly Accepted Project

BPA continued to meet with environmental groups and tribes to better understand their concerns throughout the

"We applaud BPA's efforts to mitigate the impacts from the project and will work with BPA to ensure the intent of these commitments is translated into real forest and water protection."

— Charlie Raines, Director, Sierra Club's Cascade Checkerboard Project

process. BPA also met regularly with Seattle's representatives to hammer out an agreement that would meet the City's concerns in exchange for BPA receiving an easement across the Watershed. BPA offered a creative mitigation strategy: land purchases and a promise to not seek additional land across the Watershed again.

BPA purchased lands adjacent to the Watershed that would be transferred

to the City of Seattle (almost 600 acres) or sold with conservation easements attached (about 500 acres). This includes some 350 acres above the Raging River Basin, abutting the Watershed. These purchases compensated for the loss of about 90 acres of timber in the Watershed and drew praise from local environmental groups.

BPA also identified several new mitigation measures and state-of-the-art design methods that would effectively minimize potential impacts of constructing the transmission line, such as flying preassembled tower sections and fallen timber in and out of the Watershed, and using non-toxic vegetable oil in all hydraulic equipment within the Watershed.

Finally, in its agreement with the City of Seattle, BPA committed to (1) measures protecting the City against any threat to its water supply during project construction and for two years thereafter, (2) funds to the City to improve security and finance restoration within the Watershed, and (3) costs for timber removal.

A NEPA Success Story

Commentors spared no one's feelings when they responded to the Draft EIS, and NEPA staff used those comments to prepare a successful Supplemental Draft EIS. Because BPA was responsive to stakeholders' comments

How did BPA win the needed support? Through lengthy negotiation and an attempt to try and meet everyone's needs.

and concerns, there were far fewer comments on the Supplemental Draft EIS, and BPA could prepare an abbreviated Final EIS, saving both time and expense. BPA issued the Final EIS on June 20, 2003, less than six months after issuing the Supplemental Draft EIS.

Construction began the day following the record of decision (68 FR 44532; July 29, 2003) and is scheduled to be complete in December 2003.

The extent of stakeholders' concern was far greater than realized when project planning began. The NEPA process made clear to the decisionmakers which critical resources were of most interest. BPA's extra effort to address stakeholders' concerns by developing compensatory mitigation measures through the NEPA process and negotiations resulted in a win-win-win outcome for BPA, the environmental community, and the users of electricity in the Puget Sound area – the ultimate beneficiaries of the project.

For more information, contact Gene Lynard at gplynard@bpa.gov or 503-230-3790. 

NEPA Trivia

(from the NEPA Community Meeting)

2. What was the subject of the first DOE EIS?

3. How many pages long was the first DOE EA?

- (a) 1-25
- (b) 26-50
- (c) 51-100
- (d) more than 100 pages

Answers on page 24.

NEPA Helps to Protect Sagebrush Steppe Ecosystem

By: Roger Twitchel, NEPA Compliance Officer, DOE Idaho Operations Office

NEPA can help DOE not only to make decisions about new projects but also examine ongoing activities and plan ways to reduce adverse environmental impacts. DOE's Idaho Operations Office successfully used the NEPA process to evaluate trade-offs among alternatives and determine the best way to preserve the natural sagebrush steppe ecosystem at the Idaho National Engineering and Environmental Laboratory (INEEL). INEEL contains the largest remnant of undeveloped, ungrazed sagebrush steppe remaining in the Intermountain West. Current rangeland management practice in combination with an altered wildfire process threatens to irreversibly convert what remains of the sagebrush steppe ecosystem into a landscape dominated by non-native cheatgrass.

Wildfire in the Sagebrush Steppe

Fire is a natural component of the sagebrush steppe ecosystem, typically occurring on a 40- to 70-year cycle. The natural ecosystem consists of shrubs – most notably sagebrush, an abundance of perennial grasses, and annual grasses and broadleaf herbaceous plants. When this native vegetation burns, grasses and herbaceous plants survive (perennials re-sprout from underground stems and roots, annual grasses from seed) but the sagebrush is killed. Sagebrush will recolonize only as wind-dispersed seed from unburned areas. Once established, it will take about five years to mature and will compete with the other native plants until a natural balance is reached.

The introduction of non-native annual plants, particularly cheatgrass, alters the natural fire and recovery cycle. After a fire, cheatgrass seeds quickly germinate, and the plants successfully compete for moisture and nutrients with native seedlings and surviving plants. It grows rapidly during cool, wet springs, goes to seed, and then becomes parched during the extended dry periods in late spring and early summer. Cheatgrass can quickly form a nearly continuous carpet of fuel that is extremely prone to burn. The frequency of fire increases, cheatgrass continues to increase, and sagebrush eventually disappears from the plant community.



Cheatgrass is thought to have been introduced into the Intermountain West in the 1880's in impure seed.

EA Addresses Fire Management

The Idaho Office decided to prepare an EA to address concerns that the traditional fire management strategy at INEEL – which focused solely on extinguishing fires – was adversely impacting natural resources by destroying habitat for species dependent on sagebrush, affecting cultural resources, and creating massive dust storms after a fire. Of particular concern were impacts on the eastern subspecies of the greater sage grouse, a bird that inhabits the INEEL site. The Institute for Wildlife Protection petitioned the U.S. Fish and Wildlife Service (FWS) in July 2002 to list the eastern subspecies as endangered. (To date there have been seven petitions to the FWS to list the sage grouse or one of its subspecies.)

The *INEEL Wildland Fire Management Environmental Assessment* (DOE/EA-1372, April 2003) was not associated with any project, and there was no budget set aside to prepare it. The Idaho Office's management and operating contractor made the EA a reality by juggling other activities to ensure its completion.

The EA evaluated four alternatives for managing wildfires at INEEL, each of which included options for pre-fire, fire suppression, and post-fire activities:

- *Maximum Fire Protection Alternative* – implement the full range of pre-fire, fire suppression, and post-fire activities. It would focus on creating firebreaks and aggressively fighting all fires.
- *Balanced Fire Protection Approach* – use minimum impact suppression tactics (e.g., allowing fires to burn to a natural barrier, placing containment lines to minimize impacts on significant environmental resources, minimizing soil disturbance) in order to suppress wildfires with the least impact on the land. It would minimize fuel loading and fire potential by developing a program for long-term management of native vegetation.
- *Protect Infrastructure and Personnel Safety* – include only those activities necessary to protect primary INEEL facilities. It would include pre-fire activities needed to provide safe spaces for firefighters within the site.
- *No Action Alternative* – continue traditional pre-fire, fire suppression, and post-fire activities, including fighting fires aggressively. This alternative differs from the Maximum Fire Protection Approach in that it prescribes significantly fewer pre-suppression activities, such as the creation of defensible space and fuel management zones, and no post-fire activities except for dust control.

continued on next page

Sagebrush Steppe Ecosystem

continued from previous page

Interagency Consultations Protect Natural Resources, Enhance Safety and Planning

DOE could not have reasonably assessed these alternatives without examining the general condition of sagebrush steppe in Idaho and the wildfire strategies of other area agencies. Thus, the Idaho Office contacted other organizations with interests in and knowledge of the natural resources on the site: Idaho Department of Fish and Game, Shoshone-Bannock Tribes, FWS, and the Bureau of Land Management (BLM).

At the end of the interagency consultation process, everyone was more aware of the long-term impacts and the concerns of competing interests.

BLM, in particular, was interested because it was beginning an EIS and Plan Amendment for *Fire, Fuels, and Related Vegetation Management Direction* on wildfire management in the Upper Snake River District in southeast Idaho.

The organizations shared information about existing ecosystem conditions and determined information needed to aid in successful restoration of burned areas. In addition to useful suggestions for the EA, the consultation process has

enhanced safety for all fire crews deployed at INEEL because DOE and BLM have coordinated their fire suppression and control tactics.

The EA provided a qualitative assessment and comparison of the potential impact of each alternative on air, water, wildlife, wildlife habitat, and cultural resources. Based on this analysis, the Idaho Office determined that the Balanced Fire Protection Approach will best protect natural resources. Implementing this alternative will, for example, conserve habitat critical to sagebrush-dependent species, such as the greater sage grouse. The other interested agencies agreed that this alternative was the best strategy for managing wildfires at INEEL. DOE determined that the selected alternative would not have, and in fact, likely would prevent, a significant impact on the human environment.

The NEPA process helped DOE's Idaho Office plan wildfire management actions to minimize their potentially significant environmental impacts on the site's natural resources. This was an innovative, cooperative approach to using NEPA to improve environmental protection, safety, and site-wide planning.

For more information, contact Roger Twitchell at twitchrl@inel.gov or 208-526-0776. 

FERC Integrates NEPA and Hydroelectric Licensing Processes

The Federal Energy Regulatory Commission (FERC) revised its regulations for hydroelectric licensing on July 23, 2003, to create a new Integrated Licensing Process. Under the new process, a potential license applicant's pre-filing consultation and FERC's scoping pursuant to NEPA would be conducted concurrently, rather than sequentially. The pre-filing process allows a potential applicant to gather information on stakeholder concerns, alternatives, and potential impacts that is useful both to its application and FERC's NEPA process. The new regulations promote greater coordination between FERC and Federal and state agencies with authority to apply conditions to licenses and provide for increased public participation during the pre-filing period.

An additional feature of the new regulations is the development of a study plan, which is designed to provide information needed to evaluate project effects on

the environment. The study plan is to be developed in conjunction with the NEPA scoping process to better understand which alternatives should and should not be considered. FERC anticipates that involving Federal and state agencies and the public early, especially in the development of the study plan, will improve the efficiency and predictability of the licensing process.

The new regulations become effective on October 23, 2003, and will provide the integrated licensing approach as an option during a two-year transition. After July 2005, however, the new procedures would be the default approach used by FERC. Additional information is available on the Web at www.ferc.gov under Hydroelectric Licensing Rulemaking or by contacting Tim Welch at timothy.welch@ferc.gov or 202-502-8760. (Also see *LLQR*, September 2001, page 12, regarding FERC's streamlining of its NEPA reviews of natural gas pipeline proposals.) 

Transitions

Oak Ridge: David Allen Takes Emergency Management Position; Acting NCOs Fill In

David Allen, until recently the NEPA Compliance Officer for the Oak Ridge Operations Office, writes:

I have been selected as the Director of the Assessment and Emergency Management Division, which has overall emergency management responsibility for the Oak Ridge Reservation (around 35,000 acres) and supports these efforts at Paducah and Portsmouth. In addition, this organization supports numerous assessment and quality assurance functions that range from day-to-day audits to major facility Operational Readiness Reviews and Integrated Safety Management verifications.

I will greatly miss my numerous friends and colleagues across the Department and several other agencies with which I have had the pleasure and privilege to work. These are a super group of people.



David Allen was an active participant in DOE NEPA meetings.

I assumed management responsibility for NEPA at Oak Ridge in June of 1991. After more than 12 years, the NEPA program across the Department and Oak Ridge has seen significant change; however, several aspects have not changed and should never change. First, a focus on thorough, quality NEPA reviews that properly assess the impacts of our actions; second, an ever increasing involvement of the public; and last, the philosophy that teamwork within the Department and with

stakeholders will ultimately help minimize impacts to our environment.

Until my position is permanently filled, members of the Oak Ridge environmental staff will serve as Acting NCO. David Page, Environmental Engineer, Environmental Protection Group (EPG), will be Acting NCO through September 16, 2003 (pagedg@oro.doe.gov or 865-576-1357), followed by Gary Hartman, Environmental Scientist, EPG, from September 17 through October 16, 2003 (hartmangs@oro.doe.gov or 865-576-0273).

Remember that my e-mail address (allendr@oro.doe.gov) and phone number (865-576-0411) have not changed. I will always be available to assist, counsel, laugh, or cry about any particular NEPA issue folks have.

As always,

David R. Allen

Fossil Energy NCO: Mark Matarrese

Mark Matarrese now serves as the NEPA Compliance Officer for the Office of Fossil Energy (FE), replacing Don Silawski, who served since 2001. Mr. Matarrese works in FE's Office of Environment, Security, Safety and Health. He also is the acting Headquarters Security Officer, Emergency Management Coordinator, Pollution Prevention and Waste Minimization Coordinator, and lead for Critical Infrastructure Protection activities.

His DOE work experience includes service with the Naval Petroleum and Oil Shale Reserves, Office of Defense Programs, and the Office of Environment, Safety and Health. Other previous Federal government experience includes serving at the Defense Technical Information Center and the U.S. Marine Corps/Naval Air Rework Facility-Cherry Point, N.C.

Mr. Matarrese has managed analytical chemistry and microbiological laboratory operations and has conducted analyses on a wide variety of environmental and industrial hygiene samples in both government and private industry. He can be reached at mark.matarrese@hq.doe.gov or 202-586-0491. 

How Do Federal Agencies Implement NEPA Section 101?

The National Environmental Conflict Resolution (ECR) Advisory Committee requested information on August 18, 2003, from Federal NEPA Liaisons about their implementation of NEPA Section 101. Responses will help the committee in examining the relationship between Section 101 and ECR. (See *LLQR*, June 2003, page 15.)

The Office of NEPA Policy and Compliance will coordinate DOE's response to the committee's questions: what aspects, if any, of Section 101 are covered in the Department's strategic plan; whether NEPA training or reviews of NEPA implementation incorporate Section 101 policy goals; whether Section 101 goals are addressed in alternatives analysis in agency EISs; and whether agency policies, mission statements, or regulations have a direct connection to Section 101 goals. Suggestions for inclusion in DOE's response may be sent to Yardena Mansoor (yardena.mansoor@eh.doe.gov) by September 30.

The U.S. Institute for Environmental Conflict Resolution, chartered by Congress in 1998, is intended in part to assist the Federal Government in implementing Section 101 of NEPA. For further information on the institute or its advisory committee, see www.ecr.gov or contact Melanie Emerson at memerson@ecr.gov or 520-670-5299. 

Strategic Petroleum Reserve Wins Award At 28th NAEP Conference

The National Association of Environmental Professionals (NAEP) held its 28th annual conference on June 22-25, 2003, in San Antonio, Texas. DOE's NEPA Community once again played a prominent role providing presentations and actively participating in conference sessions, all of which supported the overarching theme: *No Borders: One Globe, One Environment*.

SPR Awarded for EMS that Integrates NEPA

The DOE Strategic Petroleum Reserve (SPR) and its Management and Operating Contractor, DynMcDermott Petroleum Operations Company, were jointly presented the 2003 National Environmental Excellence Award for Environmental Management. The award was for SPR's Environmental Management System (EMS), which is premised on full integration with its NEPA process to provide a dynamic mechanism for early identification of environmental aspects (an EMS term-of-art, which has a broader meaning than environmental impacts in the NEPA context) and impacts. The result is a combined approach to aspect identification and impact management that provides the opportunity for environmental improvement throughout the project lifecycle. For more information contact Katherine Batiste, NEPA Compliance Officer, Strategic Petroleum Reserve Project Office, at katherine.batiste@spr.doe.gov or 504-734-4400.

NEPA Essential Component Of Presidential Award Recipient

The Presidio of San Francisco, one of the oldest military posts in the nation, received the 2003 NAEP President's National Environmental Excellence Award for its Presidio Trust Management Plan, which emphasizes preservation and enhancement of the Presidio's cultural, natural, scenic, and recreational resources for public use: replacing pavement with green space, improving and enlarging the park's trail system, restoring stream corridors and natural habitats, and reusing historic structures for public, residential, and office use.

The Plan is driven by Congress' direction that the Trust manage the 1,168-acre site in perpetuity for the public benefit and that the Presidio be financially self-sufficient by 2013. The trust arrangement and the financial conditions are unique in the National Park system.

An EIS was prepared for the Plan, and NEPA compliance will be integral to plans for implementing future actions. The 2002 Plan, EIS, and record of decision are available on the Web at www.presidio.gov/TrustManagement under Environmental and Planning Documents. For more information, contact John Pelka, NEPA Compliance Manager, Presidio Trust, at jpelka@presidiotrust.gov. (Also see *LLQR*, June 2003, page 7.)

NEPA Symposium Draws On DOE NEPA Community

About a dozen members of the Federal and contractor DOE NEPA Community made presentations at NEPA-related sessions during the conference. This year's NEPA symposium was chaired by Dr. John Irving, Idaho National Engineering and Environmental Laboratory. Among the presenters was Carolyn Osborne, NEPA Office, who discussed DOE's process for categorical exclusions and environmental assessments. Other DOE-related topics included site-wide EISs, wildland fires and NEPA planning, and the use of geographic information systems in the NEPA process.

NAEP Going to Portland in 2004; Abstracts Due September 30

NAEP's next conference, themed *Building Bridges in a Changing World*, will be held in Portland, Oregon, April 25-28, 2004. More information is available on the Association's Web site at www.naep.org. Abstracts for the 2004 conference are due by September 30, 2003 (an extension from the August 31 date NAEP initially announced). 

NEPA Trivia

(from the NEPA Community Meeting)

4. How many CXs does DOE have? 5. When were the DOE NEPA regulations written?

Answers on page 24.



Litigation Updates

Court Orders Agencies to Review NEPA For Two U.S.-Mexico Transmission Lines

DOE and the Bureau of Land Management (BLM) must prepare a supplemental EA or an EIS on two transborder electric power transmission lines, under a July 8, 2003, decision by the U.S. District Court for the Southern District of California. The court previously ruled on May 2, 2003, that the EA (*Presidential Permit Applications for Baja California Power, Inc., and Sempra Energy Resources* [DOE/EA-1391; 2001]) and FONSI prepared by the agencies are inadequate. (See *LLQR*, June 2003, page 20.)

The decision came in response to a lawsuit filed by the Border Power Plant Working Group. (See *LLQR* June 2002, page 13.) At issue are permits for transmission lines that carry electricity from new power plants in Mexico into the United States. DOE issued permits for transmission facilities at the U.S.-Mexico border. BLM issued permits for the lines to cross land it manages.

In its July ruling, the court deferred plaintiff's request that the permits and FONSI be set aside, an action that would have halted operation of the transmission lines until adequate NEPA analysis is completed. The court, however, retained jurisdiction to ensure that DOE and BLM fulfill their obligations under NEPA. DOE and BLM must demonstrate to the court by May 15, 2004, why the court should not set aside the permits and FONSI on July 1, 2004.

The court balanced the impacts of continued operation of the power lines while further NEPA review is conducted (a period estimated not to exceed two years) against ceasing operation. The court determined that the plaintiff had "not demonstrated a likelihood of substantial and irreparable environmental harm" during the period of additional NEPA review. Meanwhile, the companies that received the permits showed the court evidence of "considerable economic harm" if operation of the transmission lines were suspended. The court also observed that there is a net benefit to the public from enhancing the reliability of the power supply by allowing operation of the transmission lines to continue.

Further underlying its July 2003 decision is the court's analysis of two issues. In the first of these, the court had examined the administrative record for the EA and

determined in May that the EA did not explain why public "comments do not suffice to constitute a public controversy" about potential impacts of the proposed action. In selecting a remedy for this inadequacy, however, the court considered both the administrative record for the EA and additional evidence about potential impacts presented to it by experts on both sides. This led the court to be "even more convinced...that a dispute exists concerning the significance of impacts" but did not lead the court to conclude that the dispute was substantial.

While the court had earlier ruled that the EA should have responded better to public comments, it found in July that, for purposes of deciding upon a remedy, the comment letters "provided little more than conclusions as to the significance of those [potential] impacts" of the proposed action, not compelling evidence or analysis. Consequently, the court did not feel obliged to order DOE and BLM to prepare an EIS but instead gave the agencies the discretion to determine how best to fulfill their obligations under NEPA.

The second issue involved the determination of significance. For both impacts to water quality in the Salton Sea and impacts from air pollution, the court found that the plaintiff had failed to show substantial and irreparable harm. In the case of air impacts, the court made this determination despite also having found it likely that emissions of particulates from the power plants in Mexico would contribute to one violation of applicable air quality standards at each of two air monitoring stations within the U.S. during the anticipated period for completing an adequate NEPA review. Also, the court accepted scientific evidence that the increase in particulate matter as a result of power plant operations (presented in the EA) could result in adverse health impacts. However, because the increase would be at a level that the Environmental Protection Agency has determined to be "insignificant," the court declined to "find that the same increase is substantial for purposes of issuing injunctive relief."

[Case No. 02-CV-513-IEG (POR)] 

Litigation Updates (continued from previous page)

Court Finds Part of DOE Order 435.1 Invalid

The U.S. District Court for the District of Idaho ruled on July 3, 2003, that a key provision of DOE Order 435.1, Radioactive Waste Management, is invalid. The ruling applies to that portion of the Order that allows waste that is incidental to reprocessing to be managed as low-level radioactive waste (LLW). Such classification is viewed by DOE as important to speeding the treatment and reducing associated disposal costs of liquid wastes generated by DOE's prior reprocessing of spent nuclear fuel. Waste incidental to reprocessing that remains in tanks could be disposed of in place, as LLW for example, rather than being disposed of in a repository as high-level waste.

The Natural Resources Defense Council, along with other groups, challenged the provision as inconsistent with the Nuclear Waste Policy Act (NWPA). (See *LLQR*, September 2002, page 19.) The court agreed that part of DOE Order 435.1 was not consistent with NWPA.

The court declined plaintiff's request that it enjoin DOE from implementing specific plans including closing waste tanks by filling them with grout. The court found "no

indication" that DOE would "continue with any plan inconsistent with NWPA." Plaintiffs may bring the issue back before the court should the need arise, however.

In a letter to Congress on August 1, 2003, the Secretary of Energy submitted draft legislation to Congress to clarify that high-level waste does not include radioactive materials from reprocessing that DOE, in consultation with the Nuclear Regulatory Commission, determines do not require disposal in a geologic repository designed for spent nuclear fuel and high-level waste in order to protect public health and safety. The Secretary also filed a Notice of Appeal on August 27, 2003. DOE is reviewing implications of the court's decision, including whether the decision impacts existing NEPA documentation. The decision and other documents filed in this case are available online at www.id.uscourts.gov under Case Files, District, nonrestricted cases, case number 01-413.

[Case No: 01-0413-S-BLW] 

NEPA Lawsuit Challenges Biological Research Laboratories

Two nonprofit groups filed a lawsuit in U.S. District Court for the Northern District of California on August 26, 2003, alleging that DOE violated NEPA in its plans to construct and operate a Biosafety Level 3 (BSL-3) facility at the Lawrence Livermore National Laboratory (LLNL) in California and another at the Los Alamos National Laboratory (LANL) in New Mexico. The lawsuit also claims that the National Nuclear Security Administration should prepare a programmatic EIS on its Chemical and Biological National Security Program (CBNP), which includes the two BSL-3 facilities.

Tri-Valley CAREs and Nuclear Watch of New Mexico state that EAs prepared for the two BSL-3 facilities – *Environmental Assessment for the Proposed Construction and Operations of a Biosafety Level 3*

Facility at Los Alamos National Laboratory, Los Alamos, New Mexico (DOE/EA-1364; 2002) and *Environmental Assessment for the Proposed Construction and Operation of a Biosafety Level 3 Facility at Lawrence Livermore National Laboratory, Livermore, California* (DOE/EA-1442; 2002) – contain inadequate analysis to support a finding of no significant impact. The groups also contend that DOE has violated the Freedom of Information Act (FOIA) in failing to provide requested documents and the Administrative Procedure Act for failing to comply with NEPA and FOIA. The groups asked the court to issue an injunction against construction of the BSL-3 facility at LLNL and operation of the nearly-complete BSL-3 facility at LANL until DOE has complied with NEPA for the individual facilities and the CBNP. 

Training Opportunities

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

- **NEPA Overview/Cultural and Natural Resources Management**
Reno, NV: September 9-11
Fee: \$795

How to Manage the NEPA Process and Write Effective NEPA Documents
4-Day Course
San Diego, CA: September 9-12
Memphis, TN: October 7-10
Las Vegas, NV: October 21-24
Washington, DC: November 18-21
Fee: \$995

3-Day Course
Logan, UT: October 6-8
Fee: \$795

Public Response/Content Analysis Management
Phoenix, AZ: September 23-24
Fee: \$595

Team Building for NEPA Specialists
Logan, UT: October 9-10
Fee: \$595

Cumulative Impact Analysis and Documentation
Logan, UT: October 30-31
Fee: \$595

Reviewing NEPA Documents
2-Day or 3-Day Course
Boise, ID: November 4-6
Fee: \$595/\$795

The Shipley Group
888-270-2157 or 801-298-7800
shipleys@shipleysgroup.com
www.shipleysgroup.com
- **Preparing and Documenting Environmental Impact Analyses**
Durham, NC: September 15-18
Fee: \$1090

Implementation of NEPA on Federal Lands and Facilities
Durham, NC: November 3-7
Fee: \$1090

Nicholas School of the Environment and Earth Sciences
Levine Science Research Center
Duke University
919-613-8082
sea3@duke.edu
www.env.duke.edu/cee/NEPA.html
- **NEPA: Policies, Procedures, and Practices**
Los Angeles, CA: September 17-18
Fee: \$425

Information Technology Tools for Environmental Assessments and Land Use Planning
Alhambra, CA: November 7
Fee: \$245/\$270 (by/after October 24)

Successful CEQA Compliance
Los Angeles, CA: December 4-5
Fee: \$425

UCLA Extension
310-825-9971
818-784-7006
www.uclaextension.edu/publicpolicy

NEPA Trivia Answers

1. Between 19 and 20 pounds
2. DOE/EIS-001 (1977) was for the Strategic Petroleum Reserve, Texas Salt Dome
3. DOE/EA-001 (1977), Battery Energy Storage Test Facility (New Jersey), was 23 pages long, including 2 maps
4. Subpart D of the DOE NEPA Implementing Regulations has 103 typical classes of action listed: 15 in Appendix A and 88 in Appendix B
5. Proposed in 1990, issued in 1992, and revised in 1996.

EAs and EISs Completed April 1 to June 30, 2003

EAs

Bonneville Power Administration

DOE/EA-1367 (4/23/03)

White Sturgeon Mitigation and Restoration in the Columbia and Snake Rivers, Washington

Cost: \$3,000

Time: 30 months (EA was put on hold)

Chicago Operations Office

DOE/EA-1455 (6/27/03)

Enhanced Operations of the Advanced Photon Source, Illinois

Cost: \$200,000

Time: 12 months

Grand Junction Operations Office

DOE/EA-1466 (4/23/03)

Ground Water Compliance at the Naturita, Colorado, UMTRA Project Site, Colorado

Cost: \$40,000

Time: 3 months

Idaho Operations Office

DOE/EA-1372 (4/25/03)

Wildland Fire Management at INEEL, Idaho

Cost: \$ 55,000

Time: 27 months

Oakland Operations Office

DOE/EA-1345 (4/2/03)

Restoration of the Energy Technology Engineering Center Site, California

Cost: \$230,000

Time: 35 months

Richland Operations Office

DOE/EA-1462 (6/16/03)

Tank Closure Demonstration Project, Washington

Cost: \$91,000

Time: 7 months

Western Area Power Administration

DOE/EA-1465 (4/15/03)

Edgeley Wind Energy Project, North Dakota

[Note: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

Time: 4 months

EISs

Bonneville Power Administration

DOE/EIS-0312 (5/9/03)

(EPA Rating: LO)

Fish and Wildlife Implementation Plan, Oregon and Washington

Cost: \$1,000,000

Time: 42 months

DOE/EIS-0317-S1 (6/20/03)

(EPA Rating: EC-2)

Kangley-Echo Lake Transmission Line Project, King County, Washington

Cost: \$720,000

Time: 13 months

DOE/EIS-0345 (6/20/03)

(EPA Rating: EC-2)

Plymouth Generating Facility, Benton County, Washington

[Note: The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.]

Time: 17 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 of 6 EAs completed was \$72,830; the average was \$103,110.
- Cumulatively, for the 12 months that ended June 30, 2003, the median cost for the preparation of 33 EAs for which cost data were applicable was \$78,150; the average was \$98,380.
- For this quarter, the median completion time of 7 EAs was 11 months; the average was 17 months.
- Cumulatively, for the 12 months that ended March 31, 2003, the median completion time for 34 EAs was 11 months; the average was 13 months.

EIS Costs and Completion Times

- The costs for 2 EISs completed for which cost data were applicable for this quarter were \$720,000 and \$1,000,000.
- Cumulatively, for the 12 months that ended June 30, 2003, the median cost for the preparation of 9 EISs for which cost data were applicable was \$1,000,000; the average was \$7,275,560.*
- For this quarter, the median completion time of 3 EISs was 17 months; the average was 24 months.
- Cumulatively, for the 12 months that ended June 30, 2003, the median completion time for 11 EISs was 25 months; the average was 32 months.*

* *Note: This value should be interpreted with caution because a single document (the Yucca Mountain EIS) significantly affected the average.*

Recent EIS-Related Milestones (June 1 to August 31, 2003)

Notices of Intent

National Energy Technology Laboratory

DOE/EIS-0361
Western Greenbrier Co-Production Demonstration Project, Rainelle, West Virginia
June 2003 (68 FR 33111, 6/3/03)

DOE/EIS-0362
Colorado Springs Utilities Next-Generation CFB Coal Generating Unit, Fountain, Colorado
August 2003 (68 FR 48893, 8/15/03)

Draft EISs

Fossil Energy

DOE/EIS-0336
Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement
August 2003 (68 FR 51569, 8/27/03)

National Nuclear Security Administration

DOE/EIS-0236-S2
Draft Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility
June 2003 (68 FR 33934, 6/6/03)

Records of Decision

Bonneville Power Administration

DOE/EIS-0317-S1
Kangely-Echo Transmission Line Project King County, Washington
July 2003 (68 FR 44532, 7/29/03)

DOE/EIS-0183

Business Plan Final Environmental Impact Statement, Columbia County, Oregon
August 2003 (68 FR 45798, 8/4/03)

Savannah River Site

DOE/EIS-0220
Amended Record of Decision, Interim Management of Nuclear Materials; Savannah River Site Waste Management, South Carolina
July 2003 (68 FR 44329, 7/28/03)

continued on next page

Recent EIS-Related Milestones

continued from previous page

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program

(DOE/EIS-0246)

DOE/EIS-0246/SA-32

*Zumwalt Prairie Conservation Easement,
Wallowa County, Oregon*

(Decision: No further NEPA review required)

May 2003*

DOE/EIS-0246/SA-33

*Gooderich Bayou Culvert Replacement,
Flathead County, Montana*

(Decision: No further NEPA review required)

May 2003*

Watershed Management Program

(DOE/EIS-0265)

DOE/EIS-0265/SA-103

*Install Fish Screens to Protect ESA Listed Steelhead
and Bull Trout in the Walla Walla Basin – Phase II
Minor Diversion Screen Installations,
Walla Walla, Washington*

(Decision: No further NEPA review required)

June 2003

DOE/EIS-0265/SA-104

*Water Entity (Deschutes Resources Conservancy
2003) Funding for Three Water Rights Acquisition,
Princeville, Crook County, Oregon*

(Decision: No further NEPA review required)

June 2003

DOE/EIS-0265/SA-105

*Water Entity (Washington Water Trust 2003)
Purchase/Lease Water Acquisition Rights
for Three Projects, Twisp, Okanogan County,
Washington*

(Decision: No further NEPA review required)

June 2003

DOE/EIS-0265/SA-106

*Water Entity (Trout Unlimited Montana Water Project
2003) Purchase/Negotiate Water Rights for Three
Projects, Missoula, Montana*

(Decision: No further NEPA review required)

June 2003

DOE/EIS-0265/SA-107

*Hancock Springs Passage and Habitat Restoration,
Okanogan County, Washington*

(Decision: No further NEPA review required)

July 2003

DOE/EIS-0265/SA-108

*Klickitat Watershed Enhancement Project (Snyder
Canyon Creek Mill Fish Passage Project),
Washington*

(Decision: No further NEPA review required)

July 2003

DOE/EIS-0265/SA-109

*East Fork Holistic Restoration (Salmon River East
Fork 12 and Herd Creek 1), Custer County, Idaho*

(Decision: No further NEPA review required)

July 2003

DOE/EIS-0265/SA-110

*Pahsimeroi Holistic Restoration (Gydesen/Hayes
Riparian Enhancement and Irrigation Improvement
Project), Custer County, Idaho*

(Decision: No further NEPA review required)

July 2003

DOE/EIS-0265/SA-111

*Young Creek Stream Restoration,
Lincoln County, Montana*

(Decision: No further NEPA review required)

August 2003

DOE/EIS-0265/SA-112

*Upper Salmon Holistic Restoration (Zeigler Riparian
Fence), Custer County, Idaho*

(Decision: No further NEPA review required)

August 2003

DOE/EIS-0265/SA-113

*Pahsimeroi Holistic Restoration (Moen Riparian
Fence), Custer County, Idaho*

(Decision: No further NEPA review required)

August 2003

DOE/EIS-0265/SA-115

*Upper Salmon Holistic Restoration (Dowton Riparian
Fence), Custer County, Idaho*

(Decision: No further NEPA review required)

August 2003

*Not previously reported in LLQR

continued on next page

Recent EIS-Related Milestones

Supplement Analyses, continued from previous page

DOE/EIS-0265/SA-116

Fabricate and Install New Huntsville Mill Fish Screen, Columbia County, Washington

(Decision: No further NEPA review required)

August 2003

Transmission System Vegetation Management Program Final Environmental Impact Statement

(DOE/EIS-0285)

DOE/EIS-0285/SA-91

VM Around Wood Pole Structures in the Idaho Falls Region

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-128

VM for the Olympia-Satsop #3 230 kV Transmission Line Corridor

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-129

VM for the Ashe-Marion #2 500 kV Transmission Line from Structure 150/2 through 157/7

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-130

VM for the Keeler-Tillamook 115 kV Transmission Line from Structure 1/7 through 58/2 and Along Adjacent Portions of the Keeler-Forest Grove #2 115 kV Transmission Line

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-132

VM for Portion of the Big Eddy-Ostrander #1 500 kV Transmission Line Located from Tower Structure 31/2 to 39/3

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-133

VM for the Hanford-Ostrander Corridor from Structure 126/1 through Structure 146/4

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-134

VM for the Brandon-Rogue-Gold Beach Transmission Line Corridor

(Decision: No further NEPA review required)

March 2003*

DOE/EIS-0285/SA-135

VM for the Lower Monumental-McNary Transmission Line Corridor from Towers 13/1 to 14/1 and 18/1 to 19/5

(Decision: No further NEPA review required)

April 2003*

DOE/EIS-0285/SA-136

Portions of the Paul-Olympia, Paul Satsop, VM for the Oregon City (Chemawa #1 and #2 115 kV Transmission Lines from Oregon City Substation to Chemawa Substation)

(Decision: No further NEPA review required)

April 2003*

DOE/EIS-0285/SA-137

Vegetation Management for the Chemawa-Salem #1 115 kV and #2 230 kV Transmission Lines from Chemawa Substation to Salem Substation

(Decision: No further NEPA review required)

April 2003*

DOE/EIS-0285/SA-138

VM for Portion of the Raver-Echo Lake #1 500 kV Transmission Line Located from Tower Structure 4/1 to 13/1

(Decision: No further NEPA review required)

April 2003*

DOE/EIS-0285/SA-139

VM for the Little Goose (Lower Granite #1 and #2 Transmission Line Corridor from Towers 4/3 to 8/1)

(Decision: No further NEPA review required)

April 2003*

DOE/EIS-0285/SA-140

VM for the Salem Albany #1 115 kV Transmission Line from Salem Substation to Albany Substation

(Decision: No further NEPA review required)

April 2003*

*Not previously reported in LLQR

continued on next page

Recent EIS-Related Milestones

Supplement Analyses, continued from previous page

DOE/EIS-0285/SA-141

VM for the Salem Albany #2 115 kV Transmission Line from Salem Substation to Albany Substation
(Decision: No further NEPA review required)
April 2003*

DOE/EIS-0285/SA-142

VM for the Keeler-Oregon City #2 115 kV Transmission Line from Keeler
(Decision: No further NEPA review required)
April 2003*

DOE/EIS-0285/SA-143

VM for Portion of the Custer-Intalco #1 230 kV Transmission Line Located from Tower Structure 1/1 to 7/4
(Decision: No further NEPA review required)
April 2003*

DOE/EIS-0285/SA-144

VM for Portion of the Custer-Intalco #2 230 kV Transmission Line Located from Tower Structure 1/1 to 7/5
(Decision: No further NEPA review required)
April 2003*

DOE/EIS-0285/SA-147

VM for the Big Eddy-Chenoweth No. 1 & 2 Substation to Substation, Big Eddy-Midway Substation to 2/3 & Chenoweth-Goldendale (Substation to 2/3)
(Decision: No further NEPA review required)
April 2003*

DOE/EIS-0285/SA-146

VM for Portion of the Custer-Ingledow No. 1 & 2 500 kV Transmission Line Located from Tower Structure 1/4 to 9/6
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285/SA-148

Joint Project with US Forest Service for Vegetation Control for the McNary-Santiam #2 230 kV Transmission Line that Enhances Wildlife Habitat Under Powerlines
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285/SA-149

VM for the Captain Jack-Malin #1 500 kV Transmission Line from Structure 2/4 to Malin Substation
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285/SA-150

VM for the East Ellensburg Tap, 1/6 to 3/19 Transmission Line ROW
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285/SA-151

Removal of Dangerous Trees Along the Big Eddy-Ostrander-1 Transmission Line Corridor
(Decision: No further NEPA review required)
May 2003*

Ground Coulee-Bell 500 kV Transmission Line Project FEIS (DOE/EIS-0344)

DOE-EIS-0344/SA-1

Design Change for Four 500-kW Lattice Steel Towers from Double Circuit to Single Circuit Towers 82/5, 83/1, 83/2, and 83/3, Mead, Washington
(Decision: No further NEPA review required)
July 2003 **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, 2003.

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

- *Eliminating overlap.* Coordinating EIS scoping with other public participation processes conducted in the same region reduced needless overlap and facilitated the ability to share the information used for the projects.

What Didn't Work

- *Establishing alternatives.* Determination of reasonable alternatives for this EIS was particularly hard due to sensitive issues associated with the proposed action and disagreement among stakeholders.
- *Lack of understanding.* It was not well communicated to those who were unfamiliar with the EA process what the scope was and how it should have been used by the team.
- *Shifting factors.* As the group was trying to determine the EA scope and alternatives, the criteria used to determine reasonable alternatives kept changing.

Data Collection/Analysis

What Worked

- *Contractor preparedness.* When it came time to write the EIS, technical study reports (already prepared by the contractor) made the document easier to write.
- *Sharing information.* Information was shared between agencies and bureaus and was available for use in the document summaries.
- *Existing databases.* Field sources were augmented by previously collected data.

What Didn't Work

- *Uncertainty in future analysis.* Assessing activities that will occur in the future was made more difficult because the scale of the activity was unknown.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Cooperative planning.* Coordination among staff and supervisors helped keep the EIS on schedule.
- *Attention to detail.* Special consideration was paid to the facts early on in the process; this saved time later during preparation.
- *Accessible information.* Much of the data used was available on a CD at reference libraries; this led to relatively easy and timely EIS revisions.
- *Coordination among stakeholders.* Planning with other agencies who had an interest in the project facilitated timely completion of the EA.
- *Flexible contractor staff.* An accommodating contractor staff was able to respond quickly to evolving issues as they arose.

Factors that Inhibited Timely Completion of Documents

- *Lack of agreement within organization.* There was not consensus between the staff and management on how the project should have been completed.
- *Late discussion with interest groups.* Delayed consultations with interest groups postponed timely completion of the EA.
- *Chain of command.* The document writers reported to the contractor's project manager rather than to the DOE NEPA Document Manager.

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What Worked and Didn't Work

continued from previous page

Teamwork

Factors that Facilitated Effective Teamwork

- *Commitment.* DOE team members were dedicated to getting the job done, even if no direct funding was available.
- *One-stop shop.* One agency provided all of the information and data for the EA.
- *Sharing data.* A series of fact sheets was prepared on the project and was used among the EIS team during preparation.
- *Involving contractors.* Contractors were included as part of the core team until the completion of the EIS analysis; this kept them in the loop during important discussions.
- *Initial organization.* Coordinating closely with the applicant during the early stages of project development facilitated effective DOE teamwork.
- *Management support.* The DOE Program Office and the DOE Site Office project managers strongly supported the DOE NEPA Document Manager and the review team and were committed to protection of sensitive resources.

Factors that Inhibited Effective Teamwork

- *Miscommunication among the group.* Because the EA writers reported to the contractor's project manager, it was difficult for the DOE EA reviewers to get candid information on the proposed action and potential impacts of the proposed action.
- *Lack of agreement.* Project contractor resisted making design changes needed to protect sensitive resources.

Process

Successful Aspects of the Public Participation Process

- *Keeping the public informed.* Several successful meetings were held between DOE and the community.
- *Distribution of information.* By using mailing lists of interested parties, information about the EIS was disseminated quickly and efficiently.

- *Early document reviews.* A draft of the EA was sent to relevant bureaus and agencies, which improved coordination for the final document.
- *Consideration of public comments.* The analysis of implementation options within broad policy alternatives allowed outside parties to better understand how their perspectives are considered.
- *Incorporating feedback.* Local agencies provided valuable input and expertise to ensure that the analysis was adequate and the environment would be protected.

Unsuccessful Aspects of the Public Participation Process

- *Time constraints.* There was a lack of time in the project schedule to run an effective public involvement program as well as analyze and prepare technical study reports for the EIS.
- *Incomplete coordination.* The public participation process did not address concerns of all stakeholders in a timely manner. Some concerns were not addressed until very late in the process.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Being prepared.* Planning of the EIS was started early, so that when it was time to prepare the document, there was some background already established.
- *Broad analyses.* Examining many alternatives allowed for a variety of options, rather than offering too narrow a range of alternatives in the draft document.

What Didn't Work

- *Disagreements.* Concerns of various stakeholders on regional policy inhibited the process from continuing smoothly.
- *Unfunded mandates.* Contractors needed to find money when and where they could so that the EA could be completed.

continued on next page

What Worked and Didn't Work

continued from previous page

Enhancement/Protection of the Environment

- The EA process will allow for maintaining a healthy ecosystem at the project site.
- An agreement for post-construction monitoring of the project can be used as a model for future siting of similar projects.
- Through relationship analysis methodology, policy makers were able to use the information to stimulate discussions on fish and wildlife issues. Furthermore, it was used to balance their decisions on impacts to the human environment.
- The NEPA process provided opportunities for environmental resource protection by identifying measures that were needed to reduce potentially adverse environmental impacts.
- The EA process resulted in a more environmentally protective design for the current project, and it also identified deficiencies in carrying out prior NEPA commitments. These deficiencies are being evaluated and addressed.

Other Issues

Guidance Needs Identified

- One respondent noted that guidance is not available on how to prepare NEPA documents for unpredictable events, such as floods and wildland fires.
- One respondent noted that internal scoping guidance is needed on issues that specifically involve tribes in environmental reviews.

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 4 questionnaire responses were received for EAs and 5 responses were received for EISs, 7 out of 9 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that the NEPA process contributed greatly to the decisionmaking process for the project. “[It] made clear to the decisionmakers which critical resources were of most concern to those potentially impacted. As a result, the project now contains extraordinary mitigation to protect these resources. Finally, the NEPA process clarified the need for the project and expanded the kinds of alternatives that were considered.”
- A respondent who rated the process as “5” stated that the NEPA review resulted in significant environmental protection that may not otherwise have occurred.
- A respondent who rated the process as “5” stated that the NEPA process evolved into a well informed, well thought-out management plan.
- A respondent who rated the process as “3” stated that NEPA is used to support agency decisions, but it is not yet being used to plan decisions because management does not use it for that purpose.
- A respondent who rated the process as “0” stated that the NEPA process was just another permit or hoop to jump through, because construction specifications were developed and issued before the completion of the NEPA process.
- A respondent who rated the process as “0” stated that neither the requirement to prepare the EA nor human-created schedules always comply with mother nature. 

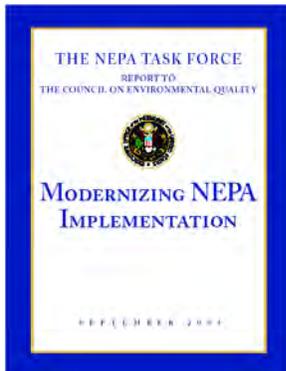
**LESSONS
LEARNED**

December 1, 2003; Issue No. 37

Fourth Quarter FY 2003

What's Next? CEQ Seeks More Input on Task Force Recommendations

NEPA practitioners, agencies, special interest groups, and the general public are reacting to recommendations intended to improve and modernize NEPA implementation presented in the *NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA*



Implementation, issued in September 2003. Through a series of meetings and regional roundtable discussions, CEQ is now seeking broad input on what should be done, how it should be done, and with what priority.

Noting that the Report was **to**, not **by** CEQ, Horst Greczmiel, CEQ Associate Director for

NEPA Oversight and Task Force Director, said he will report back to CEQ Chairman James Connaughton, who will then announce what CEQ will do in response to the Task Force recommendations.

"Realistically, CEQ needs to focus . . . What are the priorities? What's doable? What gives results?" Mr. Greczmiel said at a meeting of Federal agency NEPA Contacts in October. "Making NEPA better" will continue to be demanded of us, he said.

"We undertook this task recognizing the value that NEPA provides as well as the concern that the NEPA process was becoming no more than a process, losing its focus on helping Federal agencies make better-informed decisions," states the Task Force's transmittal memorandum to the CEQ Chair.

"The Task Force took its formidable task to heart, developing recommendations covering a broad spectrum
continued on page 3

What Have We Learned from *Lessons Learned*?

"DOE's NEPA lessons learned program is moving into its tenth year, and we're asking: What lessons have we learned, and how can we improve the lessons learned program itself?" said Eric Cohen, Office of NEPA Policy and Compliance.

The program's success depends on the active involvement of DOE's NEPA Community. Sharing ideas and being aware of issues raised by others are essential to the process of continuous improvement. One method for involvement is the lessons learned questionnaire completed by NEPA document team members. Each issue

of *Lessons Learned Quarterly Report (LLQR)* closes with a collection of responses to this questionnaire: What Worked and Didn't Work in the NEPA Process. (See page 25.)

The NEPA Office is reviewing nearly 1,000 excerpts from questionnaire responses published in *LLQR* since December 1994 to better understand the strengths and weaknesses of the NEPA process as assessed by DOE's NEPA Community. "We begin in this issue with a discussion of scoping and data collection and analysis," Mr. Cohen explained. "We will continue this series in future issues of *LLQR*, covering other topics addressed by
continued on page 10

Inside *LESSONS LEARNED*

Welcome to the 37th quarterly report on lessons learned in the NEPA process. In this issue we are starting a multi-part examination of lessons learned from *Lessons Learned*. We invite your suggestions on how to improve the Lessons Learned program. Thank you for your continuing support.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices.

Draft articles for the next issue are requested by February 2, 2004. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 2, 2004

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2004 (October 1 through December 31, 2003) should be submitted by February 2, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at tis.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 tis.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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BLM Preparing Wind Energy Programmatic EIS



Responding to the President's National Energy Policy recommendations that encourage the development of renewable energy resources (www.whitehouse.gov/energy/), the Department of the Interior, Bureau of Land Management

(BLM) is establishing a national policy and program for future wind energy development on the western public lands (excluding Alaska) administered by BLM. Having determined that the program and policy constitute a major Federal action under NEPA, BLM recently published a notice of intent to prepare a programmatic EIS (68 FR 59814; October 17, 2003), that announced scoping meetings in five western states in November and invited comments through December 19, 2003.

BLM will develop a scenario to define the magnitude of reasonably foreseeable future development of wind energy resources and identify which land use plans might be amended – for example, by designating lands for competitive leasing or adopting stipulations such as wildlife management guidelines. Resource impact issues to be assessed include wildlife and habitat, proximity to military activities, visual environment, and proximity to wilderness or other special management areas.

BLM anticipates that the Wind Energy Development Programmatic EIS and Record of Decision will be completed in about 24 months. DOE's National Renewable Energy Laboratory is providing technical assistance to BLM, and Argonne National Laboratory is providing EIS preparation support. For further information, see windeis.anl.gov or contact Lee Otteni, BLM Farmington (NM) Field Office, at 505-599-8911. 

CEQ Seeks More Input *(continued from page 1)*

of implementation issues that seek to improve, and reinvigorate, the NEPA process.” The Task Force based its report on comments received in response to a *Federal Register* notice; interviews with governmental and nongovernmental organizations; and review of literature, reports, and case studies.

The Task Force made three general recommendations of a crosscutting nature for CEQ to implement immediately to make the NEPA process more effective and efficient and also to enhance action on specific priority Task Force recommendations. (See text box on Recommendations on page 4.)



NEPA Contacts identify priority recommendations that would most help their agencies' NEPA programs.

Federal NEPA Contacts React to Report

At October 28 and November 17, 2003, meetings with CEQ and Task Force representatives, Federal agency NEPA Contacts provided reactions to the recommendations by expressing support and concerns, and identifying priorities.

Carol Borgstrom, Director of the DOE Office of NEPA Policy and Compliance, commented that the recommendations were likely to support the Task Force goal of removing barriers to NEPA efficiency by strengthening the role of CEQ. Some agency NEPA Contacts noted that enhancing intergovernmental collaboration and public involvement are likely to produce meaningful reform and help resolve land use disputes, particularly in the western part of the U.S. Others expressed the need for “harmonizing” NEPA implementation across government, sharing tools such as categorical exclusion lists and guidance to take advantage of government-wide lessons learned, and focusing on continued implementation of e-government approaches to promote public involvement and continued gains in efficiency.

In general, the NEPA Contacts commented favorably on the recommendations. They support the development of additional CEQ guidance rather than new prescriptive, regulatory approaches to NEPA implementation. Some Contacts expressed particular concerns regarding adaptive management – that it raises the possibility of an unending NEPA process and extensive legal liabilities, or that their agencies lack guidance and procedures for implementing this approach. Other Contacts mentioned the need to acknowledge that some Federal agencies, such as licensing agencies, have fundamentally different roles and approaches to their respective NEPA processes.

Next Steps: More CEQ Regional Roundtables

The Chair’s initial reaction to the Report, explained Mr. Greczmiel, was that it represents a very good job, but it is seen as the work product of the agencies and therefore CEQ wants to provide the tribes, states, local governments,

nongovernmental organizations, business and industry, and the public with another opportunity to present their views. CEQ is now considering the Task Force Report and its recommendations, with the benefit of additional expert and public review.

To ensure that broader perspective, CEQ is hosting a series of regional

roundtable meetings to hear from stakeholders on which recommendations should be implemented, how they should be implemented, and in what priority. Roundtables were held on October 30 and 31, 2003, near Olympia, Washington, and on November 13 and 14, near Philadelphia. Two future roundtable meetings, planned for Memphis on December 11 and 12, 2003, and near Dillon, Colorado, on January 8 and 9, 2004, will be announced in the *Federal Register*.

For further information, see the NEPA Task Force Web site at ceq.eh.doe.gov/ntf or contact Horst Greczmiel at 202-395-5750. *LLQR* will report on the outcome of the roundtable meetings and on CEQ reaction to and implementation of recommendations in future issues. **LL**

Task Force Report Commends DOE NEPA Web, Lessons Learned Program

“...the Department of Energy has developed requirements and procedures for posting its EISs and EAs on the DOE NEPA Web site (<http://tis.eh.doe.gov/nepa/>). In addition, DOE systematically tracks NEPA process costs and performance metrics, conducts analyses, and presents the results in quarterly Lessons Learned reports, which are made publicly available on the DOE NEPA Web site. The NEPA community could benefit from sharing the experiential knowledge gained from developing electronic NEPA information distribution standards and tracking mechanisms and would likely realize cost savings by reducing redundant development costs.”

(page 8)

NEPA Task Force Recommendations to CEQ

The summary recommendations of the NEPA Task Force Report (pages 87-89) are reprinted here.

Conclusion

The recommendations were crafted by individual task force teams and adopted by the entire task force. The recommendations are presented in the various chapters. The text of this report fully describes the recommendations, providing both context and additional task force insight on their implementation.

Three General Recommendations

The task force concluded that there are three general crosscutting recommendations for CEQ action that will facilitate efforts to make the NEPA process more effective and efficient. We believe that implementation of these general recommendations would also enhance action on specific task force recommendations, and therefore, they should be implemented as soon as possible.

The task force recommends that CEQ:

1. Establish an additional professional position, or positions, to provide technical NEPA process consultation and better coordinate advice and guidance to agencies about improving NEPA implementation and environmental analysis.
2. Conduct annual NEPA Legal Forums to discuss important NEPA legal developments; recommend and discuss any CEQ guidance that might need to be clarified as a result of this case law; discuss NEPA issues of high interest to the NEPA community; and facilitate consensus on addressing legal issues whenever possible.
3. Develop a CEQ handbook that provides existing guidance identified by topic areas and is supplemented as new guidance is issued. The guidebook should be published on the Web, with updates published periodically in hardcopy.

Priority Recommendations

Recognizing that priorities must be set and understanding that action on the remaining recommendations should also be taken, the task force recommends that CEQ initially focus on the following five recommendations regarding categorical exclusions, environmental assessments, federal and interagency collaboration, programmatic analyses and tiering, and adaptive management and monitoring.

1. Categorical Exclusions

The task force recommends that CEQ issue guidance to clarify and promote consistent practices for the development, documentation, public review, approval, and use of categorical exclusions by Federal agencies.

2. Environmental Assessments

The task force recommends that CEQ issue guidance to:

- Recognize the broad range in size of EAs;
- Clarify that the size of environmental assessments should be commensurate with the magnitude and complexity of environmental issues, public concerns, and project scope;
- Describe the minimum requirements for short environmental assessments; and
- Clarify the requirements for public involvement, alternatives, and mitigation for actions that warrant longer environmental assessments including those with mitigated findings of no significant impact.

In the near term, CEQ should issue a clarifying memo reiterating the minimum statutory and regulatory requirements for EAs when a short EA is warranted.

continued on next page

Task Force Recommendations

continued from previous page

3. Federal and Interagency Collaboration

The task force recommends that CEQ form a Federal Advisory Committee to provide advice to CEQ on:

- Identifying, developing, and sharing methods of engaging Federal, State, local, and tribal partners in training designed to educate them about the principles of NEPA, agencies' missions, and collaboration skills.
- Developing guidance addressing the components of successful collaborative agreements and providing templates applicable to various situations and stages of the NEPA process.
- Developing training for the public on NEPA requirements and effective public involvement.
- Developing a "Citizen's Guide to NEPA."

4. Programmatic Analyses and Tiering

The task force recommends that CEQ convene a Federal Advisory Committee to provide advice to CEQ on the different uses of programmatic analyses, tiering, and associated documentation; and, where necessary, provide advice on guidance or regulatory change to clearly define the uses and appropriate scope, range of issues, depth of analyses, and the level of description required in NEPA documentation.

5. Adaptive Management and Monitoring

The task force recommends that CEQ convene an adaptive management work group to assess the applicability of NEPA guidance and regulations related to adaptive management and to consider integrating the NEPA process with environmental management systems. The proposed work group should prepare the appropriate adaptive management guidance or regulatory changes. Further, we recommend that the work group initiate a pilot study to identify, implement, and document representative actions using an adaptive management approach during the NEPA process and work collaboratively with CEQ to identify aspects of the analyses and documentation requiring CEQ guidance or regulatory action.

The Role of Technology

CEQ can also facilitate and enhance NEPA improvement by acting on the recommendations in the Technology and Information Management and Security chapter. Agencies will continue, with or without CEQ, to develop information technologies and systems and improve information management to improve their NEPA processes. 

DOE Submits Cooperating Agency Report

DOE responded in early November to the Council on Environmental Quality's (CEQ) request for Federal agencies to report biannually on cooperating agency activities in NEPA reviews. This third report covers DOE EISs and EAs initiated between March 1 and August 31, 2003. In that period, DOE started 7 EIS, including 4 with cooperating agencies, and 10 EAs, including 2 with cooperating agencies. The report also updates project milestones and changes in cooperating agency status of EISs and EAs covered in the previous two biannual reports.

DOE NEPA document preparation teams are encouraged to consider potential cooperating agencies in their NEPA process and to consult with their NEPA Compliance Officer if questions arise on this subject. The benefits of cooperating agency participation in NEPA reviews and CEQ's initiatives to promote cooperating agency relationships are described in *LLQR*, March 2002, page 1. For information on cooperating agency reporting, contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326. 

Measures Identified in EA Process Protect Wetland

By: Donna Green, NEPA Document Manager, Chicago Operations Office

In planning new construction, DOE's Chicago Operations Office (CH) incorporated measures identified in an environmental assessment (EA) process to protect a recently restored wetland. The EA for Enhanced Operations of the Advanced Photon Source at Argonne National Laboratory – East (DOE/EA-1455, June 2003) evaluated the impacts of constructing and operating a Center for Nanoscale Materials, a proposed new experimental facility that had potential for impacting the watershed of a nearby wetland.



The Advanced Photon Source is a national synchrotron-radiation light source research facility funded by DOE's Office of Science. The restored wetland is the light area on the right edge of the photo (arrow), near the forested area and close to the site of the proposed new facility and an associated parking lot. The wetland is contiguous with diverse wooded and prairie areas and forms one of the largest expanses of high-quality habitat at the Argonne site.

As analyzed in an earlier EA, *Proposed Wetlands Management on the Argonne National Laboratory – East Site* (DOE/EA-1387, September 2001), DOE recently restored the wetland by removing invasive and nonnative species, conducting prescribed burns, reducing pesticide use in the watershed, and disabling a drainage tile network that had been installed at least 50 years earlier to allow farming. The measures aimed to increase biodiversity in the wetland, improve surface water and groundwater quality within its watershed, and increase total wetland area from 3 to 9 acres. The enlarged wetland will serve as a compensatory wetland bank to mitigate future actions that could result in wetland loss. The Laboratory has not yet conducted vegetation monitoring to gauge the success of the restoration effort, but has recently identified breeding populations of American toads, and chorus and green frogs.

The June 2003 EA considered potential impacts on the wetland due to stormwater runoff from the building and parking lot to be located within the wetland watershed. (Alternate parking lot locations outside the watershed were considered but did not meet project needs.) Because the action was not located in a wetland, a wetland assessment under the DOE regulations (10 CFR Part 1022) was not required. However, there would be impacts to the wetland from stormwater surges due to the increased impervious areas and surface runoff of pollutants, especially chloride from winter salting, petroleum residues, and sediments.

The conceptual design that was developed for the new facility and its parking lot included features to minimize impacts to the wetland:

- A basin to collect rain or snow runoff from the parking lot and pump it away from the wetland through a grassy swale planted with deep-rooted native grasses.
- An oil and grease filter to remove petroleum residues from parking lot overflow water.
- Another basin, planted with deep-rooted native plants, to collect roof runoff from the new building and slowly release it through a flow restrictor into a culvert leading to the wetland. This would minimize stormwater surges into the wetland.

CH received valuable informal advice from the local DuPage County environmental regulatory agency and the U.S. Army Corps of Engineers Chicago District Office in preparing the EA. The County agency reviewed and confirmed CH's hydrological analysis. The Corps advised CH on stormwater control design features to protect the wetland. This consultation was informal because a Clean Water Act Section 404 permit was not required.

For additional information, contact Donna Green at donna.green@ch.doe.gov or 630-252-2264. 



This wetland, adjacent to the Advanced Photon Source (background), was restored in less than two years by disabling a drainage tile network.

EIS to Re-review Transmission Lines

DOE recently initiated an EIS for Presidential permits it has already approved for international transmission lines that are constructed and operating (68 FR 61796; October 30, 2003). This uncommon NEPA strategy responds to court decisions in May and July 2003 that identified inadequacies in the analysis of impacts and the public participation process associated with a December 2001 EA and finding of no significant impact (FONSI) prepared by DOE and its cooperating agency, the Bureau of Land Management (BLM). (See *LLQR*, September 2003, page 22, and earlier *LLQR* articles referenced therein for a summary both of the projects by Baja California Power, Inc., and Sempra Energy Resources and of Orders by the United States District Court for the Southern District of California.)

The court directed further NEPA review but remanded the question of whether to prepare a supplemental EA or an EIS to DOE and BLM. In light of the concerns raised by the court, and in order to increase opportunities for public participation, the agencies opted to prepare an EIS.

EIS to Analyze “Clean Slate”

Although the transmission lines are in service, DOE will prepare the EIS as if the transmission lines did not exist. In its July 2003 order, the court stated that it “**PROHIBITS** the federal defendants from considering the interim operation of the transmission lines, the completion of the construction, or this Court’s equitable analysis of the environmental impacts of the proposed actions as part of the NEPA analysis and determination process on remand.” (Emphasis in original.)

Accordingly, DOE and BLM will base their analysis on the same purpose and need as used for the EA: whether to grant or deny Presidential permits (DOE) and rights-of-way (BLM). DOE and BLM have proposed the following preliminary alternatives:

- No Action Alternative: Deny both permits and corresponding rights-of-way applications – environmental impacts in the U.S. as if the lines had never been constructed.
- Grant one or both permits and corresponding rights-of-way – impacts in the U.S. of constructing and operating the lines from Mexican powerplants, as those plants are presently designed (DOE and BLM preferred alternative).
- Alternative technologies: Grant one or both permits and corresponding rights-of-way to authorize transmission lines that connect to powerplants that employ more efficient emissions controls and alternative cooling technologies, such as “dry cooling” or a combination of wet and dry cooling that will minimize environmental and health impacts in the U.S.

- Mitigation measures: Grant one or both permits and corresponding rights-of-way to authorize transmission lines whose developers employ off-site mitigation measures to minimize environmental impacts in the U.S. (e.g., offsets, such as paving roads and retiring older automobiles).

Scoping Meetings Emphasize Air, Water Issues

Public scoping meetings were held in El Centro and Calexico, California, on November 20, 2003. About 10 stakeholders spoke at each – including area residents (U.S. and Mexico), a representative of the plaintiff, and elected officials and other representatives, including those from the cities, county, irrigation district, farm bureau, state government, and an environmental task force. Comments supported the agencies’ preparation of an EIS and expressed concerns over air, water, and cumulative impacts issues. Several comments focused on the high incidence of asthma among local residents. Some commentators spoke in favor of the alternative technologies and mitigation measures.



Electric transmission lines extend north from Mexico across the international border (which is the berm across the center of photo). Inside the U.S., the lines are constructed on BLM land.

Aggressive EIS Schedule Underway

The court deferred until July 1, 2004, the setting aside of the Presidential permits and the FONSI, and ordered DOE and BLM to seek a hearing date on or before May 15, 2004, to brief these issues. The scoping period ends December 1, 2003. DOE and BLM intend to issue a draft EIS by early 2004, and a final EIS before May 15, 2004, so that it is available for the court’s review.

For further information, contact Ellen Russell, NEPA Document Manager, at ellen.russell@hq.doe.gov or 202-586-9624. The Presidential permit applications, EA, FONSI, and other materials are available on Fossil Energy’s Web site at www.fe.doe.gov under Electricity Regulation, then Pending Proceedings. **LL**

DOE NEPA Web Site Turns 10!

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

DOE was a pioneer when it launched its NEPA Web site in 1993. There were only 36 Federal Internet sites at the time, and the DOE NEPA Web site was the only one focused on providing public access to environmental information.

In the Beginning

Congress passed NEPA in 1969, and that same year researchers assembled the first computer “internetwork” – a network of networks. Nearly 25 years later, DOE’s NEPA program was well established, and the World Wide Web was in its infancy.

My dream was to apply the concept of internetworking – a common information space in which we could share information – to environmental impact assessment. My vision was to use computers to incorporate scientific data and analysis with public dialogue on environmental values, and to focus knowledge where there was a decisionmaking need.

Little information was available via the Internet in 1993, and there were few ways to find any of it. Web browser technology was in limited use. Few people had any form of Internet connection, and the connections available were slow by today’s standards. But there was a push within the Federal government to use the emerging information technology, and DOE glimpsed the opportunities that it would provide.

DOE had begun digitizing environmental information, including NEPA documents, as part of an effort to share baseline facility information. The collection was driven by a powerful library search engine that allowed queries by keyword and via a graphical user interface. (Icons of DOE facilities on maps allowed users to click from general to detailed information.) DOE digitized Executive Orders relevant to CEQ and CEQ’s own regulations and guidance in 1992. The next year, DOE’s NEPA Web site was born – the first Web site to demonstrate that information technologies could be used to further the purposes of NEPA. My dream was realized as agencies and the public were introduced to new ways to share knowledge and collaborate in the conduct of environmental impact assessment.

A Model Web Site for CEQ’s NEPANet

“Throughout the first twenty-five years of NEPA’s existence, numerous environmental analyses on federal, tribal, state and local government projects were performed. However, valuable data contained in these analyses were not stored in a retrievable manner,” wrote CEQ Chair George Frampton, Jr., in 1999 to Dr. David Michaels, Assistant Secretary for Environment, Safety and Health (EH). “In 1993, CEQ became aware of [DOE’s]



efforts... to use World Wide Web technology as part of the NEPA education process....” CEQ began to work with the EH Office of Information Management “to promote a NEPA Web presence that would encourage synergy among environmental disciplines needed to integrate the contents of environmental analyses over time and geography,” according to Mr. Frampton.

The DOE NEPA Web site formed the backbone of this national network of environmental impact assessment information, called NEPANet. CEQ drew heavily on DOE technical expertise as it began an outreach program to extend and enhance its NEPANet.

In 1995, then CEQ Chair Kathleen McGinty presented NEPANet at the DOE Conference Commemorating the 25th Anniversary of NEPA. She commended DOE for advancing its use of Internet technologies to increase citizen involvement and interagency cooperation in the NEPA process.

A National and International Model

DOE was invited to demonstrate the DOE NEPA Web site and NEPANet at the first public National Information Infrastructure Task Force Committee meeting in 1995. These Web sites were showcased as Federal pilot projects, demonstrating the benefits of both national and global infrastructures for electronic commerce and environmental monitoring.

The accolades did not induce DOE to rest on its laurels. DOE continued to add documents to its NEPA Web site and improve its search capability and overall usability.

The site first drew international attention in 1996. Scientists from Japan traveled to DOE to conduct process analysis to aid their design of an information system to support Japan’s crafting of a NEPA-like statute. Later that year, the Canadian Environmental Assessment Agency also met with DOE to use the NEPA Web site as a benchmark for the Canadian environmental impact

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NEPA Web Site at 10

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assessment network. By 1997, the Web site had been demonstrated at the International Association for Impact Assessment. That same year, the DOE NEPA Web site was awarded top ratings from *Federal Imaging* and *FEDNET*.

The Web site frequently has served as a model for other Federal agencies for purposes other than agency-specific NEPA Web site development. For example, the Air Force consulted DOE on use of information technologies for socioeconomic impact analyses and environmental baseline surveys for base closures. Most recently, the CEQ NEPA Task Force cited the DOE NEPA Web site as a good example for tracking NEPA process costs and performance metrics (related article on page 1 and text box on page 3).

Users' Needs Shape the Site

User feedback over the years, enhancements in information technologies, and careful site maintenance and modernization have helped keep the DOE NEPA Web site on the leading edge in providing NEPA information. The most important reason for the Web site's success, though, is that the DOE NEPA community uses it as a cost-saving information resource, and NEPA Compliance Officers take their responsibility to provide timely, high-quality information for Web-publishing seriously. The site now receives about 7,000 "hits" per day – a testament to its utility.

Lee Jessee, the DOE NEPA Web site creator and webmaster from 1993-2000, is currently the webmaster of CEQ's NEPAnet and the NEPA Task Force websites. She can be reached at lee.jessee@eh.doe.gov or 202-586-7600. 

New and Improved!!

LLQR Online Features Hyperlinks, Color

Starting with this issue, *LLQR* posted online at tis.eh.doe.gov/nepa/lessons.html now features active hyperlinks to Web pages, documents, and e-mail addresses cited in the articles. Just click on the hyperlinks, indicated with underlining, to launch the related resources. *LLQR* online also has color pictures. We invite you to propose further improvements by e-mail to yardena.mansoor@eh.doe.gov.

Address Change for Sending Electronic Files for Web Site

DOE's Office of Information Management has a new organization code: EH-33. Please use it when transmitting NEPA documents for posting on DOE's NEPA Web site:

ES&H Info Center
Attn: Rhonda Toms
EH-33 270CC
1000 Independence Avenue, S.W.
Washington, DC 20585-0270

What Have We Learned?

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questionnaire responses and concluding with thoughts on what the responses suggest for how to improve the NEPA lessons learned program and DOE's implementation of NEPA."

This review supplements previous undertakings in which the NEPA Office has examined questionnaire responses principally to identify factors relevant to cost and schedule performance. Findings from these earlier reviews have been shared at NEPA Community Meetings and published in *LLQR* (see e.g., *LLQR*, September 2003, page 4). The current review of responses to the lessons learned questionnaire is broader in scope.

How We Reviewed the Questionnaire Responses

NEPA Compliance Officers and NEPA Document Managers report lessons learned to the NEPA Office after completing each EIS or environmental assessment (EA), in accordance with DOE Order 451.1B. Reporting is through a lessons learned questionnaire (available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under Lessons Learned Quarterly Reports). The NEPA Office encourages all members of the NEPA document preparation team (including contractors, reviewers, and project managers) to complete the questionnaire as well.

The NEPA Office reviews the questionnaire responses and selects statements that indicate what worked or did not work. These are published in *LLQR* as anonymous comments on DOE's NEPA implementation under one of eight categories: scoping, data collection/analysis, schedule, teamwork, process, usefulness, enhancement/protection of the environment, and other issues.

For this series of articles, the NEPA Office sorted the responses from all back issues of *LLQR* and reviewed them for common themes and trends. This is a qualitative review consistent with the nature of the questionnaire.

Success Begins with Scoping

The majority of respondents who addressed scoping pointed to successful practices, and many identified successful scoping as a contributor to the timely completion of comprehensive NEPA documents. These responses make clear that participation of people inside and outside DOE is key for both EAs and EISs.

Early involvement by affected and knowledgeable entities within DOE through internal scoping contributed to a "better understanding of the proposed project and a better document," according to one respondent. Others said that effective internal scoping "enabled preparation of concise documents" and helped "identify all reasonable alternatives and issues to be addressed."

For some NEPA documents, DOE identified an additional alternative or optional way to design an alternative through internal scoping. Some respondents said that internal scoping helped define issues early and thus facilitated information needs and allowed the document preparation team to "focus on the actual analyses."

Respondents attributed similar benefits to including external parties in the scoping process, even for EAs. These parties varied with the nature of the proposed action

We are most interested in what factors the NEPA Community consistently identified as contributing to the successful implementation of NEPA and whether there are any recurrent problems that should be addressed.

and included agencies from all levels of government, organizations with particular technical expertise (e.g., committees of the National Research Council), and the general public. Additionally, respondents said that external scoping was improved by using existing public participation programs.

In one case, the respondent commended the existing program for contributing to knowledge among the interested public that led to focused scoping comments.

Respondents highlighted particular mechanisms that facilitated public input to the scoping process. These included providing a toll-free number for calls or faxed comments and accepting comments via a Web site and e-mail.

When scoping did not work well, respondents indicated the opposite of those factors that in other circumstances contributed to success. A lack of staff involvement sometimes inhibited effective internal scoping. Respondents noted that delays in completing the NEPA process resulting from management direction to consider additional alternatives could have been avoided by management involvement in the internal scoping process.

The experiences conveyed by questionnaire respondents are consistent with the direction and objectives contained in existing NEPA requirements and guidance. Internal scoping was formalized at DOE through the Secretarial Policy Statement on NEPA in 1994 and DOE Order 451.1B, National Environmental Policy Act Compliance Program. Clearly framing the scope of the NEPA document early helps to focus on the most relevant information, as recommended by DOE guidance. External scoping guidance is provided in *Effective Public Participation under the National Environmental Policy Act*, August 1998, at tis.eh.doe.gov/nepa under Guidance.

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What Have We Learned?

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Data and Collection Analysis

Once the scope is defined, the NEPA process moves forward to delve into the issues and collect and analyze relevant information. Questionnaire respondents identified several factors that contribute to success in data collection and analysis.

A “comprehensive first data call” reduced data collection needs later in the NEPA process. In addition to identifying data needs early, respondents reported that it is sometimes good practice to coordinate data collection with affected groups. Another good practice is to collect data in a manner that minimizes impacts on the environment. For example, there might be less impact by collecting data outside a mating season or when environmental conditions are least susceptible to disruption.

Good communication and coordination are important, many said. Open and direct communication can avoid miscommunication and reduce the time needed for data collection, respondents said. When data must be gathered from many sources or on several topics, respondents applauded the role of a single coordinator to facilitate information sharing.

Respondents favored using existing sources of information, such as data from applicants, other agencies, existing NEPA documents, technical reports, or environmental baseline studies. Also, they pointed to the value of the NEPA team visiting the place being evaluated so that everyone could “see exactly what would happen” as well as where it would happen.

A poorly defined scope for the review may inhibit efficient data collection and analysis, as can changes in scope during preparation of some NEPA documents.

Respondents also highlighted the benefit of engaging well qualified staff and, conversely, noted cases where the lack of expertise on the part of DOE or its contractors inhibited effective data collection and analysis. Other factors that can inhibit efficient data collection and analysis are inconsistencies in data acquired from multiple sources and inconsistent methodologies for analyzing data. These inconsistencies have arisen among DOE sites as well as between DOE and external agencies. In several cases involving data calls among multiple DOE sites, the NEPA document manager addressed this concern by developing detailed data specifications. Yet another inhibiting factor can be a change in scope or changes in data itself while the NEPA review is underway.

The NEPA Office has prepared guidance that addresses data collection and analysis. One such document is *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (May 1993), particularly the discussion of the sliding-scale principle. As questionnaire respondents pointed out, the ability to focus data collection and analysis is important to completing the work efficiently and in a manner that meets the needs of decisionmakers. The sliding-scale principle encourages prioritization of data collection and analysis efforts. It is as important to know what information is a priority for inclusion in a NEPA document as it is to know what can be addressed with less effort or left out entirely. Also, the compilation of *Mini-Guidance Articles from Lessons Learned Quarterly Reports* contains several articles related to the analysis of environmental impacts. Both documents are available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under Guidance.

Lessons about Lessons Learned

“The questionnaire responses indicate that overall the NEPA process is working at DOE. The commonly identified problems reflect the need sometimes to better emphasize the basics – involve the right set of people early, clearly define the scope and range of reasonable alternatives, work as a team, adapt efficiently to changing circumstances,” Mr. Cohen said.

“We need to do a better job sharing these lessons learned with the DOE NEPA Community, especially as DOE and contractor staffs change. How can we get the message out? And how can we more fully engage the NEPA Community to share their lessons learned? We’ve seen fewer members of a NEPA document team submitting lessons learned questionnaires in recent years. Too often only the NEPA Document Manager fills out a questionnaire and, in some cases, only after being reminded of the requirement to do so,” according to Mr. Cohen. “That’s a trend we’d like to reverse.”

To enhance its review of lessons learned questionnaire responses, the NEPA Office requests feedback from DOE’s NEPA Community. “What have you learned through the lessons learned program?” asked Mr. Cohen. “Are we asking the right questions? How can we improve the NEPA lessons learned program?”

Please send your suggestions, comments, and questions about the lessons learned program, including the questionnaire, to Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771. 

**Coming Next: Lessons Learned
about Schedule and Teamwork**

DOE Actions Promote NEPA 101 Goals

In implementing NEPA, agencies often focus on Section 102, the procedural provisions of the Act, rather than Section 101, the Act's substantive environmental protection goals. The Office of NEPA Policy and Compliance discovered that "actions speak louder than words," however, when it solicited input for the DOE response to a recent survey from the U.S. Institute for Environmental Conflict Resolution. Although DOE does not always reference Section 101 as the driver for its

Section 101 may be viewed as the "philosophy" to be used in developing alternatives to a proposed action – to see if there is a better way of meeting a need. – NEPA Compliance Officer comment

actions, DOE does, in fact, promote and meet the goals of Section 101 in its NEPA process and other activities.

DOE NEPA Compliance Officers contributed to the response by providing the NEPA Office many examples of program initiatives and site activities that result in positive environmental outcomes from a robust NEPA process. The survey response cited such policies and actions, including

pollution prevention activities, habitat enhancement and protection, recycling and reuse of materials, and a renewable energy program. The response also discussed use of an Environmental Management System as an approach for following up NEPA's predictive analysis and, if appropriate, adapting project implementation or associated mitigation actions.

LLQR Features DOE's Best NEPA Practices

Many of the examples cited in DOE's response to the Institute have been examined in *LLQR* articles, which were enclosed with the response. (All articles referenced below are available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under Lessons Learned Quarterly Reports.)

- Bonneville Power Administration: An EIS process created the framework for building consensus on a needed electricity transmission line while protecting a watershed. (September 2003, page 16)
- Los Alamos National Laboratory: An accident analysis for an extensive wildfire, prepared for a site-wide EIS, prompted the site to immediately undertake certain mitigation actions, which only months later reduced the impacts of just such a fire. (June 2000, page 1)

- Hanford (Washington) Reservation: An EIS for a 50-year land use plan will guide the protection of varied environmental resources, including a wild and scenic river, a shrub-steppe habitat, tribal and historical cultural resources, and chalk bluffs above the Columbia River. (March 2000, page 1)
- Los Alamos National Laboratory: The EIS for the Dual Axis Radiographic Hydrodynamic Test Facility led DOE to develop a site-wide habitat management plan for threatened and endangered species that also led to more efficient NEPA compliance at the site. (June 1999, page 1)
- Naval Petroleum Reserve: An EIS for sale of the site led to protection of an endangered species and cultural resources. (December 1997, page 1)

The Institute is reviewing the 16 substantive agency responses submitted and plans to issue a public report this winter. For a copy of the DOE response, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. For more information on the U.S. Institute for Environmental Conflict Resolution, see www.ecr.gov. 

Section 101 Goals Address:

- Trusteeship of the environment for future generations
- Safe, healthful, productive, and aesthetically and culturally pleasing surroundings
- Using the environment without degradation, risk, or undesirable and unintended consequences
- Preservation of historic, cultural, and natural aspects of national heritage, diversity, and individual choice
- Balancing population and resource use for high standards of living and sharing of amenities
- Enhancing renewable resources and recycling depletable resources

Preserve America E.O. Addresses Historic Heritage

A new Executive Order requires an inventory of Federal historic properties and encourages both protection and use of such properties.

Executive Order 13287 (68 FR 10635; March 3, 2003), *Preserve America*, declares a policy of actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government. This policy also directs agencies, where appropriate, to seek partnerships with State and local governments, tribes, and the private sector to promote local economic development through the long-term preservation and current productive use of such historic properties.

To promote these goals, the Executive Order directs agencies with real property management responsibilities to prepare an inventory of historic properties, including their condition, management needs, and suitability for contributing to community economic development initiatives, including heritage tourism. This report is due to the Chairman of the Advisory Council on Historic Preservation (ACHP) and the Secretary of the Interior by September 30, 2004. The ACHP has published guidelines for the preparation of this report (achp.gov/preserveamerica.html).

The new Executive Order echoes NEPA's goal to "preserve historic, cultural, and natural aspects of national heritage" (Section 101(b)(6)). DOE's NEPA

implementation practice acknowledges this goal by addressing impacts to historic and cultural resources in EISs and EAs, and requiring that a categorically excluded action not have potential for adverse impacts to "property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places" (10 CFR 1021, Appendix B to Subpart D, B(4)(i)). DOE's NEPA practice of respecting historic properties as a sensitive environmental resource would not change in response to the *Preserve America* Executive Order.

The protection of historic properties is also a component of the DOE's Cultural Resource Management Program. "Environmental Guidelines for Development of Cultural Resources Management Plans" (DOE/EH-0501) is being revised and will include specific language addressing the new Executive Order requirements.

Dr. Skip Gosling, the Department's Federal Preservation Officer and Chief Historian, is responsible for DOE's compliance with the Executive Order. He may be reached at skip.gosling@hq.doe.gov or 202-586-5241. For information on DOE's responsibilities under the National Historic Preservation Act, contact Lois Thompson, Office of Air, Water and Radiation Protection, at lois.thompson@eh.doe.gov or 202-586-9581. **LL**

Agencies Meet on Protection of Indian Sacred Sites

DOE participated in the recent "2nd Informational Meeting for Federal Agencies with Functions Regarding Native American Sacred Places and Traditional Cultural Properties," sponsored by an interagency task force. About 25 agency and tribal representatives convened in Washington, D.C., on September 22, 2003, including specialists on historic preservation, cultural resources, environmental justice, and NEPA.

Recommendations for improving NEPA implementation as it applies to the protection of Indian sacred sites were described by Horst Greczmiel, Council on Environmental Quality Associate Director for NEPA Oversight, in his discussion of the Task Force Report, *Modernizing NEPA Implementation* (related article, page 1). He highlighted the report's recommendations on improving collaboration with tribal partners, developing training tools for tribes, and maintaining confidentiality of information on Indian sacred sites.

The Advisory Council for Historic Preservation (ACHP) is developing a database pilot project ("Tribal Consultation Mapping Site" at www.achp.gov), described by

Bob Bush, to assist Federal agencies in identifying Indian tribes to be consulted for actions on lands that have historic properties of religious and cultural significance to tribes, but are not tribal lands. The database will contain maps and data that define areas of historic significance on a state-by-state basis and a list of tribal leaders with whom agencies should consult on a government-to-government basis.

A wind energy project, funded in part by DOE through a cooperative (50-50) grant, was described by Robert Gough, Intertribal Council on Utility Policy. The Rosebud Reservation (South Dakota) wind energy project (www.eere.energy.gov/windpoweringamerica/na_rosebud.html), a 750-watt installation completed in February 2003, is the first utility-scale Native American wind turbine.

For further information on this informational meeting and on DOE historic preservation and cultural resources policies, contact Lois Thompson, Office of Air, Water and Radiation Protection, at lois.thomspon@eh.doe.gov or 202-586-9581. (See also *LLQR*, September 2002, page 17.) **LL**

My Summer Detail at the NEPA Office

By: Katatra Day, Environmental Scientist, Oak Ridge Operations Office

Since joining the Oak Ridge Operations Office in July 2000, Katatra Day has been a member of the Environmental Protection Group, which oversees NEPA activities. She recently completed the DOE Technical Intern Program, which is designed to prepare recent college graduates, current Federal employees, and private sector candidates with 3-5 years of experience to be productive and knowledgeable DOE employees. Her program consisted of a specific core of technical training activities, including project management, leadership development, and a rotational assignment.



Acting NCO David Page (left) and Robert Poe, Assistant Manager for Environment, Safety, Health, & Emergency Management at the Oak Ridge Operations Office, present Katatra Day with the certificate of completion for her Technical Intern Program.

As the final phase of my participation in the DOE Technical Intern Program, I applied for a rotational assignment to the Office of NEPA Policy and Compliance at DOE Headquarters. It promised to be a good fit, both to increase my understanding of NEPA and to give me better understanding of how the DOE NEPA program works. At the Oak Ridge Operations Office, I have diverse responsibilities to assist the NEPA Compliance Officer, including serving as the liaison for our Program Offices that use the DOE-wide NEPA contracts; writing CXs, reviewing EAs and other NEPA documents; and responding to requests for information about our NEPA activities. From the beginning of my employment, I felt I needed a broader orientation to the Department and its diverse missions so I could be a more effective employee. A detail assignment to the Headquarters NEPA Office would give me “Headquarters experience” (as they refer to it in the Field) that would help me better understand how that Office assists the Field in its NEPA implementation and how better to respond to that Office’s requests for information.

I arrived the day before the Department’s NEPA Community Meeting. The NEPA Office staff was definitely busy and focused on the meeting but very welcoming. Yarden Mansoor, my assigned mentor there, took time to introduce me to the Office Director, Carol Borgstrom, and the NEPA staff. My first impression of the Office of NEPA Policy and Compliance was a positive one. After meeting the staff, I was eager to begin the 60-day journey of working at the Office and learning as much as possible from each person on the staff.

I immediately noticed and was excited to see that there were a number of other women environmental professionals in the Office. This mixture was definitely a huge difference from my Oak Ridge office – four men and myself.

After the NEPA Community Meeting, Carolyn Osborne, my immediate supervisor during my rotational assignment, and Ms. Borgstrom gave me challenging assignments that helped me to become more knowledgeable about the NEPA process. I commented on several project-specific EISs, drafted guidance on formulating EIS alternatives to support flexible decisionmaking, prepared a model postcard to be used in EIS distribution, and participated in interagency conferences, internal scoping processes, and management meetings. One of the highlights of my detail was interviewing the Assistant Secretary for Environment, Safety and Health, Beverly Cook, who shared with me her thoughts on her career at DOE and encouraged me to develop my professional skills. I will continue to reflect on our discussions and my impressions of this thoughtful and successful manager.

I gained much from my daily interaction with NEPA staff by listening, developing an understanding of their procedures, and observing their business styles. This will

The detail exposed me to so many perspectives that I could only experience at Headquarters. It was really NEPA 500: the Advanced NEPA Course!

definitely recommend a Headquarters detail to other professionals beginning their environmental careers.

help me work more proficiently and have a deeper appreciation of the NEPA implementation process. Before this experience I was so focused on my own projects that I really did not understand how all the pieces of the puzzle came together. I would

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Summer Detail

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My experience was not limited to NEPA. I was exposed also to the broader perspectives of how Department policy, the President's Management Initiative,

The Headquarters detail opened my eyes to see the broader perspective, the context of the role that I play, and what it truly means to be a civil servant.

Congressional actions, and regulatory processes interact and directly affect program direction and departmental budgets. Before this experience, I often had no real appreciation for "the big picture."

The Technical Intern Program helped me better serve DOE and its mission through quality training and on the job experience. It allowed me to acquire necessary skills needed

to be a more efficient and effective employee within the Department. This would not have been possible if my

managers and mentors at the Oak Ridge Operations Office, Technical Intern Program, and DOE NEPA Office did not have an interest in my success. I am very thankful for all their support. There is a saying that "where much is given, much is required." This experience has given me more appreciation to become the best civil servant that I can be.

Katatra Day can be reached at daykc@oro.doe.gov or 865-576-0835. The Office of NEPA Policy and Compliance greatly appreciates the contributions that she made during her 60-day detail, especially to the Lawrence Livermore Site-wide EIS and guidance documents in preparation on alternatives and EIS distribution. We encourage other DOE NEPA practitioners to consider applying for temporary assignments to our Office. 

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at tis.eh.doe.gov/nepa under DOE-wide NEPA Contracting. 

Task Description	DOE Contact	Date Awarded	Contract Team
Greater-Than-Class-C Low Level Waste Disposal EIS	Ken Picha kenneth.picha@em.doe.gov 202-586-9726	9/27/2003	Battelle
EA for Chemical and Biological Materials at Nevada Test Site and Second Supplement Analysis for Site-wide EIS	William Suiter suiter@nv.doe.gov 702-295-0630	9/20/2003	Tetra Tech
EA for the Decontamination and Decommissioning of the Juggernaut Reactor at Argonne National Laboratory	Kenneth Chiu ken.chiu@ch.doe.gov 630-252-2376	10/31/2003	Battelle

Transitions

Katherine Nakata Transfers To EH Information Management

After six years in the Office of NEPA Policy and Compliance, Katherine Nakata has transferred to a new position in the Office of Environment, Safety and Health. As an Information Management Specialist, Dr. Nakata will be a liaison between the Office of Environment and her new office, the Office of Corporate Performance Assessment within the Office of Information Management.



Dr. Nakata served as an Environmental Protection Specialist in the NEPA Office, where she was a liaison to the Power Marketing Administrations and supported the Office of Fossil Energy. She reviewed EISs (including those for Presidential permit applications to construct and inter-connect electricity transmission lines that

would cross the U.S.-Mexico border and for the sale of Naval Petroleum Reserve No. 1), contributed to the development of the revised rule for floodplain and wetland environmental review (10 CFR Part 1022), and oversaw issuance of the *Directory of Potential Stakeholders for DOE Actions under the National Environmental Policy Act*. Before joining the NEPA Office, she served for six years as a CERCLA Specialist for the RCRA/CERCLA Division of the Office of Environment, Safety and Health.

Katherine Nakata can be reached at katherine.nakata@eh.doe.gov or 202-586-1374. *The NEPA Office wishes her well in her future work, and says farewell but not good-bye.* LL

DOE's NEPA Contact at EPA, Susan Absher, Retires

Susan Absher, DOE's NEPA Point of Contact at the Office of Federal Activities, is retiring after 32 years with the U.S. Environmental Protection Agency. She supported our Lessons Learned Program and participated in our recent DOE NEPA Community Meetings. The DOE NEPA Office appreciates her valuable assistance and offers its good wishes on her retirement. LL

Mills Detailed to White House Energy Streamlining Task Force

Brian Mills of the Office of NEPA Policy and Compliance is detailed to the White House Task Force on Energy Project Streamlining for 120 days where he is applying his

This is a great opportunity to help break some logjams affecting energy projects and at the same time ensure that environmental protections are preserved.

— Brian Mills

expertise in NEPA and Federal land use planning. The Task Force was established under Executive Order 13212, "Actions to Expedite Energy-Related Projects," to "work with and monitor Federal Agencies' efforts to expedite their review of permits or take other actions as necessary to

accelerate the completion of energy-related permits, while maintaining safety, public health, and environmental protections." Mr. Mills is working on several projects with staff from the Council on Environmental Quality, the Environmental Protection Agency, and the Departments of Agriculture, Energy, and the Interior (DOI), under Task Force Director Robert Middleton, Minerals Management Service, DOI. One pilot project is an examination of the use of adaptive environmental management strategies in the NEPA review for energy projects. Mr. Mills also will assist in improving collaborative processes for Federal, state, and tribal interagency energy projects and coordination among state-level permitting authorities and



Federal agencies. "Early coordination and open communication among government agencies and with applicants is key to a nonadversarial NEPA process," he advised.

Brian Mills can be reached at brian.mills@eh.doe.gov

or 202-586-3301. See *LLQR*, December 2002, page 21, for information on a Workshop held by the Task Force, and September 2001, page 16, on the Executive Order and formation of the Task Force. LL



Litigation Updates

DOE NEPA-Related Litigation In Brief

Border Power Plant Working Group v. DOE (S.D. California): See related article on page 7.

Columbia Riverkeeper and State of Washington v. Spencer Abraham (E.D. Wash.): These consolidated NEPA actions seek to prohibit DOE from shipping transuranic and transuranic mixed waste to the Hanford site for treatment and storage while DOE prepares additional NEPA review. The court previously issued a preliminary injunction and enjoined additional transuranic waste shipments to the Hanford site during this litigation. The Government filed a report on November 21, 2003, concerning the status of the Hanford Solid Waste EIS and ROD. (See *LLQR*, June 2003, page 21.) [Case Nos: CT-03-5018-AAM and CT-03-5044-AAM]

Nevada v. DOE (D.C. Cir.): Oral arguments on the consolidated case (combining Nevada's legal challenges to siting a geologic repository at Yucca Mountain) were delayed following a decision by the court in August 2003 to place the case on its "complex" docket, a move that increases the time for arguments. Oral arguments are scheduled for January 14, 2004. (See *LLQR*, June 2003, page 21.) [Case Nos: 01-1516, 02-1036, 02-1077, 02-1179, 02-1196]

NRDC v. Spencer Abraham (D. Idaho): Congress did not act this year on legislation proposed by DOE that would have clarified the definition of high-level waste in light of a court ruling that part of DOE Order 435.1, Radioactive Waste Management, is invalid (see *LLQR*, September 2003, page 23). DOE has appealed the court ruling. DOE's briefs are due December 15, 2003. The decision and related documents are available online at www.id.uscourts.gov under Case Files, District, Case Files – Non Restricted, case number 01-413. [Case No: 01-0413-S-BLW]

Other Agency NEPA Cases

Citizens for Better Forestry v. U.S. Department of Agriculture (9th Cir.): Plaintiffs challenged the USDA's 2000 Plan Development Rule for forest management, claiming that the USDA failed to comply with procedural requirements under NEPA and the Endangered Species Act. The court held that the USDA violated the regulations implementing NEPA (see 40 CFR 1501.4 and 1506.6) by failing to provide an opportunity for public comment on an EA and FONSI in its rulemaking process, and that plaintiffs may challenge higher-level, programmatic plans that remove or impose requirements for site-specific plans, as well as site-specific plans themselves. [Case No: CV-01-00728-MJJ]

Mid States Coalition for Progress v. Surface Transportation Board (8th Cir.): Citing NEPA, the National Historic Preservation Act, and the Fort Laramie Treaty of 1868, plaintiffs challenged the Board's approval of Dakota, Minnesota & Eastern Railroad Corporation's proposal to construct a new rail line and upgrade an existing line to coal mines in the Wyoming Powder River Basin. The court concluded that the Board does not have a duty to analyze alternatives that, if adopted, would not fulfill the project goals as defined by the applicant. The court also concluded, however, that the Board's EIS was inadequate in three regards: (1) it failed to provide a reasoned discussion supporting the Board's decision that mitigation of horn noise is not warranted, (2) it did not "assess, consider, and respond" to comments made on the cumulative impact of noise and vibration on households, and (3) it failed to examine the effects of a reasonably foreseeable increase in coal consumption. The court vacated the Board's decision and remanded the matter to the Board for further proceedings consistent with the court's opinion. [Case Nos: 02-1359, 02-1863, 02-1804, 02-1794, 02-1792, 02-1785, 02-1767, 02-1482, 02-1481]

Training Opportunities

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

- **Reviewing NEPA Documents**

2-Day or 3-Day Course

Logan, UT: December 8-10

Portland, OR: February 17-19, 2004

Fee: \$595/\$795

**How to Manage the NEPA Process
and Write Effective NEPA Documents**

Milwaukee, WI: December 9-12

Las Vegas, NV: January 27-30, 2004

Salt Lake City, UT: February 24-27, 2004

Fee: \$995

Socioeconomic Impact Analysis

Logan, UT: December 11-12

Fee: \$595

Environmental Conflict Management

Logan, UT: December 18-19

Fee: \$595

**NEPA Overview and Section 106
of National Historic Preservation Act**

Sante Fe, NM: February 10-11, 2004

Fee: \$595

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: \$4,995 (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

- **Socioeconomic Impact Analyses Under NEPA**

Durham, NC: February 25-27, 2004

Fee: \$695/\$775 (by/after January 26)

**Accounting for Cumulative Effects
in the NEPA Process**

Durham, NC: March 31-April 2, 2004

Fee: \$990/\$1090 (by/after March 1)

**Preparing and Documenting
Environmental Impact Analysis**

Durham, NC: June 21-24, 2004

Fee: \$990/\$1090 (by/after May 24)

*Nicholas School of the Environment
and Earth Sciences*

Levine Science Research Center

Duke University

919-613-8082

sea3@duke.edu

www.env.duke.edu/del/shortcourses

NEPA Certificate Program

Requires successful completion of one core and three elective Duke University NEPA short courses. A written paper also is required.

Previously completed courses may be applied toward the certificate.

Fee: Included in registration for constituent courses.

919-613-8082

del@env.duke.edu

www.env.duke.edu/del/certificates/
certificates.html

EAs and EISs Completed July 1 to September 30, 2003

EAs

Bonneville Power Administration

DOE/EA-1425 (8/22/03)
*Raymond-Cosmopolis 115 kV No. 1 Transmission Line
Rebuild Project, Washington*
Cost: \$30,000
Time: 17 months

Chicago Operations Office

DOE/EA-1473 (8/07/03)
*Partial Funding of a Proposed Life Sciences Building
at Brown University, Rhode Island*
Cost: \$38,000
Time: 3 months

Golden Field Office

DOE/EA-1475 (07/11/03)
Chariton Valley Biomass Project, Colorado
Cost: \$50,000
Time: 11 months

Grand Junction Operations Office

DOE/EA-1406 (7/22/03)
*Ground Water Compliance at the New Rifle Mill
Tailings Site, Colorado*
Cost: \$21,000
Time: 46 months

National Nuclear Security Administration

DOE/EA-1479 (8/26/03)
Omega Extended Performance Project, New York
Cost: \$35,000
Time: 4 months

Western Area Power Administration

DOE/EA-1401 (8/25/03)
*Wolf Point, Montana - Williston, North Dakota 115 kV
Transmission Line Rebuild, Montana, North Dakota*
Cost: \$143,000
Time: 25 months

DOE/EA-1474 (07/18/03)

Exira Station Electric Generating Facility, Iowa
[Note: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.]
Time: 3 months

EISs

Western Area Power Administration

DOE/EIS-0323 (68 FR 54900, 9/19/03)
(EPA Rating: EC-2)
*Sacramento Area Voltage Support Project,
California*
Cost: The cost for this EIS was unavailable at the
time of this report; it will be reported in the next LLQR.
Time: 38 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 of 6 EAs for which cost data were applicable was \$36,500; the average was \$52,830.
- Cumulatively, for the 12 months that ended September 30, 2003, the median cost for the preparation of 29 EAs for which cost data were applicable was \$40,000; the average was \$93,100.
- For this quarter, the median completion time of 7 EAs was 11 months; the average was 16 months.
- Cumulatively, for the 12 months that ended September 30, 2003, the median completion time for 29 EAs was 10 months; the average was 14 months.

EIS Costs and Completion Times

- The cost for 1 EIS completed was not available at the time of this report; it will be incorporated in the EIS cost data in the next *LLQR*.
- Cumulatively, for the 12 months that ended September 30, 2003, the median cost for the preparation of 10 EISs for which cost data were available and applicable was \$1,000,000; the average was \$7,275,560.*
- For this quarter, the completion time of 1 EIS was 38 months.
- Cumulatively, for the 12 months that ended September 30, 2003, the median completion time for 11 EISs was 32 months; the average was 37 months.*

* *Note: This value should be interpreted with caution because a single document (the Yucca Mountain EIS) significantly affected the average.*

Recent EIS-Related Milestones (September 1 to November 30, 2003)

Notice of Intent

National Energy Technology Laboratory

DOE/EIS-0365

Presidential Permit Applications for Baja California Power, Inc., and Sempra Energy Resources, California

October 2003 (68 FR 61796, 10/30/03)

Draft EISs

Bonneville Power Administration

DOE/EIS-0349

Cherry Point Cogeneration Project, Washington

September 2003 (68 FR 54900, 9/19/03)

DOE/EIS-0343

COB Energy Facility, Oregon

November 2003 (68 FR 66825, 11/28/03)

Environmental Management

DOE/EIS-0359

Proposed Construction, Operation, Decontamination/Decommissioning of Depleted Uranium Hexafluoride Conversion Facility at Paducah, Kentucky

November 2003 (68 FR 66825, 11/28/03)

DOE/EIS-0360

Proposed Construction, Operation, Decontamination/Decommissioning of Depleted Uranium Hexafluoride Conversion Facility at Portsmouth, Ohio

November 2003 (68 FR 66825, 11/28/03)

Final EIS

National Nuclear Security Administration

DOE/EIS-0350

Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, New Mexico

November 2003 (68 FR 65705, 11/21/2003)

Records of Decision

Bonneville Power Administration

DOE/EIS-0312

Fish and Wildlife Implementation Plan, Oregon, Washington

November 2003 (68 FR 64614, 11/14/03)

DOE/EIS-0345

Plymouth Generating Facility Project, Washington
October 2003 (68 FR 60342, 10/22/03)

Environmental Management

DOE/EIS-0269

Amended Record of Decision, Final Programmatic Environmental Impact Statement for Long-Term Management and Use of Depleted Uranium Hexafluoride, Kentucky, Ohio, Tennessee

September 2003 (68 FR 53603, 9/11/03)

Western Area Power Administration

DOE/EIS-0354

Valley Electric Association Interconnection of Ivanpah Energy Center to Mead Substation, Nevada
November 2003 (68 FR 66410, 11/26/03)

Supplement Analyses

Bonneville Power Administration

Mid-Columbia Coho Reintroduction Feasibility Project

(DOE/EA-1282)

DOE/EA-1282-SA-04

Mahar Pond Expansion, Chelan County, Washington
(Decision: No further NEPA review required)
August 2003*

Wildlife Mitigation Program Environmental Impact Statement

(DOE/EIS-0246)

DOE/EIS-0246-SA-34

Asotin Creek Watershed, Washington-Schlee Acquisition, Asotin County, Washington
(Decision: No further NEPA review required)
September 2003

DOE/EIS-0246-SA-35

Malheur Wildlife Mitigation Project – Denny Jones Ranch, Malheur County, Oregon
(Decision: No further NEPA review required)
August 2003*

*Not previously reported in LLQR

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Recent EIS-Related Milestones (September 1 to November 30, 2003)

Supplement Analyses, continued from previous page

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265-SA-114
*Protect and Restore Lolo Creek Watershed –
Jim Brown Creek Stream Crossing Project,
Clearwater County, Idaho*
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0265-SA-117
*Umatilla River Basin Anadromous Fish Habitat
Enhancement Project – Stroud Creek Stabilization,
Umatilla River, Umatilla Indian Reservation*
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0265-SA-118
*Crims Island Parcel Acquisition – Preserve
and Restore Columbia River Estuary,
Clatskanie and Columbia Counties, Oregon;
Longview, Washington*
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0265-SA-119
*Protect and Restore the Asotin Creek Watershed –
Lick Subwatershed Road Obliteration,
Umatilla National Forest, Idaho*
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0265-SA-120
*Water Entity, Walla Walla, Yakima, and Methow
Basins, Washington; Willamette and Deschutes
Basins, Oregon; Salmon Basin, Idaho;
Blackfoot and Bitterroot Basins, Montana*
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0265-SA-121
*Reducing Water Temperature on the Teanaway River,
Kittitas County, Washington*
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0265-SA-122
*Big Creek Passage and Screening,
Kittitas County, Washington*
(Decision: No further NEPA review required)
September 2003

DOE/EIS-0265-SA-123
*East Fork Holistic Restoration-Salmon River
East Fork, Custer County, Idaho*
(Decision: No further NEPA review required)
September 2003

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

DOE/EIS-0285-SA-145
*Vegetation Management for Portion of the
Covington-White River #1 230 kV Transmission Line
Located from Tower Structure 1/1 to 9/6
King and Pierce Counties, Washington*
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285-SA-152
*Vegetation Management for the Lancaster-Noxon,
21/2 to 47/1 Transmission Line ROW,
Kootenai and Bonner Counties, Idaho*
(Decision: No further NEPA review required)
June 2003*

DOE/EIS-0285-SA-153
*Vegetation Management for Portion of the
Snohomish-Bothell No. 1 Transmission Line Located
from Tower Structure 2/4 to 8/11,
Snohomish County, Washington*
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285-SA-154
*Vegetation Management for Portion of the Raver-
Covington No. 1&2 and Tacoma-Raver No. 1&2 500 kV
Transmission Line Located from Tower Structures
1/1 to 10/6 & 19/5 to 24/3,
King County, Washington*
(Decision: No further NEPA review required)
May 2003*

*Not previously reported in LLQR

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Recent EIS-Related Milestones (September 1 to November 30, 2003)

Supplement Analyses, continued from previous page

DOE/EIS-0285-SA-155

Vegetation Management along the Shelton Kitsap #4 230 kV Transmission Line Corridor from Structure 1/1 through Structure 32/3, Mason and Kitsap Counties, Washington
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285-SA-156

Vegetation Management along the Paul Olympia 500 kV and Chehalis-Olympia 230 kV Transmission Lines, Lewis County, Washington
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285-SA-157

Vegetation Management for the Lower Monumental-Ashe (500 kV) and Midway-Benton #1 (115 kV) and #2 (230 kV) Transmission Lines, Benton County, Washington
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285-SA-158

Addition of Use Area to List Approved Herbicides (Systemwide)
(Decision: No further NEPA review required)
May 2003*

DOE/EIS-0285-SA-159

Vegetation Management along the Raymond Cosmopolis No. 1, 115 kV Transmission Line Corridor from Structure 1 through Structure 169, Pacific and Grays Harbor Counties, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-160

Vegetation Management for the Albany-Lebanon #1 115 kV Transmission Line from Albany Substation to Lebanon Substation, Linn County, Oregon
(Decision: No further NEPA review required)
June 2003*

DOE/EIS-0285-SA-161

Vegetation Management for the Columbia Falls - Trego, 1/1 to 46/9 Transmission Line Row, Lincoln and Flathead County, Montana
(Decision: No further NEPA review required)
June 2003*

DOE/EIS-0285-SA-162

Vegetation Management for the Libby-Troy Section of the Libby-Bonnors Ferry Transmission Line ROW, Lincoln County, Montana
(Decision: No further NEPA review required)
June 2003*

DOE/EIS-0285-SA-163

Grant and Douglas County Noxious Weed Management along BPA Rights-of-ways, Transmission Structures and Roads, Grant and Douglas Counties, Washington
(Decision: No further NEPA review required)
July 2003*

DOE/EIS-0285-SA-164

Vegetation Management for the Walla Walla-North Lewiston Transmission Line Corridor near Tower 16/2, Walla Walla County, Washington
(Decision: No further NEPA review required)
July 2003*

DOE/EIS-0285-SA-165

Vegetation Management for the Cardwell-Cowlitz 115 kV Transmission Line, Cowlitz County, Washington
(Decision: No further NEPA review required)
July 2003*

DOE/EIS-0285-SA-166

Vegetation Management for the Grandview-Red Mountain #1 Transmission Line Corridor from Benton City Substation to Tower 19/9, Benton County, Washington
(Decision: No further NEPA review required)
July 2003*

*Not previously reported in LLQR

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Recent EIS-Related Milestones (September 1 to November 30, 2003)

Supplement Analyses, continued from previous page

DOE/EIS-0285-SA-167

Vegetation Management for the McNary-Ross, 345 kV Transmission Line, Klickitat County, Washington
(Decision: No further NEPA review required)
July 2003*

DOE/EIS-0285-SA-168

Vegetation Management for 4 Patches of Leafy Spurge on the Grande Coulee-Bell Transmission Line Corridor between WP 76/5 and WP 77/1 in Riverside State Park, Spokane, Washington
(Decision: No further NEPA review required)
July 2003*

DOE/EIS-0285-SA-169

Vegetation Management for Portion of the CJ-Monroe No. 1 from 80/1 to 121/4 and CJ-Snohomish No. 3&4 from 80/3 to 81/1 and 100/3 to 105/1, King and Snohomish Counties, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-170

Vegetation Management for Portion of the Rocky Reach-Maple Valley No. 1 Transmission Line, from 90/3 to 113/3, King County, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-171

Vegetation Management for Portion of the Monroe-Snohomish No. 1 230 kV Transmission Line, Snohomish County, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-172

Vegetation Management for the Swan Valley – Teton 1&2 Transmission Line Corridor between Towers 29/1 & 36/3, Teton County, Wyoming
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-173

Vegetation Management for Portion of the Tacoma – Raver #1 500 kV Transmission Line from Tower 1/1 to 15/16, Pierce and King Counties, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-174

Miscellaneous Tree Cutting – Various Corridors, Oreille County, Washington; Bonner County, Idaho
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-175

Vegetation Management for the Ashe-Slatt Transmission Line Corridor, Benton County, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-176

Vegetation Management for Dallas-Chenoweth & Chenoweth - Harvey 115 kV Transmission Lines, Wasco County, Washington
(Decision: No further NEPA review required)
August 2003*

DOE/EIS-0285-SA-177

Vegetation Management for Bonneville-Hood River 115 kV Transmission Line, Hood River, Oregon
(Decision: No further NEPA review required)
September 2003

DOE/EIS-0285-SA-178

Vegetation Management for Portion of the Chehalis-Covington No. 1 Transmission Line, Pierce County, Washington
(Decision: No further NEPA review required)
September 2003 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 July 1 and September 30, 2003.

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

- *Early planning.* Scoping identified the need to avoid certain utility lines, enabling us to make the necessary adjustments in the initial design.
- *Responding to concerns.* Proposed transmission line realignments were implemented to reduce land use impacts in response to land owner concerns.

What Didn't Work

- *Inability to compromise.* During the EA process, we learned that compromises on project expansion issues in surrounding neighborhoods and historic areas are time consuming and difficult. This is especially true when the expansion entails facilities that are considered more "industrial" in nature and undesirable to have nearby.

Data Collection/Analysis

What Worked

- *Using GIS data.* Use of GIS data assisted in analyzing impacts, planning the location of project elements, consulting with agencies, and informing the public of the issues.
- *Conducting agency meetings.* Meetings were held with various agencies within a close time frame, so they could work out their approach because their agency agendas sometimes conflicted. This method facilitated solving problems concerning resource issues.
- *Organizing comments.* Classification and grouping of DEIS comments helped facilitate the preparation of comment/response document information.
- *Using experienced contractors.* To avoid frustrations and a steep learning curve, avoid using contractors that have no previous experience in preparing NEPA documents.

What Didn't Work

- *Lack of pertinent data.* Data collected for the EA were not specific to the proposed action.
- *Failure to follow standards.* NEPA contractors did not follow our standard mitigation measures. Instead the contractor developed new measures but did not provide a basis for using them.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Cooperative planning.* Coordination among staff and supervisors helped keep the EA on schedule.
- *Coordination among stakeholders.* Initial site visits established a good rapport among the team preparing the EA and the technical contractors supporting the project applicant. This approach facilitated timely completion of the EA as well as subsequent exchanges of information.
- *Initiate consultation processes early.* The consultation process was finished prior to completing the public outreach activities and writing the EA. This allowed for a timely streamlined project schedule.
- *Used abbreviated FEIS.* Use of an abbreviated FEIS (we circulated only changes to the draft EIS, rather than rewriting and recirculating the entire statement, in accordance with 40 CFR 1503.4 (c)) saved time and cost. Circulating the entire FEIS would have required additional time to review and additional cost for printing.
- *Early communication.* Expectations for better quality control were conveyed to contractors early and often.

continued on next page

What Worked and Didn't Work in the NEPA Process

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Factors that Inhibited Timely Completion of Documents

- *Accommodating sensitive resources.* Consideration of sensitive environmental resources changed some elements of the project design and added time to the project schedule.
- *Unawareness of NEPA requirement.* The grantee did not initially understand the requirement to comply with NEPA; once understood, the project schedules had to be revised to enable EA completion.
- *Discussion with interest groups.* Consultations with the public resulted in several iterations of early designs; time consuming and difficult negotiations ensued.
- *Poor NEPA contractor performance.* The document provided by NEPA contractor did not meet quality assurance objectives and not all conclusions provided in the EA were supported. This resulted in additional revisions prior to final approval.

Teamwork

Factors that Facilitated Effective Teamwork

- *Early coordination.* Faster, less complex reviews were facilitated by early coordination with reviewers. Better quality control also contributed to fewer changes and faster reviews.
- *Team meetings.* Regular discussions allowed staff to learn environmental procedures, give input, and solve problems.
- *Progress reports and teleconferencing.* Monthly reports and teleconferences facilitated teamwork.
- *Numerous communications.* Frequent communication facilitated effective teamwork.
- *Creating an alliance.* Forming an equal partnership when one agency was designated as the lead agency contributed to good communication and team work.

Factors that Inhibited Effective Teamwork

- *Miscommunication.* There was a misunderstanding between the contractors and DOE on the level of effort, analysis, and writing necessary to complete an EA.

Process

Successful Aspects of the Public Participation Process

- *Geographically dispersed locations.* Holding meetings at geographically separated towns was appreciated by local people.
- *Keeping the public informed.* Using public outreach techniques, several successful meetings were held with the participants, the Federal government, and the community.
- *Meet frequently.* The ongoing conflict over zoning was addressed by sponsoring regular meetings to talk with the public about project plans. Such meetings were the only way for both sides of the zoning controversy to openly discuss the matter and coexist amicably.
- *Early distribution of information.* Public input was requested early in the scoping process. The EA was provided to a wide audience for review.
- *Careful comment consideration.* There was careful consideration of public comments and drafting of responses to these comments to ensure objectivity.

Unsuccessful Aspects of the Public Participation Process

- *Dangerous meeting locations.* The meetings were conducted at night in remote areas with unpredictable weather and rather dangerous nighttime driving conditions.

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What Worked and Didn't Work in the NEPA Process

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Usefulness

Agency Planning and Decisionmaking: What Worked

- *Respecting environmental concerns.* Environmental considerations guided the planning process more than any other part of the process and were integral to most design and implementation decisions.
- *Addressing future plans.* As part of the agency's planning and decisionmaking process, the EA addressed maintenance work for several years. The EA also defined a number of mitigation measures to minimize environmental impacts.

Enhancement/Protection of the Environment

- The EA process will protect wetlands. The need to protect fish habitat and water quality resulted in the siting of structures and roads away from streams as much as possible. Measures will be implemented to protect areas where wetlands and streams cannot be avoided. Standards for road construction were improved. Various land use restrictions will address the need to protect endangered species.
- Given implementation of the environmental protection measures outlined in the document, every known measure will be taken to avoid environmental harm. More will be known once additional analysis is performed after the project is funded.

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 4 questionnaire responses were received for EAs and 1 response was received for EISs, 3 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process, "prompted many questions to ensure good alternatives analyses and comparison."
- A respondent who rated the process as "5" stated that the NEPA process, "was a factor in many of the engineering, design, and construction decisions on this project."
- A respondent who rated the process as "4" stated that the NEPA review resulted in "a more informed decision making" process.
- A respondent who rated the process as "2" stated that "considering the need for the project, it was already known that the poles on the transmission line needed to be replaced due to age and condition. It was recognized early in the NEPA process that the No Action Alternative would not meet the needs of the project." 

LESSONS LEARNED

March 1, 2004; Issue No. 38

First Quarter FY 2004

Need Help Preparing NEPA Documents? New, Improved “Green Book” Is on the Way

By: Carl Sykes, *Office of NEPA Policy and Compliance*

The time has come for the DOE NEPA Community to work together to strengthen our basic NEPA guidebook, *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (also known as the “Green Book”). The Green Book (www.eh.doe.gov/nepa under Guidance) is certainly no weakling: it provides succinct recommendations for key NEPA issues in just 38 pages. However, it has a few gaps. The Office of NEPA Policy and Compliance is now undertaking, with input from the DOE NEPA Community, well-targeted revisions to update and augment the Green Book. We aim to increase its usefulness to NEPA document preparers and reviewers.



Carl Sykes is leading the charge to strengthen the Green Book, DOE's NEPA primer.

The DOE Office of Environment, Safety and Health issued the Green Book in May 1993 as an expansion and refinement of earlier informal NEPA “Do and Don’t” lists. The NEPA Office had circulated draft versions of the Green Book for comment throughout the DOE NEPA Community as well as to the Council on Environmental Quality (CEQ). CEQ held it as a model for other agencies to emulate. Although some details have become dated, the Green Book guidance is still valid today, a testament to its careful development and thorough review process. The revision must be prepared with similar rigor.

Updates, Refinements Needed

At a minimum, we want the Green Book to address all major issues and, where appropriate, reference other, more detailed NEPA guidance. DOE and other agencies have issued a number of important guidance documents in the decade since the Green Book was first issued. For example, CEQ issued guidance on cumulative effects and environmental justice in 1997, and DOE has issued many guidance documents, including mini-guidance from *Lessons Learned Quarterly Report*. Also, we plan to revise the Green Book section on accident analysis to reference and reflect the July 2002 DOE guidance, *Recommendations for Analyzing Accidents under the National Environmental Policy Act*.

Practical experience, in addition to guidance, will inform the Green Book revision. Over the years, NEPA practices have evolved as lessons have been gleaned from NEPA successes, failures, litigation, and other experiences. We plan to develop a more comprehensive list of NEPA issues to address, with the intent of filling the gaps.

(continued on page 15)

Inside *LESSONS LEARNED*

Welcome to the 38th quarterly report on lessons learned in the NEPA process. In this issue we are continuing a multi-part examination of lessons learned from *Lessons Learned*. We invite your suggestions on how to improve the Lessons Learned program. Thank you for your continuing support.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices.

Draft articles for the next issue are requested by May 3, 2004. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 3, 2004

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2004 (January 1 through April 30, 2004) should be submitted by May 3, 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 printed in the September issue each year.

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Modern Pit Facility Final EIS Delayed

On January 28, 2004, National Nuclear Security Administration (NNSA) Administrator Linton Brooks announced the *Modern Pit Facility Final Environmental Impact Statement* (EIS), originally scheduled for publication by April 2004, has been delayed. Mr. Brooks cited congressional concerns about the timing and scope of the project and stated that NNSA needs to respond to the concerns before proceeding with the Final EIS.

In June 2003, NNSA published the *Modern Pit Facility Draft EIS* that analyzed five alternative sites: Los Alamos and Carlsbad, New Mexico; the Nevada Test Site; Pantex Plant, Texas; and the Savannah River Site, South Carolina. The Draft EIS also evaluated upgrading an existing fabrication facility at Los Alamos National Laboratory. The Environmental Protection Agency reviewed the draft EIS and gave it a "Lack of Objections" rating. In accordance with 40 CFR 1502.14 (e), the Final EIS will identify the preferred site for the Modern Pit Facility (or Los Alamos upgrade of the existing facility); a preferred site alternative was not identified in the Draft EIS. 

NNSA Withdraws FONSI for LANL Biosafety Lab

The National Nuclear Security Administration (NNSA) issued a press release on January 23, 2004, announcing its decision to prepare a new environmental assessment (EA) for operation of a newly constructed Biosafety Level-3 (BSL-3) facility at the Los Alamos National Laboratory. NNSA had issued an EA (DOE/EA-1364) and finding of no significant impact (FONSI) for the construction and operation of the BSL-3 facility in February 2002. Due to new circumstances and information concerning the operation of the BSL-3 facility, NNSA has withdrawn the 2002 FONSI. The BSL-3 facility (and another BSL-3 facility planned for Lawrence Livermore National Laboratory) is the subject of an ongoing lawsuit filed in August 2003, in which plaintiffs claim, among other things that the EA for the facility was inadequate. (See related article in Litigation Updates, page 16.) 

BLM Programmatic EIS to Examine Wind Energy In Response to President's National Energy Policy

The Bureau of Land Management (BLM), an agency of the Department of the Interior, recently conducted a public scoping process for its *Wind Energy Development Programmatic EIS* (PEIS). The individual comments were overwhelmingly supportive of wind energy development but suggested that siting criteria reflect concerns ranging from visual impacts to habitat and species protection to economics.

PEIS Preparation Involves Multiple Agencies

BLM initiated the PEIS in response to the President's National Energy Policy, which encourages the development of renewable energy resources. The PEIS will evaluate issues associated with establishing a national policy and program for wind energy development on BLM-administered public lands in the western United States, except Alaska. (See *LLQR*, December 2003, page 2.) The Fish and Wildlife Service, also within the Interior Department, is a cooperating agency, providing its special environmental expertise on how to evaluate and mitigate impacts from wind turbines and associated facilities. (See "Interim Voluntary Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines" (68 FR 41174; July 10, 2003); available at www.fws.gov/r9dhcbfa/windenergy.htm.)

DOE's national laboratories are assisting in preparation of the PEIS, although DOE is not participating as a cooperating agency. The National Renewable Energy Laboratory (NREL) is providing technical support (described in text box, next page), and Argonne National Laboratory is providing PEIS preparation support. DOE's Golden Field Office, which manages NREL, will participate in PEIS document reviews, and the Western Area Power Administration has offered BLM its assistance.

The NEPD [National Energy Policy Development] Group recommends that the President direct the Secretaries of the Interior and Energy to re-evaluate access limitations to federal lands in order to increase renewable energy production, such as biomass, wind, geothermal, and solar.

— Reliable, Affordable, and Environmentally Sound Energy for America's Future, Report of the National Energy Policy Development Group, May 2001 (www.whitehouse.gov/energy)

PEIS Intended to Facilitate Wind Energy Development on BLM Lands

BLM maintains land use plans to define how particular parcels of the land it manages may be used. The plans specify restrictions that need to be enforced to ensure consistency with the principles of multiple use and sustainable yield under which BLM operates. Any development of wind energy must be conducted within the parameters established in the applicable land use plan.

BLM administers about 25 rights-of-way in California and Wyoming that authorize commercial development of wind energy, and wind turbines on these public lands generate about 500 megawatts of electricity. The agency has received proposals for development of additional wind energy resources on lands it manages. BLM notes, however, that "commercial wind energy development activities in some cases may not be in conformance with existing land use plans."

To address this potential conflict until the PEIS is completed, BLM established an Interim Wind Energy Development Policy in 2002 (Instruction Memorandum No. 2003-020; October 16, 2002) that encourages the



Photographs like this one from BLM's Wind Energy PEIS Web site (<http://windeis.anl.gov>) illustrate the siting of wind turbines in a desert landscape in western states.

(continued on page 4)

Wind Energy Programmatic EIS *(continued from page 3)*

consideration of wind resource potential when land use plans are being revised. The memorandum also provides guidance on processing right-of-way applications for wind energy testing and development projects. The guidance addresses the need for an EA or EIS to accompany each application for wind energy development.

BLM's Proposed Action Could Require Land Use Plan Amendments

BLM proposes to assess in the PEIS where it is reasonably foreseeable that wind energy might be developed on lands it manages. NREL is assisting with this undertaking through an inventory of high-potential wind energy resources. (Information on this NREL-BLM partnership is available at www.eere.energy.gov/windpoweringamerica. Under Wind Powering America, select Public Lands for a copy of "Assessing the Potential for Renewable Energy on Public Lands" (February 2003). Also, follow the "Where is Wind Power?" link for state maps showing areas with the potential for producing wind energy.)

BLM also proposes to address the possible amendment of individual land use plans. For example, land use plans might be modified to incorporate stipulations applicable to wind energy development projects (e.g., wildlife management guidelines). As another example, land might be designated for competitive leasing of wind energy resources.

Public Scoping Attracted Broad Interest

The scoping process included a 60-day public comment period that ended on December 19, 2003. Scoping meetings were held in five western states (California, Utah, Wyoming, Nevada, and Idaho). BLM received more than 800 individual scoping comments covering a wide range of subjects, including engineering and design, wildlife, monitoring and mitigation, land use, visual impacts, and national energy policy. A *Summary of Public Scoping Comments* along with a searchable index of all comments received and information on wind energy is available at the PEIS's Web site (<http://windeis.anl.gov>).

The majority of comments address the balance between wind energy development and minimizing environmental impacts. Siting criteria, as would be reflected in individual land use plans, are also a concern. "By taking this big picture look," commented the Idaho Conservation League, "the BLM can help locate wind power projects in locations where there is a sufficient and steady wind supply and environmental concerns can be more easily addressed."

One environmental concern raised by commentators is the potential impact on wildlife habitat. Road construction associated with installing and maintaining wind turbines and related transmission services can disrupt habitat, and the presence of towers can alter a habitat that had been characterized by open space, commentators said.

National Renewable Energy Laboratory: DOE's Focus for Wind Energy Research

NREL is DOE's national laboratory for renewable energy research, development, and deployment, and its National Wind Technology Center (NWTC), located near Boulder, Colorado, is DOE's lead wind energy research facility.

NREL is supporting BLM throughout the PEIS process by providing staff and informational materials for public meetings. It is also providing technical data (e.g., on wind energy technologies, mitigation studies, land suitability for wind energy development, and geographic information system and resource mapping) that are useful to developing the proposed action description and impact analyses. In addition, NREL hosted an interagency workshop on February 3, 2004, at which representatives of the involved agencies discussed the nature of full-scale wind energy projects and the type and magnitude of impacts they present.

NREL has conducted an environmental study at the Technology Center related to one of the more controversial aspects of wind energy development. *National Wind Technology Center Site Environmental Assessment: Bird and Bat Use and Fatalities – Final Report* (NREL/SR-500-32981, January 2003) assesses impacts on populations of birds and bats at the site. Based on a 12-month survey, the study concluded that, "Bird mortality associated with the site appears to be minor," with most deaths "probably the result of collisions with support wires for the meteorological towers rather than the turbines themselves." The study reported "no evidence of bat fatalities at the site."

The Technology Center's Web site (www.nrel.gov/wind) presents the study on bird and bat fatalities (under NWTC Library) and includes other useful information about wind energy. For example, there is a report on "Wind Power Today" and basic information on wind energy, such as "How Do Wind Turbines Work?" and "Where Does the Wind Blow?"

(continued on next page)

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Other environmental concerns include the potential for birds, bats, and insects to be killed by flying into turbine blades, support wires, or transmission wires. Commentors noted that these hazards can be mitigated through the choice of design. For example, the use of towers with smooth exteriors – as opposed to lattice-work towers – eliminates risks associated with birds using the towers as perches. Concerns also were expressed about visual impacts, especially in areas with scenic importance, such as near national parks and historic sites.

In its scoping comments, DOE's Western Area Power Administration identified the need for the programmatic EIS to "consider the impact of wind development on the electric transmission system." Noting that wind development may occur in areas with "limited transmission capability," Western commented that, "A National policy could lead to large scale development that will require construction or rebuild of numerous transmission lines, resulting in other environmental consequences."



This photo, also from the PEIS Web site, illustrates the scale of a turbine.

Companies that develop wind energy commented on the need to use the PEIS to streamline the decisionmaking process. The American Wind Energy Association expressed hope that the PEIS "will help remove procedural and informational barriers to the orderly development of wind generation at appropriate sites" on BLM-managed lands. San Geronio Farms, which has developed over 160 megawatts of wind energy projects in California, encouraged BLM to use the PEIS to "decrease the amount of double work that is done at the local level" by providing adequate analysis of key areas of concern. The company also encouraged BLM to "limit the amount of land that can be tied up by any one company" in order to provide "smaller developers a chance" to pursue wind energy development on BLM land.

Commentors also noted potential conflicts between wind energy development and military air space and land use requirements. The U.S. Air Force, which is the lead for the Department of Defense (DOD) for wind energy, suggested steps to enhance coordination, such as identifying locations on BLM lands where wind projects might affect DOD mission sustainability. (See *LLQR*, June 2003, page 9, for discussion of the cancellation of plans to develop wind energy at the Nevada Test Site because of DOD concerns.)

Another comment by the Air Force was that BLM should "[c]onsider expanding the PEIS beyond just BLM-owned lands to include wind facilities on lands owned by other public land management agencies." Other commentors suggested additional ways to broaden the scope of the PEIS, for example evaluating competing energy sources (particularly coal and other fossil fuels).

BLM envisions publishing the draft PEIS in August 2004. For further information about the *Wind Energy Development PEIS*, contact Lee Otteni, BLM Farmington Field Office, at 505-599-8911. 

Lessons Learned from *Lessons Learned*

Part 2: Schedule and Teamwork

Schedule and teamwork go hand-in-hand, say respondents to DOE's Lessons Learned Questionnaire. The respondents describe a synergistic relationship in which good teamwork contributes to meeting schedules, and adherence to schedules enhances the performance of NEPA document preparation teams. Involving the right people – from contractor support to senior DOE management – and working together as a team is critical to issuing a document on a schedule consistent with the Department's needs, respondents say. Effective teamwork is enhanced by development and implementation of a schedule in a manner that keeps every member of the team informed.

What Makes the Schedule Work?

Questionnaire respondents identified many factors that contribute to the successful completion of NEPA documents on schedule. The single most important factor is management attention. According to an analysis of responses, management attention to scope, issues resolution, and the schedule itself is essential to completing EAs and EISs on time. Coupling management attention with good teamwork throughout the NEPA process enhances the chance of achieving schedules.

Respondents added that engaging team members in frequent meetings contributes to successful scheduling. At various points in the process, meetings might be held among the core members of the NEPA document preparation team (often to gauge progress toward interim milestones), program or site office management, and relevant headquarters' offices, to resolve key issues or with reviewers to facilitate completion of the document. Effective meetings can be conducted via conference calls or intensive, multi-day sessions involving representatives of all affected organizations. It can be helpful, some said, to use these meetings to conduct "real time" reviews of revisions to a document.

Other respondents pointed out that it is important to clearly define the scope of the EIS or EA early, even when it adds time at the start of the NEPA process. Data availability early in the process also is important, said respondents, who touted the benefit of timely identification of pre-existing data or generation of needed data (e.g., through the early completion of a risk analysis).

Respondents identified "tools" that contribute to the maintenance of schedules. Some pointed to the efficiency of electronically transferring documents to facilitate reviews and the benefits of software programs to track the schedule. Other respondents attributed success to incorporating the EIS or EA schedule as a performance measure in the document preparation contract. Others highlighted the utility of using in-house resources for laboratory analyses, printing, and other tasks.

This article is the second of a series examining nearly 1,000 excerpts from responses to DOE's NEPA Lessons Learned Questionnaire published in *LLQR* since December 1994. The excerpts are published on the concluding pages of each issue of *LLQR* under the heading: *What Worked and Didn't Work in the NEPA Process*. (See page 25.) (The Questionnaire is available on DOE's NEPA Web site at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports.)

The first article discussed scoping and data collection and analysis (*LLQR*, December 2003, page 1). This article summarizes responses regarding schedule and teamwork. The series will continue with a discussion of the NEPA process, usefulness, and enhancement/protection of the environment and will conclude with thoughts on how to improve the NEPA lessons learned program and DOE's implementation of NEPA.

Respondents also identified factors that make it difficult to maintain the schedule. Failure of key staff, including managers, to review the NEPA document in a timely manner can undercut efforts to maintain a schedule. Reliance on inexperienced staff (particularly in regard to NEPA experience) and staff changes during document preparation can have a similar impact. Other factors include poor coordination internally and with external parties (e.g., other agencies) and incompatibility in software among team members.

Several respondents pointed to adverse schedule impacts arising from late definition of the scope or changes in the proposed action, alternatives, or other important aspects of the NEPA analysis. Some mentioned that a long public comment period or an extension of the public comment period delayed the schedule. Conversely, another respondent provided an example where closing the scoping process before the completion of supporting studies resulted "in a need to back track and add new project components and alternatives."

What Fosters Good Teamwork?

Respondents underscored the importance of putting together the right team. This includes senior management, the NEPA Document Manager, the NEPA Compliance Officer, program managers, reviewers (including those from the NEPA Office and the Office of the General Counsel), technical project staff, and support contractors. Having the interest, involvement, and commitment of the right people at the right times is key, many said.

(continued on next page)

Lessons Learned (continued from previous page)

Although respondents cited a variety of contributors to effective teamwork, the most recognized factor was good communication. Lines of communication were made more effective by practices such as an open-door policy by the NEPA Document Manager, regular and frequent meetings and conference calls, use of electronic communication, and addressing issues early.

Other attributes of successful teamwork highlighted by respondents include involving people with the right set of technical skills and those with enthusiasm and commitment, identifying responsibility for discrete aspects of the work, and working well within the team and among offices. Many cited close cooperation – involving contractors, headquarters offices, and others early and often – as a factor in building and maintaining effective teamwork.

What's the real secret to completing an EIS on time?

“The unashamed, liberal application of sugar and caffeine was particularly effective as a procedure to help keep the document team on schedule.”

– Questionnaire Respondent

Respondents noted that the NEPA document team did not work effectively when one or more of the attributes mentioned above were lacking. Examples raised include doubts about the effectiveness of the NEPA process (e.g., the perception that a decision had already been made), competition for management attention between reviewing the EIS and other priorities, inability to obtain information in a timely manner, and personnel conflicts.

NEPA Success Relies on Good Management Practices

“The successful completion of a NEPA document hinges on many of the same management principles as any project,” said Eric Cohen, Unit Leader, NEPA Office. “We should continually strive to identify the right mix of skills for each NEPA document early in the process, pull together a team of people with the resources and interest in conducting a meaningful and timely NEPA analysis, and work together to get the job done. Responses by DOE’s NEPA Community to the Lessons Learned Questionnaire underscore these basic points year after year, from EAs to programmatic EISs alike.”

Effective teamwork and scheduling are addressed in existing DOE NEPA guidance. For example, “NEPA Contracting Reform Guidance” (December 1996) emphasizes integrating the NEPA process, contracting, and project management to “do it right the first time.” (See www.eh.doe.gov/nepa under DOE-wide NEPA Contracting.) Also, DOE Order 451.1B, National Environmental Policy Act Compliance Program, establishes lines of authority for the NEPA document preparation team and encourages approaching NEPA document preparation as a team effort (on the DOE NEPA Web site above under NEPA and Related Requirements).

Coming Next: Lessons Learned about the NEPA Process, Usefulness, and Enhancement / Protection of the Environment

CEQ Chair Emphasizes NEPA's "Productive Harmony" Goal

By: Carolyn Osborne, *Unit Leader, Office of NEPA Policy and Compliance*



Pointing to the national policy goal set out in NEPA Section 101(a) more than 30 years ago, Council on Environmental Quality Chair James L. Connaughton emphasized the need to balance social, economic, and environmental factors in "Attaining Productive Harmony in Environmental Policy in the 21st Century." In this address to a Policy Leadership Forum at Resources for the Future on January 22, he stressed that this national environmental policy, ahead of its time when set forth, is vital today.

Mr. Connaughton noted progress around the globe in health, environmental and social indicators, stemming in part from the massive block of law established in the last three decades. He commented that we now have the luxury to "refine, shape and sculpt" this block. In doing so, he explained that the President's approach places the highest premium on state and local action to further national goals and is predicated on the belief that economic growth is the solution, not the problem, for reducing environmental degradation.

To produce "real results," he emphasized that we must "simplify, simplify, simplify" environmental standards and other tools that stem from our laws. With reference to air quality concerns of acid rain, particulate matter, haze, and toxics, for example, Mr. Connaughton described requirements under the Clean Air Act as a "Rube Goldberg machine" – an extremely complex and uncertain path. He then projected air quality improvements that would occur from the President's current simplifying initiatives on Clear Skies and non-road diesel emissions.

For the near- to mid-term, Mr. Connaughton outlined programs that will deploy technologies that are central to making lasting strides – the FutureGen Program, Hydrogen Fuel Initiative, and FreedomCAR Partnership – new efforts to reduce emissions of greenhouse gases. (DOE has a major part in these efforts.)

How to Build on Our Environmental Progress

Asking "Where do we go next?," Mr. Connaughton outlined five core drivers for continued environmental progress:

- Results – focus on performance in terms of outcomes, not the number of programs or money spent.
- Sound science and quality data – enhance methods of risk management so that we can prioritize and deliver sensible responses.

- Innovation in technology and policy – create an economic and regulatory environment that supports new and cleaner technologies. NEPA created a mandate for the Federal government to create environmental blueprints to aid decisionmaking, and we have developed regulations and other tools to get things done. Now, be more discerning in choosing among these tools, changing them if needed to get a job done.
- Local collaboration for local solutions – switch from "public input" over the last 30 years to "public involvement" over the next 30. When people are engaged at the local level in problem solving, they tend to take on ownership for sustaining the solution.
- Personal stewardship and responsibility – foster accountability by other than professional environmentalists to integrate environmental considerations into operational criteria. Get "the right information, to the right people, at the right place, at the right time, to produce the right action."

At the close of the questions and answers session that followed his presentation, Mr. Connaughton said that in seeking to resolve issues, it often comes down to impacts on real people and having to understand what the environmental piece is in relation to the economic piece in relation to the social piece – that "wonderful sustainable development circle, or NEPA circle." The text, slides, and videotape of Mr. Connaughton's presentation and a videotape of the questions and answers session is available on the Resources for the Future Web site at www.rff.org.



NEPA Section 101 Policy Balances Objectives

The Congress, recognizing the profound impact of man's activity on...the natural environment...and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares...continuing policy of the Federal Government...to use all practicable means and measures, including financial and technical assistance, **in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.**

Excerpts from NEPA, Section 101(a) with emphasis as added by CEQ Chair, January 22, 2004

Supporting Flexible Decisionmaking in Practice: Sacramento Area Voltage Support

By: Loreen McMahon, *NEPA Compliance Officer, Sierra Nevada Region*, and Catherine Cunningham, *Environmental Protection Specialist, Corporate Services Office, Western Area Power Administration*

Soon after the 2000-2001 electric power crisis in California, the Western Area Power Administration (Western) identified the need to improve electric system reliability, provide voltage support, and increase security of the electric power transmission system in the Sacramento area. Uncertainties abounded, however – in the financial and regulatory environment facing the power industry, in utilities' plans to construct new generation or transmission facilities, and in the nature and timing of specific proposals to fund transmission improvements.

In the face of these challenges, Western needed to be flexible in its decisionmaking. In response, Western prepared the *Sacramento Area Voltage Support Final EIS* (DOE/EIS-0323; September 2003), in which it analyzed alternatives for needed near-term improvements in the electrical transmission system. Western was able to issue a record of decision (69 FR 1721; January 12, 2004) before completing comprehensive surveys for some resources and before receiving project-specific funding. Western is now prepared to complete the resource environmental reviews cost-effectively.

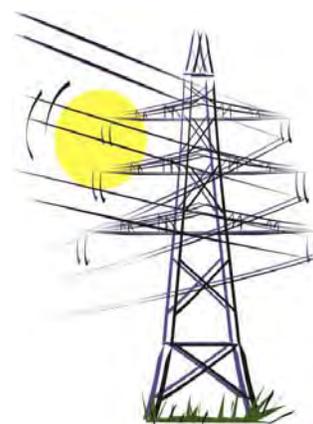
Need for Near-Term Improvements Influences Alternatives

Western began by identifying five broad categories of activities: new power generation, demand-side management (operational and other measures to reduce load, such as conservation and load-shedding), distributed generation (power generated at or near the location where a load is), new transmission, and transmission upgrades. Through internal and public scoping, Western concluded that new power generation, demand-side management, and distributed generation would not meet the screening criteria due to long-term implementation requirements or limited effectiveness, and eliminated these activities from detailed consideration.

Western applied the remaining activities – new transmission and transmission upgrades – to existing routes and potential route alignments to formulate a proposed action (with two alignment options) and three additional action alternatives. Western specified a configuration of new transmission lines and/or reconductoring for a combined distance of approximately 180 miles. Western incorporated almost 60 standard environmental protection measures into the project description.

Detailed Environmental Surveys, Consultations Deferred Until Project-Specific Proposals

Although Western analyzed impacts based on available data, it decided to defer the major resource survey efforts – for air, biological, cultural, and wetland resources – and consultations with the regulatory authorities – U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and



the State Historic Preservation Officer – until after receiving specific project funding. Western would then identify mitigation measures beyond the environmental protection measures already incorporated into the alternatives and develop a mitigation action plan. Western met with Environmental Protection Agency (EPA) representatives to obtain input and support for this

approach. EPA staff expressed optimism and acknowledged other cases where projects had gotten caught up in an expensive cycle of “hurry up and wait.”

In addition to agreeing on the broad approach, EPA recommended that Western make commitments in the final EIS and record of decision on future public participation, a commitment that had already been made internally by the Western NEPA team. Both the final EIS and record of decision state that if the environmental studies and consultations deferred during the EIS process result in modifications to the decision, Western will undertake additional activities to meet its NEPA and public participation obligations.

This approach provides a potential major cost savings to the government. Resource surveys for all the route segments have an estimated cost of more than \$400,000. Because project proponents would likely support projects for only some segments, surveys for the entire right-of-way would probably not be needed. In addition, because of uncertainties in utilities' plans and proposals, Western is not able to predict when construction would begin; projects not in the immediate future would have the potential for requiring new or updated surveys. For more information, contact Loreen McMahon at mcmahon@wapa.gov or 916-353-4460. 

NEPA Champions Brief Congressional Staff

By: Yarden Mansoor, Office of NEPA Policy and Compliance

As an important but controversial transportation funding bill is considered by Congress, seven members of the academic and environmental communities in late January 2004 presented a briefing to House and Senate staff titled “Congress at the Crossroads: Transportation, Public Participation and the National Environmental Policy Act.” The bill, which would authorize billions in funding for highway, motor carrier, hazardous materials, and boating programs, is the third iteration of legislation known as the Transportation Equity Act (informally, TEA-3), established by Congress in 1992 and renewed in 1998.

To inform House and Senate staff members, speakers offered presentations on NEPA’s history, application, and requirements; NEPA’s value to the public and decisionmakers; the causes of project delays often attributed to NEPA compliance; and Congressional challenges to the concepts of environmental review and public participation, including a critique of current TEA-3 and other legislative proposals that the speakers attest would undermine NEPA values.

NEPA Viewed as Valuable in Decisionmaking and Public Disclosure

NEPA emerged over 30 years ago in response to acknowledged degradation of natural resources and an atmosphere of “environmental anxiety” following the publication of Rachel Carson’s *Silent Spring*, said Professor Hope Babcock, Director of the Institute for Public Representation at the Georgetown Law Center. Promoted as a full disclosure act, she said that NEPA obligates agencies to disclose and conduct an open evaluation of the environmental impacts of proposals and their alternatives. “NEPA prohibits uninformed – rather than unwise – decisions,” she said, citing a Supreme Court decision.

While NEPA does not require selection of alternatives with the least adverse environmental impacts, it imposes significant obligations, both financial and administrative, on an agency,” said Robert Dreher, Deputy Executive Director of the Georgetown Environmental Law and Policy Institute (and former Deputy General Counsel for the U.S. Environmental Protection Agency), “but many professionals who are engaged in the process have come to view it as an integral part of good decisionmaking.” He pointed to a variety of agency approaches (including DOE’s) to promoting, facilitating, and improving their NEPA processes.

Speakers also focused on the value of NEPA as an essential tool for the public to get informed about and

“The Department of Energy, through its Lessons Learned Report, emphasizes NEPA successes and carefully analyzes what can be improved.”

*– Robert Dreher,
Georgetown Environmental
Law and Policy Institute*

is a strong endorsement of retaining the current NEPA framework while improving some aspects of its practice. (See ceq.eh.doe.gov/ntf/report/index.html and *LLQR*, December 2003, page 1.)

Speakers urged the Congressional staff not to demonize NEPA as an obstacle, through costs or delay, to project implementation. Often “NEPA compliance” includes planning, data collection, conceptual design, and public involvement steps that would be necessary in any case, they said. Greg Smith, Transportation Director, Friends of the Earth, presented results of an examination of recent Federal Highway Administration NEPA reviews that had taken longer than 5 years to complete. It was not the NEPA process itself that caused the delay, but the proposed projects’ low priority, lack of funding, or overall complexity. In some cases, he added, poor consultant work resulted in inadequacies that needed correcting before completing the NEPA document.

Concern that Legislative Provisions Would Undermine NEPA

It is particularly important, according to Sharon Buccino, Senior Attorney, Natural Resources Defense Council, not to circumvent the NEPA process by the types of provisions that have been included in some recent Congressional bills, including some proposed in TEA-3:

- Specifying mandatory, often unrealistic deadlines, even for highly complex proposals: Under one proposal cooperating agencies would be limited to a 60-day review period for an EIS and 30 days for an EA. In the case of interagency disputes that could not be resolved within 30 days, the issue would have to be reported to the House of Representatives.

participate in decisionmaking. They cited the work of the Council on Environmental Quality’s NEPA Task Force as a serious effort to improve NEPA implementation. They characterized the Task Force as representing a partnership of diverse public, environmental, and governmental interests, and stated that its recent Report

(continued on next page)

White House Task Force on Energy Project Streamlining Responds to Requests for Help (Details,Details...or What a NEPA Nerd Did this Winter)

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

When President Bush signed Executive Order 13212 (Actions to Expedite Energy-Related Projects) in May 2001, I did not think he was referring to me. The need for a special White House Task Force to get energy project proposals acted on by the various Federal agencies puzzled me: after all, isn't acting on proposals what agencies do?

Last October I was assigned to the Task Force for a 120-day detail. The reality of the need for the Task Force hit home the first week. All Task Force projects are the result of requests for assistance from Federal and state agencies, Indian Tribes, interest groups or individual companies. My first task was the result of a request from a company that held Federal oil and gas leases in Utah. It was having what it called a "NEPA problem" with a Federal agency. Being from the NEPA Office (so the de facto NEPA nerd for the Task Force), I was assigned the "NEPA problem."

In June 2003, the company had filed what it thought was a routine application for increasing the size of a surface pipeline from a four-inch to six-inch diameter. The pipeline is laid on the ground and extends from existing wells along an existing road in a canyon bottom. The increase in pipeline capacity was needed to transport increased production.

The agency had not acted on the application because the NEPA review was not completed. The agency could not decide if the project would be categorically excluded or if an EA was needed. In November 2003 (following a call from the Task Force), the agency decided that the proposed action could indeed be categorically excluded except that it thought that an Endangered Species Act

Section 7 consultation was needed. A quick response from the Fish and Wildlife Service, which assured the agency that the action was a "no effect" action on endangered species, resulted in the agency approving the permit and allowing the increased natural gas to be delivered to consumers. (By not getting the permit until late November, the company incurred a 10-fold increase in cost of the routine pipeline replacement because of having to deal with significant snow depths.)

Needless to say, the pipeline problem was not a "NEPA problem." In fact, of all the perceived "NEPA problems" I have worked on with the Task Force, not one was a problem with the NEPA process. The "NEPA problems" have been instead problems of failing to implement existing NEPA regulations or agency NEPA policy.

My time on the Task Force has been entirely enjoyable. Having the opportunity to assist other Federal agencies in solving problems as well as to participate in Task Force initiatives that will indeed streamline how agencies work together has convinced this NEPA nerd that not only is the Task Force needed, it seems to actually be working.

In a letter to the NEPA Office, Robert Middleton, Director, White House Task Force on Energy Project Streamlining, said "Brian was instrumental in the continued success of the Task Force...by volunteering continuously to do whatever it took to make the Task Force accomplish its mission...His professional performance and can-do attitude have reflected positively upon your organization and the U.S. Department of Energy." Brian Mills will return to the NEPA Office this month. See LLQR, December 2003, page 16, for information on the Task Force.



NEPA Champions

(continued from previous page)

- Shifting influence away from the public, states, and localities, and authority away from natural resource agencies – even if they are cooperating agencies – to the project proponents: For example, some proposals would allow the Federal Highway Administration alone to determine the purpose and need for government action. In such cases, cooperating agencies could be constrained in meeting their obligations to protect resources through consideration of alternatives or mitigation.
- Dictating the decision outcome irrespective of the NEPA process: Section 115 of the FY04 Energy and Water Appropriations bill funds road construction into the Izembek National Wildlife Refuge in Alaska and mandates construction of Alternative 1 "notwithstanding any other provision of law," thus requiring the Army Corps of Engineers to ignore public comments regarding other less costly and less environmentally damaging alternatives (Pub. Law 108-137, signed December 1, 2003).



Annual Planning Summary Guidance Issued To Facilitate Timely and Efficient NEPA Compliance

To encourage greater involvement of DOE senior managers in their NEPA planning process, the Assistant Secretary for Environment, Safety and Health recently issued *Informal Guidance on the Preparation of Annual NEPA Planning Summaries*. The intent of the December 2003 guidance is to promote the planning summary as a tool for timely NEPA compliance and the efficient allocation of monetary and staff resources. Annual planning summaries are also used to inform the public, for example, through mailings and posting on Web sites, of ongoing and future EAs and EISs to enhance public participation.

In addition to their use by an Office in planning its own NEPA documents, annual planning summaries can be a strategic tool for coordination between a Program Office and its Field Offices. This year, for example, Environmental Management requested that its Field Offices submit their planning summaries through the Program Office for consolidation and coordination. According to NEPA Compliance Officer Steve Frank, “Environmental Management intends to use the planning summaries submitted by its Field Offices to develop corporate NEPA strategies – including scheduling, budgeting, and coordinating crosscutting issues.”

In addition to helping Offices plan and informing the public on ongoing and future NEPA reviews, annual planning summaries help the Office of NEPA Policy and Compliance in making staff resources available to assist in the preparation, review, and approval of EISs. Further, identifying all EAs and EISs being prepared or planned throughout the Department helps the NEPA Office identify trends and crosscutting issues.

Guidance, 2004 Summaries Posted on DOE NEPA Web Site

The guidance and the 2004 planning summaries received to date are posted on the DOE NEPA Web site at www.eh.doe.gov/nepa/summaries.html. New in the informal guidance are report templates in an automated spreadsheet format (Excel), developed by the NEPA Office in response to NEPA Compliance Officer suggestions requesting a recommended or standard format for the planning summary.

A total of 30 annual planning summaries have been submitted in 2004, five more than in 2003. Based on the information presented in the summaries to date, there are projections for 9 EISs, 4 supplement analyses, and 28 EAs.

A number of notable improvements were observed in the planning summaries submitted this year. Fifteen planning summaries were transmitted by the due date and 29 were signed by the appropriate official. Most of the planning summaries contained the required schedule information for completion of the NEPA reviews identified, although again this year, many of the summaries did not contain cost information.

The NEPA Office is analyzing the summary information and will help Offices to complete the process, on request. In addition, comments on the informal guidance are welcome. Please direct any comments or questions on the guidance to Lee Jessee at lee.jessee@eh.doe.gov or 202-576-7600. 

Transitions

Retirements in the Office of the General Counsel: Farewell to Bill Dennison and Steve Ferguson

Two leaders in DOE's NEPA compliance activities with almost 60 years of NEPA experience between them – William J. Dennison and Steven E. Ferguson – retired from the Office of the General Counsel on January 2, 2004.

Bill Dennison served in the Office of the General Counsel for 27 years, the last 15 as the Assistant General Counsel for Environment. In that position, he supervised a staff of 12 lawyers providing legal advice to the Office of NEPA Policy and Compliance and DOE programs. Bill helped to develop NEPA compliance strategies for major DOE initiatives and was a key contributor to the DOE NEPA Regulations and major guidance documents.

Steve Ferguson served for 30 years at DOE and its predecessor, the Federal Energy Administration, first with the Office of Fossil Energy and later in the Office of the General Counsel as a Deputy Assistant General Counsel

for Environment. He worked on many EISs, from DOE's first one for the Strategic Petroleum Reserve to most recently the National Nuclear Security Administration's Livermore Site-wide EIS. Steve was a frequent speaker at DOE NEPA Community Meetings.

Daniel Ruge now is the Acting Assistant General Counsel for Environment.

Members of DOE's NEPA Community know that the issuance of EISs and development of NEPA guidance takes place in consultation with the Office of the General Counsel. This consultation is never a pro forma process; our legal partners provide invaluable advice and assistance. Bill Dennison and Steve Ferguson will be greatly missed. The Office of NEPA Policy and Compliance offers best wishes to both in their future endeavors.



Three New NEPA Compliance Officers Designated

Legacy Management: Rich Bush

Richard (Rich) Bush is the NEPA Compliance Officer for the new Office of Legacy Management, which is responsible for the long-term care of former nuclear weapons production sites following completion of environmental cleanup. He will also act as the lead for environmental compliance activities for the new organization, which is based in DOE Headquarters and administers its Field sites through its Office of Land and Site Management (formerly the Grand Junction Office). Mr. Bush has recently been a project manager for Environmental Management's Office of Science and Technology at the National Energy Technology Laboratory. Mr. Bush can be reached at rbush@gjo.doe.gov or 970-248-6073. *Tracy Plessinger, former NCO for the Grand Junction Office, continues to serve there as a physical scientist for Legacy Management.*

Ohio Field Office: Mike Reker

Michael (Mike) Reker has been designated as the NEPA Compliance Officer for the Ohio Field Office and the Ohio closure sites under its jurisdiction: Fernald, Mound, the Battelle sites in Columbus and West Jefferson, and the

RMI Environmental Services site in Ashtabula. Mr. Reker joined the Energy Research and Development Administration in 1976 as a quality assurance engineer at the Dayton Area Office. There he was responsible for environment, safety, and health; quality assurance; and security programs at the Mound Plant. With the establishment of the Ohio Field Office, Mr. Reker became Team Leader for Environmental Programs, responsible for oversight of environmental activities at the Mound site. Mr. Reker can be reached at michael.reker@ohio.doe.gov or 513-246-0106.

Dan Sullivan continues to serve as NCO for the West Valley Demonstration Project Office in New York.

Naval Petroleum and Oil Shale Reserves: Mike Taylor

Michael J. (Mike) Taylor has been designated as the NCO for Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming. As Acting Technical Assurance Program Manager, Mr. Taylor is also responsible for the environmental, safety, security, health, counterintelligence, energy conservation, and quality assurance programs. He joined DOE in 2002, after working at Naval Petroleum Reserve No. 3 for 16 years as a contractor. He can be reached at mike.taylor@rmtc.doe.gov or 307-437-9606.

We offer the best wishes of the DOE NEPA Community to former NCOs Robert Grandfield (Ohio Field Office) and Don Ross (Naval Petroleum and Oil Shale Reserves) on their retirement.



New on the NEPA Bookshelf



NAEP's Special Issue of *Environmental Practice*

Edited by Charles H. Eccleston, John H. Perkins, and
Debra R. Holmes

Journal of the National Association of Environmental
Professionals,

Oxford University Press, December 2003

Phone 800-852-7323 or 919-677-0977

Internet: www3.oup.co.uk/envpra/

ISSN 1466-0466; 109 pages; \$ 37.00

The December 2003 issue of *Environmental Practice*, the quarterly journal of the National Association of Environmental Professionals (NAEP), is a special issue focused on NEPA in theory and practice, with special attention to NEPA's potential role in the "Age of Terrorism."

The contents are divided into three sections – Points of View; News and Information; and Features, Case Studies and Reviews. Highlights are summarized below.

Points of View

- NEPA's purpose of "stimulating the health and welfare of man" suggests that more attention should be placed on considering the links between the "built environment" – with features such as urban sprawl and vehicle dependency – and chronic diseases such as asthma, obesity, and diabetes. (John Perkins, Evergreen State College)
- An interview with Lynton Caldwell, the "father of NEPA," presents new insights on the politics surrounding NEPA's passage in the late 1960s and recommendations for improved political campaigning on environmental issues. (Editors of *Environmental Practice*)
- More attention to appropriate size and expertise of the interdisciplinary team for NEPA document preparation could improve effectiveness and efficiency of the NEPA process. (J. Peyton Doub and Charles H. Eccleston, NAEP NEPA Tools and Techniques Committee)

News and Information

- "NEPA in the Agencies: A Critique of Current Practices" examines NEPA implementation in 12 Federal agencies, including the Department of Energy, and provides recommendations to the Council on Environmental Quality. (Robert B. Smythe, Potomac Resource Consultants, and Caroline Isber, consultant)

- Cultural resources, which are to be considered in judging the significance of environmental impacts, should include natural landscapes to which indigenous people and communities assign religious and cultural values. Because these are not limited to sites of documented historical events, they pose challenges to NEPA analysts who traditionally consider monument and landmark protection. (Thomas F. King, National Preservation Institute)
- There are advantages to using NEPA as a comprehensive process for evaluating and countering the impacts of potential terrorist actions. (Charles H. Eccleston, Environmental Planning and NEPA Services)
- This December issue provides an extensive list of books published in 2003 that relate to the interests of environmental professionals.

Features, Case Studies and Reviews

- The experience of the Tennessee Valley Authority in integrating NEPA with its Environmental Management System in 2002 offers insights and strategies to other agencies. (Jon M. Loney, et al., Tennessee Valley Authority)
- A study of Ohio River bridges suggests a seven-step process for assessing indirect impacts and cumulative effects. (Ron Deverman, Parsons)
- Following the events of September 11, 2001, many agencies began to limit access to information in NEPA documents; a better practice may be to eliminate information that is not relevant to understanding impacts but that could be useful to those wanting to do harm. (Lucinda Low Swartz, Battelle Memorial Institute)
- NEPA is compared to environmental policy acts of three states – Massachusetts, North Carolina, and Washington – with focus on jurisdiction, documentation of impacts, and public participation; state environmental policy acts do not uniformly provide the ability to enforce mitigation or other commitments made in EISs. (Diane M. L. Mas, Fuss & O'Neill, Inc.)
- Case studies suggest a nine-step process for integrating the NEPA process with planning and consultation activities involving, for example, historic and cultural properties, endangered species, and farmland protection. (Todd Stribley, ICF Consulting; Daniel F. Barone, TetraTech EM Inc., and J. Peyton Doub, TetraTech NUS)



DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting. 

Task Description	DOE Contact	Date Awarded	Contract Team
Carbon Sequestration Programmatic EIS	Heino Beckett heino.beckett@netl.doe.gov 304-285-4132	12/19/2003	Potomac-Hudson
Western Greenbrier Co-Production Demonstration Project EIS	Mark McKoy mmckoy@netl.doe.gov 304-285-4426	1/8/2004	Potomac-Hudson
Los Alamos National Laboratory Bio-Safety Level-3 Laboratory Operation EA	Elizabeth Withers ewithers@doeal.gov 505-667-8690	1/23/2004	Battelle

Green Book Revision *(continued from page 1)*

Help Identify Areas for Green Book Improvement

Everybody can help with the next step in updating the Green Book – identifying the gaps. Please re-read the Green Book, noting where discussion of important issues is missing. Think back over past NEPA documents you have prepared or reviewed, and make a list of suggested improvements. E-mail your comments by May 3 to Carl Sykes at carl.sykes@eh.doe.gov or call 202-586-9924 if you would like to discuss your comments.

Over the next few months, the NEPA Office will prepare a draft revision of the Green Book to circulate throughout the DOE NEPA community for review and comment. As we have not clearly defined the scope of this revision, the timing of a revised draft is uncertain, but we are aiming for a comment period later this year. The next issue of the LLQR will have an update of this process, including a list of suggestions received. The effort to update the Green Book is underway! 

“I’m very excited about the review of the Green Book by the NEPA Office. This resource has been very helpful in standardizing DOE’s approach to document preparation, particularly the presentation of information. It is now 10 years old, however, and needs to be updated to incorporate our experiences.”

*– Elizabeth Withers, NEPA Compliance Officer,
Los Alamos Site Office*



Litigation Updates

DOE NEPA-Related Litigation In Brief

Columbia Riverkeeper and State of Washington, et al., v. Abraham, et al. (E.D. Wash.): These consolidated legal actions seek to prohibit DOE from shipping transuranic and transuranic mixed waste to the Hanford site for treatment and storage pending DOE's preparation of additional NEPA documentation. The court granted in May 2003 the plaintiffs' motions for a preliminary injunction and enjoined any shipment of additional transuranic waste to the Hanford site during this litigation. The court directed the parties to file a joint status report by March 1, 2004, concerning the *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and the state's Hazardous Waste Management Act claims. [Case Nos.: 03-CT-5018 and 03-CT-5044]

Natural Resources Defense Council, et al., v. Abraham, et al. (9th Cir.): This is an appeal of the Idaho District Court's ruling that the provisions of DOE Order 435.1 governing DOE's management of radioactive waste are invalid insofar as they enable the Department to determine that some waste associated with reprocessing spent fuel is not high-level waste. (See *LLQR*, September 2003, page 23.) The Government's brief was filed on January 29, 2004; plaintiffs' brief is due March 18, 2004. The Idaho District Court's decision and related documents are available at www.id.uscourts.gov under Case Files, District, Case Files – Non Restricted, case number 01-413. [Case No.: 03-35711]

State of Nevada, et al, v. U.S. Department of Energy, et al. (D.C. Cir.): The court heard oral arguments on this consolidated case (combining Nevada's legal challenges to siting a geologic repository at Yucca Mountain) on January 14, 2004, and on the same day, also heard oral arguments on petitions challenging the regulations issued by Environmental Protection Agency and Nuclear Regulatory Commission concerning the Yucca Mountain site. The court may issue its rulings in these cases by late spring. [Case Nos.: 01-1516, 02-1036, 02-1077, 02-1179, 02-1196]

Tri-Valley Communities Against a Radioactive Environment, et al., v. U.S. Department of Energy, et al. (N.D. Cal.): This action had sought to prohibit DOE from implementing a proposed plan to ship surplus plutonium items from the Rocky Flats Environmental Technology Site to the Lawrence Livermore National Laboratory (LLNL). The case arose, in part, from DOE's intent to use a particular shipping container that was not certified for such shipments. DOE subsequently decided to ship the parts in certified containers to a site other than LLNL, rendering the case moot. In January 2004, the court granted DOE's unopposed motion to dismiss the action. (See *LLQR*, June 2002, page 13, and March 2002, page 19.)

Tri-Valley Communities Against a Radioactive Environment, et al., v. U.S. Department of Energy, et al. (N.D. Cal.): This a NEPA and Freedom of Information Act action brought by two nonprofit organizations and several private citizens alleging deficiencies in the EAs for a proposed biosafety-level 3 (BSL-3) facility at Los Alamos National Laboratory (LANL) and another at Lawrence Livermore National Laboratory (LLNL), and also alleging that DOE is required to prepare an EIS on each BSL-3 facility and a programmatic EIS or programmatic EA on the Chemical and Biological National Security Program. (See *LLQR*, September 2003, page 23.) The complaint seeks to halt construction and operation of the facilities pending completion of these NEPA reviews. The plaintiffs further claim that DOE has failed under the Freedom of Information Act to produce documents relating to the BSL-3 facilities. Based on DOE's decision to withdraw the finding of no significant impact for the LANL facility and prepare a new EA, the parties agree that claims related to the adequacy of the LANL EA are now moot. (See related article, page 2.) The case will proceed, focusing on the adequacy of the LLNL EA and the need for a programmatic EIS, with briefing to continue through April. [Case No.: CV-03-3926-SBA]

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Litigation Updates

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Other Agency NEPA Cases

U.S. Department of Transportation, et al., v. Public Citizen, et al. (Supreme Court): The Supreme Court announced on December 15, 2003, that it will review a decision by the Ninth Circuit Court of Appeals in a lawsuit over a Department of Transportation (DOT) NEPA review for three safety and inspection rules covering Mexican trucking. (See *LLQR*, June 2003, page 22.) The question before the Court is whether a presidential “foreign-affairs action” (i.e., allowing certain foreign trucks to enter the United States pursuant to the North American Free Trade Agreement), which is otherwise exempt from environmental review requirements under NEPA, can become subject to those requirements as a “reasonably foreseeable” consequence of an agency action reviewed under the Council on Environmental Quality NEPA regulations and guidance. The agency action at issue is DOT’s rulemakings regarding safety and inspection of trucks from Mexico, for which DOT prepared two EAs and a categorical exclusion. Oral arguments may be scheduled for April 2004, in which case a decision would be expected before the Court’s term ends in June 2004. [Case No.: 03-358]

International Snowmobile Manufacturers Association, et al., v. Norton, et al. (D. Wyoming): The court issued a preliminary injunction on February 10, 2004, preventing the National Park Service (NPS) from implementing a 2001 rule banning use of snowmobiles in Yellowstone and Grand Teton National Parks and the parkway that connects the two parks. This decision stems from a challenge to an NPS EIS and subsequent rulemaking. The court concluded that there is a substantial likelihood that plaintiffs’ NEPA claims are valid, specifically that (1) the EIS failed to take a hard look at the preferred alternative (i.e., a complete ban on recreational snowmobile use); (2) the ban on snowmobile use was a “prejudged political conclusion;” (3) “NPS failed to involve or consider input from cooperating agencies” when it changed its preferred alternative from that published in the draft EIS, which allowed continued use of snowmobiles subject to new standards to reduce emissions and noise; and (4) “NPS denied the public meaningful participation” in the NEPA process. The court cited two concerns. First, NPS had agreed to solicit public comments on the final EIS due to “potential public controversy” surrounding its choice of preferred alternative. NPS received more than 10,000 comments during the designated comment period, which ran from when it made the final EIS available in hard

copy and on the Internet on October 10, 2000, through October 31, 2000. (See ROD at 65 FR 80920; December 22, 2000.) The court, however, pointed out that the notice of availability for the final EIS was published in the Federal Register on October 31, 2000 – the same day as the close of the comment period. Second, the NPS finalized the rule implementing its preferred alternative from the EIS on January 18, 2001 – one day after the close of the public comment period on the proposed rule. [Case No.: 00-CV-229-B]

Natural Resources Defense Council, et al., v. Evans, et al. (N.D. Cal.): The court issued a permanent injunction in August 2003 restricting the Navy’s use of certain sonar technology. The restrictions, which were negotiated between the Navy and plaintiffs, will limit the geographic area and times when the sonar can be used in order to protect marine mammals. The agreement resolves litigation over alleged violations by the Navy of the Marine Mammal Protection Act, the Endangered Species Act, the Administrative Procedure Act, and NEPA. In regard to NEPA claims, the court found that the Navy’s EIS failed to consider all reasonable alternatives (particularly alternatives that could have mitigated potential impacts) and relevant scientific information. The court had issued a preliminary injunction against the Navy in November 2002 (*LLQR*, December 2002, page 23).

Norton, et al., v. Southern Utah Wilderness Alliance, et al. (Supreme Court): The Supreme Court scheduled oral arguments for March 29, 2004, in this case involving the scope of actions subject to review under the Administrative Procedure Act. A decision is expected before the Court’s term ends in June 2004. One issue before the Court is whether certain activities by the Bureau of Land Management (BLM) require supplemental environmental review under NEPA. The dispute centers on BLM’s management of wilderness study areas (public lands that might be designated by Congress as wilderness areas) and adjacent lands in Utah. The Southern Utah Wilderness Alliance, et al., claim that BLM has failed to protect these lands from damage caused by the use of off-road vehicles and that BLM should supplement existing NEPA documentation to address the increased use of off-road vehicles. [Case No.: 03-101]

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Litigation Updates

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San Luis Obispo Mothers for Peace, et al., v. U.S. Nuclear Regulatory Commission, et al. (9th Cir.): This action challenges three decisions by the Nuclear Regulatory Commission and is based, in part, on claims that the Commission violated NEPA by failing to consider the potential environmental impacts of terrorist acts at a spent nuclear fuel storage facility proposed by Pacific Gas and Electric Company for its Diablo Canyon Power Plant in southern California. Plaintiffs challenged the decisions during the NRC's licensing process and now are petitioning the court for review of those final decisions. The NRC's decisions rely partly on its earlier determination that NEPA does not require the consideration of impacts of terrorism in rendering licensing decisions (*LLQR*, March 2003, page 10). The three NRC decisions in question (CLI-02-23, November 21, 2002; LBP-02-23, December 2, 2002; CLI-03-01, January 23, 2003) are available on the NRC's Web site at www.nrc.gov. [Case No.: 03-74628]



e-NEPA: A New LOOK

The DOE NEPA Web site has recently undergone a facelift to make it consistent with other Office of Environment, Safety and Health (EH) web sites. The contents of the NEPA Web site are essentially the same. However, the new unified look includes features that provide additional EH-related information: a border with information across the top of the page, both left- and right-hand navigation tools, and latest EH news on the front page.

Also, effective immediately, a new Internet address (URL) should be used to navigate to the DOE NEPA web site. Please bookmark the following URL: www.eh.doe.gov/nepa. Although the old URL will continue to work, please use this new URL when making references to the DOE NEPA Web site in DOE NEPA documents and notices.

In addition, we have added a new page to the DOE NEPA Web site that includes the annual NEPA planning summaries for Program and Field Offices (related article, page 12). This page includes format templates and the annual NEPA planning summaries guidance. The URL for this page is: www.eh.doe.gov/nepa/summaries.html.



Federal Highway Web Training Includes NEPA

Providing online information and guidance on environmental regulations can be an efficient approach to meeting some agency training needs. With funding and technical guidance from the Federal Highway Administration (FHWA), the Maryland State Highway Administration recently developed online training on how to avoid, minimize, and mitigate adverse impacts to certain sensitive resources from highway projects. The training focuses on a required impact evaluation that can be included in an EIS or EA.

Under Section 4(f) of the Department of Transportation (DOT) Act of 1966, FHWA and other DOT agencies cannot approve "use" of land for highway projects if it contains "significant" publicly-owned parks, recreation areas, wildlife or waterfowl refuges, or "significant" cultural resources unless there are no "feasible and prudent" alternatives that avoid the use of such land. In that case, planning must include measures to minimize or mitigate harm to the property.

DOE NEPA practitioners may find this training Web site useful as a simple, user-friendly example that lets one choose how to navigate through related topics, instead of starting at the beginning and reading through to the end. Interactive graphics illustrate the resource examples of alternative roadway routes for sites that contain sensitive resources. The Web site also includes checklists, flowcharts, a glossary, and background information, such as the legislative history. A NEPA section provides an overview of the law and regulations, relevant Executive Orders, and Section 309 of the Clean Air Act.

This training is available at www.section4f.com. For more information contact Benita Smith at benita.e.smith@fhwa.dot.gov or 202-366-2065.



Training Opportunities

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

- **Reviewing NEPA Documents**

Portland, OR: March 9-11
Logan, UT: April 12-14
Fee: \$795

Socioeconomic Impact Analysis

Logan, UT: March 11-12
Fee: \$595

**NEPA Overview and Section 106
of National Historic Preservation Act**

Logan, UT: March 30-31
Fee: \$595

**NEPA Overview and Teambuilding for NEPA
Specialists**

Boise, ID: April 6-8
Fee: \$795

**Cumulative Impact Analysis
and Documentation**

Logan, UT: April 15-16
Fee: \$595

**How to Manage the NEPA Process
and Write Effective NEPA Documents**

San Francisco, CA: May 18-21
Fee: \$995

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: \$4,995 (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

- **Accounting for Cumulative Effects
in the NEPA Process**

Durham, NC: March 31-April 2
Fee: \$990/\$1090 (by/after March 1)

**Preparing and Documenting
Environmental Impact Analysis**

Durham, NC: June 21-24
Fee: \$990/\$1090 (by/after May 24)

The Law of NEPA

Durham, NC: July 21-23
Fee: \$695/\$775 (by/after June 28)

Nicholas School of the Environment
and Earth Sciences
Duke University
919-613-8082
sea3@duke.edu
[www.env.duke.edu/del/shortcourses/
courses/upcoming.html](http://www.env.duke.edu/del/shortcourses/courses/upcoming.html)

NEPA Certificate Program

Requires successful completion of one core and three elective Duke University NEPA short courses. A written paper also is required. Previously completed courses may be applied toward the certificate.

Fee: Included in registration for constituent courses.

del@env.duke.edu
[www.env.duke.edu/del/certificates/
certificates.html](http://www.env.duke.edu/del/certificates/certificates.html)

- **NEPA Workshop**

This course is designed for individuals with all levels of NEPA experience. The focus is on case studies.

Cupertino, CA: March 15
Fee: \$171/\$226(agency staff/others)

University of California Santa Cruz Extension
831-427-6600; 800-660-8639 in CA
www.ucsc-extension.edu

NAEP Conference to Feature 15th Annual NEPA Symposium

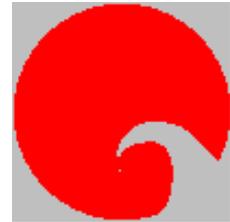
“Building Bridges in a Changing World” is the theme of this year’s annual conference of the National Association of Environmental Professionals (NAEP). The conference, which always attracts a large contingent of NEPA practitioners and features a NEPA Symposium, will be held April 25-28 in Portland, Oregon.

“This year’s theme focuses on the challenges faced by environmental professionals in balancing the needs of public health and safety, local and regional economics, community development, resource extraction, recreation, and cultural practices with natural resources preservation,” state conference co-chairs John Irving (Idaho National Environmental and Engineering Laboratory) and Carol Snead (HDR Engineering Inc, Portland) in their registration invitation. “In this conference we will explore previous successes and the

methods used to build bridges among those competing interests and to create a healthy and sustainable environment for everyone.”

NEPA topics planned for the conference include process innovations, lessons learned, NEPA and Federal agency lands, transportation in national parks, and legal issues. Special presentations will be made on recent Federal legislation, which mandates the use of “good science” in Federal decisionmaking.

Additional information and a registration form are available at www.naep.org/CONFERENCE04/Advanced%20Program.pdf or call 863-679-3852. A discount is offered for registration by March 26, 2004.



Courses at NAEP Conference

The following courses are offered on April 25 in conjunction with the annual NAEP conference:

- Morning
 - **Integrating Section 4(f) Compliance in Transportation Decision Making**
 - **Measuring Sustainability Using Indicators**
 - **Introduction to Section 106 Process: Historic Property**

- Afternoon
 - **Methods for Evaluating Secondary Land Use**
 - **Impacts of Transportation Projects**
 - **Integrating NEPA into the ISO 1400 Environmental Management System**
 - **Introduction to Section 404 Process: Wetlands**

- Full Day
 - **Writing the Perfect EA/FONSI or EIS**

Half-day courses: \$150/\$250 for NAEP members/nonmembers for one course, \$100 for a second course
Full day course: \$250/\$350 for NAEP members/nonmembers

EAs and EISs Completed October 1 to December 31, 2003

EAs

Los Alamos Site Office

DOE/EA-1447 (11/3/03)

*Proposed Consolidation of Operations within
the Dynamic Experimentation Division of LANL,
New Mexico*

Cost: \$141,000

Time: 17 months

Western Area Power Administration

DOE/EA-1478 (10/27/03)

*Phase II Modifications and Construction
of Transmission Lines for the Hoover Dam Bypass
Project, Nevada*

[Note: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.]

Time: 7 months

EIS

National Nuclear Security Administration/ Albuquerque Operations Office

DOE/EIS-0350 (68 FR 65705, 11/21/03)

(EPA Rating: LO)

*Chemistry and Metallurgy Research Building
Replacement Project at Los Alamos National
Laboratory, New Mexico*

Cost: \$1,345,000

Time: 16 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 cost of one EA for which cost data were applicable was \$141,000.
- Cumulatively, for the 12 months that ended December 31, 2003, the median cost for the preparation of 18 EAs for which cost data were applicable was \$45,000; the average was \$76,000.
- For this quarter, the median completion time of two EAs was 12 months; the average was 12 months.
- Cumulatively, for the 12 months that ended December 31, 2003, the median completion time for 24 EAs was 11 months; the average was 14 months.

EIS Costs and Completion Times

- The cost for one EIS completed this quarter was \$1,345,000. The cost for one EIS (DOE/EIS-0323) completed last quarter was not reported, but was \$1,342,000.
- Cumulatively, for the 12 months that ended December 31, 2003, the median cost for the preparation of seven EISs for which cost data were available and applicable was \$1,000,000; the average was \$899,000.
- For this quarter, the completion time of one EIS was 16 months. For this quarter, the completion time of one EIS was 16 months.
- Cumulatively, for the 12 months that ended December 31, 2003, the median completion time for eight EISs was 22 months; the average was 25 months.

Recent EIS-Related Milestones (December 1, 2003 to February 29, 2004)

Notice of Intent

Bonneville Power Administration

DOE/EIS-0367
Transmission Business Policy, Oregon
December 2003 (68 FR 71101, 12/22/03)

Draft EIS

National Nuclear Security Administration

DOE/EIS-0348
Site-wide for Lawrence Livermore National Laboratory, California
February 2004 (69 FR 9315, 2/27/04)

Final EISs

Environmental Management

DOE/EIS-0286
Hanford Site Solid (Radioactive and Hazardous) Waste Program, Washington
February 2004 (69 FR 7215, 2/13/04)

DOE/EIS-0337
West Valley Demonstration Project, Final Waste Management EIS, New York
January 2004 (69 FR 2583, 1/16/04)

Records of Decision

National Nuclear Security Administration

DOE/EIS-0350
Chemistry and Metallurgy Research Building Replacement Project, Los Alamos National Laboratory, Los Alamos, New Mexico
February 2004 (69 FR 6967, 2/12/04)

Western Area Power Administration

DOE/EIS-0323
Sacramento Area Voltage Support Project, California
January 2004 (69 FR 1721, 1/12/04)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0246-SA-36
Logan Valley Wildlife Mitigation Project, Grant County, Oregon
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0246-SA-37
Blue Creek Winter Range—Spokane Reservation, Spokane Indian Reservation, Stevens County, Washington
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0246-SA-38
Proposed Weaver Slough Conservation Easement, Flathead River System, Flathead County, Montana
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0246-SA-39
Albeni Falls Dam Wildlife Mitigation Kalispel Tribe—Pend Oreille County Acquisitions, Pend Oreille County, Washington
(Decision: No further NEPA review required)
February 2004

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265-SA-124
Implement Fisheries Enhancement Opportunities on the Coeur d' Alene Reservation, Benewah Creek Watershed, Benewah County, Idaho
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0265-SA-125
Simcoe Creek Streamflow Enhancement and Passage, Yakima County, Washington
(Decision: No further NEPA review required)
October 2003*

*These earlier documents were not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (December 1, 2003 to February 29, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-126

Improvement of Anadromous Fish Habitat and Passage in Omak Creek, Colville Reservation and Omak Creek Watershed, Washington
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0265-SA-127

Yakima Tributary Access and Habitat—Ahtanum Creek, Yakima County, Washington
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0265-SA-128

Weaver/McWennegar Slough Riparian Habitat, Flathead County, Montana
(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0265-SA-129

Oregon Fish Screening Project, Screen Replacements, Grant, Umatilla, and Walla Walla Counties, Oregon
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0265-SA-130

Yakima Tributary Access and Habitat Program—Dry Creek Fish, Kittitas County, Washington
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0265-SA-131

Habitat Projects Lake Roosevelt Tributaries—Bridge Creek Passage/Habitat Improvements, Ferry County, Washington
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0265-SA-132

Idaho Model Watershed Habitat Projects—Salmon Valley Golf Course, Lemhi County, Idaho
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0265-SA-133

Idaho Model Watershed Habitat Projects—Basin Creek AFO, Lemhi County, Idaho
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0265-SA-134

Challis Creek 8/8A (Highline Canal) Construction of a Fish Screen, Remove Barrier and Install a Steeppass Fish Ladder, Challis Creek, Idaho
(Decision: No further NEPA review required)
February 2004

Vegetation Management Program

(DOE/EIS-0285)

DOE/EIS-0285-SA-179

Vegetation Management for Carlton Tillamook 230 kV Transmission Line from Carlton Substation to Tillamook Substation, BPA Eugene Region, Yamhill and Tillamook Counties, Washington
(Decision: No further NEPA review required)
September 2003*

DOE/EIS-0285-SA-180

Vegetation Management for the Hills Creek Lookout Point No. 1 115 kV Transmission Line, BPA Eugene Region, Lane County, Oregon
(Decision: No further NEPA review required)
September 2003*

DOE/EIS-0285-SA-181

Vegetation Management along the Noxon-Hot Springs Transmission Line ROW, Sanders County, Montana
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0285-SA-182

Vegetation Management for the Snohomish-Beverly Park 115 kV Transmission Line from the Snohomish Substation to Structure 5/9, Snohomish County, Washington
(Decision: No further NEPA review required)
September 2003*

DOE/EIS-0285-SA-183

Vegetation Management for the Arlington-Jim Creek 115 kV Transmission Line from the Arlington Substation to Structure 10/5, Snohomish County, Washington
(Decision: No further NEPA review required)
September 2003*

*These earlier documents were not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (December 1, 2003 to February 29, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-184

Vegetation Management along the Olympia-Grand Coulee No.1 287 kV and Olympia South Tacoma 230 kV Transmission Line Corridor, Thurston County, Washington

(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285-SA-185

Vegetation Management for the Naselle-Tarlet No. 1 and No.2 115 kV Transmission Lines, BPA Olympia Region, Pacific County, Washington

(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0285-SA-186

Vegetation Management along the Midway-Moxee No.1 Transmission Line ROW, Yakima County, Washington

(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285-SA-187

Vegetation Management along the Fidalgo-Lopez No.2 and No.3 Transmission Lines, San Juan County, Washington

(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285-SA-188

Vegetation Management along the Allston-Astoria No.1 115 kV Transmission Line Corridor, Pacific and Wahkiakum Counties, Washington

(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285- SA-189

Vegetation Management along the Bell-Boundary No.3 83/4 to 83/6 and Colville-Boundary No.1 17/4 to 17/6 Transmission Line ROW, Stevens County, Washington

(Decision: No further NEPA review required)
December 2003

DOE/EIS-0285-SA-190

Vegetation Management on the North Bonneville-Troutdale and North Bonneville-Ross 230 kV Transmission Line Corridors, Skamania and Clark Counties, Washington

(Decision: No further NEPA review required)
December 2003

DOE/EIS-0285-SA-191

Vegetation Management for Olympic-Shelton No. 1 and 2 115 kV Transmission Lines and Olympia-Shelton No.3 and No.4 and Olympia-Kitsap No. 3 230 kV Transmission Lines, Thurston and Mason Counties, Washington

(Decision: No further NEPA review required)
January 2004

DOE/EIS-0285-SA-192

Vegetation Management for the Ashe-Howard and Scootene Tap Line Corridor, Benton County, Washington

(Decision: No further NEPA review required)
January 2004

**Grand Coulee-Bell 500 kV
Transmission Line Project**
(DOE/EIS-0344)

DOE/EIS-0344-SA-2

Design Change for Crossing Avista's Westside Tap 230 kV Line and Relocating Taft-Bell Tower 98/5 Ahead-On-Line to Create Clearance for the Grand Coulee-Bell 500 kV Capacitor Yard, Spokane County, Washington

(Decision: No further NEPA review required)
February 2004

*These earlier documents were not previously reported in LLQR

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2003.

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 Didn't Work

- *Lack of regard for NEPA process.* The project staff did not take the NEPA process very seriously and thought that since it was a "box to be checked" they could be lax with the entire process from soup to nuts. Staff was concerned only with the main course and did not devote adequate attention to details. By the time the process was over, the staff saw the attention that the public paid to their proposal, and realized the importance of the NEPA process. It was an expensive lesson for them. Converts to NEPA are made one by one.

Data Collection/Analysis

What Worked

- *Using past documents as a template.* The project manager was able to model the EA after one prepared earlier on a similar subject, thus minimizing the time required for formatting and preparation of project description.

What Didn't Work

- *Failure to obtain information.* The need to obtain detailed information concerning the proposed action, such as the identification of utilities and structures to be vacated, was not made a priority.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Schedule tracking system.* The NEPA Compliance Officer and staff requested revised schedules from the project team for all outstanding EAs and tracked schedule compliance on a weekly basis.

Factors that Inhibited Timely Completion of Documents

- *Inability to obtain accurate information.* The EA was initiated too early in the project's development before enough information was known to adequately assess the impacts. There was a delay developing project information, thereby precluding timely completion of the EA.
- *Unresponsiveness.* Requests for information were not completed in a timely manner by all groups involved in document preparation, preventing the completion of the draft EA on schedule.
- *Multiple responsibilities.* Several EAs were being completed at the same time and the project staff was unable to accommodate completion of each one in a timely manner.
- *Extended comment reviews.* The regulators were granted an extended comment review period, which made timely completion difficult.

Teamwork

Factors that Inhibited Effective Teamwork

- *Negligence.* The relationship between DOE staff and the contractor was strained because the contractor lacked the attention to detail necessary to adequately support the EA preparation.
- *Change in personnel.* Leadership changes made it difficult to work effectively as a cohesive team.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

Process

Unsuccessful Aspects of the Public Participation Process

- *Misjudging public interest.* There was a difference of opinion between the people that lived close to the facility and those that lived farther away. For this EA, because of its content, the public that lived farther away from the facility wanted an EIS and were not happy with an EA/FONSI. A public meeting was not held for the draft EA since the impacts didn't seem to warrant a meeting. We underestimated the interest in this project.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Defining issues.* The EA process forced the project staff to focus on some problems that were not initially identified. Also, the process helped to center much needed attention on vacated structures and security needs that were not previously addressed.
- *Patience.* A large, renewable supply of patience is always something that is important with NEPA compliance.

Enhancement / Protection of the Environment

- The environment was protected and enhanced since NEPA document preparers noted the need for more attention to final site selection, post-construction site landscaping, and parking area water runoff in the final designs. Given the remote location of the site, without the EA, the tendency of the project team might otherwise have been more lax about such details.
- The NEPA process properly identified environmental concerns, such as cultural resources and hazardous waste sites that could be affected by the proposed action. These concerns were mapped and identified in the scoping process, thereby avoiding all potential negative impacts.

Effectiveness of the NEPA Process

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

For the past quarter, in which 2 questionnaire responses were received for EAs and 1 response was received for an EIS, 3 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “4” stated that the NEPA process, “forced the project folks to get their act together – they started by viewing the process as a irritation and a box to check, but by the time that it was finished they had begun to recognize the real benefit and utility of the process.”
- A respondent who rated the process as “4” stated that the NEPA process, “went smoothly, was initiated well in advance of construction, and negative environmental impacts were avoided.”
- A respondent who rated the process as “3” stated that the NEPA process, “facilitated informed and sound decisionmaking.”

LESSONS LEARNED

June 1, 2004; Issue No. 39

Second Quarter FY 2004

“Open House” Format for Scoping Meetings Provides DOE Valuable Input for Yucca Rail EIS

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

The recent scoping meetings for the Yucca Mountain Rail Alignment Environmental Impact Statement (EIS), using an “open house” format rather than more formal presentations, provided valuable information to the Department regarding issues of concern to the public. More than 300 persons who participated in the scoping meetings had the opportunity to engage in one-on-one dialogue with DOE representatives, discussing concerns and receiving answers to their questions. Individuals were also able to provide oral comments to a court reporter for the record.

“An open and collaborative planning process is essential to developing a safe, secure, and environmentally sound system for transporting the nation’s spent nuclear fuel and high-level waste to a repository at Yucca Mountain,” observed Gary Lanthrum, Director of National Transportation, Office of Civilian Radioactive Waste Management. With this principle in mind, Robin Sweeney, Document Manager for the Repository Rail Alignment EIS, led a DOE team in conducting five “open houses” during May in Amargosa Valley, Goldfield, Caliente, Reno, and Las Vegas, Nevada.

This approach was well received by many members of the public. However, some participants, including the State of Nevada, were concerned that they were unable to hear the comments of others. The State asked that all comments received by DOE during the scoping process be transcribed and made available to the public. DOE will address this concern by making transcripts of the oral comments publicly available on the Internet.

Two-Way Communication Benefits DOE

The “open house” format enabled members of the public to talk with DOE program officials and technical experts and receive answers to their questions. In turn, DOE obtained specific information about the concerns of people potentially affected by the proposed approximately 319-mile rail line from Caliente to Yucca Mountain. (The actual length may differ depending on route variations being considered.) DOE needs public comments to help it evaluate alternative alignments and explore ways to mitigate potential impacts, such as by making adjustments to avoid or minimize land use conflicts or sensitive resources.

(continued on page 3)



In the open meeting format, people could speak one-on-one with DOE technical experts to express views and get answers to their questions.

DOE NEPA Community Meeting Set for July 20-21 (page 2)

Inside *LESSONS LEARNED*

Welcome to the 39th quarterly report on lessons learned in the NEPA process. In this issue we are continuing a multi-part examination of lessons learned from *Lessons Learned*. We invite your suggestions on how to improve the Lessons Learned program. Thank you for your continuing support.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 2, 2004. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 2, 2004

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2004 (April 1 through June 30, 2004) should be submitted by August 2, 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 printed in the September issue each year.

Printed on recycled paper



July NEPA Community Meeting: Getting Better and Better

The Office of NEPA Policy and Compliance will host a DOE NEPA Community Meeting on July 20 and 21 in Washington, DC, and telecast it to 19 DOE Field locations. The theme for the meeting – *Getting Better and Better* – focuses on noteworthy activity in the Department’s NEPA program as we aim to make it more efficient and supportive of good decisionmaking.

To help us explore how to improve the DOE NEPA program, Robert Middleton, Director of the White House Task Force on Energy Project Streamlining, will give us his perspective on “What Can We Do Better?” Horst Greczmiel, Council on Environmental Quality (CEQ) Associate Director for NEPA Oversight, will address “What’s New/What’s Next at CEQ.”

The agenda also features three new draft DOE NEPA guidance documents – an updated and augmented “Green Book” (*Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements*) (LLQR, March 2004, page 1), and guidance on supplement analyses and on responding to comments on a draft EIS. Other topics will be case studies of recent DOE

NEPA reviews, and presentations from the Bureau of Land Management and National Park Service on experiences in applying e-government approaches to the NEPA process.

Attendance at the Forrestal Auditorium will allow participants the best opportunity for discussion with guest speakers, the Office of NEPA Policy and Compliance staff, and other NEPA colleagues. But recognizing that not all participants will be able to travel, this will be the second DOE NEPA meeting to offer the option of participating through videoconferencing. To accommodate four time zones, a six-hour session is planned for each day. NEPA Compliance Officers will coordinate participation planning for their Office’s staff and contractors. Registration procedures for Headquarters attendance and Field videoconference sites will be announced in early June.

The NEPA Office welcomes suggestions for additional meeting topics and nominations for case study presentations. To provide suggestions or for additional information, contact Jim Sanderson at jim.sanderson@eh.doe.gov or 202-586-1402. 

Yucca Mountain Rail Alignment EIS Scoping

(continued from page 1)

“DOE hopes the public will help the Department answer several key EIS questions, such as how the rail line should be routed, whether the line should be fenced, and whether the line should be dedicated solely for DOE’s use rather than shared commercial use,” Ms. Sweeney said. “I’m delighted that the scoping meetings have been so productive in providing DOE with specific comments that will help us answer these questions,” she added.

How the “Open House” Format Worked

DOE invited the public to attend the meetings at their convenience any time during the meeting hours (4 to 8 p.m.), to engage in one-on-one discussions with DOE representatives, and to provide comments in writing or to a court reporter. There were no formal DOE presentations.

People in the local communities know these areas better than we do and are providing us a wealth of information we would not have otherwise found. I look forward to further collaborative communications throughout the EIS process.

*— Robin Sweeney, Document Manager,
Repository Rail Alignment EIS*

At the meeting room entrance people were asked to sign in and indicate their preferences for receiving EIS-related information (e.g., paper copy or CD ROM format). A television monitor near the entrance played continuous-loop taped information about the rail line proposal and the importance of the public’s comments in helping to define the scope of the Rail Alignment EIS. Inside the meeting room, DOE provided displays of maps, flow charts of the EIS process, colorful posters showing what is required to build a railroad, and another video providing information about areas along the route.

One of the more popular displays was a laptop-driven video projection of detailed maps of the proposed rail route. At this display people could zoom in on areas of interest, such as where the rail line might cross roads used to access their property or other land interest, or public lands that ranchers use for cattle grazing.

DOE representatives at the displays and throughout the meeting room engaged members of the public proactively, speaking with people one-on-one, answering questions,

(continued on page 11)



Maps, charts, posters, videos, and other displays stimulated discussion and provided different ways for people to get information.



Robin Sweeney (left), Document Manager, asks a clarifying question to understand a person’s comments.



Some people are more comfortable expressing their comments to a court reporter, as shown above, rather than to the entire group.

Lessons Learned from *Lessons Learned* Part 3: Public Participation, Usefulness, and Environmental Protection

Effective public participation in the NEPA process is achieved by following the basic tenets of starting early, reaching out to all concerned, and being responsive to comments received. Effective public participation benefits the NEPA process, which in turn benefits DOE and the environment. Respondents to DOE's Lessons Learned Questionnaire have repeated these essential messages frequently over the past decade.

Good Communication Is Key

Questionnaire respondents identified many factors that contribute to successful public participation in the NEPA process. A common theme through many of the responses was that good communication with the public allows the NEPA process to progress in a smooth and efficient manner. The single most important factor identified is to communicate early and continually, often in an informal manner, such as through open houses and on-site meetings. Face-to-face meetings with external agencies, tribes, and members of the public often enhance the NEPA process. Closely working with states and other cooperating agencies (especially when conducting parallel reviews under NEPA and state law) to coordinate public meetings also is an effective way to engage the public and obtain meaningful input.

Notifying the public of proposed actions and holding public meetings are simply the first steps for effective public participation, respondents said. Communication must continue in order to sustain participation. Additionally, failure to address comments raised by local communities can create just as many problems as not involving the public in the first place. It is very important to understand the significance of a proposed action to the public.

Respondents reported varying degrees of success with meeting formats, citing a desire among the public for more interaction and less rigidity while also noting the importance of accurately capturing public comments. "Effective Public Participation under the National Environmental Policy Act, Second Edition" provides guidance on the implementation of public participation as a fundamental component of the NEPA process. This document is available on DOE's NEPA Web site (www.eh.doe.gov/nepa) under Guidance.

This article is the third of a series examining nearly 1,000 excerpts from responses to DOE's NEPA Lessons Learned Questionnaire published in *LLQR* since December 1994. The excerpts are published on the concluding pages of each issue of *LLQR* under the heading: *What Worked and Didn't Work in the NEPA Process*. (See page 23.) The Lessons Learned Questionnaire is available on DOE's NEPA Web site at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports.

The first two articles discussed scoping and data collection and analysis (*LLQR*, December 2003, page 1) and schedule and teamwork (*LLQR*, March 2004, page 6). This article summarizes responses regarding the NEPA participation process, usefulness, and enhancement/protection of the environment. The series will conclude in the September 2004 issue of *LLQR* with thoughts on how to improve the NEPA lessons learned program and DOE's implementation of NEPA.

Fostering Better, Informed Decisions

Respondents provided examples of how the NEPA process has been useful to DOE, including enhancing awareness of environmental aspects of proposed projects, improving siting decisions, and identifying and helping solve discrete problems (e.g., waste management needs associated with a decontamination and decommissioning project). Overall, respondents indicated that the NEPA process regularly leads to better, informed decisionmaking.

In some instances, however, respondents indicated that the NEPA process was not effective. The most common reason identified was a perception that a decision had been predetermined. This was sometimes attributed to competing drivers, such as environmental remediation decisionmaking or programmatic requirements. In other cases, respondents reported that a decision was made based on political pressure or technical considerations, following which, as one respondent described it, the "NEPA paperwork" was completed. Other factors adversely affecting the usefulness of the NEPA process include inadequate funding for NEPA document preparation, difficulty coordinating closely-related NEPA documents, and failure to adequately define alternatives.

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Lessons Learned from *Lessons Learned*

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NEPA Process Protects the Environment

Questionnaire respondents identified many examples of the NEPA process helping protect the environment. Respondents stated that habitat for endangered species, wetlands, and other natural resources were better protected through siting decisions and mitigation, and that cultural and historic resources identified through the NEPA process also were protected. Pollution prevention and waste reduction plans assessed through the NEPA process ultimately allowed improvements in the environmental performance of projects, said respondents. Also cited by respondents was an indirect benefit resulting from enhanced awareness of environmental issues associated with DOE activities.

“NEPA implementation often leads to better decisions,” said Eric Cohen, Unit Leader, NEPA Office. “This is what NEPA was meant to do. The NEPA Community has

reported time and again how effective NEPA implementation enhances our relations with external agencies and the public, leads to better, informed decisionmaking, and yields demonstrable results in terms of projects that have lower environmental impacts and more effectively meet DOE’s needs.” 

We want to hear from you!

How would you improve the Lessons Learned Questionnaire? Would you like us to add questions or remove some? How can we better share lessons learned throughout DOE, particularly to people new to the NEPA program? Send your suggestions to Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

Apply Common Sense: Reduce Unfamiliar Abbreviations, Retain Helpful Ones

An embarrassing moment occurred recently in a DOE manager’s presentation to a Citizens Advisory Board: according to a news article, the speaker was unable to explain the meaning of the five abbreviations in a presentation slide. In reaction, the Board proposed to charge speakers a 25-cent fine for each use of an abbreviation.

On the other hand, another speaker acknowledged, “I’d feel like I was being punished if I had to say ‘Comprehensive Environmental Response, Compensation, and Liability Act’ every time instead of CERCLA.” “Some of the spell-outs are worse than the acronyms,” said a Board member, “but we’re going to try, especially for the new people.”

The same principles apply to the NEPA process. Obscure abbreviations, which may be found in many NEPA documents, can undermine effective communication. NEPA document preparers should address abbreviation use with common sense and sensitivity, especially to the first-time reader. A list of abbreviations and their explanations in EAs and EISs would help. Additional recommendations are provided in “Use QCPTEEA to Reduce Abbreviations” (*LLQR*, December 2000, page 8).

By the way, an acronym is an abbreviation that is pronounced as a word – so NEPA is an acronym but DOE is a mere abbreviation. 

Carbon Sequestration Programmatic EIS Supports Global Climate Change Initiative

DOE has begun a Programmatic EIS (PEIS) to assess the potential environmental impacts from its Carbon Sequestration Program, which is administered by the Office of Fossil Energy's (FE's) National Energy Technology Laboratory (NETL). The Carbon Sequestration Program implements the Global Climate Change Initiative announced by President Bush on February 14, 2002 (text box, next page), as well as several National Energy Policy goals targeting the development of new technologies, market mechanisms, and international collaboration to reduce greenhouse gas intensity and greenhouse gas emissions.

NETL expects that its strategy of preparing a Programmatic EIS will efficiently support the Global Climate Change Initiative in several ways. For example, findings from the PEIS will inform the Department's selection of technologies to study for future demonstration and deployment, and provide a framework for technology assessment. The PEIS will help identify key issues and impacts for detailed analysis in future site-specific or project-specific NEPA reviews that could tier from the PEIS, streamlining their preparation. Also, a programmatic document is better suited than project-

specific documents for evaluating issues and impacts of nationwide and global scope, and considering regional approaches to sequestration.

Program Targets 2012 and Beyond

Through the Carbon Sequestration Program, FE aims to "demonstrate a series of safe and cost-effective technologies at a commercial scale by 2012 and to establish the potential for deployment leading to substantial market acceptance beyond 2012," as stated in the notice of intent (NOI) (69 FR 21514; April 21, 2004) for the PEIS.

Over 80 research and development projects currently are being carried out throughout the U.S. in carbon capture, sequestration, storage, non-CO₂ greenhouse gas mitigation, measurement, monitoring, verification, and breakthrough concepts – revolutionary technologies that could make drastic cuts in greenhouse gas emissions. The goal is to "develop a portfolio of technology options that have significant potential" for reducing carbon intensity and meeting other program goals, according to the NOI.

(continued on next page)

Types of Sequestration

Direct

Indirect



Source: <http://www.netl.doe.gov/coalpower/sequestration/images/slide2.jpg>

Carbon Sequestration PEIS

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These efforts are needed, the NOI explains, because carbon dioxide concentrations in the atmosphere have increased rapidly, in correlation with the rate of world industrialization. Annual greenhouse gas emissions in the U.S., for example, are 12 percent higher now than in 1992.

“What constitutes an acceptable level of greenhouse gases in the atmosphere remains open to debate,” according to NETL, “but even modest stabilization scenarios would eventually require a reduction in worldwide greenhouse gas emissions of 50 to 90 percent below current levels.” (See www.netl.doe.gov/coalpower/sequestration/pubs/04co_seq_portfolio.pdf.)

The Carbon Sequestration Program includes seven Regional Partnerships, involving more than 150 organizations across 40 states, two Canadian provinces, and three Indian nations. DOE and its partners seek to determine the most suitable technologies, regulations, and infrastructure needs for carbon capture, sequestration, and storage in various geographic areas.

For example, the Department of Agriculture’s Natural Resources Conservation Service and Forest Service, along with electric utilities, are collaborating with DOE on terrestrial sequestration, and the U.S Geological Survey and the oil industry are partners with DOE on geologic sequestration. DOE’s Office of Science, the academic research community, the National Science Foundation, and the National Academy of Sciences are focusing on the identification of priority research areas and breakthrough concepts.

Nationwide Scoping Process

DOE initiated the PEIS because issues related to sequestration decisions are nationwide in scope and because research and development activities for carbon sequestration “are demonstrating the potential readiness of technologies for field-testing,” according to the NOI. The PEIS “will not directly evaluate specific field demonstration projects,” though these might be addressed in future tiered NEPA documents. Instead, the “PEIS will evaluate the issues and impacts associated with the demonstration and deployment of technologies to implement the key elements of the [Carbon Sequestration] Program,” including “impacts of carbon sequestration technologies and future demonstration activities programmatically.”

NETL has taken several steps to foster public participation, with varying degrees of success. For example, in view of the nationwide scope and to enhance public participation, NETL decided to conduct eight public scoping meetings across the country. The meeting

What is the Global Climate Change Initiative?

The Global Climate Change Initiative relies on the power of the markets and technological innovation to achieve reductions in greenhouse gas emissions. One goal of the initiative is an 18 percent reduction in the carbon intensity (the ratio of carbon dioxide (CO₂) gas emissions to economic output) of the U.S. economy by 2012, while maintaining economic growth for investment in new and clean energy technologies. More information on this Initiative is available on the Web at www.whitehouse.gov/news/releases/2002/02/climatechange.html.

What is Carbon Sequestration?

Carbon sequestration refers to the removal of carbon dioxide from large point sources (such as power plants, oil refineries, and industrial processes) or from the air itself and then storing it in geologic formations, such as depleted oil and gas reservoirs, deep coal seams, or saline formations. Carbon sequestration also refers to increasing the natural carbon dioxide uptake of plants, trees, and soil to increase their carbon dioxide storage.

locations were selected to enable the participation of the Carbon Sequestration Program’s seven regional partners. Although attendance at the five meetings conducted so far has been light to moderate, NETL is receiving valuable scoping comments, helping it to identify key issues (e.g., sequestered carbon stability, safety issues, cost issues, and a need to better inform the public about the program).

To enhance public participation, NETL scheduled the first public scoping meeting on May 6, 2004, to coincide with a national conference on carbon sequestration that NETL conducted in Arlington, Virginia. This approach was successful in attracting about 45 people, many of them from the conference; however, no one provided comments during the formal portion of the meeting.

The last public meeting will be held on June 10 and the public scoping period ends June 25. The draft PEIS is planned to be available in late 2005 and the final PEIS in 2006. Further information about the Carbon Sequestration Program and the PEIS is available on the Web at www.netl.doe.gov/coalpower/sequestration and by contacting Dr. Heino Beckert, Document Manager, at heino.beckert@netl.doe.gov or 304-285-4132. 

The Libyan Connection: Emergency Action Needed

Emergency Identified

DOE occasionally must decide to take quick actions involving a classified subject without time to prepare an EIS or EA. This was the case when Henry Garson, Associate General Counsel for DOE's National Nuclear Security Administration (NNSA), was invited on January 13, 2004, to a classified meeting the next day with representatives from the Departments of State and Defense. DOE/NNSA learned that the Libyan government had agreed to give up its nuclear weapons program and all other weapons of mass destruction, and that the governments of the United States and the United Kingdom had agreed to remove the nuclear materials.

Apparently, the only catch was that an unknown amount of nuclear material at an unspecified enrichment level had to be removed quickly. In fact, as these agency officials were being briefed on the situation, a DOE team from Oak Ridge had already been assembled and was planning the mission to fly to Libya, package the nuclear material, some classified documents, and gas centrifuge parts, and transport it all back to the United States. The DOE team was expected to package the nuclear material for shipment on January 27, 2004, just 13 days from the meeting. Because there is no categorical exclusion to cover this action – and no time to prepare an EA, much less an EIS – DOE had to find an alternative approach to meeting its obligations for environmental review.

Alternate Approach Adopted

Under the DOE NEPA implementing regulations (10 CFR 1021.343(a)), in emergency situations that demand immediate action, DOE may take an action without observing all provisions of its NEPA regulations or the Council on Environmental Quality (CEQ) regulations. To do so, however, DOE must consult with CEQ as soon as possible regarding alternative arrangements for emergency actions having significant environmental impacts. During the week following the January 14th meeting, therefore, DOE/NNSA and Office of NEPA Policy and Compliance staff began consultation with CEQ.

DOE's approach was to show CEQ that similar actions had received appropriate NEPA review and that their environmental impacts had been analyzed. Office of NEPA Policy and Compliance staff was aware of an existing EIS covering transportation of similar nuclear material, including a classified analysis of potential environmental impacts from possible accidents. CEQ was briefed on this analysis and agreed that the impacts would be of a similar nature. On January 26, 2004, CEQ found that NNSA's request for alternative arrangements was appropriately limited to the actions necessary to address the immediate impacts and risks associated with the emergency. Based on the briefing that DOE personnel provided, and NNSA's commitment to consult with the U.S. Environmental Protection Agency and others, CEQ concluded that NNSA's assessment of the environmental impacts, including incorporation of an existing classified analysis of a similar scenario, provided sufficient alternative arrangements for NEPA compliance.

Nuclear Package Arrives

On January 27, 2004, the DOE Oak Ridge team, with the help of the U.S. Air Force, removed 55,000 lbs of nuclear material, including four containers of uranium hexafluoride, from Libya and transported it to McGhee Tyson Airport in Knoxville, Tennessee. From there the material was transported without incident to the Y-12 National Security Complex at Oak Ridge. Immediately after the shipment arrived safely at Y-12, the President announced it – effectively “unclassifying” the mission. The material was then transported to DOE's Portsmouth facility in Ohio for disposition. Following the successful completion of the mission, NNSA again briefed CEQ and issued a notice of emergency action (69 FR 10440; March 5, 2004), successfully complying with the provisions of 10 CFR 1021.343, *Variations*. **LL**



NEPA Strategy Adjusts to Changing Circumstances

DUF₆ Conversion Facilities EISs

Sometimes external events significantly alter NEPA plans. Such was the case when an August 2002 supplemental appropriations bill (Public Law 107-206) was passed requiring DOE to award a contract, within 30 days of enactment, to design, construct and operate depleted uranium hexafluoride (DUF₆) conversion facilities at both its Portsmouth (Ohio) and Paducah (Kentucky) sites. The law also directed that the contract require construction to start no later than July 31, 2004. These requirements caused DOE to adjust its ongoing NEPA process for the DUF₆ conversion projects.

The proposed facilities are needed to convert DUF₆ to a more stable chemical form suitable for beneficial use or disposal. Besides construction and operation of the conversion facilities, DOE's proposal includes transportation of the conversion products and waste materials from Portsmouth and Paducah to a disposal facility, transportation and sale of the hydrogen fluoride produced as a conversion co-product, and neutralization of hydrogen fluoride to calcium fluoride and its sale or disposal. DOE would also transport the DUF₆ cylinders stored at the East Tennessee Technological Park, near Oak Ridge, Tennessee, to Portsmouth for conversion.

At the time the law was passed, DOE was preparing a single EIS to evaluate potential environmental impacts of constructing and operating one large or two smaller DUF₆ facilities at the DOE sites, or using existing conversion capacity at commercial nuclear fuel fabrication facilities. DOE had conducted scoping in the fall of 2001.

When Congress directed that both plants be built, DOE decided to cancel the single EIS and prepare two separate EISs: one for a facility at Paducah and one for a facility at Portsmouth. The Portsmouth and Paducah sites were no longer alternatives to each other. DOE also changed the focus of the NEPA review (i.e., the range of reasonable alternatives to be analyzed) to specific locations at each

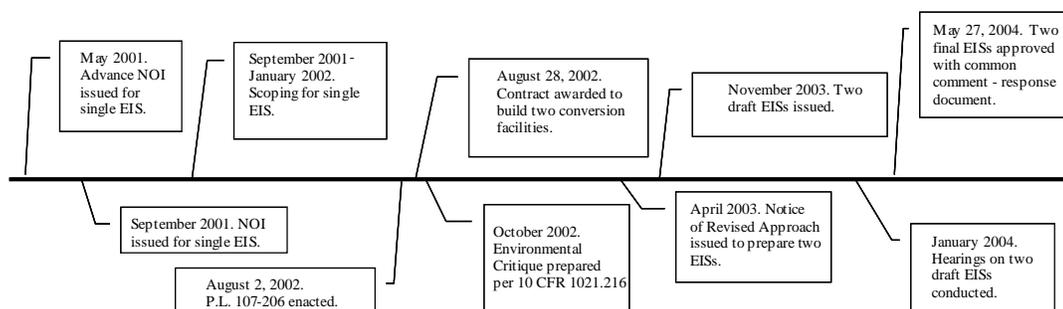
DOE site. DOE's decision to prepare two EISs helped ensure that any delay related to one site would not delay the project at the other site.

Although the EISs are separate, they were managed in parallel to maximize efficiency and consistency. DOE issued a Notice of Revised Approach in April 2003 and considered comments received on it and in scoping for the previous EIS in preparing the new EISs. DOE mailed the two Draft EISs to stakeholders in November 2003 and held public hearings in January 2004. Because of the similarities in the proposed actions and the general applicability of numerous comments to both site-specific EISs, DOE prepared a single comment-response document for inclusion in both EISs. This effort saved time and money, required less work to organize and edit, and provided the public with all comments received on both Draft EISs and all DOE responses.

According to Gary Hartman, the EIS Document Manager, "it just made good sense to pool our resources into one set of comment-responses to be included in both EISs. That way, similar issues could be handled the same, and the folks in Ohio and Tennessee could read the comments from Kentucky (and vice versa) and DOE responses. More importantly, saving time became a priority after the Draft EISs were issued late last year. It was essential that the Final EISs be completed "on time" to allow records of decision to be issued and construction to begin by July 31, 2004." Without the flexibility of preparing a single set of comment-responses for two EISs, the risk of a schedule slip would have been much greater.

DOE approved the EISs in late May and will issue them in early June. For more information, contact Gary Hartman, NEPA Document Manager, at hartmang@oro.doe.gov or 865-576-0273. **LL**

Timeline of EISs for Portsmouth and Paducah DUF₆ Conversion Facilities



Card Game Highlights Diversity at Federal-Tribal NEPA Clinic

By: Katherine S. Pierce, *Senior Environmental Specialist for Policy and Power, Bonneville Power Administration*

It's Day 2 of the Tribal Environmental Review Clinic in Seattle, Washington. Four teams are huddled in the corners of the conference room, shuffling through decks of cards. The blue cards specify steps in the NEPA environmental review process and the green cards identify opportunities for tribal and public involvement. The objective of the group exercise is to create a timeline of events, identifying critical junctures for Federal communication and/or consultation with tribes during NEPA analyses and processes. There is quite a diversity of opinions and outcomes! Perhaps this can best be explained by the diversity within the room.

The 3-day workshop brought together representatives from 22 tribes, 17 Federal agencies from 8 Departments (that's 8 different sets of NEPA implementing regulations), the Environmental Protection Agency, and the Council on Environmental Quality. (See text box.) Each team in the group exercise included both tribal and Federal participants. As each team attempted to arrange all of the blue NEPA cards across a timeline, it quickly became clear that this would not be a simple assignment. There were so many different opinions based on so many different experiences. A quick peek at the arrays of blue cards on the walls confirmed these divergences.

Then, once the blue NEPA cards were arranged across the wall, it was time to overlay the green tribal involvement cards. Again, what a variety of opinions! Green cards were put up and taken down. Even the blue cards were rearranged. In the end, there were four quite different timelines created. But the real goal of the group exercise had been met: through sharing information and collaborating on a process, we had strengthened our relationships.

In 2000, staff from the Tulalip Tribes, in conjunction with tribal experts from across the country, published a handbook as a comprehensive guide for American Indian and Alaska Native communities. Part I of this tribal handbook on environmental review focused on participating in NEPA and Part II focused on developing tribal environmental policy acts (TEPAs). Both processes – NEPA and TEPA – create opportunities for more informed decisionmaking. Both processes also ensure opportunities for expressing issues and concerns.

By providing tribe-to-tribe training, the Tulalip Tribe's Tribal Environmental Review Clinic is the next step in supporting tribal participation and leadership in

NEPA/TEPA Work Group

The Council on Environmental Quality (CEQ) announced in February 2004 that it was establishing an Inter-Agency NEPA/TEPA (National Environmental Policy Act/Tribal Environmental Policy Acts) Work Group, in collaboration with the Department of the Interior, the Bureau of Indian Affairs, the Forest Service, the Advisory Council on Historic Preservation, the Department of Defense, the Army Corps of Engineers, and the Environmental Protection Agency (EPA).

With its announcement, CEQ invited Federal agencies to nominate representatives to a March 2004 regional tribal workshop, developed by the Tulalip Tribes with an EPA grant and based on the October 2000 comprehensive guide to the NEPA process published by the Tulalip Tribes. One goal of the Inter-Agency Work Group is to support such ongoing efforts to develop collaborative tribal-Federal NEPA training and workshops.

In response to CEQ's request that Federal participants be from the Pacific Northwest region, understand NEPA and tribal coordination, and be in positions to build effective working relationships and enhance effective tribal participation in the NEPA process, DOE nominated Katherine Pierce from the Bonneville Power Administration. She joined about 20 other Federal participants and 40 tribal representatives from the Pacific Northwest in the 3-day Tribal Environment Review Clinic, as she discusses in the accompanying article. This regional tribal workshop was organized in conjunction with a Tribal National Advisory Board to ensure that it could serve as a model for future sessions in other regions.

For further information on the Inter-Agency NEPA/TEPA Work Group contact Cheryl Wasserman, Associate Director for Policy Analysis, Office of Federal Activities, EPA, who coordinated the March 2004 Workshop with the Tulalip Tribes (wasserman.cheryl@epamail.epa.gov or 202-564-7129).

The Tulalip Tribes Handbook – "Participating in the National Environmental Policy Act/Developing a Tribal Environmental Policy Act: A Comprehensive Guide for American Indian and Alaska Native Communities" – is available on its Web site, www.tulalip.nsn.us, under "Tribal Environmental Review Clinic."

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Federal-Tribal NEPA Clinic

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environmental review processes. The purpose of the Clinic is to help tribes protect their natural and cultural resources through informed and leveraged participation in the NEPA process. The Clinic is also intended to assist tribes in the development of internal environmental review practices that meet their organizational and cultural needs.

The Seattle workshop was the first Tribal Environmental Review Clinic. Day 1 was devoted to providing the tribal participants with an understanding of the requirements, responsibilities and opportunities associated with Federal agency NEPA procedures, and Day 3 concentrated on

assisting tribes in developing TEPAs. On Day 2, Federal agency representatives were invited to share in the experience. The agenda was filled with group exercises, presentations, case studies, lessons learned, clinics, and group discussions. However, the collaborative group exercise described above on defining opportunities for tribal-Federal consultation and involvement during the NEPA process was definitely the highlight of the day.

For further information on the Workshop, contact Katherine Pierce at kspierce@bpa.gov or 503-230-3962. 

Yucca Mountain Rail Alignment EIS Scoping

(continued from page 3)

and explaining how to provide detailed, specific comments that would help the Department address their concerns. Representatives of the Surface Transportation Board, the U.S. Air Force, and the Bureau of Land Management also were available for the public to consult with at the meetings. These agencies will participate as cooperating agencies in preparing the EIS.

People could provide comments in several ways, such as by completing written forms and placing them in a “suggestion” box. In addition, people could provide oral comments to either of two court reporters. A DOE official listened to the comments provided to the reporters, occasionally asking questions to clarify a comment. Two reporters appeared adequate for the meetings, at which attendance ranged from about 40 to 115.

Lessons Learned on Meeting Format

- The “open house” format fostered dialogue and solicitation of comments. Further, the meeting format beneficially fostered a “community meeting” atmosphere, particularly at small towns along the potential route (Amargosa Valley, Goldfield, and Caliente).
- At the first meeting, several people arrived and began asking questions while the scoping team was still setting up displays and before the arrival of the court reporters, in effect starting the meeting early. The meeting format may have fostered this. While this did not pose a serious problem, the team learned to arrive and set up even earlier for subsequent meetings.

- Several people said they are more comfortable providing comments to a court reporter and a DOE representative, rather than to an entire group as in some other formats. A few people, however, stated that they preferred to address the entire group.
- A few people said that they would have preferred to be able to hear other people’s comments. Under the meeting format, neither agency representatives nor other meeting participants could hear everyone’s comments. Making transcripts of oral comments publicly available may help address this concern.
- DOE did not place any time limits on oral commenters, and a few people spoke to a reporter for up to 20 minutes. While no complaints were received, meeting planners should consider the need for limits in other settings.
- A few people did not appear to understand how the meeting was intended to work. For example, some people looked for any available chair and, until DOE engaged them, appeared to be waiting for a formal presentation.
- One commenter who had not listened to the taped video presentations said that, although DOE too often makes unwelcome lengthy formal presentations at public meetings, a short (10 to 15 minute) DOE update on the EIS and the repository program would have been helpful in this case.

For further information, contact Robin Sweeney, Document Manager, at robin.sweeney@ymp.gov or 702-794-1417. 

See two related articles, pages 12 and 13.

About the Yucca Rail Alignment EIS

In its April 8, 2004, Record of Decision (ROD) for the “Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada” (DOE/EIS-0250F) (Repository EIS), DOE decided to use rail for most of the shipments to the repository. Because there is no existing rail access to Yucca Mountain, implementing this decision will require the construction of a rail line to connect the repository site to an existing rail line in the State of Nevada. The rail line would be used to transport up to 70,000 metric tons of spent nuclear fuel and high-level radioactive waste from 72 commercial and 5 DOE sites to the repository. About 3,000 to 3,300 total rail shipments – about one train every two days with three casks per train – would be required during a 24-year period. (About 1,000 additional truck shipments from sites without rail capability would also be required.)

In the ROD, DOE also selected the Caliente corridor from among five alternative Nevada *rail corridors* in which to study possible *alignments* for the rail line. DOE defined a *rail corridor* as a 0.25 mile wide strip of land that encompasses one of several possible *alignments*, or specific locations, within which DOE could build a rail line. A *rail alignment* was defined as a strip of land 100 feet on either side of the track centerline.

The Caliente corridor originates at an existing siding to the mainline railroad near Caliente, Nevada, extends westerly to the northwest corner of the Nevada Test and Training Range, before turning south-southeast to the repository at Yucca Mountain (map, below). In the

Repository EIS, DOE analyzed eight alternative routes (variations) along the Caliente corridor that may minimize or avoid environmental impacts and construction complexities. The Repository EIS did not identify alternatives for about 55 percent of the corridor length, referred to as “common segments.”

As explained in the Notice of Intent (NOI) (68 FR 18566; April 8, 2004) for the Rail Alignment EIS, the proposed action is to determine a rail alignment within the Caliente corridor, and to construct and operate the rail line. In determining the alignment, DOE will explore alternative alignments within the common segments and eight alternative routes. The final alignment is expected to be less than 200 feet wide, although the EIS will explore a much wider area. The NOI also requested comments on additional routing alternatives outside of the defined Caliente corridor that might avoid or minimize environmental impacts, such as by avoiding wilderness study areas, Native American Trust Lands, encroachment on the Nevada Test and Training Range, or sensitive resources. DOE must also consider rail design requirements (e.g., grade) and construction complexities in a variety of terrains in optimizing the alignment. Construction could take up to four years and cost up to an estimated \$880 million.

The repository program plans to select an EIS contractor, complete the scoping process, conduct detailed field surveys, and issue a draft EIS in early 2005. For more information about the EIS see www.ocrwm.doe.gov/wat/mode_decision.shtml. LL



Location of the Caliente corridor in Nevada.

Repository Program and NEPA Process Update

After responding to more than 13,000 comments on the repository Draft EIS and Supplement to the Draft EIS, DOE completed the approximately 5000-page Final Repository EIS. In February 2002, the Repository EIS accompanied the Secretary of Energy's recommendation to the President, in accordance with the Nuclear Waste Policy Act. At that time DOE made the Repository EIS available to the public on the Internet and in reading rooms.

On July 23, 2002, the President signed into law (Pub. L. 107-200) a joint resolution of the U.S. House of Representatives and the U.S. Senate designating the Yucca Mountain site for development as a geologic repository for the disposal of spent nuclear fuel and high-level waste. DOE subsequently completed distribution of the Repository EIS in paper and CD ROM format and the Environmental Protection Agency published a Notice of Availability on October 25, 2002 (67 FR 65564). (See related article, *Innovative, Efficient EIS Distribution Saves Yucca Mountain Project \$200,000* in *LLQR*, March 2003, page 9.)

The Repository EIS provides the environmental impact information necessary to make certain broad transportation-related decisions, such as a choice of transportation mode (e.g., mostly rail or mostly legal-weight truck) nationally and in the State of Nevada, and the choice among alternative rail corridors in Nevada. The Final EIS identified mostly-rail as DOE's preferred

alternative transportation mode, both nationally and in the State of Nevada; however, the EIS did not identify a preference among the five alternative rail corridors in Nevada.

On December 29, 2003, DOE published in the *Federal Register* a Notice of Preferred Nevada Rail Corridor (68 FR 74951), announcing the Caliente corridor as its preferred corridor in which to consider a rail alignment for the construction of a rail line in Nevada, and the Carlin corridor as a secondary preference. Also on December 29, 2003, the Bureau of Land Management (BLM) published a Notice of Proposed Withdrawal and Opportunity for Public Meeting (68 FR 74965), announcing DOE's application to withdraw land for evaluation for the potential construction of a rail line. BLM's notice segregated land within a one-mile corridor from surface entry and mining for two years while studies are done to support a final decision on DOE's withdrawal application.

In March 2004, DOE issued a Supplement Analysis (DOE/EIS-0250-SA1) and concluded that a supplement to the Repository EIS was not required for a transportation scenario not explicitly analyzed in the EIS (i.e., shipping spent nuclear fuel in legal-weight truck casks on rail cars to a rail-to-truck transfer station in Nevada, thence to the repository).

In its Record of Decision (ROD) (69 FR 18557; April 4, 2004) DOE selected: (1) the mostly-rail scenario as the shipment mode nationally and in the State of Nevada, and (2) the Caliente corridor in which to examine potential alignments for construction of a rail line to the repository. (The ROD stated that DOE would use truck transport where necessary, depending on certain factors such as timing of completion of the rail line proposed to be constructed in Nevada. This could include building an intermodal capability at a rail line in Nevada to take legal-weight truck casks from rail cars and transport them to the repository via highway, should the rail system be unavailable at the time the repository opens.)

DOE also published on April 4, 2004, its Notice of Intent for the Rail Alignment EIS. DOE issued a later notice in response to a request from the State of Nevada, extending the public scoping period until June 1, 2004, and announcing the meetings in Reno and Las Vegas.

The repository program is now preparing an application to the Nuclear Regulatory Commission seeking authorization to construct the repository, and intends to submit the application in 2004. For more information about the repository program see www.ocrwm.doe.gov/ymp/index.shtml. 



Allen Benson, Yucca Mountain Project Public Affairs specialist, greeted members of the public at the scoping meeting in Goldfield for the ongoing Rail Alignment EIS.

New Stakeholder Directory Compact Disk Will Facilitate Document Distribution

Beginning with the July 2004 edition the *Directory of Potential Stakeholders for DOE Actions under NEPA*, the Office of NEPA Policy and Compliance is instituting changes to make the annual Directory easier to use and more efficient to produce. In addition to the past practices of posting the Directory on the DOE NEPA Web site and distributing copies as requested, the NEPA Office will distribute the Directory on compact disk, which will allow users to copy and paste directory listings into other applications, such as spreadsheets and word processing. This should make it easier for NEPA Document Managers to prepare their EIS and EA distribution lists, letters, and labels for the categories of stakeholders included in

the Directory: Federal agencies, state NEPA contacts (including state and local government associations), and regional and national nongovernmental organizations.

The NEPA Office intends to distribute the Stakeholder Directory on compact disk in early July, and welcomes user feedback at the July 20-21 DOE NEPA Community Meeting. The most recent Directory is available on the DOE NEPA Web site at www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf. For additional information, contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326. **LL**

2004 Environmental Excellence Awards Presented at NAEP Conference



The National Association of Environmental Professionals (NAEP), at its April 2004 conference in Portland, Oregon, presented eight Environmental Excellence Awards, including a NEPA award, to recognize significant achievements in environmental practice.

NAEP is a nonprofit association of about 5,000 members, who represent a broad range of professional environmental interests and backgrounds. The Association's annual national conference provides a forum for state-of-the-art information on environmental planning, research, and management – with more than 100 presenters of professional papers and panel discussions, including a NEPA symposium.

The NEPA Excellence Award was conferred on The Louis Berger Group, Inc., of Cary, North Carolina, for *Guidance for Assessing Indirect and Cumulative Impacts of Transportation Projects in North Carolina*, which it prepared for the North Carolina Department of Transportation. The highest NAEP honor, the President's Award, was conferred in the category of Conservation Programs, to the *San Antonio Water System Conservation Program* nominated by the San Antonio Texas Water System Public Utility and endorsed by the Governor of

Texas. Additional awards were conferred for outstanding projects in Educational Excellence, Environmental Management, Planning Integration, Public Involvement/Partnership, Environmental Stewardship, and Best Available Environmental Technology.

April 2005 Conference in DC Area

NAEP's 2005 conference – with an announced theme of *Inspiring Global Environmental Standards and Ethics* – will be held April 16-19, 2005, in Alexandria, Virginia, close to Washington, DC. A NEPA Symposium will be on the agenda. See the conference Web site, at www.naep.org/CONFERENCE05/Alexandria.html, for details – including instructions on submitting an abstract for a paper or poster session or a nomination for an Environmental Excellence Award. For additional information, contact Gary Kelman, Chair, NAEP Conference Committee, at gkelman@mde.state.md.us or 410-537-3630, or Jim Melton, Chair, NAEP Environmental Excellence Awards Committee at jmelton@maximusa.com or 406-443-5210. **LL**

Abstracts are due August 31, 2004.

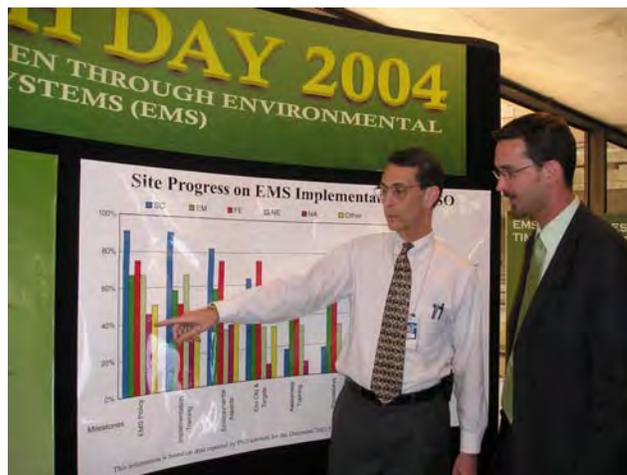
Award nominations are due February 26, 2005.

EH Celebrates Earth Day 2004

The Office of Environment, Safety and Health (EH) contribution to DOE's Earth Day 2004 celebration was an exhibit, *Getting to Green through Environmental Management Systems (EMS)*, displayed in the Headquarters Forrestal Building for two weeks in April. The exhibit highlighted DOE's progress in implementing EMSs – a goal to be reached at all DOE sites by December 31, 2005 – by identifying DOE Site and Program Offices that have fully implemented an EMS and those that are still striving to meet the deadline.

DOE's EMS Web site, maintained by the Office of Environmental Policy and Assistance at www.eh.doe.gov/oepa/ems, includes up-to-date information to assist Offices in EMS implementation.

For more information on DOE's EMS activities, contact Larry Stirling at john.stirling@eh.doe.gov or 202-586-2417. DOE's EMS commitments and the *Environmental Protection Program Order* were the subjects of an article in *LLQR*, March 2003, page 1. 



Deputy Assistant Secretary for Environment Andy Lawrence (left) and Jim Sanderson, the NEPA Office's EMS contact, consider Site and Program progress in EMS implementation.

EH Hosts Pollution Prevention Teleconference

The DOE Office of Pollution Prevention and Resource Conservation (EH-43) hosted a May teleconference among Headquarters and Field sites to discuss lessons learned, promote innovation, and address ways to meet DOE's new pollution prevention (P2) goals by December 2005. P2 goals can be addressed through environmental management systems that include targets for reduced waste stream generation, reduced releases to environmental media, and increased purchase of environmentally preferable products and services. Speakers emphasized continuous improvement in efficiency and cost-effectiveness, and encouraged organizations to report waste generation reduction activities and purchases of environmentally preferred products using the existing P2 databases (www.eh.doe.gov/p2/) so that progress can be measured.

The P2 conference agenda and speakers' presentation materials are available at www.eh.doe.gov/oepa/p2/. The DOE Environmental Stewardship Clearinghouse Web site at <http://epic.er.doe.gov/epic/> provides information on P2 activities and resources for DOE, the Department of Defense, and the Environmental Protection Agency. For more information on DOE's P2 program, contact Jane Powers, Office of Pollution Prevention and Resource Conservation, at jane.powers@eh.doe.gov or 202-586-7301. 



Dr. Paul Anastas, Assistant Director, White House Office of Science and Technology Policy, emphasizes "Green Chemistry" as a P2 tool for source reduction. Green Chemistry is the design of chemical products and processes that reduce or eliminate the use and generation of hazardous substances. (See www.epa.gov/greenchemistry/.)



Litigation Updates

DOE NEPA-Related Litigation In Brief

Border Power Plant Working Group v. Abraham, et al. (S.D. Calif.): The court granted DOE's request to extend the period of time – from July 1, 2004, to December 15, 2004 – for completing an EIS for two electric transmission lines that cross the U.S.-Mexico border. (See *LLQR*, December 2003, page 7, and September 2003, page 22.) [Case No.: 02-CV-513-IEG (POR)]

Columbia Riverkeeper and State of Washington, et al., v. Abraham, et al. (E.D. Wash.): These consolidated legal actions seek to prohibit DOE from shipping transuranic and transuranic mixed waste to the Hanford site for treatment and storage pending DOE's preparation of additional NEPA documentation. In response to briefs filed on March 15, 2004, the court granted the Government's motion for a limited stay concerning NEPA issues pending issuance of a record of decision relying on the *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286), which DOE issued in February 2004. A status conference is scheduled for June 1, 2004. [Case Nos: 03-CT-5018 and 03-CT-5044]

Natural Resources Defense Council, et al., v. Abraham, et al. (9th Cir.): This is an appeal of the Idaho District Court's ruling that found invalid certain provisions of DOE Order 435.1, Radioactive Waste Management. These provisions would enable the Department to determine that some waste associated with reprocessing spent fuel is "waste incidental to reprocessing" and not subject to the management requirements for high-level waste. (See *LLQR*, September 2003, page 23.) The parties have fully briefed the issues in the appeals court and are awaiting the court's scheduling of oral argument. Meanwhile, Congress is considering legislation that would affect implementation of the Idaho District Court's decision. [Case No.: 03-35711]

State of Nevada, et al., v. U.S. Department of Energy, et al. (D.C. Cir.): The court may issue its rulings in these cases this summer. [Case Nos. 01-1516, 02-1036, 02-1077, 02-1179, and 02-1196]

Tri-Valley Communities Against a Radioactive Environment, et al., v. U.S. Department of Energy, et al. (N.D. Cal.): This action alleges that the EAs for proposed Biosafety Level 3 ("BSL-3") facilities at Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL) are deficient. (See *LLQR*, September 2003, page 23.) Based on DOE's decision to withdraw the FONSI for the LANL facility and prepare a new EA, the parties agreed in January 2004 to narrow the focus of this litigation to the adequacy of the LLNL EA and the need for a programmatic EIS on the Chemical and Biological National Security Program. (See *LLQR*, March 2004, pages 2 and 16.) The case has been fully briefed. No oral argument has been scheduled. [Case No.: CV-03-3926-SBA]

Other Agency NEPA Cases

U.S. Department of Transportation, et al., v. Public Citizen, et al. (Supreme Court): The Supreme Court heard oral arguments on April 21, 2004, on an appeal of a decision by the Ninth Circuit Court of Appeals in a lawsuit over DOT's NEPA review for Mexican trucking safety and inspection rules. (See *LLQR*, March 2004, page 17, and June 2003, page 22.) The question before the Court is whether a presidential "foreign-affairs action" (i.e., allowing certain foreign trucks to enter the United States pursuant to the North American Free Trade Agreement), that is otherwise exempt from environmental review requirements under NEPA, can become subject to those requirements as a "reasonably foreseeable" consequence of agency action reviewed under the Council on Environmental Quality NEPA regulations and guidance. A decision is expected before the Court's term ends in June 2004. [Case No.: 03-358]

Norton, et al., v. Southern Utah Wilderness Alliance, et al. (Supreme Court): The Supreme Court heard oral arguments on March 29, 2004, in this case involving the scope of actions subject to review under the Administrative Procedure Act. (See *LLQR*, March 2004, page 17.) One issue before the Court is whether

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Litigation Updates

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management by the Bureau of Land Management of wilderness study areas (public lands that might be designated by Congress as wilderness areas) and adjacent lands in Utah requires supplemental environmental review under NEPA. A decision is expected before the Court's term ends in June 2004.

[Case No.: 03-101]

San Luis Obispo Mothers for Peace, et al., v. U.S. Nuclear Regulatory Commission, et al. (9th Cir.): In a case concerning whether the Nuclear Regulatory Commission has an obligation under NEPA to consider the potential

environmental impacts of terrorist acts in its licensing decisions, the petitioners filed a brief (www.mothersforpeace.org/data/2004-03-159thCircuitBrief.pdf) on March 15, 2004, and the states of California, Massachusetts, Utah, and Washington filed an amicus curiae (friends of the court) brief (<http://caag.state.ca.us/newsalerts/2004/04-038.pdf>) in support of the petitioners on March 19, 2004. (See *LLQR*, March 2004, page 17, and March 2003, page 10.) [Case No.: 03-74628]



*NEPA Community Meeting + DC in July =
It Just Can't Get Any Better*

DOE-wide NEPA Contracts Update

The following task has been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting.

Task Description	DOE Contact	Date Awarded	Contract Team
LANL Site-Wide EIS 5-Year Supplement Analysis	Elizabeth Withers ewithers@doeal.gov 505-667-8690	05/27/2004	SAIC

DOE Submits Fourth Cooperating Agency Report

Using the online Cooperating Agency Reporting System, DOE responded in late April to the Council on Environmental Quality's (CEQ's) request for Federal agencies to report biannually on cooperating agency activities in NEPA reviews. This fourth report covers DOE EISs and EAs initiated between September 1, 2003, and February 29, 2004. In that period, DOE started 3 EISs, including 1 with a cooperating agency, and 12 EAs, including 2 with a total of 3 cooperating agencies. The report also updates project milestones and changes in cooperating agency status of EISs and EAs covered in the previous three biannual reports.

CEQ has encouraged Federal agencies to consider potential Federal, state, and local cooperating agencies for each NEPA review. CEQ's initiatives to promote cooperating agency relationships and the benefits of cooperating agency participation in the NEPA process are described in *LLQR*, March 2002, page 1, and in the CEQ memoranda referenced therein (<http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html>). DOE NEPA document preparation teams should consult with their NEPA Compliance Officers if questions arise on this subject. For information on cooperating agency reporting, contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326. **LL**

Transitions

Beverly Cook Launches a New Career

Beverly Cook, Assistant Secretary for Environment, Safety and Health since February 2002, resigned from DOE effective April 16, 2004, and accepted a position at the Jet Propulsion Laboratory (JPL), which is managed by the California Institute of Technology. To date, an acting assistant secretary has not been named. "Moving to Pasadena puts me closer to my family," Ms. Cook explained, "and I will arrive at JPL at one of the most exciting moments." In July, after nearly seven years of interplanetary space travel, National Aeronautics and Space Administration's (NASA's) Cassini spacecraft will arrive at Saturn. "I will be there when the first pictures and data are received," she said.

Ms. Cook is well versed in the Cassini project. In 1997, DOE provided the plutonium power sources (the radioisotope thermal generators) for the spacecraft and was a cooperating agency with NASA in preparing the EIS for the Cassini project. Ms. Cook, then with the Office of Nuclear Energy, acted as the DOE spokesperson in explaining the risks associated with this project, and in controversies centered on the consequences of possible plutonium contamination from an accident during launch or earth orbit.

At a final staff meeting, she described a unique aspect of the JPL's work: that inflexible deadlines are often determined by astronomical opportunities. "Some things can only be done when the planets line up. It's amazing what can get done when no one can mess around with the end date," she said.

She expressed her appreciation for her DOE environmental staff, and noted that our stature has grown. Praising the NEPA staff, she said, "In the last couple of years, you have converted some of your biggest critics. Some who thought that you were just an obstacle to DOE getting things done now appreciate that you are the ones who keep DOE out of trouble."

Managers and staff of Environment, Safety and Health, along with DOE's NEPA Community, will miss Beverly Cook, who was so fluent in DOE's projects and a strong supporter of good decisionmaking. We wish her well in her future endeavors. **LL**

New NCO for Rocky Flats: Richard Schassburger

Richard Schassburger was designated as NEPA Compliance Officer (NCO) for the Rocky Flats Project Office on the retirement of Joseph Rau in December. Mr. Schassburger has been with DOE since 1979 and with the Rocky Flats Project Office since 1988. His NEPA experience dates back to the early 1990s when he served as the first NCO for Rocky Flats. In addition to NEPA, Mr. Schassburger is responsible for regulatory compliance for the closure of the Rocky Flats Environmental Technology Site. He can be reached at richard.schassburger@rf.doe.gov or 303-966-4888. **LL**

Training Opportunities

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

- **Clear Writing for NEPA Specialists**

Washington, DC: June 8-10
North Bend, OR: August 17-19
Fee: \$795

- **Executive Overview and Teambuilding for NEPA Specialists**

Jackson Hole, WY: July 20-22
Fee: \$795

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Reno, NV: August 24-27
Fee: \$995

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: \$4,995 (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

- **Preparing and Documenting Environmental Impact Analysis**

Durham, NC: June 21-24
Fee: \$1090

- **The Law of NEPA**

Durham, NC: July 21-23
Fee: \$695/\$775 (by/after June 28)

- **Implementation of the National Environmental Policy Act**

Durham, NC: October 18-22
Fee: \$1050/\$1150 (by/after September 20)

- **Current and Emerging Issues in NEPA**

Durham, NC: November 17-19
Fee: \$695/\$775 (by/after October 25)

Nicholas School of the Environment
and Earth Sciences
Duke University
919-613-8082
sea3@duke.edu
www.env.duke.edu/del/shortcourses/courses/upcoming.html

- **NEPA Certificate Program**

Requires successful completion of one core and three elective Duke University NEPA short courses. A written paper also is required. Previously completed courses may be applied toward the certificate.

Fee: Included in registration for constituent courses.

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

EAs and EISs Completed January 1 to March 31, 2004

EAs

Bonneville Power Administration

DOE/EA-1467 (2/6/04)

Bonneville-Alcoa Access Road Project, Washington

Cost: \$35,000

Time: 13 months

DOE/EA-1486 (3/15/04)

Methow Valley Irrigation District Rehabilitation Project, Washington

Cost: \$43,000

Time: 5 months

Chicago Operations Office

DOE/EA-1483 (3/3/04)

Decontamination and Decommissioning of the Juggernaut Reactor in Building 335 at Argonne National Laboratory-East, Illinois

Cost: \$35,000

Time: 6 months

National Nuclear Security Administration

DOE/EA-1471 (1/15/04)

Transportation of HEU from Russian Federation to Y-12 National Security Complex, Tennessee

Cost: \$193,000

Time: 13 months

EISs

Environmental Management/Ohio Field Office

DOE/EIS-0337 (69 FR 2583; 1/16/04)

(EPA Rating: LO)

West Valley Demonstration Project Waste Management, New York

Cost: \$1,119,000

Time: 27 months

Environmental Management/ Richland Operations Office

DOE/EIS-0286 (69 FR 7215; 2/13/04)

(EPA Rating: EC-2)

Hanford Solid (Radioactive and Hazardous) Waste Program, Washington

Cost: \$9,000,000

Time: 76 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 of four EAs completed was \$39,100; the average was \$76,500.
- Cumulatively, for the 12 months that ended March 31, 2004, the median cost for the preparation of 22 EAs for which cost data were applicable was \$43,000; the average was \$81,300.
- For this quarter, the median completion time of four EAs was 10 months; the average was 9 months.
- Cumulatively, for the 12 months that ended March 31, 2004, the median completion time for 22 EAs was 10 months; the average was 9 months.

EIS Costs and Completion Times

- For this quarter, the median and average cost of two EISs was \$5,060,000.
- Cumulatively, for the 12 months that ended March 31, 2004, the median cost for the preparation of seven EISs for which cost data were available and applicable was \$2,075,000; the average was \$1,119,000.
- For this quarter, the median and average completion time of two EISs was 52 months.
- Cumulatively, for the 12 months that ended March 31, 2004, the median completion time for seven EISs was 27 months; the average was 33 months.

Recent EIS-Related Milestones (March 1 to May 31, 2004)

Notices of Intent

Civilian Radioactive Waste Management

DOE/EIS-0369

Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada

April 2004 (69 FR 18565, 4/8/04)

Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0366

Implementation of the Office of Fossil Energy's Carbon Sequestration Program

April 2004 (69 FR 21517, 4/21/04)

Draft EISs

Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0284

Low Emission Boiler System Project, Elkhart, Illinois

March 2004 (69 FR 10422, 3/5/04)

Fossil Energy

DOE/EIS-0365

Imperial-Mexicali 230 kV Transmission Lines, Imperial County, California

May 2004 (69 FR 26817, 5/14/04)

Record of Decision

Civilian Radioactive Waste Management

DOE/EIS-0250

Record of Decision on Mode of Transportation and Nevada Rail Corridor for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

April 2004 (69 FR 18557, 4/8/04)

Supplement Analyses

Bonneville Power Administration

Vegetation Management Program Environmental Impact Statement

(DOE/EIS-0285)

DOE/EIS-0285-SA-193

Vegetation Management for the Big Eddy-Midway No. 1 500 kV and the McNary-Ross No. 1 345 kV Transmission Lines, Klickitat County, Washington

(Decision: No further NEPA review required)

March 2004

DOE/EIS-0285-SA-194

Vegetation Management on the Paul Allston 230 kV and 500 kV Transmission Line Corridor, Lewis and Cowlitz Counties, Washington

(Decision: No further NEPA review required)

March 2004

DOE/EIS-0285-SA-195

Vegetation Management for the Midway-Benton Transmission Line Corridor from Tower 11/7 to Tower 25/1, Benton County, Washington

(Decision: No further NEPA review required)

March 2004

DOE/EIS-0285-SA-196

Vegetation Management for the Lancaster-Noxon 230 kV Transmission Lines Corridor, Sanders County, Montana

(Decision: No further NEPA review required)

March 2004

DOE/EIS-0285-SA-197

Vegetation Management for the Lower Monumental-Hanford/Ashe-Hanford/Scootene Tap Transmission Line, Benton County, Washington

(Decision: No further NEPA review required)

April 2004

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Recent EIS-Related Milestones (March 1 to May 31, 2004)

(Supplement Analyses, continued from previous page)

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265-SA-135
Idaho Model Watershed Habitat Projects – Muddy Springs/Pahsimeroi Fence, Custer County, Idaho
(Decision: No further NEPA review required)
March 2004

DOE/EIS-0265-SA-136
Eliminate a Diversion along Morgan Creek, Provide Fish Screen, Remove Fish Barrier, Improve Irrigation System and Improve Water Quality, Custer County, Idaho
(Decision: No further NEPA review required)
March 2004

DOE/EIS-0265-SA-137
Duck Valley Habitat Enhancement and Protection, Owyhee County, Idaho, and Elko County, Nevada
(Decision: No further NEPA review required)
March 2004

DOE/EIS-0265-SA-138
Duck Valley Reservoirs Fisheries and Operation and Maintenance, Elko County, Nevada
(Decision: No further NEPA review required)
March 2004

DOE/EIS-0265-SA-139
Idaho Model Watershed Habitat Projects – East Fork Riparian Enhancement, Garman Fence, Custer County, Idaho
(Decision: No further NEPA review required)
March 2004

DOE/EIS-0265-SA-140
Burlington Bottoms Wildlife Mitigation Project – Water Control Structure and Culvert Replacement, Multnomah County, Oregon
(Decision: No further NEPA review required)
March 2004

DOE/EIS-0265-SA-141
Idaho Model Watershed Habitat Projects – Salmon River Enhancement, Sell Fence, Lemhi County, Idaho
(Decision: No further NEPA review required)
March 2004

Office of Civilian Radioactive Waste Management

Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250)

DOE/EIS-0250-SA-1
Supplement Analysis for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada [regarding intermodal transportation]
(Decision: No further NEPA review required)
March 2004



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 January 1 and March 31, 2004.

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

- *Internal scoping meetings.* An internal scoping meeting involving the participation of pertinent project personnel was held to provide essential information for the EA.
- *Establishing timeline early.* A realistic NEPA process timeline was established as early as possible and in-house strategy meetings among team players were organized.
- *Using past documents as an example.* The team relied largely on past documents that addressed similar proposals to move spent nuclear fuel from locations in other countries where it was poorly controlled.

Data Collection/Analysis

What Worked

- *Referencing related documents.* The preparation of the EA had no complications and was streamlined by referencing a relevant NEPA document.
- *Bounding analyses.* Many bounding analyses were used in the EIS with the expectation that the detailed planning and implementation would stay within those bounds.

What Didn't Work

- *Inexperienced contractor.* The EA team was working with a new DOE contractor. It took the contractor a while to get up to speed and to provide the team with some analysis of data.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Stakeholder interest.* Increasing interest by participating stakeholders and citizens kept us focused on prioritizing efforts and helped keep the document on schedule.
- *Attentive management.* The document manager played a central coordination role in relaying information requests between the EA writers and project personnel. He also ensured the draft EA review cycles were completed on time.
- *Keeping contact among team members.* A close working relationship between the managers and the EA writer prevented the schedule from slipping too much.
- *Continuous scheduling.* The EIS schedule was revised as appropriate to reflect changes in the program direction.
- *Teamwork.* Having a dedicated and experienced NEPA/Project team (composed of headquarters, site, and contractor folks) to prepare and review the document at various stages, perform the technical analyses, and shepherd the EIS through the process facilitated timely completion of the EIS.
- *Beginning with a realistic schedule.* A schedule was created that included realistic expectations for the review and concurrence periods.

Factors that Inhibited Timely Completion of Documents

- *Responding to comments.* The response to internal draft comments sometimes generated additional comments, thus making the review cycles longer than expected.

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What Worked and Didn't Work

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- *Review and concurrence time.* The review and concurrence time at the headquarters level took up a major chunk of time even when the document moved through the process easily. There should be an effort to facilitate a more timely and coherent approval process at headquarters or a delegation of project specific EISs to the field level.
- *Difficulty obtaining data.* Due to difficulty in getting expected data from the contractor, the worker impact analysis was delayed.
- *Wide-ranging concurrence process.* Due to the cross-cutting interest in the subject, numerous organizations were involved in the concurrence process. The concurrence process was not well understood, so at times it was conducted inefficiently.
- *Experience.* Having a team of experienced personnel greatly enhanced the EIS process. Having a focused program person to serve as “EIS shepherd” also enhanced the ability of the team to be successful.
- *Face-to-face meetings.* The contractor was within easy access to the site office so that meetings could be accomplished face-to-face. When holding meetings to hash through problems and reach important decisions it was more efficient for meetings to be held in person.
- *Dialogue.* The proposed action’s complexity, forecast data inconsistencies, and work scope changes created a number of ongoing EIS challenges. Of critical importance in successfully addressing these were the DOE team’s maintenance throughout the NEPA process of contacts and communications with both the regulators and the public.

Teamwork

Factors that Facilitated Effective Teamwork

- *Maintaining open lines of communication.* The team used e-mail and frequent meetings to stay connected while focusing on the NEPA process strategy.
- *Keeping contractors in the loop.* Contractors were kept apprised of the NEPA progress, which enabled them to coordinate timing and other details with planning for project staging and construction.
- *Close working locations.* The physical proximity of the NCO, Document Manager, and legal support facilitated effective teamwork.
- *Informing contractors.* Contractor staff were involved in many meetings as technical support to the program, thereby, maintaining knowledge of program changes.
- *Cooperation.* An excellent start was achieved by having a kickoff meeting with the Document Manager and other DOE staff in EH and GC. The project’s NEPA liaison maintained good communications among the EA contractor, EH, and GC.
- *Establishing a clear schedule.* Establishing a clear schedule and expectations during the scoping process enhanced the effectiveness of teamwork between DOE and the NEPA contractor.

Factors that Inhibited Effective Teamwork

- *Distance.* The distance between the DOE field offices involved in the EA inhibited effective teamwork at times.

Process

Successful Aspects of the Public Participation Process

- *A comprehensive mailing list.* A comprehensive mailing list was established in an effort to inform as many interested people as possible. The draft EA was offered either through hard copy in the mail or electronic mailing. Also, several points of contact were offered to the public to facilitate input to the NEPA process.
- *State coordination.* A NEPA liaison in the state’s government office was consulted for comments on the draft EA.
- *Early announcements.* The early announcement of the EA during a Citizen Advisory Group monthly meeting proved to be a successful aspect of the public participation process.

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What Worked and Didn't Work

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Unsuccessful Aspects of the Public Participation Process

- *Unhappy public.* Public meetings of whatever format, arrangement, type, place, and so forth, are usually viewed as opportunities for the public to vent about their feelings regarding faults and failures with DOE and the subject project rather than the NEPA impact analyses and ways in which DOE could correct any identified deficiencies.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Fully using the NEPA process.* DOE undertook the NEPA process to accommodate the need for an objective assessment, to assist in the decisionmaking, to withstand any possible legal challenges, and to satisfy the NEPA compliance and implementing procedures.

Enhancement / Protection of the Environment

- The NEPA process for this project ensured that environmental permit compliance and the “as low as reasonably achievable” principle were followed.

Other Issues

- One respondent noted that DOE should not engage into NEPA unless appropriate data and information to formulate decisions are first gathered; parameters about the project are well defined; commitments and resources are available to complete preparation of an objective, fact-finding document; and preparation of the NEPA document is first well planned out.

Guidance Needs

- One respondent noted that the guidance on public participation seems to reflect a more liberal application of the requirements than currently practiced in the Department. This created some confusion and need for interpretation/direction from the NEPA liaison and GC.
- One respondent noted that it would be useful to have guidance on how to develop an Addendum to a previously approved EA.
- One respondent noted that it would be a good idea to provide guidance to people about how to internally get through the NEPA process for EISs. Because there have been many retirements and will be more in the next ten years, it would be nice if future document preparers could be left with guidance about what they will need to do.

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 4 questionnaire responses were received for EAs and 2 responses were received for EISs, 3 out of 6 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that “the NEPA document was prepared largely to spell out the project facts and predicted outcomes to assist in decisionmaking and accommodate the agency’s requirements for NEPA decisionmaking.”
- A respondent who rated the process as “4” stated that “the NEPA process helped make critical program decisions.”
- A respondent who rated the process as “3” stated that “the EA helped clarify what was to be shipped off-site for final disposal.”

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- A respondent who rated the process as “3” stated that “as the NEPA process occurred in tandem with the Critical Decision 1 and 2 process in this case, it was somewhat effective in helping refine some of the planning process, but politics probably played a bigger role in the actual decisionmaking.”
- A respondent who rated the process as “2” stated that the NEPA process “affects the planning of how work should be done to meet environmental, safety and health requirements.”
- A respondent who rated the process as “1” stated that “the need to eliminate weapons-usable special nuclear materials is a key element to our national security. The proposed action was the result of a working group commissioned by presidents of the United States and Russia and was going to happen unless a large problem was identified.” LL

NEPA Community Meeting: Getting Better and Better and Better and Better and Better...

Washington DC, July 20 and 21, 2004



2000

2001

2002

2003

2004

SRS SNF Management EIS

Vegetation Management Program EIS

JEA Circulating Fluidized Bed Combustor EIS

Treating TRU/ Alpha Low Level Waste OR EIS

Treatment and Management of Sodium Bonded SNF EIS

Expanded Civilian Nuclear R&D and Isotope Production Programmatic EIS, Including the Role of the Fast Flux Test Facility

DOE O 451.1B NEPA Compliance Program

CAA General Conformity Requirements and the NEPA Process

Mini-guidance Articles from LLQR

NCO Meeting Washington, DC

NAEP Environmental Excellence Award

SRS Salt Processing EIS

Y-12 National Security Complex SWEIS

Condon Wind Project EIS

Sundance Energy Project EIS

National Ignition Facility Supplemental EIS

NCO Meeting Washington, DC

NEPA Website Responds to Post-9/ 11 Security Concerns

Geologic Repository at Yucca Mountain EIS

Idaho High-Level Waste and Facilities Disposition EIS

SRS High-Level Waste Tank Closure EIS

Kentucky Pioneer Integrated Gasification Project EIS

Relocation of TA-18 at LANL EIS

Umatilla Generating Project EIS

Wallula Power Project and Transmission Line EIS

McNary-John Day Transmission Line EIS

Recommendations for Analyzing Accidents Under NEPA

Policies on Application of NEPA to CERCLA and RCRA

NEPA Community Meeting Washington, DC

CEQ NEPA Task Force Established (DOE Participant)

Six DOE-Wide NEPA Contracts Issued

DOE NEPA Website Redesigned

Fish and Wildlife Implementation Plan EIS

Kangley-Echo Transmission Line Supplemental EIS

Sacramento Area Voltage Support Project EIS

Schultz-Hanford Area Transmission Line EIS

Maiden Wind Farm EIS

Plymouth Generating Facility EIS

Chemistry and Metallurgy Research Building Replacement EIS

Interim Actions Guidance

Annual NEPA Planning Summaries Guidance

Brief Guide: DOE-Wide NEPA Contracts Revised

DOE Regulations for Compliance with Floodplains/Wetlands

NEPA Community Meeting Washington, DC

Supreme Court Declined to Hear Challenge of Appellate Court's Approval of DOE's Use of Supplement Analyses

Hanford Solid Waste Program EIS

West Valley Waste Management EIS

Construction and Operation of DUF₆ Conversion Facility at Portsmouth, OH EIS

Construction and Operation of DUF₆ Conversion Facility at Paducah, KY EIS

NEPA Community Meeting Washington DC

White House Task Force on Energy Project Streamlining (DOE Participant)

10th Anniversary of LLQR

10th Anniversary of NEPA Stakeholders Directory

NEPA Stakeholders Directory Issued as Interactive Software Application

2000

2001

2002

2003

2004



Environmental Impact Statements (EISs)



Meetings



Announcements



Guidance

LESSONS LEARNED

September 1, 2004; Issue No. 40

Third Quarter FY 2004

DOE's Process – Getting Better and Better

“What can we do better?” Participants addressed this question at DOE’s annual NEPA Community Meeting, “Getting Better and Better,” on July 20 and 21, 2004. “For those of us in the NEPA business, getting better and better is not an option, it is a necessity,” challenged keynote speaker Andy Lawrence, Deputy Assistant Secretary for Environment, in his welcome to some 175 participants at the Department’s Headquarters in Washington, DC, and at 19 DOE field sites.

Robert Middleton, Director, White House Task Force on Energy Project Streamlining, said that the key to improving the NEPA process is to ask, “Who needs to be involved in decisionmaking? How can we get their early collaboration and consultation?” Delays in the NEPA



Robert Middleton, Director, White House Task Force, emphasized implementing NEPA in a business-like manner. “Plan ahead, be clear and concise, and involve the public in a transparent process,” he said.

process can arise, Mr. Middleton explained, when people with concerns are brought in late and when issues are buried under the day’s short-term priorities.

Also, he urged working with General Counsel to not “short circuit the ability to defend our NEPA process.” It is difficult to go back to put a

Establish a memorandum of understanding among relevant agencies to outline the rules of engagement in the NEPA process.

*– Martin Letourneau,
White House Task Force*

document on the right track, he said, adding that agencies are usually sued on process, not on final decisions.

Better Inter-Agency Communication Needed

Martin Letourneau, DOE representative to the Task Force on detail from the Office of Environmental Management, said that the Task Force often was able to move stalled projects by helping involved agencies understand each other’s NEPA processes and how to work in parallel. He explained that most energy projects involve multiple agencies with various jurisdictions (e.g., land management, protected species).

He recounted several projects referred to the Task Force by the private sector, which had specific concerns about the NEPA process. He noted, however, that it was often a lack of knowledge about another agency’s NEPA processes or administrative procedures that led to delays, not the NEPA process itself.

A lead agency must show leadership in the NEPA process, to open communication and clarify each agency’s needs, Mr. Letourneau said. He emphasized the need to be creative when working with other agencies but cautioned that there is a fine line between being creative and noncompliant.

(continued on page 4)

Acting Assistant Secretary for Environment, Safety and Health Named, Page 2

Inside *LESSONS LEARNED*

Welcome to the 40th quarterly report on lessons learned in the NEPA process. That's 40 issues! Have you read them all? We are pleased to feature the July 2004 NEPA Community Meeting in this issue, as well as our annual update of the cumulative index to *LLQR*. Thank you for your continuing support.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2004. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2004

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2004 (July 1 through September 30, 2004) 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 printed in the September issue each year.

Printed on recycled paper



John Spitaleri Shaw Is Acting Assistant Secretary for Office of Environment, Safety and Health

John Spitaleri Shaw, who recently served as DOE's Deputy Chief of Staff and White House Liaison, was named Acting Assistant Secretary for Environment, Safety and Health (EH) on July 22. The President has nominated Mr. Shaw to be the Assistant Secretary, subject to Senate confirmation.

Previously in this Administration, he served as the Principal Deputy Assistant Secretary for EH.

Earlier in his career, Mr. Shaw served as a Majority Counsel for the U.S. Senate Committee on Governmental Affairs and as an attorney for Patton Boggs, LLP, in Washington, DC. He earned his bachelor's degree from Syracuse University and his J.D. from Catholic University of America Law School.

In an August meeting with EH staff, Mr. Shaw said he was glad to be back in EH. He noted that "EH is the hub of the wheel of DOE," explaining that "all other programs in DOE come to EH for advice and guidance at some point."

Other DOE offices look to EH for the help they need to do their jobs well.

— John Spitaleri Shaw

He said the Secretary looks to EH to ensure that DOE is meeting its mission "in a way that does not endanger workers, the environment, or the communities near DOE facilities."

EH also has a new Principal Deputy Assistant Secretary, Russell Shearer. Early in his career, Mr. Shearer was an environmental attorney at DOE's Savannah River Site. More recently, he served as the Special Assistant to the Assistant Secretary of the Army Installations and Environment. **LL**

Awards for Contributions to DOE's NEPA Program

In his keynote address, Mr. Andy Lawrence, Deputy Assistant Secretary for Environment, surprised meeting participants by recognizing special contributions to making DOE's NEPA Program better and better.



Daniel T. Ruge, Acting Assistant General Counsel for Environment, was recognized for his personal commitment and continuing legal support for DOE's NEPA Compliance Program. Mr. Ruge and his staff worked closely with the NEPA Office to draft three new guidance documents and have been responsive to the needs of senior management and the DOE NEPA community. He accepted the award on behalf of his staff.



Jay Rose, recently retired NEPA Compliance Officer and NEPA Document Manager for the National Nuclear Security Administration, was recognized for his dedication to excellence and significant contributions to DOE's NEPA Compliance Program. He directed the preparation of several technically-challenging and politically-sensitive EISs, including the Stockpile Stewardship and Management Programmatic EIS.

Thank you, DOE's NEPA Community, for all the good you have done to protect the environment.

**– Carol Borgstrom, Director
Office of NEPA Policy and Compliance**



Carol Borgstrom, Director, Office of NEPA Policy and Compliance, was recognized for 30 years of Federal service and received a gold pin, plaque, and book of American landscapes, which was signed by meeting participants (photo at left).

Getting Better and Better *(continued from page 1)*

What's New/Next at CEQ

“Each administration since NEPA’s enactment has continued to focus on the importance of NEPA’s mandates and objectives and has sought ways to improve the NEPA process,” said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ). Mr. Greczmiel said that the results of the NEPA Task Force recommendations that he will present to CEQ Chair James Connaughton could lead to the next steps on this path of continuous improvement.



Horst Greczmiel said that “DOE does NEPA better than many other agencies. What’s old for DOE is often new to others.”

wants the implementation of Task Force recommendations to be transparent to the public, Mr. Greczmiel said, and CEQ probably will rely heavily on electronic media. Roundtable participants urged CEQ to put its energy and resources into guidance, not into establishing a committee under the Federal Advisory Committee Act, he said.

Because of the widespread misunderstanding of the NEPA process among many stakeholders, compounded by the differences among agencies’ NEPA procedures, Mr. Greczmiel expects one recommendation to address new options for NEPA training, including a citizens’ guide, focused on how different parties can participate effectively in the NEPA process. CEQ has been engaged in training with state and county governments and has begun a process to build better understanding among tribes and Federal agencies. (See related article, page 16.)

Mr. Greczmiel said that another recommendation favorably received at the roundtables is that CEQ begin pilot projects focused on

The presentation to the CEQ Chair will be based on the NEPA Task Force recommendations in its report to CEQ, *Modernizing NEPA Implementation (LLQR, December 2003, page 1)*, comments received on the Report, and input received at four regional public roundtables, at which he said participants generally agreed with issues and priorities set forth in the Report. The CEQ Chair

The DOE Lessons Learned Quarterly Report is an excellent way to build public trust and confidence.

– Horst Greczmiel

preparing NEPA analyses and documents in conjunction with adaptive management and environmental management systems. He also noted wide support for recommendations that CEQ provide guidance on how to establish and apply categorical exclusions, how much public participation to have for an EA, and how best to use a programmatic EIS.

The CEQ NEPA Task Force, Mr. Greczmiel added, is compiling a compendium of “useful practices,” which he envisions as a living document, periodically updated. He commended the DOE NEPA Lessons Learned Program as an excellent example of presenting and disseminating useful practices.

Public Participation/ Scoping/Tribal Issues

Recent DOE public participation-related activities were discussed by a panel of DOE and Laboratory representatives.

Herb Jones, Deputy Assistant Secretary for Intergovernmental and External Affairs, reminded meeting participants of the need to notify Congressional and Public Affairs Offices three business days before certain upcoming public outreach actions, including issuance of draft and final EISs and records of decision (RODs). This is needed, he explained, so that these Offices can identify issues early and be prepared to answer questions from Congress.

Recent public scoping yielded very different results for nationwide, regional, and site-specific EISs. Lloyd Lorenzi, NEPA Compliance Officer, National Energy Technology Laboratory, described the

(continued on next page)



Herb Jones described a one-page form that is being distributed DOE-wide for use in providing information electronically to Congressional and Public Affairs Offices on upcoming public actions.



Lloyd Lorenzi said that commentors who were expected to voice opposition were substantially silent on the scope of Fossil Energy’s Carbon Sequestration Programmatic EIS.

Getting Better and Better (continued from previous page)

disappointingly low attendance at meetings and the small number of comments received on the scope of the *Programmatic EIS for the Implementation of the Carbon Sequestration Program* (DOE/EIS-0366). Because this program would have activities nationwide, he explained, DOE announced meetings in eight cities across the nation, advertising in newspapers, newsletters, Web sites for the Programmatic EIS and the Laboratory, and the *Federal Register*. Although the EIS Web site has had many visitors, he said there were only eight comments submitted on the scope of the Programmatic EIS.



Anthony Dvorak observed that the use of Internet technology is one of the biggest changes in the NEPA process that he has observed during his career, noting that it enables participation regardless of location.

Similarly, there was little public participation at regional scoping meetings held for the Bureau of Land Management's (BLM's) programmatic EIS for wind energy development on that agency's land (*LLQR*, March 2004, page 3), said Anthony Dvorak, Director, Environmental Assessment Division, Argonne National Laboratory. (Argonne is supporting BLM's EIS preparation.) In contrast, about 70 percent of scoping comments for the BLM EIS were submitted online. He said that BLM will not hold public meetings on the draft EIS because Internet use has been so wide-spread for this EIS.

In sharp contrast, Robin Sweeney, NEPA Document Manager, Office of Civilian Radioactive Waste Management (telecast from the Office of Repository Development in Las Vegas, NV), told of high participation in recent scoping meetings in rural communities for the rail corridor to the Yucca Mountain site (DOE/EIS-0369; see *LLQR*, June 2004, page 1). She strongly doubted that the Internet could serve these stakeholders, as many are potentially affected residents in very remote locations, with difficulty getting good telephone service or service at all, much less Internet access. She said she hopes the interactions during the informal scoping meetings for the Repository Rail Alignment EIS had begun to build stronger relationships with stakeholders, including 17 Native American organizations.

Herb Jones described DOE's ongoing Indian Initiative, which began with a Summit in February 2004, at which the

Secretary and Deputy Secretary of Energy and other senior staff met with 150 tribal leaders in Washington, DC, to try to establish a framework for future interactions. Mr. Jones said that the Office of Congressional and Intergovernmental Affairs is reviewing other input from the Summit, including the request from tribal leaders that DOE hold meetings throughout the country. Mr. Jones said that there is a need to better organize DOE's tribal points of contact and that the Department needs to work with the tribal community to address differing perspectives on issues that impair our ability to work together.

Are We Getting Better?

The measure of success for NEPA performance is how well implementation enables "the timely accomplishment of DOE missions in a safe and environmentally sound manner," said Eric Cohen, Unit Leader, NEPA Office. The quantitative metrics reported for the NEPA program should be interpreted within this context of meeting DOE's mission needs, he said.

The ten-year trends for costs and completion times for EAs and EISs reflect positively on DOE's performance, Mr. Cohen said. Overall NEPA costs show a downward trend. The median cost of the six EISs completed in the last year is \$1.3 million. Over the past decade, the median cost is \$1.9 million.

DOE continues to demonstrate the appropriate use of flexibility inherent in the NEPA process, Mr. Cohen said, with schedules extended when circumstances demand longer periods for analysis, public participation, or other factors. Yet, when the need for speed arises, he said,

(continued on next page)



Richard Ahern, Ed LeDuc, Angela Foster, and Janet Masters from the Office of General Counsel discuss recent NEPA litigation. See page 18 for details of the cases.

Getting Better and Better (continued from previous page)

NEPA reviews can be completed on tight schedules. The median completion time for six EISs finalized in the past year is 22 months, down from the median of 25 months for the past decade.

These statistics for EIS completion time measure the period from publication of DOE's notice of intent to the Environmental Protection Agency's notice of availability of the final EIS. Another important metric is the time from the notice of availability of the final EIS to DOE's issuance of the ROD, he said. The median time from final EIS to the first ROD for almost 100 EISs completed over the past decade is 56 days, or less than four weeks from the end of the minimum 30-day "waiting period" required by regulation (40 CFR 1506.10(b)(2)). Although a few recent ROD delays associated with litigation sensitivities delayed mission implementation, he said, in most cases long ROD issuance times were deliberate, enabling DOE to consider information, public comments, and other factors before making a decision.

Other metrics demonstrate that DOE's NEPA performance remains solid, Mr. Cohen reported. Seventy-five percent of respondents to DOE's Lessons Learned Questionnaire in the past year rated the NEPA process as "effective," in terms of usefulness to decisionmakers and ensuring protection of the environment. DOE's EISs continue to enable mission implementation even in the face of legal challenges, and the analyses help ensure protection of the environment, he said.

"Yes, We're Getting Better!"

"You have accomplished much," Mr. Lawrence assured the DOE NEPA Community, "and your hard work and dedication to excellence are recognized and appreciated." In reviewing NEPA accomplishments since the last DOE NEPA Community Meeting (*LLQR*, September 2003, page 1), he noted 150 completed NEPA documents, new regulations for floodplain and wetland environmental review, the 10th anniversaries of the *Lessons Learned Quarterly Report* and the *Stakeholders Directory*, and a gamut of activities, from evaluating the results of groundwater transport and air dispersion modeling to negotiating within the Department and with stakeholders.

You have fought to uphold NEPA values while supporting the achievement of DOE missions. I encourage you to continue to perform your duties with care and concern for the environment.

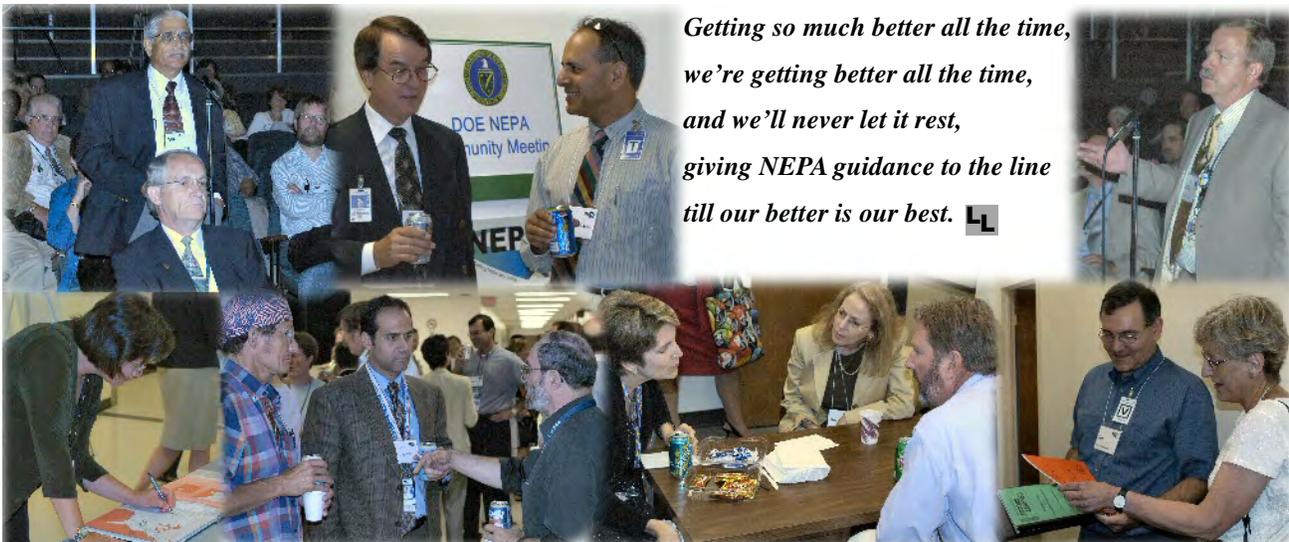
**– Andy Lawrence,
Deputy Assistant Secretary
for Environment**

He noted that these and other accomplishments are on the new, 2000–2004, timeline prepared by the NEPA Office, which is provided with this issue of *LLQR* and posted with it

on the DOE NEPA Web site at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. A 1990–2000 timeline, first presented at the 2000 NEPA Community Meeting, also is available on the DOE NEPA Web Site with the June 2000 *LLQR*.

Mr. Lawrence said that while he was proud of DOE's accomplishments, we cannot stop now. Using as an anthem the Beatles' song "Getting Better," which played frequently during the meeting, he ended poetically by paraphrasing:

*Getting so much better all the time,
we're getting better all the time,
and we'll never let it rest,
giving NEPA guidance to the line
till our better is our best. LL*



Working with Cooperating Agencies



Vivian Bowie led a panel discussion on cooperating agency relationships.

The benefit of cooperation among agencies was one of the common threads throughout this year's NEPA Community Meeting. On the meeting's second day, Vivian Bowie, NEPA Office, introduced a panel of four NEPA practitioners who had worked with cooperating agencies on EISs during the past year. Their practical insights demonstrated the wide variety of circumstances in which it can be helpful to involve cooperating agencies, as well as some of the pitfalls to avoid.

agencies "dovetail" their NEPA procedures with other agency administrative procedures. The Forest Service, for example, tries to have the administrative record for the NEPA review serve other purposes. This affects scheduling and the flow of work, he said. Learn the internal procedures and processes of cooperating agencies "as well as you know your own," he advised, and define working relationships clearly. He recommended MOUs as a vehicle to formalize relationships and expectations.

It's not a question of whether we cooperate, but how we do it.

— Carol Borgstrom

Hanford High-Level Waste Tank Closure

The State of Washington Department of Ecology is a cooperating agency with DOE in preparation of the *Environmental Impact Statement for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks* (DOE/EIS-0356). Mary Beth Burandt, NEPA Document Manager, Office of River Protection, explained that Ecology's involvement is helping to streamline compliance with the State Environmental Policy Act, providing a foundation for any required modifications to state permits or compliance agreements, and enhancing public credibility in the EIS.

Mid-level managers for DOE and Ecology signed a memorandum of understanding (MOU) that focuses cooperation on technical issues. Under the MOU, Ecology can write a foreword to the EIS to explain its perspective on points of agreement and disagreement. Ecology has actively participated in each stage of the EIS preparation, including a DOE Headquarters review of a preliminary draft in Washington, DC.

Permits for Electric Transmission Lines

Tony Como, Deputy Director, Electric Power Regulation, Office of Fossil Energy, relayed his experience working with several cooperating agencies on NEPA documents for transmission lines. Cooperating agencies "don't always cooperate," he said. The degree of cooperation can vary markedly based on the interest of the individuals representing the cooperating agency, as well as the agency's available staffing and funding to support the project.

Mr. Como also pointed out the importance of learning the internal procedures of the cooperating agency. Some

Decommissioning at West Valley, New York

Dan Sullivan, West Valley NEPA Compliance Officer, spoke about the benefits of working with cooperating agencies on the EIS for the *Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Service Center* (DOE/EIS-0337). The New York State Department of Environmental Conservation, the U.S. Environmental Protection Agency, and the Nuclear Regulatory Commission (NRC) are actively participating as cooperating agencies, and the New York State Research and Development Authority is a joint lead agency.

DOE's MOU with NRC has proven to be "very helpful," said Mr. Sullivan. "While an MOU with the other two agencies is not in place, DOE has effectively used other informal approaches to make progress." Periodic workshops with the agencies have proven helpful, he said, as have bi-weekly EIS status calls. Information is exchanged regularly among agencies to help focus resources, and the cooperating agencies have helped develop the EIS schedule. The cooperating agencies also have provided early review of EIS technical support documents and guidance on dose modeling, and they are helping to develop scenarios for the site performance assessment.

Uranium Mill Tailings Pile in Utah

A dozen agencies from Federal, state, local, and tribal governments are cooperating in preparing the *Remediation of the Moab Uranium Mill Tailings EIS* (DOE/EIS-0355). Don Metzler, Moab Project Manager, Office of Environmental Management, telecast from the Grand Junction Office in Colorado, said that letter agreements, rather than MOUs, define roles for each cooperating agency, such as to provide data on, or review

(continued on page 12)

e-NEPA Improves Access and Efficiency

Several speakers at this year's NEPA Community Meeting highlighted advances in e-NEPA. Across the Federal government, Web-based approaches to document collaboration and interactive information management are changing the face of NEPA. Challenges remain, however, and any implementation of e-NEPA techniques must consider such issues as Internet access, security, privacy, and records management.

e-NEPA at Other Federal Agencies

Carl Zulick, ePlanning Project Manager at the Bureau of Land Management (BLM), and Jacob Hoogland, Chief of the National Park Service's (NPS's) Environmental Quality Division, presented overviews of their respective agencies' Web-based applications for managing aspects of NEPA document preparation, including the comment-response process.

Mr. Zulick described the BLM online application called ePlanning, which is now being tested using draft EISs for BLM and Forest Service sites. The features available to the EIS preparation team (and any others to whom the team leader grants access) are the ability to draft the document collaboratively; conduct internal review; track and resolve comments; publish to compact disk, print version, and internal and external Web sites; and maintain records of the document's development. BLM expects to achieve significant cost savings with this application, Mr. Zulick noted, by minimizing duplicative information technology efforts, allowing geographically dispersed participants to work together efficiently, and producing documents that have a common "look and feel."

The features that ePlanning makes available to the public are the ability to view and print a document; search by



Carl Zulick, BLM (left), and Jacob Hoogland, NPS, discussed their respective agencies' Web-based applications, which are similar in offering efficient management of the comment-response process.

topic; switch between text and related geographic information system (GIS) information; and submit comments that are linked to subject portions of the text, Mr. Zulick explained. The basic software application is designed to be highly adaptable to a wide variety of BLM projects and easily adoptable by other agencies. Public reaction to BLM's e-NEPA approaches has been very positive, said Mr. Zulick, with over half of the participants in recent NEPA reviews indicating a preference to view a document online or receive it on compact disk.

Mr. Hoogland described the National Park Service's Planning, Environment, and Public Comment system, which is being designed to integrate environmental compliance processes with project management and financial planning. Like the BLM e-NEPA approach, the system provides many resources and tools to the agency, and offers a secure and efficient way for the public to review a document and submit comments. The system is especially helpful in organizing comments and managing their resolution, said Mr. Hoogland, a task that can be overwhelming for EISs that receive extremely large numbers of comments.

(continued on page 12)



During a lunch break, Amy Hilbert of Aquilent, Inc., demonstrated the NPS's Planning, Environment, and Public Comment system to meeting participants.

BLM's ePlanning Project

Pilot projects: Select from the list of ePlanning Web sites at <https://www.eplanning.blm.gov>

Contact: Carl Zulick at carl_zulick@blm.gov or 202-452-5158



NPS's Planning, Environment, and Public Comment System

Pilot projects: Select Plans from the PEPC Web site (<http://parkplanning.nps.gov>) for a list of pilot projects

Contact: Jacob Hoogland at jacob_hoogland@nps.gov or 202-513-7188



Getting Better Through Guidance and Case Studies

Guidance should be flexible but foster consistency.

– Carol Borgstrom

The NEPA Community Meeting featured previews of three guidance documents being prepared by the Office of NEPA Policy and Compliance and case studies on issues that the guidance will address. Carol Borgstrom, Director of the NEPA Office, said the goal is to prepare guidance that is clear and generally applicable across DOE. After addressing comments from the DOE NEPA Community, the NEPA Office will request that the Acting Assistant Secretary for Environment, Safety and Health issue the guidance.

“GREEN BOOK” REVISIONS

Carl Sykes, NEPA Office, discussed the ongoing effort to update *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (1993, “Green Book”). “Most of the Green Book remains valid, so why change after 11 years?” asked Mr. Sykes. He went on to explain that the NEPA Office wants to incorporate elements of other DOE guidance published since 1993, including mini-guidance from *LLQR*, as well as DOE’s experience using the Green Book to help implement NEPA. Changes he described include new sections on topics such as Clean Air Act conformity and environmental justice, and updates to existing sections to account for new information, such as revised radiation dose-to-risk conversion factors.

Mr. Sykes pointed out that “the purpose of the Green Book is to function as a quick, brief NEPA reference for widely diverse DOE projects, not to cover everything.” Its focus is the content of NEPA documents, he explained, not the NEPA process.

Case Studies: Applying the Sliding Scale

The Green Book emphasizes application of the sliding-scale principle: ensuring that NEPA documents provide a level of detail and analysis commensurate with the importance of the issue or potential impact, he said. Use of the sliding scale was discussed by three panelists: Steve Blazek, NEPA Compliance Officer, Golden Field Office; Tom Grim, NEPA Document Manager, Livermore Site Office; and Andi Kasarsky, Program Analyst, Office of Defense Science, National Nuclear Security Administration.

Mr. Blazek illustrated application of the sliding scale in the evaluation of mercury releases and potential bioconcentration in the *I’SOT Canby District Heating Project, Modoc County, California Final Environmental*

Assessment (DOE/EA-1460, March 2003), a geothermal research and development project, which DOE funded in part. An extensive DOE EA (some 200 pages) was appropriate, he said, even though a review under the California Environmental Quality Act had found no significant issues. During DOE consultation with the U.S. Fish and Wildlife Service, he explained, concerns surfaced about releases of mercury to river water and potential bioconcentration in fish and bald eagles. DOE needed to look closer at potential impacts and mitigation, and as this mercury issue was complicated, over half of the EA focused on it, he said.



Steve Blazek, Tom Grim, and Andi Kasarsky recounted applying the sliding-scale approach when preparing EAs and EISs.

Mr. Grim described how individual projects are evaluated using the sliding scale in the *Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic Environmental Impact Statement* (DOE/EIS-0348/DOE/EIS-0236-S3). The scope of this combined Site-wide and Supplemental Programmatic EIS for the Laboratory includes operation of several facilities, cleanup activities, and several new projects, he said.

The level of analysis differs based on factors such as whether construction would be on a new or already developed site, he explained. Two controversial projects were addressed in separate appendices. Ms. Kasarsky described the evaluation of one of those projects, the National Ignition Facility, a laser facility at the Laboratory. The greater level of detail was driven, in part, she explained, by litigation surrounding the use of plutonium in the Facility.

THE EIS COMMENT-RESPONSE PROCESS

In leading a comment response process, a NEPA Document Manager should obtain early management agreement on major issues, emphasized Carolyn Osborne, Unit Leader, NEPA Office. She said that guidance being prepared on how to respond in a final EIS to comments on a draft EIS will stress such management strategies and provide advice on substance and mechanics, for example,

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Guidance and Case Studies *(continued from previous page)*

how to respond to the content and volume of comments received from an e-mail campaign. She outlined the guidance, pointing out additions that will address requests from the NEPA Community, such as factors to consider when responding to proposed new alternatives.

► Case Studies: Responding to Comments

DOE files only about two percent of the draft EISs that the Environmental Protection Agency (EPA) must review and rate each year under its Clean Air Act Section 309 responsibilities, explained Kimberley DePaul, Deputy Director of EPA's Office of Federal Activities. She noted that EPA Regions 8, 9, and 10 have half the EIS review load, which might make them less available for early involvement in EISs. Energy projects are high priority however, and the regions will do their best to participate in DOE's NEPA process. She stressed that EPA Headquarters is working with all its Regional Offices to ensure that EPA comments are objective, fact-based, and even-toned.



Kimberley DePaul said that most EPA ratings of draft EISs are "EC-2" – Environmental Concerns-Insufficient Information. This means some questions remain unanswered, not that EPA views the project as problematic.

Two experienced DOE NEPA Document Managers joined Ms. DePaul in describing lessons learned from managing a large volume of public comments on EISs for complicated and controversial proposals. The main advice that Richard Kimmel, NEPA Document Manager for the *Idaho High Level Waste EIS* (DOE/EIS-0287), would give a new NEPA Document Manager is to have as close a reporting relationship to the decisionmaker as

possible, to enable ready feedback on EIS issues. He also advised having a team of Federal employees dedicated to the EIS work.

Jay Rose, NEPA Document Manager for the *Stockpile Stewardship and Management Programmatic EIS* (DOE/EIS-0236) and the *Modern Pit Facility EIS* (DOE/EIS-0236-S2), echoed this advice. He said that most comments are policy-related and Federal employees must provide the difficult responses. He noted, however, that a contractor counterpart to the DOE NEPA Document Manager is vital to driving the NEPA process. Mr. Rose

advised focusing first on responses to comments from likely challengers, which usually present the majority of difficult issues, as these responses can form a blueprint for others. Mr. Rose also advised reading final EISs of similar scope and complexity for ideas on how to conduct the process and present results.

"Make sure EISs and other agency documents are consistent or explain any differences," urged Ms. DePaul, who spoke from her earlier experiences managing the Department of Navy's NEPA program.

Mr. Kimmel agreed, saying that other NEPA documents or documents under the Comprehensive Environmental Response, Compensation, and Liability Act process may have set forth agency policy. With regard to consistency, the panelists also urged early and independent quality control reviews of a final EIS under preparation, to determine if comment categories need to be adjusted, all comments are being captured, and responses and changes to the EIS are consistent.



Using a small team to initially review comments and prepare draft responses can help attain consistency among parts of a final EIS, advised Richard Kimmel. He also suggested training or a manual to guide an EIS team.

PREPARING SUPPLEMENT ANALYSES

Jeanie Loving, NEPA Office, summarized draft guidance for preparing Supplement Analyses (SAs), that had been circulated for review within the NEPA Community. She said that an SA is a useful means to determine whether to issue a supplemental EIS when an agency makes changes relevant to environmental concerns in its proposals, or new circumstances or information arise that are relevant to environmental concerns. DOE regulations require an SA when the need for a supplemental EIS is unclear, and also for the five-year review of site-wide EISs. Many DOE offices have completed major programmatic and other broad EISs, and she noted that an increasing need for SAs related to those EISs may be expected as the Department's missions and needs continue to evolve.

Ms. Loving emphasized that although there is no "one size fits all" set of principles for preparing SAs, the draft guidance describes general elements applicable to most if not all SAs – deciding whether to prepare or not to prepare an SA, the content of an SA, outcomes that can

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Guidance and Case Studies (continued from previous page)

result from an SA, and DOE's SA process. Ms. Loving urged reviewers to share illustrative case examples, past problems encountered in preparing SAs, and any other comments for use in preparing the final set of recommendations.

Case Studies: SAs Fit Many Situations

Three experienced NEPA Compliance Officers were on hand to discuss different aspects of the SA process. Drew Grainger, Savannah River Operations Office, highlighted the use of SAs that enabled DOE to prevail in NEPA litigation. Harold Johnson, telecast from the Carlsbad Field Office, discussed the use of technical supporting material to evaluate an action not specifically analyzed in an EIS (the disposal of transuranic (TRU) waste containing polychlorinated biphenyl (PCB) compounds without thermal treatment). Tom McKinney, Bonneville Power Administration (BPA), described BPA's strategic use of SAs to address the large number of project-specific NEPA reviews BPA must conduct each year.

Mr. Grainger's presentation focused on *Hodges v. Abraham* (2002), in which the Governor of South Carolina challenged the adequacy of DOE's NEPA documentation of its evolving decisions on plutonium consolidation and storage. Mr. Grainger described DOE's use of SAs to support determinations that a supplemental EIS was not required in order for DOE to accelerate shipments of surplus plutonium from Rocky Flats to Savannah River or to modify an existing facility for plutonium storage at Savannah River rather than construct a new facility. The Court of Appeals for the Fourth Circuit confirmed the district court's decision to uphold DOE's NEPA documentation, and the Supreme Court declined to review the case. (See *LLQR*, March 2003, page 12.)

The subject of Mr. Johnson's case study was the June 2004 *Supplement Analysis for the Disposal of Polychlorinated Biphenyl-Commingled Transuranic Waste at the Waste Isolation Pilot Plant (WIPP)* (DOE/EIS-0026-SA-02). In the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement* (WIPP SEIS-II; DOE/EIS-0026-S2, September 1997), DOE analyzed the disposal of TRU waste containing residues from thermally-treated PCBs. Because there is no facility capable of thermally treating DOE's PCB-commingled TRU waste, DOE needs to have the capability to dispose of untreated PCBs. The evaluation in this SA referenced a technical study of repository performance with untreated PCBs and included an evaluation of transportation impacts under accident and incident-free conditions. The SA supported a

conclusion that for most impact areas there would be no change in impacts due to the disposal of untreated PCBs. Where a small increase in risk could potentially occur, the increase was too small to change the numerical expression of the impacts as reported in the WIPP SEIS-II. This SA and its associated ROD amendment are the culmination of several years of effort to complete the NEPA review and obtain the necessary regulatory authorities to dispose of DOE's PCB-commingled TRU waste at WIPP.



Drew Grainger and Jeanie Loving listen as Tom McKinney (right) describes how BPA uses SAs to efficiently manage hundreds of NEPA reviews a year. (Harold Johnson participated by video.)

Mr. McKinney acknowledged a statistic presented the previous day by Mr. Lawrence: of 122 SAs completed in the past year, all but 2 were prepared by BPA. Mr. McKinney then explained that SAs are part of the NEPA compliance strategy for three discrete BPA programs: Transmission System Vegetation Management, Watershed Management (a fisheries enhancement program), and Wildlife Mitigation. BPA prepared a programmatic EIS for each of these programs and established specific standards and guidelines as part of an environmental management system (EMS), to guide planning and implementation of individual projects. Each program's standards and guidelines are presented in checklist format to assist project proponents in providing evidence sufficient to support a determination whether the project is substantially consistent with the programmatic EIS. If so, preparation of a supplemental EIS for the project is not required.

Mr. McKinney concluded with his view of how an EMS process and a strategic NEPA process are compatible: The EMS steps of (1) planning, (2) implementation and operation, (3) checking and corrective action, and (4) management review may be accomplished, respectively, through the NEPA steps of (1) EIS preparation, (2) action-specific SAs, (3) program monitoring, and (4) adaptive management. **LL**

Cooperating Agencies *(continued from page 7)*

of, a particular topic. DOE also has defined appeal authorities to handle disagreements and will discuss any disagreements among agencies in the EIS. He said that DOE made an attempt to keep information shared with cooperating agencies confidential, but accepted that shared information could become public. DOE is trying to accommodate the needs of cooperating agencies in the EIS schedule, he said.

Benefits of working with cooperating agencies include building cooperative relationships, reducing the cost of data acquisition, identifying issues early, and facilitating the acceptance of interim actions, Mr. Metzler said. He also said that all but one cooperating agency used a standardized form to comment on a preliminary draft of the EIS, which made it easier to review and respond to their comments. Mr. Metzler also identified drawbacks to working with cooperating agencies, including the amount of management time necessary to establish agreements,



Mary Beth Burandt, Tony Como, Dan Sullivan, and Don Metzler (not shown) described benefits and challenges of working with cooperating agencies.

variability in levels of participation, competing priorities for agency attention, and the inability to restrict access by the public and the media at meetings. He said that the involvement of cooperating agencies extended the schedule for issuing the draft EIS. **LL**

e-NEPA *(continued from page 8)*

Other system features available to the Park Service include the ability to screen projects to help determine the appropriate level of NEPA review; identify environmental issues, such as resources with potential impacts; and conduct administrative overview by “rolling-up” information on compliance activities for multiple projects. Unlike the BLM system, however, the Park Service system does not incorporate a GIS.

Expanding e-NEPA at DOE

The 21st edition of *Directory of Potential Stakeholders for DOE Actions Under NEPA*, July 2004, is the first to be distributed as a database application on compact disk, announced Yardena Mansoor, NEPA Office. This new e-NEPA approach makes the *Directory* of NEPA contacts in Federal agencies, states, and nongovernmental organizations far more useful, she explained. As in the past, the *Directory* is available online (www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf) and in print, but the new database application allows the user to more quickly find relevant contact information and then transfer it to another software application (e.g., word processing,

Maybe we can team together to develop some new e-NEPA initiatives. What other aspects of the NEPA process can we improve through these types of approaches? We welcome your ideas.

– Carol Borgstrom

spreadsheet) to efficiently produce accurate mailing labels or personalized letters. Distributing and updating the *Directory* is easier, too. (See *LLQR*, June 2004, page 14.)

Denise Freeman, NEPA Office, introduced the “CD Library Project,” which entails putting a number of DOE NEPA documents on separate compact disks, which can then be copied as needed. This will enable DOE to be more responsive to requests for documents, especially those that are out of print. In taking this step, the NEPA Office also is addressing the concern that some DOE stakeholders do not have Internet access that allows downloading large files. **LL**

More Thoughts on Getting Better and Better

By: Clarence Hickey, NEPA Compliance Officer, Office of Science

A real benefit of DOE's NEPA Community Meetings is the chance to network and talk face-to-face about NEPA issues with colleagues from across the Department. After this year's meeting, I found myself thinking that to keep *getting better and better*, the Department and the Federal government in general need to tackle some issues beyond the procedural provisions and compliance aspects of NEPA implementation. I sent my thoughts to the Office of NEPA Policy and Compliance, which asked if I would prepare an article reflecting these ideas. So, here they are for you to mull on.

Better Environmental Stewardship Requires More Than NEPA Procedures

I would like to see DOE embrace the policy and goals of Section 101 of NEPA as an operating philosophy and in its larger strategic planning. In our Departmental strategic plans we tend to focus the discussion of environmental protection on Integrated Safety Management (ISM) and/or Environmental Management Systems (EMS), plus remediation and waste management commitments. These are useful environmental foci, but they are not complete.



Our strategic plans say that we do EISs and involve the public, but we do not use NEPA's policy and goals as our overarching way of doing business. We do very well at being procedurally compliant with Section 102 of NEPA, but we have always needed more than compliance to fully protect the environment and to demonstrate our environmental stewardship to the public we serve. In some ways it seems like we have short changed the ethical aspects of the Act's policy and goals in our fervor to be compliant with its legal and procedural requirements. We need both compliance and ethics to be proper stewards of the environment, and we need to put as much vigor into ethics as we do into procedural compliance.

Scope of NEPA and ISM Match

DOE's ISM Systems contain provisions for environmental protection, although ISM's focus is primarily on safety. I believe that an environmental piece of ISM is the NEPA process and its documentation, which provide an environmental framework that is consistent with ISM's

safety focus and its five core functions (bold below). Consider especially the scope and content of an EIS:

- An EIS **defines the scope of work** (i.e., purpose and need, proposed action and alternatives) – ISM core function No. 1.
- An EIS **analyzes the environmental hazards** and consequences – ISM core function No.2.
- An EIS helps to **develop and implement environmental hazard controls** (e.g., through mitigation action plans and records of decision) – ISM core function No. 3.
- An EIS helps to plan the **performance of work within controls** and standards (i.e., requirements and compliance) – ISM core function No. 4.
- The EIS process **provides feedback and continuous improvement** (e.g., mitigation action plans, lessons learned, public and community input) – ISM core function No. 5.

The Office of Science prepared an EIS Quality Assurance Plan in 2002 that attempts to relate how the Plan and NEPA compliance are consistent with the ISM process, and how an EIS is a key environmental application of ISM. (See Chapter 1, Introduction, of the Plan at www.sc.doe.gov/sc-80/sc-83/qa-eis.shtml.) I believe that ISM should be an aspect of assessing and protecting the human environment in the NEPA process, as Section 101 speaks to health and welfare, risks to health or safety, and to other undesirable and unintended consequences. (This latter aspect always has been for me the "NEPA basis" for such things as accident analysis, and to some degree for cumulative effects assessment.)

Compliance Should Be the Beginning, Not End Point, of Environmental Review

The match between ISM core functions and NEPA needs to be better plugged into the DOE mindset on ISM.

DOE has tended to use a more narrowly focused aspect of ISM as our mantra for "all things environmental and safety." Safety always has been a part of NEPA, and safety issues can have environmental and health consequences. ISM should be part of how we "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of [people]" (NEPA, Section 2, Purpose). I believe we have turned things around in ways that can work against our achieving full

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More Thoughts *(continued from previous page)*

stewardship of the human environment. If we could embrace Section 101 as our mantra, ISM would fall under the larger rubric of those lofty goals that Congress passed in 1969.

I would like to see DOE explore ways to formally and publicly connect our NEPA documentation (Section 102 compliance) with its reason for being prepared (Section 101 policy and goals). DOE might explain in a finding of no significant impact or record of decision how its conclusions are consistent with or support the policy and goals in Section 101. Our EAs and EISs state how we are preserving cultural resources or protecting endangered species, for example, but how does creating a new laboratory or proposing a new nuclear program for the nation support the broad goals of NEPA? I suspect they do, and I think we could discuss this in our NEPA documents. I would like to see DOE be the first agency to test this idea of connecting Sections 101 and 102 in our NEPA documents, just as we have jumped into the lead on many other NEPA issues.

I will admit some disappointment in the recent development of DOE Order 450.1, Environmental Protection Program, as it does not draw upon the importance of NEPA's policy for the nation in environmental protection and does not espouse the policy NEPA contains as an operational philosophy and policy for an agency. The Order draws primarily on the use of EMSs as the way to achieve protection. Now, don't misunderstand me. EMSs are magnificent structures for compliance and for building public trust at our sites. We have tended, however, to see compliance as the end point, rather than the beginning. I would rather have seen the two orders better cross referenced.

So, here you have it. A pro-NEPA editorial from a maverick environmental NCO. These are my thoughts solely, and not necessarily those of the Office of Science or the NEPA Office. I'd be glad to read your op-eds in future issues of *LLQR*. If you have questions or comments, send them to me at clarence.hickey@science.doe.gov or 301-903-2314. **LL**

DOE NEPA Office Shares Best Practices

In the spirit of sharing DOE lessons learned, staff from the Office of NEPA Policy and Compliance meets regularly with representatives of other agencies and countries. The Office supports the Environmental Protection Agency's (EPA's) "International Capacity Program for Environmental Impact Assessment" and recently also responded to requests for information from the Japanese Environmental Ministry and the Minerals Management Service (U.S. Department of the Interior).

EPA sponsors study tours for representatives from other countries (e.g., China, Ghana, Japan, South Korea, and Russia) that want to develop new or improved environmental impact assessment practices. The study tours include meetings with EPA, the Council on Environmental Quality (CEQ), and other Federal agencies to discuss U.S. environmental impact assessment and environmental protection practices. EPA's Office of Federal Activities asks DOE to support the study tours by providing briefings on case studies and exemplary DOE NEPA practices,

Representatives of other agencies appreciate DOE's NEPA Lessons Learned Quarterly Reports because of the value in developing their own programs.

— Eric Cohen

including DOE's lessons learned program. For example, NEPA staff recently briefed a representative from the University of Tokyo Institute for Environmental Studies, which is particularly interested in DOE's effective practices for fostering public participation and DOE's use of programmatic environmental impact statements.

The Japanese Environmental Ministry is interested in learning how agencies determine the scope of an EIS and how they organize public meetings. On the recommendation of CEQ, a Ministry representative met with NEPA Office staff. The meeting addressed a wide-range of NEPA implementation issues, including management of uncertainty in impact analyses, monitoring of impacts after project implementation, and information management issues (e.g., databases, security). The Ministry representative was particularly impressed by the quality and quantity of NEPA information that DOE makes available on its Web site (www.eh.doe.gov/nepa).

The Minerals Management Service, as part of its multi-year e-Government initiative to improve service to internal and external customers, contacted DOE when benchmarking. In the telephone interview, the NEPA Office staff discussed DOE's NEPA process performance metrics, responsibilities for NEPA compliance within DOE, and the DOE NEPA lessons learned program.

For further information, contact Eric Cohen at eric.cohen@eh.doe.gov or 202-586-7684. **LL**

Lessons Learned from *Lessons Learned* Part 4: Getting Better, and Better Still

DOE's NEPA program appears to be on the right track, but needs to continue emphasizing basic tenets such as good communication and early and meaningful involvement of all interested parties. This conclusion is based on a review conducted by the Office of NEPA Policy and Compliance of nearly 1,000 excerpts from responses to DOE's NEPA Lessons Learned Questionnaire published in *LLQR* since December 1994.

Good communication and effective involvement were identified time and again by questionnaire respondents as key factors in the successful completion of EAs and EISs. Good communication is essential throughout the NEPA process – early on to help reduce the time needed for data collection; through regular, internal meetings to keep the entire document preparation team informed and focused; and through continuous, often informal, meetings with external agencies and the public to develop good working relationships and assure that issues are identified and addressed.

Meaningful involvement applies to parties within and outside DOE. The NEPA document team needs to have the right skills mix, including NEPA experience, respondents said, and include senior management, as needed. Successful scoping depends on reaching within and outside DOE to assure early involvement of interested parties, emphasizing that a well-scoped EA or EIS is more likely to be completed on time and meet program needs.

Respondents indicated that tools such as Web sites and electronic distribution of documents can enhance both communication and meaningful involvement. By using these tools and good management practices together effectively, respondents said, the NEPA process often leads to better-informed decisions. Moreover, respondents identified numerous discrete actions resulting from NEPA reviews that enhanced environmental protection.

Respondents also identified what didn't work for NEPA implementation. Most often the mistakes involved failing to implement accepted practices. Among the problems identified were not defining alternatives early in the process and not adequately engaging managers or the public.

The observations of respondents were echoed by Martin Letourneau, DOE representative to the White House Task Force on Energy Project Streamlining, at this year's NEPA Community Meeting. He said that the

This article is the fourth of a series examining responses to DOE's NEPA Lessons Learned Questionnaire. Excerpts from the responses are published on the concluding pages of each issue of *LLQR* under the heading: *What Worked and Didn't Work in the NEPA Process*. (See page 29.) The Lessons Learned Questionnaire is available on the DOE NEPA Web site at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports.

The first three articles discussed scoping and data collection and analysis (*LLQR*, December 2003, page 1), schedule and teamwork (*LLQR*, March 2004, page 6), and public participation, usefulness, and environmental protection (*LLQR*, June 2004, page 4). This article concludes the series.

Task Force saw no unusual issues in its review of NEPA case studies across the Federal government, just the "same mistakes and the same opportunities" to improve NEPA implementation. (See related article, page 1.)

Transfer Knowledge Gained from Experience

"Communicating lessons learned to new NEPA practitioners is particularly important," said Eric Cohen, Unit Leader, NEPA Office. He recalled that several people at the NEPA meeting commented on how members of DOE's NEPA Community are retiring or moving on. "We're losing corporate knowledge and experienced NEPA practitioners," Mr. Cohen said. "How can we get guidance and other information on NEPA implementation to new people?"

He pointed out that e-NEPA mechanisms such as the DOE NEPA Web site (www.eh.doe.gov/nepa) make guidance documents readily available. Nonetheless, the NEPA Office is looking for ways to expand the use of e-NEPA in this area, support NCOs in efforts to train new people, and develop additional guidance that documents lessons learned.

"Our challenge," Mr. Cohen said, "is to recruit new people to DOE's NEPA Community and to communicate successful practices so that we don't reinvent the wheel, don't repeat the same mistakes. We always welcome suggestions to help us meet this challenge and keep getting better and better." 

CEQ Work Group Aims to Enhance Tribal Role in NEPA Process



Recognizing that Federal agencies, American Indian tribes, Alaska Native entities, and Native Hawaiian organizations can learn much from one another, and that increasing stakeholder information sharing and cooperation improves the NEPA process, the Council on

Environmental Quality (CEQ) recently announced the establishment, mission, and goals of the Interagency Tribal NEPA Capacity Work Group (Work Group).

The Work Group's mission, provided in a July 30, 2004, memorandum from Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, to Federal Agency NEPA Contacts and Tribal Coordinators, is to "strive to enhance tribal capacity for more effective participation in NEPA analyses and processes to encourage more informed decisionmaking so as to promote the preservation of tribal cultural heritage and cultural identity." The Work Group also will encourage and support tribal efforts to develop tribal-specific NEPA-like processes.

Goals of the Work Group

One of the six short-term goals is to "aid in developing and evaluating regional training offered to build tribal-agency understanding and working relationships under NEPA at the local levels." The Work Group supported such an education and training session provided by the Tulalip tribes earlier this year. (See *LLQR*, June 2004, page 10.)

Other short-term goals address

- developing and maintaining a training compendium
- creating and supporting an interagency one-stop Web portal
- identifying and making available national and local tribal and Federal agency contact information
- collecting and sharing examples of success stories and related materials
- developing an overall strategy for meeting tribal needs.

Four long-term goals include one to "enhance access by tribes, federal agencies, and others to capacity building tools, training materials, and contacts for tribes to more effectively and constructively engage in federal decisionmaking." This goal involves sharing lessons learned via the Internet.

Mr. Greczmiel expects the CEQ memorandum to be posted on the NEPA Web site (<http://ceq.eh.doe.gov/nepa/nepanet.htm>). Current Federal agency members of the Work Group include representatives from the Advisory Council on Historic Preservation; the Departments of Agriculture, Defense, Energy, Transportation, and the Interior; and the Environmental Protection Agency. The Work Group will periodically request assistance for information and review of materials being developed.

For further information, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Amendments Clarify Advisory Council Role in NEPA Process and Agency Decisionmaking on Historic Properties

In recent amendments to its regulations implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), the Advisory Council on Historic Preservation clarified that its opinion on an agency's findings regarding effects on historic properties is not binding on the agency. The amendments were effective August 5, 2004 (69 FR 40544; July 6, 2004), and included revisions to 36 CFR 800.8, "Coordination with the National Environmental Policy Act."



Although an agency must take the Council's opinion into account and provide the Council with a summary of the agency's final decision, including its rationale and evidence that it considered the Council's opinion, the

agency is not required to abide by the Council's opinion. The revised regulations make clear that an agency is responsible for the final decision on findings of "no historic properties affected" and "no adverse effects" on historic properties.

Detailed information on the Section 106 process can be found on the ACHP's Web site (www.achp.gov). For specific discussion of coordinating the NEPA and Section 106 processes, see *LLQR* June 2001, page 8, and June 1999, page 3. Summaries of the Section 106 process and the recent amendments, and a copy of the regulation as amended, can be found on the Web site of DOE's Office of Air, Water and Radiation Protection Policy and Guidance at www.eh.doe.gov/oepra/guidance/cultural/sect106_nhpa.pdf (as attachments to a memorandum dated July 27, 2004). For further information on DOE's Section 106 compliance, contact Lois Thompson at lois.thompson@eh.doe.gov or 202-586-9581. 

NRC Adopts Environmental Justice Policy Statement



The Nuclear Regulatory Commission (NRC) recently adopted a “Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions” (69 FR 52040; August 24, 2004). The preamble states that while

NRC is “committed to the general goals” of Executive Order 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), the agency “will strive to meet those goals through its normal and traditional NEPA review process.” The Policy Statement further explains NRC’s position that the “basis for admitting EJ contentions in NRC licensing proceedings stems from the agency’s NEPA obligations,” emphasizing that environmental justice “issues are only considered when and to the extent required by NEPA.”

NRC issued a draft Policy Statement for public comment on November 5, 2003 (68 FR 62642). The preamble to the final Policy Statement addresses comments received on the draft, a number of which pertain to NRC’s future decision on whether to adopt DOE’s final EIS on the high-level waste repository at Yucca Mountain, Nevada (DOE/EIS-0250, October 2002), in connection with NRC’s licensing process for the repository.

NRC sets forth eight guidelines regarding the consideration of environmental justice in its NEPA implementation, quoted in part below.

- “The legal basis for the NRC analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898.”
- The goal of the environmental justice portion of a NEPA analysis is to “identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities” and to “identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad-ranging review of racial or economic discrimination.”
- “In developing an EA where a FONSI is expected it is not necessary to undertake an EJ analysis unless special circumstances warrant the review. Special circumstances arise only where the proposed action has a clear potential for off-site impacts to minority and low-income communities associated with the proposed action.”

- Because environmental justice-related issues are location-specific, they “normally are not considered during the preparation of generic or programmatic EISs.”
- “EJ per se is not a litigable issue in NRC proceedings. Rather the NRC’s obligation is to assess the proposed action for significant impacts to the physical or human environment.”
- “The methods used to define the geographic area for assessment and to identify low-income and minority communities should be clear, yet allow for enough flexibility that communities or transient populations that will bear significant adverse effects are not overlooked during the NEPA review.” Use standard distances and population percentages as guidance, “supplemented by the EIS scoping process, to determine the presence of a minority or low-income population.”
- “The assessment of disparate impacts is on minority and low-income populations in general and not to the ‘vaguely defined, shifting subgroups within that community.’”
- “In performing a NEPA analysis for an EIS, published demographic data, community interviews and public input through well-noticed public scoping meetings should be used in identifying minority and low-income communities that may be subject to adverse environmental impacts.”

For further information contact Brooke G. Smith, NRC Office of General Counsel, at bgs@nrc.gov or 301-415-2490. 

Editor’s note: Executive Order 12898 concerning environmental justice and the Council on Environmental Quality’s “Environmental Justice: Guidance Under the National Environmental Policy Act” (December 1997) are available on the DOE NEPA Web site (www.eh.doe.gov/nepa) under Guidance. Also, EPA has issued “Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews” (July 1999, www.epa.gov/compliance/resources/policies/nepa/enviro_justice_309review.pdf). DOE is preparing guidance for incorporating environmental justice considerations in its NEPA analyses.



Litigation Updates

Daniel Ruge, Acting Assistant General Counsel for Environment, introduced a panel from DOE's Office of General Counsel at the NEPA Community Meeting. Attorneys Richard Ahern, Ed Le Duc, Angela Foster, and Janet Masters reviewed major cases that could affect DOE's NEPA program. The cases they discussed are summarized below.

Court Affirms WIPP SEIS-II Record of Decision

On June 30, 2004, the United States District Court for the District of New Mexico affirmed DOE's Record of Decision (63 FR 3624; January 23, 1998) to implement the preferred alternative analyzed in the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement* (WIPP SEIS-II; DOE/EIS-0026-S2, September 1997). The preferred alternative foresees disposing of up to 175,600 cubic meters of transuranic (TRU) waste in WIPP.

DOE Addressed Issues in EISs

Citizens for Alternatives to Radioactive Dumping (CARD) claimed that the WIPP SEIS-II is inadequate in its discussion of geology, hydrology, release scenarios, the risk of terrorist attacks or sabotage, the plutonium content of each shipping container, and the potential for roof fall and gas generation within the repository. (See *LLQR*, September 1998, page 11.) The court concluded, however, that plaintiffs had not presented new information that DOE had failed to consider through the NEPA process, and the court identified where these issues are discussed in the WIPP SEIS-II, relying often on DOE's responses to public comments.

Plaintiffs also claimed that the WIPP SEIS-II is inadequate for failing to consider alternative disposal sites, such as long-term storage at sites where TRU waste was generated or use of the proposed high-level waste repository. The court reviewed alternatives evaluated in all WIPP-related EISs and concluded that, through its staged NEPA review process, DOE had adequately evaluated a range of reasonable alternatives. In the case of using the proposed high-level waste repository, for example, the court concluded that it was sufficient to provide a brief discussion of the reasons why the alternative was eliminated from detailed study in the WIPP SEIS-II, in part, because the issue had been addressed in the original WIPP EIS (DOE/EIS-0026, 1980).

Court Deferred to Agency Expertise

The court deferred to DOE's "resolution of conflicting evidence concerning issues within its area of expertise." In other words, the court limited its review to the question of whether DOE had considered relevant issues in the NEPA process, and the court did not attempt to resolve differences in the interpretation of scientific opinion.

Similarly, the court accepted DOE's methodology for analyzing environmental justice. Plaintiffs challenged the WIPP SEIS-II for inadequately considering the potential environmental impacts on low-income and minority populations along transportation routes. In particular, plaintiffs offered what the court termed a "hypothesis" for characterizing the population along highways that differed from the methodology used by DOE in the WIPP SEIS-II. The court found that plaintiffs had not provided evidence that their hypothesis was credible, and the court deferred to DOE's choice of methodology for analyzing potential environmental justice impacts.

DOE Not Required to Use Actual Characterization Data

Plaintiffs criticized the Environmental Protection Agency's (EPA's) process for certifying the acceptability of waste prior to DOE disposing of it in WIPP, claiming that it reflects a "piecemeal" approach and is based on uncertain characterization of waste rather than "actual characterization data describing the complete waste inventory planned for disposal at WIPP." The court determined that it could not review plaintiffs' claims against EPA but did evaluate the implications of plaintiffs' arguments for the WIPP SEIS-II. The court concluded that waste characterization in the WIPP SEIS-II is adequate and that it would "render agency decisionmaking intractable" to require that DOE suspend WIPP operations to further supplement the WIPP SEIS-II "with actual characterization data for each item of waste." The court did clarify, though, that it was not opening the door to "use WIPP for the treatment or disposal of other types of waste not contemplated in the SEIS-II or not permitted by applicable statutes and regulations."
[Case No.: CIV 99-321 MCA/ACT]

(continued on next page)

Litigation Updates (continued from previous page)

DOE NEPA Litigation in Brief

Border Power Plant Working Group v. Abraham et al. (S.D. Calif.): DOE is preparing an EIS for two electric transmission lines that cross the U.S.-Mexico border. The EIS and record of decision (ROD) are scheduled for completion by December 15, 2004, consistent with the court's order. (See *LLQR*, June 2004, page 16; December 2003, page 7; and September 2003, page 22.) [Case No.: 02-CV-513]

Columbia Riverkeeper and State of Washington et al. v. Abraham et al. (E.D. Wash.): Plaintiffs amended their complaint in August 2004 to ask the court to bar shipments of low-level radioactive and low-level mixed waste to the Hanford site. DOE currently is operating under a May 2003 court-ordered injunction that bars the shipment of transuranic waste to the Hanford site. At issue is the adequacy of DOE's NEPA reviews related to waste management and disposal at Hanford, including the recently completed *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and ROD (69 FR 39449; June 30, 2004). [Case Nos: 03-CT-5018 and 03-CT-5044]

Nuclear Energy Institute, Inc. v. Environmental Protection Agency¹ (D.C. Cir.): In this case, which combined Nevada's legal challenges to siting a geologic repository at Yucca Mountain, plaintiffs argued that DOE's *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250, February 2002) is inadequate to support a site-selection recommendation by the Secretary of Energy or the President. A three-judge panel on July 9, 2004, found this argument moot because Congress has since approved the Yucca Mountain site, thus ending the site-selection process. The court left open the possibility of future challenges of the EIS, however, should DOE or the Nuclear Regulatory Commission (NRC) rely on it for future decisions.

¹ This case is cited in previous issues of *LLQR* as *State of Nevada et al. v. U.S. Department of Energy et al.*

The court also dismissed or denied all other challenges brought against DOE, the Environmental Protection Agency (EPA), and NRC, with one exception: it vacated the 10,000 year compliance period in the EPA rule and the corresponding section of the NRC rule and remanded the matter to EPA. The court found that the 10,000 year compliance period was not consistent with the requirement of Section 801(a) of the Energy Policy Act that EPA's rule be "based upon and consistent with the findings and recommendations of the National Academy of Sciences" (NAS). NAS had recommended that compliance be measured at the time of peak radiation release, which is estimated to occur after several hundred thousand years. (See *LLQR*, March 2002, page 19, and December 2002, page 22.)

[Case Nos. 01-1516, 02-1036, 02-1077, 02-1179, 02-1196]

Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al. (N.D. Calif.): This a NEPA and Freedom of Information Act action brought by two nonprofit organizations and several private citizens alleging deficiencies in the EAs for a proposed Biosafety Level 3 ("BSL-3") facility at Los Alamos National Laboratory (LANL) and another at Lawrence Livermore National Laboratory (LLNL). Based on DOE's January 2004 decision to withdraw the FONSI for the LANL facility and prepare a new EA, the parties agreed in principle to narrow the focus to the adequacy of the LLNL EA and the need for a programmatic EIS. The case is fully briefed, and DOE is awaiting a decision. (See *LLQR*, March 2004, pages 2 and 16; and September 2003, page 23.) [Case No.: CV-03-3926-SBA]

Touret et al. v. NASA et al. (D.R.I.): In this action, filed May 21, 2004, plaintiffs challenge the adequacy of the *Environmental Assessment for the Partial Funding of a Proposed Life Sciences Building at Brown University, Providence, Rhode Island* (NASA/03-GSFC-02/DOE/EA-1473, July 2003) and request preparation of an EIS. This EA was prepared by the National Aeronautics and Space Administration, with DOE as a cooperating agency. Both agencies and Brown University are named in the lawsuit. A briefing schedule has not been set. [Case No.: 1:04cv00198]

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Litigation Updates *(continued from previous page)*

Other Agency NEPA Cases

U.S. Department of Transportation et al. v. Public Citizen et al. (Supreme Court): The Supreme Court on June 7, 2004, reversed a decision by the Ninth Circuit Court of Appeals in a lawsuit over DOT's EA for Mexican trucking safety and inspection rules (*LLQR*, June 2003, page 22). The appeals court had ruled that a Presidential decision to lift a moratorium on the cross-border operation of Mexican-based trucks is a reasonably foreseeable consequence of DOT's rulemaking, and therefore DOT should have considered the overall environmental impact of lifting the moratorium (i.e., potential affects attributable to increased truck traffic from Mexico into the U.S.) as part of its NEPA review.

The Supreme Court, however, ruled unanimously that DOT need not consider these potential impacts because lifting the moratorium is a Presidential decision and DOT has no discretion to prevent the entry of Mexican trucks for environmental reasons. DOT "simply lacks the power to act" on information about potential environmental impacts of increased truck traffic from Mexico, the Court concluded. "We hold that where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect. Hence, under NEPA and the implementing CEQ regulations,

the agency need not consider these effects in its EA when determining whether its action is a 'major Federal action.'"

The Court also ruled that because Public Citizen had not identified additional alternatives in their comments on DOT's EA, they forfeited any objection to the EA on the grounds that it had not adequately discussed potential alternatives to the proposed action. [Case No.: 03-358]

Norton et al. v. Southern Utah Wilderness Alliance et al. (Supreme Court): The Supreme Court on June 14, 2004, reversed a decision by the Tenth Circuit Court of Appeals and determined that the Bureau of Land Management need not supplement existing NEPA analyses to address the increased use of off-road vehicles in certain wilderness study areas in Utah. A wilderness study area is public land that might be designated by Congress as a wilderness area. Management of a wilderness study area is guided by a land use plan, which the Court described as a "comprehensive management framework" that reflects the Bureau's priorities but does not commit the agency to specific actions. Because the land use plans in question already had been approved, the Court determined that, "There is no ongoing 'major Federal action' that could require supplementation" of existing NEPA analyses. [Case No.: 03-101] 

Transitions

New NCO: Allen Wrigley, Princeton Site Office

Allen Wrigley was recently designated NEPA Compliance Officer (NCO) for the Princeton Site Office, which has new NEPA authorities under the recent reorganization of the Office of Science. An environmental engineer, Mr. Wrigley currently is assigned to environmental compliance and electrical and fire protection safety, in addition to NEPA coordination. His previous experience includes environmental restoration and waste management with private engineering consulting firms, the U.S. Air Force, and his first four years at DOE, as well as environmental management in the chemical manufacturing sector. Mr. Wrigley can be reached at awrigley@pppl.gov or 609-243-3710.

Other Transitions

Jay Rose, recently the Deputy NEPA Compliance Officer for Defense Programs in the National Nuclear Security Administration, has retired from DOE after 14 years of service. (See page 3, and, for his remarks at the 2004 DOE NEPA Community Meeting, see page 10.) During his seven years as NCO he served as Document Manager for several complex and significant EISs, including the *Stockpile Stewardship and Management Programmatic EIS* (DOE/EIS-0236) and its supplement for the proposed Modern Pit Facility (DOE/EIS-0236-S2). For information on Defense Programs NEPA activities, contact NNSA NCO James Mangeno at james.mangeno@nnsa.doe.gov or 202-586-5484.

On behalf of the DOE NEPA Community, we wish Jay and Roger well in their future endeavors.

Roger Twitchell retired from the Idaho Operations Office after 31 years of Federal service. During his 10 years as NCO, he supported several major EISs, including for *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs* (DOE/EIS-0203) and *Idaho High-Level Waste and Facilities Disposition* (DOE/EIS-0287). For information on Idaho Operations Office NEPA activities, contact Jack Depperschmidt, Acting NCO, at depperdj@id.doe.gov or 208-526-5053. 

Training Opportunities

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

- **Managing and Facilitating Public Meetings**

Portland, OR: September 21-23
Fee: \$885 (GSA contract: \$795)

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Logan, UT: September 27-29
Fee: \$885 (GSA contract: \$795)
Las Vegas, NV: October 19-22
Fee: \$1,110 (GSA contract: \$995)

- **Team Building for NEPA Specialists**

Logan, UT: September 30-October 1
Fee: \$660 (GSA contract: \$595)

- **Clear Writing for NEPA Specialists**

Logan, UT: October 18-20
Fee: \$885 (GSA contract: \$795)

- **Socio-economic Impact Analysis for NEPA Specialists**

Logan, UT: November 15-16
Fee: \$660 (GSA contract: \$595)

- **Reviewing NEPA Documents**

Phoenix, AZ: November 16-18
Logan, UT: December 8-10
Fee: \$885 (GSA contract: \$795)

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: October 18-22
Fee: \$1,050/\$1,150 (by/after September 20)

- **Current and Emerging Issues in NEPA**

Durham, NC: November 17-19
Fee: \$695/\$775 (by/after October 25)

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

- **NEPA Certificate Program**

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.

Fee: Included in registration for constituent courses.

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

- **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.*
720-859-0380
info@envirotrain.com
www.envirotrain.com

EAs and EISs Completed April 1 to June 30, 2004

EAs

Los Alamos Site Office

DOE/EA-1464 (6/14/04)

Proposed Remediation of Material Disposal Area H within Technical Area 54 at Los Alamos National Laboratory, New Mexico

Cost: \$195,000

Time: 18 months

National Energy Technology Laboratory

DOE/EA-1477* (1/16/04)

Great River Energy's Lignite Fuel Enhancement Demonstration Project, North Dakota

Cost: \$39,900

Time: 8 months

Oak Ridge Operations Office

DOE/EA-1495* (1/21/04)

USEC Incorporated America Centrifuge Lead Cascade Facility at Piketon, Ohio

Cost: \$15,000

Time: 11 months

Western Area Power Administration

DOE/EA-1411 (9/19/02; FONSI Date 6/2/04)

East Altamont Energy Center, Alameda County, California

Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 33 months

* Not previously reported in LLQR

EISs

Environmental Management/

Oak Ridge Operations Office

DOE/EIS-0359 (69 FR 34161; 6/18/04)

(EPA Rating: EC-1)

Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Paducah, Kentucky

Cost: \$1,775,500

Time: 33 months

DOE/EIS-0360 (69 FR 34161; 6/18/04)

(EPA Rating: EC-2)

Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Portsmouth, Ohio

Cost: \$1,775,500

Time: 33 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 of three EAs for which cost data were applicable was \$39,900; the average was \$83,300.
- Cumulatively, for the 12 months that ended June 30, 2004, the median cost for the preparation of 18 EAs for which cost data were applicable was \$39,900; the average was \$76,852.
- For this quarter, the median completion time of four EAs was 15 months; the average was 18 months.
- Cumulatively, for the 12 months that ended June 30, 2004, the median completion time for 18 EAs was 12 months; the average was 14 months.

EIS Costs and Completion Times

- For this quarter, the median and average cost of two EISs completed was \$1,775,500.
- Cumulatively, for the 12 months that ended June 30, 2004, the median cost for the preparation of six EISs for which cost data were applicable was \$1,560,250; the average was \$2,726,167.
- For this quarter, the median and average completion time of two EISs was 33 months.
- Cumulatively, for the 12 months that ended June 30, 2004, the median completion time for six EISs was 33 months; the average was 37 months.

Recent EIS-Related Milestones (June 1 to August 31, 2004)

Notice of Intent

Environmental Management/ Richland Operations Office

DOE/EIS-0364

Disposition of the Fast Flux Test Facility, Richland, Washington

August 2004 (69 FR 50176, 8/13/04)

Environmental Management

DOE/EIS-0200

Revised Record of Decision, Final Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste

June 2004 (69 FR 39446, 6/30/04)

Draft EIS

Bonneville Power Administration

DOE/EIS-0353

South Fork Flathead Watershed Westslope Cutthroat Trout Conservation Project, Montana

June 2004 (69 FR 34161, 6/18/04)

Environmental Management/ Carlsbad Field Office

DOE/EIS-0026-S2

Revised Record of Decision, Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement, Carlsbad, New Mexico

June 2004 (69 FR 39456, 6/30/04)

Final EIS

Bonneville Power Administration

DOE/EIS-0349

Cherry Point Co-generation Project, Washington

August 2004 (69 FR 52668, 8/27/04)

Environmental Management/ Oak Ridge Operations Office

DOE/EIS-0359

Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Paducah, Kentucky

July 2004 (69 FR 44654, 7/27/04)

Records of Decision

Bonneville Power Administration

DOE/EIS-0343

COB Energy Facility

August 2004 (69 FR 52880, 8/30/04)

DOE/EIS-0360

Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at Portsmouth, Ohio

July 2004 (69 FR 44649, 7/27/04)

(continued on next page)

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting.

James Rose is now the Program Manager for the Tetra Tech, Inc., contract team. He can be reached at james.rose@tetratech.com or 703-931-9301. 

Description	DOE Contact	Date Awarded	Contract Team
Supplement Analysis for the Disposal of Fernald Operable Unit 4 11e(2) Byproduct Material at the Nevada Test Site	John Carilli carilli@nv.doe.gov 702-295-0672	7/13/2004	Potomac-Hudson
Sandia National Laboratories (NM) Site-wide EIS Assessment for Sandia Site Office	Susan Lacy slacy@doeal.gov 505-845-5542	7/14/2004	AGEISS
Fast Flux Test Facility Decommissioning EIS	Doug Chapin douglas_h_chapin@rl.gov 509-373-9396	7/16/2004	Battelle

Recent EIS-Related Milestones (June 1 to August 31, 2004)

(continued from previous page)

Environmental Management/ Richland Operations Office

DOE/EIS-0286

Hanford Solid (Radioactive and Hazardous) Waste Program, Richland, Washington
June 2004 (69 FR 39449, 6/30/04)

Nuclear Energy, Science and Technology

DOE/EIS-0310

Amended Record of Decision, Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States including the Role of the Fast Flux Test Facility
August 2004 (69 FR 50180, 8/13/04)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0169-SA-08*

Yakima/Klickitat Fisheries Project, Boone Pond Acclimation Site, Kittitas County, Washington
(Decision: No further NEPA review required)
April 2004

System Operation Review Environmental Impact Statement (DOE/EIS-0170)

DOE/EIS-0170-SA-2

2004 Federal Columbia River Power System Juvenile Bypass Operations, Lower Columbia River
(Decision: No further NEPA review required)
July 2004

Business Plan Environmental Impact Statement (DOE/EIS-0183)

DOE/EIS-0183-SA-06

Memorandum of Agreement between Bonneville Power Administration (BPA) and Bonneville Environmental Foundation (BEF) to Help Support BEF's Renewable Resource Activities, Pacific Northwest
(Decision: No further NEPA review required)
June 2004

Wildlife Mitigation Program Environmental Impact Statement

(DOE/EIS-0246)

DOE/EIS-0246-SA-40

Protect and Restore Wildlife Habitat Coeur d' Alene Tribe - Hangman Acquisitions, Benewah County, Idaho
(Decision: No further NEPA review required)
July 2004

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

DOE/EIS-0265-SA-142*

Idaho Model Watershed Habitat Projects – Goddard Habitat Project, Streambank, Lemhi County, Idaho
(Decision: No further NEPA review required)
April 2004

DOE/EIS-0265-SA-143*

Therriault Creek Meadow Restoration Project, Lincoln County, Montana
(Decision: No further NEPA review required)
May 2004

DOE/EIS-0265-SA-144*

Salmon River Habitat Enhancement Monitoring and Evaluation, Fencing and Planting, Custer County, Idaho
(Decision: No further NEPA review required)
May 2004

DOE/EIS-0265-SA-145*

Hood River Habitat – Baldwin Creek Culvert Replacement 2004, Hood River County, Oregon
(Decision: No further NEPA review required)
May 2004

DOE/EIS-0265-SA-146

Grande Ronde Model Watershed Project – Catherine Creek Off-Channel Rearing Habitat Improvement, Union County, Oregon
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-147

Grande Ronde Model Watershed Project – Catherine Creek Swackhammer Fish Passage and Erosion Management, Union County, Oregon
(Decision: No further NEPA review required)
July 2004

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-148

Idaho Model Watershed Habitat Projects – Gydesen-Moen Irrigation Improvement and Riparian Enhancement, Custer County, Idaho
(Decision: No further NEPA review required)
June 2004

DOE/EIS-0265-SA-149

Idaho Model Watershed Habitat Projects – Rocky Mountain Ranch River Fence, Custer County, Idaho
(Decision: No further NEPA review required)
June 2004

DOE/EIS-0265-SA-150

Idaho Model Watershed Habitat Projects – Downton Ellis Creek Riparian Fence, Custer County, Idaho
(Decision: No further NEPA review required)
June 2004

DOE/EIS-0265-SA-151

Idaho Model Watershed Habitat Projects – Arrow A-Jay Neider Ranch River Fence, Custer County, Idaho
(Decision: No further NEPA review required)
June 2004

DOE/EIS-0265-SA-152

Idaho Model Watershed Habitat Projects – Zeigler Riparian Fence Phase II, Custer County, Idaho
(Decision: No further NEPA review required)
June 2004

DOE/EIS-0265-SA-153

Yakima Tributary Access and Habitat Program – Cowiche Creek Pump Screens, Yakima County, Washington
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-154

Idaho Model Watershed Habitat Projects – Bauchman (Ives Place) Riparian Fence, Custer County, Idaho
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-155

Blind Slough Restoration Project – Clatsop County, Oregon
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-156

Upper Salmon River Anadromous Fish Passage Improvement Projects, Lemhi County, Idaho
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-157

Protect and Restore the Big Canyon Creek Watershed, Lewiston, Idaho
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-158

Idaho Model Watershed Habitat Projects – Twelvemile Creek Pipeline, Lemhi County, Idaho
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-159

Pine Hollow Watershed Enhancement – Jackknife Watershed Projects, Sherman County, Oregon
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-160

Protect and Restore the Lapwai Creek Watershed, Nez Perce and Lewis Counties, Idaho
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-161

Grave Creek Channel Stabilization Project – Phase Two, Eureka, Montana
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-162

Libby Creek (Lower Cleveland) Stabilization Project, Libby, Montana
(Decision: No further NEPA review required)
July 2004

DOE/EIS-0265-SA-163

John Day Watershed Restoration Program, Wheeler and Grant Counties, Oregon
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-164

Idaho Model Watershed Habitat Projects – L-9 Irrigation Diversion Modification, Lemhi County, Idaho
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-165

Idaho Model Watershed Habitat Projects – Welp Riparian Enhancement Fence, Custer County, Idaho
(Decision: No further NEPA review required)
August 2004

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Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-166

Idaho Model Watershed Habitat Projects – Coleman Creek Fish Passage Restoration, Kittitas County, Washington

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-167

Klickitat Watershed Enhancement Project – Klickitat Meadows Restoration, Yakima County, Washington

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-168

Protect and Restore Lolo Creek Watershed – Jim Brown Creek Streambank Stabilization, Clearwater County, Idaho

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-169

Idaho Model Watershed Habitat Projects – Pahsimeroi Fence Crossing, Lemhi County, Idaho

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-171

Wallowa River/McDaniel Habitat Rehabilitation, Wallowa County, Oregon

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-172

Gravel Push-Up Dam Removal, Lower North Fork John Day – Portable Pump Intake Screens, Grant County, Oregon

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0265-SA-173

Tapteal Bend Riparian Corridor Restoration Project, Benton County, Washington

(Decision: No further NEPA review required)
August 2004

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

DOE/EIS-0285-SA-198*

Vegetation Management for the Bell-Boundary #1 230 kV Transmission Line Corridor, Spokane and Pend Orielle Counties, Washington

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-199*

Vegetation Management on the Paul Satsop (Reference line) 500 kV Transmission Line Corridor, Structures 10/4 –21/5, Thurston County, Washington

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-200*

Vegetation Management for the John Day-Grizzly 500 kV Transmission Line Corridor, Sherman, Wasco, and Jefferson Counties, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-201*

Vegetation Management for the Big Eddy-Chemawa 230 kV Transmission Line Corridor, Clackamas and Marion Counties, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-202*

Vegetation Management for the Santiam-Chemawa 230 kV Transmission Line Corridor, Marion County, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-203*

Vegetation Management for the Garrison-Taft 500 kV Transmission Line Corridor, Powell, Granite, Missoula, and Mineral Counties, Montana

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-204*

Vegetation Management for the Forest Grove-McMinnville 115 kV and Associated Transmission Line Corridors, Washington and Yamhill Counties, Oregon

(Decision: No further NEPA review required)
April 2004

* Not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-205*

Vegetation Management on the 500 kV Pearl-Keeler No. 1 (Structures 1/1 to 19/3) and the 230 kV Pearl-Sherwood No. 1 and 2 (Structures 1/1 to 5/6) Transmission Line Corridors, Clackamas and Washington Counties, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-206*

Vegetation Management for Blue Ridge, Leneve and Kenyon Mt. Microwave Sites, Coos and Lane Counties, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-207*

Vegetation Management for the Hanford-Ostrander 500 kV Transmission Line Corridor, Structures 78/1 to 126/1, Klickitat County, Washington

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-208*

Vegetation Management for the Coburg, Hall Ridge, Noti, Prospect Hill, and Scott Mountain Microwave Sites, Yamhill, Lane, Marion, and Douglas Counties, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-209*

Vegetation Management on the Toledo-Wendson #1 230 kV Transmission Line Corridor, Toledo Substation to Wendson Substation, Lincoln and Lane Counties, Oregon

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-210*

Vegetation Management for the Carson Tap 115 kV Transmission Line Corridor, Skamania County, Washington

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-211*

Vegetation Management for the McNary-Ross 345 kV Transmission Line Corridor between Tower Structures 138/6 and 144/1, Skamania County, Washington

(Decision: No further NEPA review required)
April 2004

DOE/EIS-0285-SA-212*

Vegetation Management along the Raymond-Willapa River No. 1, 115 kV and Raymond-Henkle St. 115 kV Transmission Line Corridors, Pacific County, Washington

(Decision: No further NEPA review required)
May 2004

DOE/EIS-0285-SA-213

Vegetation Management along the Pilot Butte-La Pine, 230 kV Transmission Line Corridor, Deschutes County, Oregon

(Decision: No further NEPA review required)
June 2004

DOE/EIS-0285-SA-214

Vegetation Management for the Cougar-Thurston #1 and Thurston-Willakenzie #1 115 kV Transmission Line Corridors, Lane County, Oregon

(Decision: No further NEPA review required)
June 2004

DOE/EIS-0285-SA-215*

Vegetation Management along the St. Helens-Allston 115 kV Transmission Line Corridor from 1/1 to Allston Substation, Columbia County, Oregon

(Decision: No further NEPA review required)
May 2004

DOE/EIS-0285-SA-216

Vegetation Management in Selected ROW Sections of the Creston-Bell Corridor, Lincoln and Spokane, Washington

(Decision: No further NEPA review required)
June 2004

DOE/EIS-0285-SA-217

Vegetation Management for the Mt. Hebo Microwave Site, Yamhill County, Oregon

(Decision: No further NEPA review required)
June 2004

DOE/EIS-0285-SA-218

Vegetation Management along the Bonners Ferry-Troy 1/1 to 18/8 Transmission Line Right of Way (ROW), Boundary County, Idaho and Lincoln County, Montana

(Decision: No further NEPA review required)
June 2004

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-219

Vegetation Management at Selected Transmission Line Structures Located along the Libby-Bonnars Ferry Transmission Line Right of Way (ROW), Lincoln County, Montana

(Decision: No further NEPA review required)
June 2004

DOE/EIS-0285-SA-221

Vegetation Management along the Right-of-Way of the Paul Allston No. 1 and 2- 500 kV Transmission Line Corridor, Columbia County, Oregon and Cowlitz County, Washington

(Decision: No further NEPA review required)
July 2004

DOE/EIS-0285-SA-222

Vegetation Management along the St. John's-Keeler 115 kV Transmission Line Corridor, Washington County, Oregon

(Decision: No further NEPA review required)
July 2004

DOE/EIS-0285-SA 223

Vegetation Management along the Schultz-Raver 1 and Schultz-Echo Lake 1 (43/5 to 49/3), Schultz-Raver 2 and 3 (44/1 to 49/3), Covington-Columbia 1 (39/5 to 44/2, and Olympia-Grand Coulee 1 (84/5 to 88/2) Transmission Line Corridors, King County, Washington

(Decision: No further NEPA review required)
August 2004

DOE/EIS-0285-SA-224

Vegetation Management along the Paul-Allston No. 2, 500 kV, Napavine-Allston No. 1 500 kV, and the Longview-Chehalis No. 1 230 kV Transmission Line Corridor, Lewis and Cowlitz Counties, Washington

(Decision: No further NEPA review required)
August 2004

* Not previously reported in LLQR

Environmental Management/ Carlsbad Field Office

Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (DOE/EIS-0026-S2)

DOE/EIS-0026-SA-02

Disposal of Polychlorinated Biphenyl-Commingled Transuranic Waste at the Waste Isolation Pilot Plant, Carlsbad, New Mexico

(Decision: Issued Revised ROD; 69 FR 39456, 6/30/04)
June 2004

Nuclear Energy, Science and Technology

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

DOE/EIS-0310-SA-01

Supplement Analysis for the Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility

(Decision: Issued Amended ROD; 69 FR 50180, 8/13/04)
August 2004

Strategic Petroleum Reserve

Site-Specific and Programmatic Environmental Impact Statements

DOE/SPR-EIS-0075-SA-01*

Operational and Engineering Modifications, Regulatory Review, and Socioeconomic Variation

(Decision: No further NEPA review required)
March 2004 

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, 2004.

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

- *Joint scoping.* Public scoping was conducted jointly with the State's Energy Commission, in the State's workshop format.

Data Collection/Analysis

What Worked

- *State certification process.* The process that the State's Energy Commission requires for power plant certification focused on avoiding significant impacts.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Good EIS contractor.* The contractor was competent and experienced; its online comment-response system was especially helpful in meeting the schedule.
- *Delayed documentation.* The FONSI and mitigation action plan were delayed due to expiration of agreement between DOE and the applicant.

Factors that Inhibited Timely Completion of Documents

- *Related historical preservation work.* An ethnographic overview based on interviews with local tribes needed to be completed before starting a required consultation under the National Historic Preservation Act.
- *Scoping meeting cancellation.* The DOE program office cancelled scoping meetings and shortly thereafter requested that they be rescheduled "as soon as possible," which posed logistical difficulties.

- *Congressional action.* Enactment of the Appropriations Act for Further Recovery from the Response to Terrorist Attacks on the United States (Public Law 107-206) required DOE to reassess the need for and scope of the EISs. Additionally, a classified appendix needed to be prepared.

Teamwork

Factors that Facilitated Effective Teamwork

- *Communication.* Frequent communication with our EA contractor and use of Web-available documents facilitated teamwork, as did good interaction with the State and the applicant's consultants.
- *Conference calls.* Weekly calls among the project staff, EIS contractor, and DOE headquarters program and review offices personnel were effective in resolving issues and keeping focused.

Process

Successful Aspects of the Public Participation Process

- *Working together.* A few members of the public did not recognize the distinct differences between the State Energy Commission's public process and DOE's NEPA process. As a result, some filed comments on the NEPA document with the State. However, the State provided copies of all filed documents to DOE.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Identified mitigations.* The NEPA process identified mitigations that needed to be implemented.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- *Siting decisions.* The EISs were useful in deciding the specific locations for depleted uranium hexafluoride conversion plants at Paducah, Kentucky and Portsmouth, Ohio, after Public Law 107-206 effectively eliminated consideration of alternatives for a much broader scope of decisionmaking.

- *Comprehensive approach.* Although the proposed action concerned only a pilot scale project, the EA included elements of licensing, building modifications, and decontamination and decommissioning that would be needed in a later demonstration phase, thus avoiding piecemeal consideration of impacts.

Enhancement/Protection of the Environment

- Mitigation commitments from the EA process will provide adequate protections for sensitive resources.

- The overall effect of converting depleted uranium hexafluoride to more stable chemical forms is positive, but the NEPA process (which Congress required in this case to focus on site-specific facility locations) likely had no substantive effect.

- The EA appropriately addressed all emissions and wastes, including using site data to evaluate dose rates to nearest members of the public.

Effectiveness of the NEPA Process

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

For the past quarter, in which 2 questionnaire responses were received for EAs and 2 responses were received for EISs, 1 out of 4 respondents rated the NEPA process as “effective.” That respondent rated the process as “4,” even though DOE was not a cooperating agency in the sense of CEQ’s regulations and was not the lead Federal agency.

- A respondent who rated the process as “2” stated that power plant’s certification was based on State jurisdiction, and the process was structured to support the State’s decisionmaking. DOE’s joint environmental review with the State ensured that all environmental consequences of the project were addressed.

- A respondent who rated the process as “1” for two EISs stated that by passing Public Law 107-206, which dictated that DOE would construct and operate facilities at two specific sites, Congress effectively narrowed consideration of reasonable alternatives only to location alternatives at each designated site. LL

LESSONS LEARNED

December 1, 2004; Issue No. 41

Fourth Quarter FY 2004

Putting the Web to Work for NEPA

“What’s your e-mail address? Do you have a Web site?”

These are common questions in meetings about DOE actions, including the NEPA process. Harder questions to answer are the ones we should ask ourselves: “Are we using these tools effectively to enhance the NEPA process? Are we getting all we can out of the Internet?”

“We’ve repeatedly advocated use of the Internet to improve NEPA implementation,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance, “and we’re seeing results. Nearly all DOE NEPA documents completed since 1998 are available on the Web, and DOE often uses Web sites as an integral part of the NEPA process. In many areas, DOE is ahead of other agencies in making use of the Internet.”

“We can do even better,” Ms. Borgstrom continued. “I challenge everyone in DOE’s NEPA Community to become more Web savvy. Learn what makes a Web site effective.”

EISs on the Web

The NEPA Office maintains a comprehensive collection of DOE NEPA documents on the DOE NEPA Web site (www.oh.doe.gov/NEPA under DOE NEPA Documents). Although many people first check the DOE NEPA Web site for NEPA information, a dedicated Web site for a specific environmental impact statement (EIS) or, in some cases, an environmental assessment (EA), can supplement the DOE NEPA Web site by providing more detailed information.

If you don’t have a Web site for your EIS, consider creating one. If you do have a Web site, take a second look at it. How can it be improved?

– Carol Borgstrom
Director, Office of NEPA
Policy and Compliance

Many DOE Program and Field Offices provide links on their corporate Web sites to their NEPA-related documents or to EIS-specific Web sites. Doing so allows Program and Field Offices to present NEPA information within the context of their broader activities and may provide easier access to people accustomed to using program or project Web sites.

An example of this is the Richland Operations Office’s archive of EISs and EAs, which is available by selecting Public Documents from that Office’s home page (www.hanford.gov/rl).

Archiving NEPA documents and making them available via the Internet is one way to use this powerful tool. Recently at DOE NEPA Community Meetings and in

(continued on page 4)



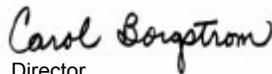
DOE maintains Web sites for more than half its ongoing EISs, three of which are illustrated here.

The EIS Comment-Response Process Guidance Issued; see page 9

Inside *LESSONS LEARNED*

The National Environmental Policy Act turns 35 on January 1, 2005! This landmark legislation altered the Federal decisionmaking process. In this issue of *LLQR*, Ray Berube, retired Deputy Assistant Secretary for Environment, looks back at how NEPA compliance procedures have evolved at DOE. Our lead article looks at how the Internet is becoming an increasingly useful NEPA tool. We hope you will find helpful suggestions throughout *LLQR* on how we can continue to improve and modernize NEPA implementation, and, as always, we welcome your suggestions for continuous improvement.

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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 February 1, 2005. Contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2005

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2005 (October 1 through December 31, 2004) should be submitted by February 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 printed in the September issue each year.

Printed on recycled paper



Case Studies Address NEPA Section 101

The National Environmental Conflict Resolution Advisory Committee, established by the U.S. Institute for Environmental Conflict Resolution, submitted a draft report to the Institute in August 2004 that addresses the intersection between NEPA Section 101 objectives and environmental conflict resolution practices. This section of NEPA focuses on the goals of the environmental review process, while Section 102 addresses procedures.

The draft report draws from information that Federal agencies provided in response to the Institute's inquiry in late 2003 on agency implementation of NEPA Section 101. DOE responded that although it does not always refer to Section 101 as the driver for its actions, the Department does in fact promote and meet the goals expressed in Section 101 through the NEPA process and other environmental activities.

The draft report presents 20 case studies of projects that used environmental conflict resolution practices to further the goals of NEPA. Two DOE EISs are featured: *Final Hanford Comprehensive Land Use Plan EIS* (DOE/EIS-0222, September 1999) and *Bonneville Power*

Administration Watershed Management Program Final EIS (DOE/EIS-0265, July 1997). Other case studies include:

- **Corridor H** – A linear transportation project EIS (Federal Highway Administration) with interagency and stakeholder disputes concerning adverse impacts and economic development.
- **Everglades** – An EIS (U.S. Army Corps of Engineers) for a water management program with interagency disagreements on the preferred alternative and interpretation of modeling results.
- **Glen Canyon** – A dam operations EIS (Bureau of Reclamation) with unavailable information addressed through an adaptive management approach.

For more information, see the Web site of the Advisory Committee, www.ecr.gov/necrac, which contains the draft report under "Reports & Recommendations." DOE's contributions to the NEPA Section 101 study are discussed in *LLQR*, December 2003, page 12, and included in the draft report's Appendix F, "Report on NEPA 101 Survey of Federal Agency NEPA Liaisons." 

Milestones Marking the Evolution of DOE's NEPA Program



By: Ray Berube, Retired Deputy Assistant Secretary for Environment

On January 1, 1970, NEPA was signed into law by then-President Richard Nixon. In anticipation of the 35th anniversary of NEPA, LLQR asked Ray Berube, DOE's honorary NEPA historian, to reflect on the evolution of NEPA compliance at DOE. Mr. Berube joined DOE in 1978 and served as DOE's Deputy Assistant Secretary for Environment from 1987 until his retirement in 2003. Since January 2004, he has been a Senior Advisor at Dade Moeller & Associates.

DOE's NEPA compliance program has evolved continuously since the Department's founding in 1977. I worked directly with DOE's NEPA program throughout my 25 years at the Department. I would like to share with you my perspective on several major changes that stand out in my memory – milestones marking a journey from strong resistance to NEPA in the early years to a DOE that now accepts NEPA as a valuable decisionmaking tool.

DOE's First NEPA Procedures

In the early 1970s – prior to the establishment of DOE – there were many problems implementing NEPA across the Federal government, numerous NEPA lawsuits, and a wide diversity of management approaches to NEPA compliance. Some agencies adopted totally centralized approaches with approval authority retained at headquarters. Other agencies opted for totally decentralized approaches with approval authority fully delegated to field elements.



Ray Berube reviews his comprehensive notes on DOE's NEPA compliance history.

The congressional committees drafting the DOE Organization Act were cognizant of these problems and differences in management approaches. The creation of DOE involved the merger of dozens of Federal agencies or parts of Federal agencies. To avoid the chaos that could be caused by different approaches to NEPA compliance by the various elements of the new Department, Congress addressed the need for a single, centralized NEPA compliance program covering all parts of the new DOE in its reports on the DOE Organization Act. In response, DOE's first procedures for complying with NEPA established a single, centralized NEPA compliance program with the Assistant Secretary for

Environment (a predecessor of the Assistant Secretary for Environment, Safety and Health) responsible for the approval of everything from memoranda-to-file to EAs and EISs.

This arrangement was fraught with problems, the most serious of which was the lack of ownership of NEPA reviews by line organizations. Within DOE, NEPA compliance was widely viewed by line management as a responsibility of the Office of Environment and as a paperwork exercise that did not add value or influence decisionmaking. This view trickled down through the Department and influenced the preparation of all-too-often inadequate NEPA documents, which extended review and revision cycles thus adding delays and increased costs for the Department's priority programs and projects.

Delegating Authority

In the early 1980s, national security often trumped environmental compliance within DOE. In an attempt to avoid the "NEPA problems" that were viewed as compromising DOE's national security mission, the Department's management moved to a more decentralized NEPA compliance program. Approval authority for two types of NEPA decisions was delegated to heads of line organizations and Operations Office Managers:

- NEPA Determinations – whether, under Section D of the DOE NEPA Guidelines in effect at that time, a proposed action qualifies for a categorical exclusion (CX), or requires preparation of an EA or EIS.
- Memoranda-to-file – for actions not covered by CXs in Section D of the DOE NEPA Guidelines, but for which on a case-by-case basis the environmental impacts of the proposed action are "clearly insignificant" and therefore do not warrant preparation of an EA or EIS.

Unfortunately, this delegation of authority exacerbated NEPA compliance problems instead of solving them. Too often delegated approval authority was used to attempt to avoid proper NEPA compliance. Perhaps the most egregious example of this was an obviously inappropriate use of a memorandum-to-file for a new \$100 million nuclear facility, for which a court ultimately ordered DOE to prepare an EIS.

(continued on page 14)

Putting the Web to Work (continued from page 1)

LLQR, the NEPA Office also has encouraged use of Web sites to facilitate document preparation and public participation. Other Federal agencies have invested in the development of Web-based tools to achieve these purposes. (See *LLQR*, September 2004, page 8.)

The NEPA Office recently reviewed EIS-specific Web sites established by DOE and other Federal agencies to better understand how the Web is being used to further NEPA implementation. We focused on Web sites that provide more than a simple link to NEPA documents. These Web sites also provide information on the proposal under review, the NEPA process, and ways for the public to participate. This approach uses the Web to convey essential information about the EIS, and it better engages the public – encouraging participation – than a link to a NEPA document.

(The Web site for the Bureau of Land Management’s Wind Energy Programmatic EIS at windeis.anl.gov is an example of this more effective use of the Web; see *LLQR*, March 2004, page 3. Also see the DOE EIS-specific Web sites listed in the text box on page 6 and the sample screen shots from the Web site for a National Park Service study and EIS on page 7.)

Make Your Web Site Useful

In our review of EIS-specific Web sites created by DOE and other Federal agencies, the NEPA Office noted many factors that influence the usefulness of a Web site: how the page is found (e.g., from where it is linked), what information it contains, how current the information is, and other factors. Also, we consulted a resource on Web site usability and accessibility – *Usability.gov*. Based on this review, we identified several suggestions and examples to improve DOE’s use of the Web for its NEPA implementation.

Learn More at *Usability.gov*

There is a wealth of experience and research on Web site usability and accessibility, much of which is captured at usability.gov, a Web site maintained by the Department of Health and Human Services. From assessing the purpose of and the prospective audience for a new Web site to overhauling an existing Web site, usability.gov has suggestions based on experience in the Federal government and the private sector.

Make Your Web Site Easy to Find

How would someone find your Web site? Some people know an EIS is being prepared, and they set out to find information about it on the Web. These people have the

The DOE NEPA Web Site www.eh.doe.gov/nepa

The DOE NEPA Web site alerts people of NEPA milestones and public participation opportunities. For example, notices of intent and notices of availability, and associated public meetings are posted under “What’s New,” a Web page that links to a dedicated Web site for a NEPA document, if one exists. On a separate Web page, the DOE NEPA Web site contains a “NEPA public participation calendar.”

In addition, the DOE NEPA Web site contains recently-issued draft EISs, an archive of completed NEPA documents, NEPA and related requirements and guidance, and other NEPA-related resources and information.

Nevertheless, the DOE NEPA Web site is not intended to provide all of the information about a specific proposal that an interested party might want. Dedicated Web sites can provide such information, and we are working to create a new, separate page on the DOE NEPA Web site to provide links to EIS-specific Web sites. (See related article, page 20.)

advantage of knowing a specific topic, and possibly even a document title. They might have been notified of the Web address in a DOE mailing or *Federal Register* notice. If not, they can use one of the Internet search engines or the search feature built into a DOE Web site to find a link to information on the EIS. An example of the latter is the search box atop every page on the Hanford Web site (www.hanford.gov).

Other people may begin at the home page of a DOE Program or Field Office, but based on our review, this is often not effective. Some EISs can be found by following links to public participation or environmental documents from these home pages, but none of the home pages we reviewed highlighted NEPA documents, even for ongoing NEPA reviews.

For example, the Office of Fossil Energy’s (FE’s) Web site (www.fe.doe.gov) has a prominent link to information about carbon sequestration. During our review, we discovered that there was no link to the Web site for the ongoing programmatic EIS on *Implementation of the Office of Fossil Energy’s Carbon Sequestration Program* (DOE/EIS-0366) from FE’s home page or from the first page of the carbon sequestration section of FE’s Web site. Using the search box and correct choice of keywords, a person could find comprehensive information about the EIS, which is maintained on the National Energy Technology Laboratory’s Web site (www.netl.doe.gov/coal/Carbon%20Sequestration/eis).

(continued on next page)

Putting the Web to Work *(continued from previous page)*

Similarly, the Office of Nuclear Energy, Science and Technology (NE) maintains a Web site for its *EIS for the Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems* (DOE/EIS-0373, *consolidationeis.doe.gov*), but did not link to the Web site from the Program Office's home page (*nuclear.gov*).

In response to this review, NE revised its Web site to provide a direct link from its home page to the EIS Web site. Also, FE is in the process of providing a link from its Web site to the carbon sequestration programmatic EIS Web site.

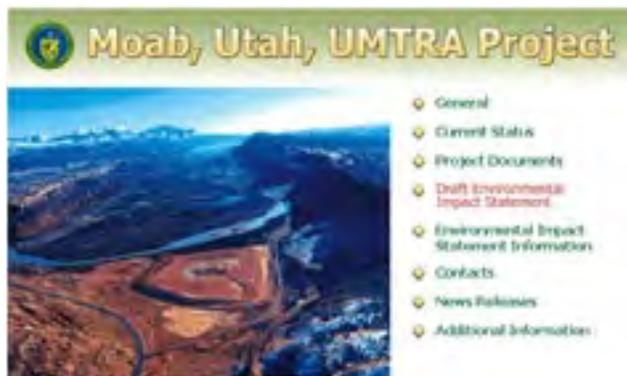
Establish a One-Stop Web Site

A Web site can be a tool for informing interested persons about an ongoing NEPA process and the program or project under review. The Grand Junction Office designed its Web site for the Moab, Utah, mill tailings remediation project and related EIS (DOE/EIS-0355; *gj.em.doe.gov/moab*) to serve this purpose.

Our stakeholders have come to expect timely availability of project documents on the Web site.

– Don Metzler, NEPA Document Manager

and regulations, the EIS schedule, opportunities for public participation, and a copy of the draft EIS and related NEPA documents.



The Grand Junction Office's Web site for the Moab EIS provides project and NEPA documents, information on public participation, and a list of contacts.

The National Park Service maintains a dedicated Web site for its North Shore Road EIS (*www.northshoreroad.info*). It has published summaries of scoping comments by topic, information on the purpose and need for agency action as well as goals and objectives of the proposed project itself, and reports that are related to the EIS. The Park Service also has published a timeline that shows current and planned activities for collecting and analyzing data, involving the public, and conducting other aspects of the NEPA process.

Among documents to consider posting on a Web site are:

- Notice of intent
- Notices of availability of the draft and final EIS
- News releases
- Key correspondence
- Schedules and other NEPA process information
- Public involvement opportunities
- Presentation materials from public meetings
- Transcripts of scoping meetings and hearings on the draft EIS
- Other public comments
- Frequently asked questions and answers
- Documents referenced in the EIS
- Maps, photographs, and diagrams

Also, consider organizing public comments to make it possible to search them by commentator or subject, much as they often are indexed in a final EIS.

Keep Your Web Site Up-to-Date

A great benefit of the Web is the immediacy of information. If a Web site is not updated regularly, however, information may get stale. To keep a Web site current, make documents available on the Web as soon as possible after they are issued and continue to post information on upcoming meetings and other timely scheduling details.

After the scoping period has ended, for example, it is time to update the Web site to reflect that the EIS has moved into the next phase of the NEPA process. This could be as simple as changing sentences about the scoping period to past tense so readers are not given the impression that the scoping period is ongoing, and posting meeting transcripts and other scoping comments.

Our review of DOE EIS Web sites revealed that this is not being done as well as it could be. For example, the Web sites for two DOE EISs had not been updated in many months to reflect the significant delays in the EIS schedules. In response to this review, both of these Web sites are being updated.

(continued on next page)

Putting the Web to Work (continued from previous page)

Let the Public Have Its Say

Most DOE EIS Web sites provide information about submitting comments during the scoping period or on the draft EIS. The Web sites typically list the mailing address, telephone and fax numbers, and an e-mail address for such comments.

Web sites can be made more interactive, however. For example, through a Web site people can submit questions or comments, respond to questionnaires, and request to be added to a mailing list. These and other techniques can enhance public participation in the NEPA process. For example, the Web site for *Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line EIS* (DOE/EIS-0336; www.ttclients.com/tep) provides an online comment form.

An Effective Web Site Furthers NEPA's Goals

"A Web site can provide easy access to an EA or EIS and supporting documentation, and information about the public participation and decisionmaking processes," said Ms. Borgstrom. "We should be as thoughtful in our development of a Web site for a NEPA document as we are in the preparation of the document itself. Increasingly, people will go to the Web to learn about and participate in our NEPA activities," said Ms. Borgstrom. "Let's keep raising the bar on excellent NEPA implementation." 

DOE EIS-Specific Web Sites

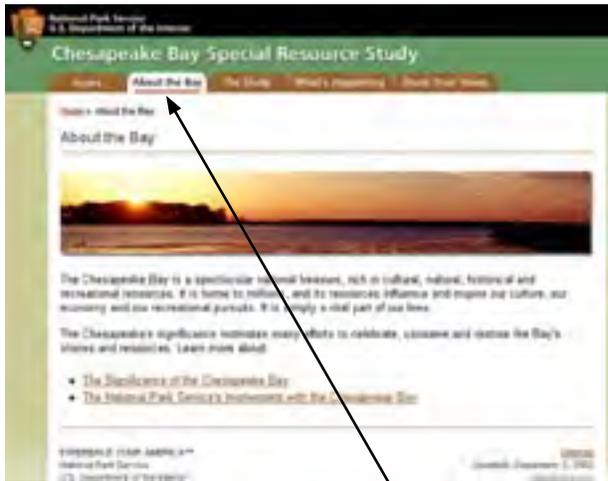
DOE Program and Field Offices have established Web sites for more than half of the ongoing DOE EISs to promote public participation. We use the term Web site to refer to any number of Web pages related to the same EIS, so long as those pages contain more than links to the EIS and related documents.

These Web sites provide helpful information, such as background on the proposed project, illustrations and maps, and timelines or schedules. Some also include information on the NEPA process and describe how to participate by commenting during the scoping period and on the draft EIS. DOE Web sites sometimes include forms through which interested people may submit comments online or provide their e-mail address to receive updates on the EIS.

- *EIS for the Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems* (DOE/EIS-0373), consolidationeis.doe.gov
- *Northeast Reliability Interconnect EIS* (DOE/EIS-0372), web.ead.anl.gov/interconnecteis
- *EIS for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0369), www.ocrwm.doe.gov/wat/eis.shtml
- *Implementation of the Office of Fossil Energy's Carbon Sequestration Program EIS* (DOE/EIS-0366), www.netl.doe.gov/coal/Carbon%20Sequestration/eis
- *EIS for the Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365), web.ead.anl.gov/bajatermoeis
- *Remediation of the Moab Uranium Mill Tailings EIS* (DOE/EIS-0355), gj.em.doe.gov/moab
- *West Valley Demonstration Project (WVDP) Waste Management EIS* (DOE/EIS-0337) and *Decommissioning and/or Long-Term Stewardship EIS* (DOE/EIS-0226-R), www.wv.doe.gov/LinkingPages/insidewestvalley.htm under Environmental Impact Statement
- *Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line EIS* (DOE/EIS-0336), www.ttclients.com/tep
- *Programmatic EIS on the Disposition of Scrap Metals* (DOE/EIS-0327), www.em.doe.gov under Hot Topics
- *Modern Pit Facility EIS* (DOE/EIS-0236-S2), www.mpfeis.com
- *Bonneville Power Administration Project-Specific EISs*, www.efw.bpa.gov under Environmental Planning/Analysis, then Active Projects, Completed Projects, or Deferred Projects
- *Western Area Power Administration Project-Specific EISs*, www.wapa.gov/cso/officefun/env/envplann.htm under Current & Ongoing NEPA Projects and Upcoming NEPA Projects

National Park Service's Effective Web Site for the Chesapeake Bay Study/EIS

www.chesapeakestudy.org



Overview of the Project Area



Comprehensive Information on the Study/EIS

Home Page:
Clear Navigation and
Helpful Information
Invites Public Participation



Upcoming Meetings, Schedules, and Publications



Convenient Links Encourage Public Participation

Effective Communication During EA Process Benefits All

By: Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office

If a NEPA document team communicates effectively, then the NEPA process will likely be successful – that is, it can achieve real environmental protection rather than mere completion of the required NEPA document.

A Savannah River team learned this lesson as construction began for

The problem with communication is the illusion that it has occurred.

– George Bernard Shaw

the second Glass Waste Storage Building, which will store canisters filled with vitrified high-level radioactive waste pending shipment to a repository. In evaluating the environmental impacts of constructing and operating this building (*Defense Waste Processing Facility Supplemental Environmental Impact Statement*, DOE/EIS-0082-S, 1994), DOE identified a need for large volumes of soil that would meet the American Society for Testing and Materials criteria for use as structural and general fill material. By the start of construction of the storage building, however, the Site's existing sources of structural fill material were depleted, dedicated to other projects, or did not meet the requirements for this project. A new source of structural fill needed to be developed.

Internal Scoping Defines EA Data Needs

Engineers identified a general location at the Savannah River Site with an adequate amount of soil that would meet the structural criteria. Using the Site's Environmental Evaluation Checklist process, DOE determined that an EA would be appropriate to evaluate the significance of the environmental impacts of constructing and operating a new borrow pit.

The EA process was initiated at the earliest opportunity with an internal scoping meeting that brought together the Site borrow pit project team and the DOE NEPA staff. Because the proposed project location was undeveloped, the NEPA staff informed the project team that DOE would have to determine whether protected species or cultural resources were present. The NEPA staff was assured by the project team that the appropriate onsite organizations, the U.S. Forest Service and the Savannah River Archaeological Research Program (affiliated with the University of South Carolina), had already been contacted and that all field investigations would be completed within the needed time period.

Interagency Teamwork Prevents Delays

When the NEPA Document Manager contacted the Forest Service and the Archaeological Research Program during EA preparation, however, he learned that these investigations were scheduled to be completed after the proposed project start date. Although relevant conversations had taken place, due to miscommunications, neither organization had scheduled field work to support the aggressive schedule for the proposed project. The NEPA Document Manager brought all parties together again, this time resulting in agreement on a schedule that would support the timely completion of the EA and proposed start of borrow pit construction.

The Forest Service then relocated a South Carolina state-listed species of concern, the sandhill lily (*Nolina georgiana*), and accelerated a planned timber harvest from the borrow pit location.

The Archaeological Research Program defined areas to be avoided so as not to disturb an area of potential archaeological resources near one end of the project site. The borrow pit project team provided extra support for EA review and comment response to prevent the NEPA process from delaying the project. That effort would have been a success story in and of itself. Once the miscommunication among agencies was resolved, the EA (*Construction, Operation, and Closure of the Burma Road II Borrow Pit at the Savannah River Site*, DOE/EA-1501; July 2004) was completed ahead of schedule and under budget, and a finding of no significant impact was issued.



The Forest Service relocated plants from several colonies of sandhill lily, a state-listed species of concern, from the proposed borrow pit area to adjacent suitable habitat.

Environment Wins in the End

This EA resulted in real protection of the environment rather than simply “checking the NEPA box” on the project schedule. The Forest Service was able to preserve

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By Popular Demand: Comment-Response Guidance Issued

Soliciting and responding to public comments is a critical – and often challenging – phase of the NEPA process. Not surprisingly, DOE’s NEPA Compliance Officers and NEPA Document Managers identified comment-response guidance as a priority need. In response, to assist those involved in the preparation and review of a final EIS, the Office of NEPA Policy and Compliance recently prepared *The EIS Comment-Response Process* (October 2004) with the assistance of the DOE NEPA Community.

The guidance addresses both the substance and mechanics of the process and gives advice on tracking and categorizing comments, considering comments and preparing responses, and presenting responses and corresponding changes in a final EIS. It also provides excerpts from relevant regulations, policy, and guidance issued by the Council on Environmental Quality and DOE, examples from comment-response sections of final EISs, and a flow chart of the comment-response process. (Elements of this guidance also will be helpful in responding to comments received on environmental assessments or other NEPA documents.)

The guidance advises NEPA Document Managers to brief program and project managers as soon as possible on issues raised in public comments and to obtain early agreement on proposed responses. It recommends involving policy and subject matter experts as needed throughout the comment-response process.

In issuing the guidance, John Spitaleri Shaw, Acting Assistant Secretary for Environment, Safety and Health, said, “We expect this guidance to promote efficiency, effectiveness, and consistency in responding to public comments.” He urged Assistant Secretaries and Heads of Field Organizations to promote the guidance to those in their organizations who prepare or assist in preparing NEPA documents.

The recommendations in this guidance will help DOE demonstrate that it has considered all environmental factors important to decisionmaking and build credibility with stakeholders, which can increase the likelihood of successful implementation of a proposal. The guidance presents successful techniques from DOE’s recent experience with EISs that elicited large numbers of comments and should help reduce vulnerability to legal challenges that could result from inadequate consideration of stakeholder comments.

The guidance is posted on the DOE NEPA Web site at www.eh.doe.gov/nepa under Guidance, then Document Preparation. Also see the article introducing the guidance development effort (*LLQR*, June 2003, page 1) and the summary of the July 2004 NEPA Community Meeting case study discussions on responding to comments (*LLQR*, September 2004, page 9). For more information contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Effective Communication *(continued from previous page)*

colonies of a state-listed species of concern and the Archaeological Research Program was able to preserve areas of potential value for contributing to knowledge of the pre-history of the Savannah River Site.

The NEPA Document Manager needs to make sure that all the participants in the NEPA process, including the advocates of the proposed action, are talking to each other and have a common understanding of the path forward. The significance of effective communication in the NEPA process cannot be overstated. Never assume that effective communication is occurring among the parties supporting preparation of an EA. Such effective communication will make the project, the NEPA process, and the environment winners in the end.

For additional information, contact Drew Grainger at drew.grainger@srs.gov or 803-952-8001, or Steve Danker, the NEPA Document Manager, at stephen.danker@srs.gov or 803-952-8603. 



Following timely completion of the EA and FONSI, site clearing began at the borrow pit site.

Corps of Engineers Issues Draft EIS for First Offshore Wind Farm in U.S.

By: Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance



After 34 months of intensive research and analysis, the U.S. Army Corps of Engineers (COE) in November 2004 issued a Draft EIS/Environmental Impact Report (EIR) for a large wind energy project proposed to be constructed in Nantucket Sound, between Cape Cod and Nantucket Island. Members of the DOE NEPA Community may be interested in this EIS, not only because of the unprecedented nature of the proposal – this would be the first offshore wind energy project in U.S. territorial waters – but also because of the way the EIS process is serving to integrate multiple Federal, state, and regional environmental review processes for a relatively controversial proposal.

The Draft EIS/EIR addresses the most relevant potential impacts and public interest factors identified by the scoping process, and is intended to fulfill the regional, state and Federal environmental assessment requirements.

***– Karen K. Adams
Cape Wind Energy Project EIS Manager***

Combined Agency Review Processes

COE prepared the four-volume, 3,800-page document to fulfill its NEPA review responsibilities in response to a permit application. The document also is intended to fulfill the requirements of the Massachusetts Environmental Policy Act (MEPA) as an EIR, and address issues relevant to the Cape Cod Commission (CCC) review of the applicant's proposal as a Development of Regional Impact under the Cape Cod Commission Act. Thus, the information in the document would satisfy three different laws requiring environmental review.

The draft document describes how the combined NEPA/MEPA/CCC review processes have been coordinated to enable joint agency and public review of the proposed project. The combined processes include the conduct of joint public hearings that serve to fully inform the public of the multiple jurisdictional reviews and enable the receipt of public comments on the three processes at one time.

Also of note is the participation of 17 cooperating agencies, including Federal, state, and local agencies, and a Native American tribe. Many of the agencies have jurisdiction over aspects of the project, and their participation in the combined EIS/EIR fosters efficiency

in the project review process. Other agencies, including DOE's Office of Energy Efficiency and Renewable Energy through its Northeast (Boston) Regional Office, agreed to participate as a cooperating agency to provide technical expertise. COE is the lead agency because of its jurisdiction under Section 10 of the Rivers and Harbor Act of 1899, which provides for Federal regulation of any work in, or affecting, navigable waters of the United States. This authority was extended under the Outer Continental Shelf Lands Act of 1953.

The Proposed Action

The applicant, Cape Wind Associates, LLC, proposes to construct and operate a wind-powered electrical generating facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. The facility would include 130 wind turbine generators, an electrical service platform, and a submarine and upland cable system to transmit a maximum electrical output of 454 megawatts (MW) to the New England regional power grid, including users on Cape Cod and the Islands of Martha's Vineyard and Nantucket. The average annual output would be about 170 MW.

The wind turbines would be up to 420 feet high (to rotor tip) above the ocean, with the hub (shown in photo) about 260 feet above the water surface. The turbine array (wind farm) would occupy about 24 square miles between Nantucket Island and the Cape Cod mainland. Collectively, the project structures would occupy only about one acre. The closest distance from any turbine to the mainland would be about 4.7 miles; the distance to Nantucket Island would be about 11 miles and to Martha's Vineyard about 5.5 miles. The turbines could be visible from these locations. A wide spacing between the

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Computer-generated image of typical offshore wind turbines.

Draft EIS for First Offshore Wind Farm in U.S. *(continued from previous page)*

turbines (minimum of about 2,060 feet) and a grid pattern arrangement, among other design features, is intended to reduce potential for bird collisions and enable safe marine transportation.

Although there are onshore (upland) wind farm projects in the United States, including New England, and offshore wind farms in Europe, there are no offshore wind farms in the United States.

Document Scope

In addition to the applicant's proposal, the Draft EIS/EIR includes the No Action alternative, an assessment of alternative energy generating technologies including renewable and non-renewable energy technologies, alternative submarine and upland cable routes, and a comparison of upland and offshore wind farm locations. COE worked with the cooperating agencies and the public to identify an initial list of 17 alternative upland and offshore wind farm locations. Subsequently, after listening to the public and consulting renewable energy and wind power experts, COE developed and applied screening criteria to narrow the range of reasonable wind farm locations to four.

The four alternative locations developed for detailed comparative review in the EIS/EIR are:

- A terrestrial alternative (Massachusetts Military Reservation)
- An offshore shallow water alternative (the applicant's proposal and two other sub-sites)
- An offshore deeper water alternative
- An offshore combination alternative with reduced footprint in Horseshoe Shoal

The document describes COE's use of a "representative sample" analytical approach to determine and compare the relative merits of the alternatives.

Through the scoping process, COE identified the following key areas of potential environmental impact for detailed evaluation: Geology and Sediment Conditions, Physical Oceanographic Conditions, Benthic and Shellfish Resources, Finfish, Protected Marine Species, Terrestrial Ecology, Birds, Coastal and Freshwater Resources, Water Quality, Cultural/Recreational/Visual Resources, Noise, Transportation, Electrical and Magnetic Fields, Telecommunication Systems, Air and Climate, and Socioeconomics.

Potential Beneficial and Adverse Impacts

The Draft EIS/EIR describes the potential adverse and beneficial impacts on these resources, and lists proposed mitigation.

Among the benefits identified would be the creation of jobs and a reduction in the need to construct additional fossil fuel electric generation facilities, which would benefit the region's air quality while providing for economic growth.

The document indicates that, overall, the proposal would have very small adverse impacts. Among the potential adverse environmental impacts identified are those related to aesthetics. The document states that "recreational boaters would experience open views of the above water components" and "the project would add a built element to existing daytime views of the seascape.... flashing lights would create a visual change to the existing relatively unbroken nighttime view under clear sky conditions." A visual impact assessment conducted by an architectural historian resulted in an adverse effect finding for several national register-listed properties (including the Kennedy Compound) because project structures could be visible from them. Mitigation measures proposed to address these impacts include the use of marine gray paint for structures to reduce contrast with the sea and sky, and the lowest

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These computer-simulations, prepared by the applicant, Cape Wind Associates, LLC, project that from Nantucket Island (left), 13.8 miles away, the proposed wind farm would appear as little more than a row of white dots along the horizon. The wind farm is more visible from Cotuit (right), on lower Cape Cod about 6 miles from the proposed site.

Draft EIS for First Offshore Wind Farm in U.S. *(continued from previous page)*

intensity daytime and nighttime lighting considered safe by the Federal Aviation Administration and the Coast Guard.

The document also states that, although some bird mortality is expected, collisions with turbine blades are unlikely to cause bird population declines. Mitigation measures proposed to reduce potential impacts on birds include:

- Use of larger, slower-turning rotors that would not come within 75 feet of the ocean surface (most birds have been observed flying below 20 feet above the ocean)
- Lighting features that are not known to attract birds
- Avoidance of guide wires
- Tubular construction and other design features that discourage perching and nesting
- Post-construction monitoring

In public comments received so far, project supporters, including some national environmental organizations, have cited the benefits identified in the Draft EIS/EIR, including those from fostering the use of clean, renewable energy sources. Supporters also noted the small estimated environmental impacts. Opponents, however, including some prominent Massachusetts political representatives, have stated objections to industrial development in a pristine area and expressed concerns about potential adverse effects on tourism. Some opponents have stated that the project should not go forward and that a more systematic Federal review process for offshore projects of all kinds is needed.

EIS Process/Next Steps

In response to Cape Wind Associates, LLC's permit application in November 2001, COE issued a Notice of Intent to prepare the EIS in January 2002, and conducted

public scoping meetings later in 2002. COE worked closely with the Federal, state, and local cooperating agencies in scoping and preparing the document. The Environmental Protection Agency issued a notice of availability of the Draft EIS on November 19, 2004, starting a 105-day public comment period. (In response to public requests, COE extended the originally-planned 60-day comment period by 45 days.) COE plans to conduct four public hearings on the Draft EIS/EIR in Massachusetts in December, carefully consider public comments, and issue a Final EIS/EIR in mid-2005. COE would then issue a Record of Decision no sooner than 30 days later stating its permit decision.

Under its Section 10 authority, COE considers the positive and negative aspects of a proposal, including environmental and other factors, in evaluating permit applications before deciding whether or not the project is in the public interest (i.e., whether or not the benefits outweigh the detriments). COE can: (1) issue the permit for the proposed site; (2) issue the permit with special conditions; or (3) deny the permit.

For More Information

The Draft EIS is available at www.nae.usace.army.mil under Projects, then Cape Wind Permit Application. Written comments will be accepted until February 24, 2005. Comments or requests for a compact disk copy of the Draft EIS should be sent to:

Karen K. Adams
Corps of Engineers
696 Virginia Road
Concord, MA 01742
978-318-8335
email: wind.energy@usace.army.mil 

Correction to CEQ's 2003 Printing of Its NEPA Regulations

Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), recently advised that the 2003 printing of CEQ's pamphlet titled "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR Parts 1500-1508) has an **incorrect mail code** for the Environmental Protection Agency's Office of Federal Activities. The affected section of the regulations and correct mail code are:

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (**MC 2252-A**), 1200 Pennsylvania Ave., NW, Washington, DC 20460....

(The July 2004 Directory of Potential Stakeholders for DOE Actions under NEPA provides the correct mail code for the Office of Federal Activities. The Stakeholders Directory is available on the DOE NEPA Web site at www.eh.doe.gov/nepa_under_Guidance, then Public Participation.)

DOE Submits Fifth Cooperating Agency Report; CEQ Proposes New Procedures

The Office of NEPA Policy and Compliance responded in October to the Council on Environmental Quality (CEQ) request for Federal agencies to report biannually on cooperating agency activities in NEPA reviews. This fifth report covers DOE EISs and EAs initiated between March 1 and August 31, 2004: three EISs, including one with two cooperating agencies, and nine EAs, none of which has cooperating agencies. The report also updates document milestones and changes in cooperating agency status of EISs and EAs covered in the previous four biannual reports.

CEQ has recently proposed major changes to its system for cooperating agency reporting:

- Changing the reporting period from 6 to 12 months
- Aligning the reporting period with the fiscal year
- Decreasing the amount of information to be reported
- Simplifying the identification of challenges or barriers to establishing cooperating agency status
- Reporting on EAs completed rather than initiated during the reporting period

CEQ also proposes to end the use of a Web-based reporting system in favor of a word-processed report. In an October 29, 2004, memorandum, the Acting Assistant Secretary for Environment, Safety and Health expressed DOE's support for these proposed changes. CEQ is expected to soon issue the revised procedures for cooperating agency reporting and to make them effective for the January 2006 report that will cover fiscal year 2005.



To enable the Office of NEPA Policy and Compliance to prepare the DOE cooperating agency report efficiently, NEPA Document Managers should inform the Office of cooperating agency involvement as soon as it is known. Of particular interest to

CEQ are EISs and EAs for which a lead agency identifies a potential cooperating agency – one with jurisdiction by law or special expertise relating to some part of the proposal – and that agency is not invited to participate, is invited but declines, or initially accepts but then the lead or cooperator terminates the relationship before the NEPA review is completed.

DOE NEPA document preparation teams are encouraged to consider potential cooperating agencies early in their NEPA process and to consult with their NEPA Compliance Officer if questions arise on this subject. The benefits of cooperating agency participation in NEPA reviews and CEQ's initiatives to promote cooperating agency relationships are described in *LLQR*, March 2002, page 1, and CEQ guidance is posted at ceq.eh.doe.gov/nepa/regs/guidance.html. For information on cooperating agency reporting, contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326. **LL**

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting. **LL**

Description	DOE Contact	Date Awarded	Contract Team
EIS for Decommissioning of the Rare Isotope Accelerator	Katatra Day 865-576-0835 daykc@oro.doe.gov	7/20/2004	SAIC
EA for Conveyance of Parcel ED-6 to City of Oak Ridge	Katatra Day 865-576-0835 daykc@oro.doe.gov	9/30/2004	SAIC
EIS for Consolidation of Operations Related to Production of Radioisotope Power Systems	Raj Sharma 301-903-2899 rajendra.sharma@nuclear.energy.gov	10/29/2004	SAIC

Milestones of DOE's NEPA Program *(continued from page 3)*

SEN-15-90

During the mid- and late-1980s, newspapers published stories almost every day about environmental and safety problems at DOE sites across the country. Shortly after taking office in 1989, the new Secretary of Energy, Admiral James Watkins, launched a 10-point initiative to address these problems. One of these initiatives was a thorough review of the Department's NEPA procedures and past practices, including the DOE NEPA Order, the DOE NEPA Guidelines, and relevant Departmental guidance memoranda. That review resulted in a Secretary of Energy Notice (SEN-15-90) directing major revisions in the Department's NEPA compliance procedures. In my opinion, the most significant revisions were:

- To eliminate both the "catch-all" CX and memorandum-to-file.
- To require each Headquarters Office having NEPA responsibilities and each Field Office to designate a NEPA Compliance Officer (NCO).

The catch-all CX was as follows: "Actions that are substantially the same as other actions for which the environmental impacts have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is still valid." Although well-intended, the catch-all CX was subject to inappropriate use. The memorandum-to-file was a device for case-by-case application of the CX concept. The memorandum-to-file, like the catch-all-categorical exclusion, also was susceptible to inappropriate use.

The role of an NCO was not described in SEN-15-90 and, as a result, the first cadre of NCO's had and met the added challenge of defining and establishing a role for themselves. That role is now well-established, and the NCO system has become an effective and absolutely essential component of DOE's NEPA compliance program.

1994 Secretarial Policy on NEPA

NEPA compliance improved significantly with the implementation of SEN-15-90. However, the number of NEPA documents, particularly the greatly increased number of EAs caused by the elimination of the catch-all CX and the memorandum-to-file, overwhelmed the NEPA document preparation and approval process at field offices and in headquarters. This resulted in lengthy delays, excessive preparation costs, and other inefficiencies.

In response to complaints about these problems from within DOE, on June 13, 1994, then-Secretary of Energy Hazel O'Leary issued a Secretarial Policy on NEPA. The cover memorandum for this Policy Statement states in part that: "We must approach NEPA as a team – ensuring quality and improving efficiency and thereby making NEPA work better and cost less. Accordingly, with the attached Policy Statement, I am directing a number of actions to streamline the NEPA process, minimize the cost and time for document preparation and review, emphasize teamwork, and make the process more useful to decision makers and the public."

In my opinion, the most significant changes made by the 1994 Policy Statement were:

- Delegation of approval authority for EAs, which unclogged the overwhelmed review process and fostered ownership of the EAs by the line organizations preparing and approving them.
- The requirement for a NEPA document manager from the line organization for all projects requiring NEPA review, which also fostered ownership of EAs and EISs by line organizations. In addition, this requirement has significantly increased the number of line organization employees who have direct experience with NEPA compliance and, thereby, enhances and facilitates NEPA implementation.
- The requirement for a "quarterly summary" of lessons learned in the process of preparing EAs and EISs. The LLQR has become a very successful driver and vehicle for continuing improvement in DOE's NEPA compliance program.

CONCLUSION

In retrospect, it is clear to me that although the problems that led to SEN-15-90 and the 1994 Secretarial Policy Statement were almost direct opposites, the goal of both sets of revisions was the same – improved NEPA compliance by DOE. I believe that goal is being achieved through the combination of these revisions, which created a NEPA process that both produces quality NEPA documents and often significantly influences decisionmaking. In addition, I believe, that for continued success, the evolutionary process of improving DOE's NEPA compliance program must continue as it has, with the many significant improvements since 1994. **LL**

Transitions

Carl Sykes Moves to NNSA

The bad news is that Carl Sykes has left the DOE NEPA Office. The good news is that Carl got a promotion and will continue doing some NEPA work. In September, Carl moved to the National Nuclear Security Administration (NNSA) as the Pantex Site lead for the Office of Operations and Construction Management (NA-124). His new responsibilities focus on providing project and operations oversight to facilitate the site's readiness to perform mission work.

After four years with the NEPA Office, Carl said he will miss working in the Office but he will still be working *with us*, as resolving NEPA issues that require NNSA headquarters assistance will be part of his duties. Carl said, "When I first visited my new office one of the things I noticed was a complete collection of site-wide EISs, programmatic, and project-specific EISs; several sets of NEPA Compliance Guides; and even a copy of a document some folks refer to as the Green Book."* Thus, you can take the employee out of the NEPA Office, but you can't take the employee out of NEPA, Carl said. We wish Carl well and look forward to continued collaboration with him.

* *Carl Sykes became the "adoptive father" of the basic NEPA guidebook, Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements (also known as the Green Book), when he took the lead of a NEPA Office team to revise the 1993 guidance. The revised Green Book will be issued soon. (See LLQR, March 2004 page 1.)*

Court Sends Whales Back to the Oceans; Cetaceans Have No Standing to Sue

The U.S. Court of Appeals for the Ninth Circuit ruled on October 20, 2004, that Cetaceans do not have statutory standing to sue. The "self-appointed attorney," in the words of the court, of The Cetacean Community (whales, porpoises, and dolphins) challenged the Navy's use of Surveillance Towed Array Sensor System Low Frequency Active Sonar during wartime or heightened threat conditions. The Cetaceans alleged that use of this sonar system violates the Endangered Species Act, the Marine Mammal Protection Act, and NEPA.

In a separate case, the U.S. District Court for the Northern District of California issued a permanent injunction in August 2003 restricting the Navy's routine peacetime use of the sonar system "in areas that are particularly rich in marine life." (See *LLQR*, March 2004, page 17, and December 2002, page 23.)

New NCOs

Idaho Operations Office: Jack Depperschmidt

Jack Depperschmidt has been designated as the NEPA Compliance Officer (NCO) for the Idaho Operations Office following the retirement of Roger Twitchell. Mr. Depperschmidt began his Federal career working for the U.S. Fish and Wildlife Service as a research technician. His earliest experience in the DOE complex was as a regulatory specialist with Westinghouse Idaho Nuclear Company, Inc., where he served as the lead for NEPA compliance. In 1991 he joined DOE as an environmental specialist working on regulatory and natural resource issues in the Idaho Operations Office, Environmental Compliance Division, and in 1998 was named Deputy NEPA Compliance Officer. Mr. Depperschmidt can be reached at depperjd@id.doe.gov or 208-526-5053.

Livermore Site Office: Tom Grim

Tom Grim was recently designated NCO for NNSA's Livermore Site Office. Tom served in the U.S. Air Force and worked for the Department of the Navy before joining DOE's Livermore Site Office in 1995. He has served as a project manager for nuclear nonproliferation projects in North Korea and Kazakhstan and now serves as the NEPA Document Manager for the *Site-wide EIS for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS*. Mr. Grim can be reached at tom.grim@doeal.gov or 925-422-0704.

Y-12 Site Office: Bob Hamby

Bob Hamby has been designated the NCO for NNSA's Y-12 Site Office, replacing Susan Dyer-Morris. Since joining the Department in 1991, Mr. Hamby has served as NEPA Document Manager for numerous EAs and contributed to several major EISs, including the site-wide EISs for Los Alamos National Laboratory and Lawrence Livermore National Laboratory, and the EIS for the Dual Axis Radiographic Hydrodynamic Test Facility. Before joining DOE, Mr. Hamby served as program manager at the Tennessee Valley Authority for 10 years. Mr. Hamby can be reached at hambyre@yso.doe.gov or 865-576-9281. 



Litigation Updates

Appeals Court Dismisses Challenge to DOE Order 435.1

The U.S. Court of Appeals for the Ninth Circuit on November 5, 2004, vacated a district court decision that declared invalid a key provision of the Manual for DOE Order 435.1, Radioactive Waste Management. (See *LLQR*, September 2003, page 23.) That provision allows waste resulting from reprocessing spent nuclear fuel that is determined to be incidental to reprocessing to be managed as low-level radioactive waste if certain conditions are met.

The appeals court ruled that the challenge brought by the Natural Resources Defense Council (NRDC) and other groups was not ripe for judicial review. 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. The appeals court disagreed that under the language of the Manual DOE will or might simply call high-level waste something else, and then dispose of it improperly. "DOE assures us that what it does do will be documented and will be publicly available. It does not plan a *camisado* [archaic Spanish: night attack]."

While the litigation regarding DOE Order 435.1 proceeded, Congress also considered the issue of how certain wastes from reprocessing should be classified. Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 sets conditions through which the Secretary of Energy, in consultation with the Nuclear Regulatory Commission, may determine that, for those wastes in South Carolina and Idaho, "the term 'high-level radioactive waste' does not include radioactive waste resulting from the reprocessing of spent nuclear fuel." The President signed the bill into law on October 28, 2004. The full text of the law is available at thomas.loc.gov/bss/d108/d108laws.html, then search for Public Law 108-375.

Groups Allege EIS Required for ETEC Cleanup

The Natural Resources Defense Council, Committee to Bridge the Gap, and the City of Los Angeles filed a lawsuit on October 21, 2004, alleging that DOE's cleanup activities at the Energy Technology Engineering Center (ETEC) are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Endangered Species Act. The lawsuit challenges the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and associated finding of no significant impact. The EA sets forth a path to remediate and close ETEC.

Plaintiffs contend that the EA is based on inadequate characterization of contamination, does not consider all

"The district court felt that there was no particular reason to wait until DOE had actually applied the Order and its contemplated processes to some particular situation existing at some particular site and, in so doing, had actually come into conflict with [the Nuclear Waste Policy Act]. We differ from that view," the appeals court wrote.

[Case No.: 03-35711]

"We must adopt a wait and see attitude There might be some danger in waiting, but that is not a greater hardship for NRDC and the rest of our society than the one already imposed by our high-level-waste-Frankenstein."

***– Ferdinand F. Fernandez, Judge
U.S. Court of Appeals for the Ninth Circuit***

reasonable alternatives, and does not consider cumulative impacts, including impacts associated with chemical contamination.

Plaintiffs ask the court to prevent DOE from relinquishing any control over the site prior to completing an EIS, issuing a record of decision, and taking steps to comply with CERCLA and the Endangered Species Act.

The lawsuit, *Natural Resources Defense Council et al. v. Department of Energy et al.*, was filed in U.S. District Court, Northern District of California.

[Case No.: 04-CV-04448]

(continued on next page)

Litigation Updates (continued from previous page)

Nevada Challenges Rail Plan for Yucca Mountain Repository

The State of Nevada filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on September 7, 2004, challenging DOE's *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Waste Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Repository FEIS, DOE/EIS-0250, February 2002) and the ongoing *Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (Rail Alignment EIS, DOE/EIS-0369). The petition alleges that DOE did not comply with NEPA in making decisions regarding the transportation mode and route for a new rail line to carry spent nuclear fuel and high-level radioactive waste to the proposed Yucca Mountain repository in Nevada.

The Repository FEIS identified "mostly rail" (i.e., rail transport supplemented by truck transport) as DOE's preferred alternative transportation mode. The FEIS did not identify a preference among the five alternative rail corridors in Nevada. DOE later issued a Notice of Preferred Nevada Rail Corridor (68 FR 74951; December 29, 2003), identifying the Caliente corridor as DOE's preferred corridor in which to construct a rail line in Nevada. Subsequently, DOE completed a Supplement Analysis (DOE/EIS-0250-SA1, March 2004) and, in a Record of Decision (ROD; 69 FR 18557; April 8, 2004), selected (1) the mostly-rail transportation mode and (2) the

Caliente corridor in which to examine potential rail alignments. The same day it published the ROD, DOE also published a Notice of Intent for the Rail Alignment EIS (69 FR 18565). (See *LLQR*, June 2004, page 13).

Nevada claims that the mostly-rail transportation mode was not analyzed in the Repository FEIS and that it "is a composite of several transportation phases that the FEIS never proposed combining." Nevada also claims that elements of the mostly-rail transportation mode had been dismissed from detailed analysis in the FEIS and that the supplement analysis provided no additional impact analysis about them. In addition, Nevada claims that DOE erred by not identifying the Caliente corridor as its preferred alternative in the Repository FEIS.

Nevada also claims that DOE is in violation of the Interstate Commerce Act because of "DOE's unilateral assumption of lead agency status in proposing to construct and evaluate the impacts of the nation's longest new rail project in decades." Nevada claims that, under the Interstate Commerce Act, the Surface Transportation Board has exclusive regulatory jurisdiction "over rail transportation, and any rail project broadly affecting national rail transportation and commerce." (The Surface Transportation Board is participating as a cooperating agency in preparing the Rail Alignment EIS.)

[Case No.: 04-1082]

Other DOE NEPA Litigation in Brief

Border Power Plant Working Group v. Abraham et al. (S.D. Calif.): DOE issued Presidential Permits and is now preparing an EIS for the construction, operation, and maintenance of two electric transmission lines that cross the U.S.-Mexico border. The court agreed in November to DOE's request for an extension to file a brief by February 1, 2005, showing cause why the permits should not be set aside on March 15, 2005. (See *LLQR*, June 2004, page 16; December 2003, page 7; and September 2003, page 22.)

[Case No.: 02-CV-513]

Columbia Riverkeeper and State of Washington et al. v. Abraham et al. (E.D. Wash.): Plaintiffs amended their complaint in August 2004 to ask the court to bar shipments of low-level radioactive and low-level mixed waste to the Hanford site. DOE currently is operating under a May 2003 court-ordered preliminary injunction that bars the shipment of transuranic waste to the Hanford site. At issue is the adequacy of DOE's NEPA reviews

related to waste management and disposal at Hanford, including the recently completed *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and ROD (69 FR 39449; June 30, 2004).

The court will hear oral arguments on February 3, 2005, on Plaintiffs' request for a preliminary injunction barring shipment of low-level and mixed low-level waste and a motion by DOE to lift the existing preliminary injunction concerning transuranic waste. In the interim, DOE has agreed not to accept the shipment of off-site-generated low-level and mixed low-level waste at Hanford. (A hearing is scheduled for January 11, 2005, on the State's claim that storage of mixed transuranic waste violates the Resource Conservation and Recovery Act and the State's Hazardous Waste Management Act.)

[Case Nos: 03-CT-5018 and 03-CT-5044]

(continued on next page)

Litigation Updates (continued from previous page)

Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al. (N.D. Cal.): The court ruled on September 10, 2004, that DOE's EA is sufficient for a proposed Biosafety Level 3 ("BSL-3") facility at Lawrence Livermore National Laboratory and that DOE is not required to prepare a programmatic EIS on its Chemical and Biological National Security Program. The plaintiffs appealed the ruling on November 11, 2004, to the U.S. District Court of Appeals for the Ninth Circuit (Case No.: 04-17232). Briefing is scheduled to end in April 2005; no hearing date has been set.

The plaintiffs had argued that the *Environmental Assessment for The Proposed Construction and Operation*

of a Biosafety Level 3 Facility at Lawrence Livermore National Laboratory (DOE/EA-1442, December 2002) inadequately addresses threats associated with the proposed BSL-3 facility, precedential effects of the proposed facility, public controversy surrounding the proposed facility, and cumulative effects of the proposed facility. The plaintiffs also had argued that the Chemical and Biological National Security Program entails a series of connected actions subject to a programmatic review under NEPA. The District Court found in DOE's favor on each of these points. (See *LLQR*, March 2004, pages 2 and 16; and September 2003, page 23.)

[Case No.: CV-03-3926-SBA]

Other Agency NEPA Cases

The Lands Council et al. v. Powell et al. (9th Cir.): The Lands Council successfully appealed a district court decision that upheld a Forest Service timber harvest plan in the Idaho Panhandle National Forest. Reversing a lower court decision, the appeals court found that the Forest Service had violated both NEPA and the National Forest Management Act, and left in place a stay that prevents the Forest Service from implementing its timber harvest plan before complying with both Acts.

The appeals court cited three violations of NEPA. First, the cumulative effects analysis in the Forest Service's final EIS "acknowledged broad environmental harms from prior harvesting." The court concluded, however, that for "the public and agency personnel to adequately evaluate the cumulative effects of past timber harvests, the Final [EIS] should have provided adequate data of the time, type, place, and scale of past timber harvests and should have explained in sufficient detail how different project plans and harvest methods affected the environment."

Second, the appeals court concluded that the Forest Service relied on "stale" habitat data for assessing cumulative effects on the Westslope Cutthroat Trout. "Evidence of current habitat conditions, and any degradation or improvement in the last thirteen years" is relevant to assessing cumulative effects, the court wrote.

Third, the court found that the Forest Service had not adequately disclosed in the final EIS certain shortcomings of one model used in its analysis. "We hold that this withholding of information violated NEPA, which requires up-front disclosures of relevant shortcomings in the data or models," the court concluded.

[Case No.: 03-35640]

Pennaco Energy, Inc. v. United States Department of the Interior (10th Cir.): At issue is whether the Department of the Interior's (DOI's) Bureau of Land Management (BLM) complied with NEPA before auctioning three oil and gas leases in the Powder River Basin of Wyoming in 2000. The Interior Board of Land Appeals (IBLA), an entity within DOI, ruled in 2002 that BLM had not complied with NEPA and directed BLM to undertake appropriate action to come into compliance.

BLM had relied on two existing EISs to satisfy NEPA requirements with regard to issuance of the leases. The Board later determined, however, that these EISs did not constitute a hard look at water discharges or air quality issues particular to the leases in question. One of the EISs did not evaluate the type of gas development (coal bed methane) that would occur under the leases. The second EIS did evaluate impacts associated with this type of gas development, but it was a post-leasing analysis and therefore "did not consider pre-leasing alternatives, such as not issuing leases at all."

The U.S. District Court for the District of Wyoming reversed the Board's decision. The appeals court then, on August 10, 2004, reinstated the Board's decision. The appeals court wrote that "the administrative record contains substantial evidence to support IBLA's conclusion that the proposed action raised significant new environmental concerns that had not been addressed by existing NEPA documents."

[Case No.: 03-8062] 

See also text box on whale litigation, page 15.



Training Opportunities

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

- **Introduction to NEPA/309 Review (FED103: NEPA/309 Review)**
Washington, DC: April 12-14

Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
 - **How to Manage the NEPA Process and Write Effective NEPA Documents**
Las Vegas, NV: January 25-28
Fee: \$1,110 (GSA contract: \$995)
Logan, UT: February 14-16
Fee: \$885 (GSA contract: \$795)

Clear Writing for NEPA Specialists
Reno, NV: February 8-10
Fee: \$835 (GSA contract: \$745)
until December 8
Logan, UT: March 7-9
Fee: \$835 (GSA contract: \$755)
until December 7

Team Building for NEPA Specialists
Logan, UT: February 17-18
Fee: \$660 (GSA contract: \$595)

How to Manage the NEPA/CEQA Process and Write Effective NEPA Documents
Palm Springs, CA: March 1-4
Fee: \$1,060 (GSA contract: \$945)
until January 1

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
 - **NEPA: Turning Complexities into Strategies**
Denver, CO: February 3-4
Fee: \$595 (\$495 if multiple registrants)

NEPA: Your Definitive and Practical Guide
Los Angeles, CA: February 28
San Francisco, CA: March 11
Austin, TX: April 8
Fee: \$395 (\$350 if multiple registrants)

CLE International
800-873-7130
registrar@cle.com
www.cle.com/dev
 - **Implementation of the National Environmental Policy Act**
Durham, NC: January 24-28
Fee: \$1,050

Socioeconomic Impact Analysis Under NEPA
Durham, NC: February 16-18
Fee: \$695

Accounting for Cumulative Impacts in the NEPA Process
Durham, NC: March 14-16
Fee: \$695

Making the NEPA Process More Efficient: Scoping and Public Participation
Durham, NC: March 16-18
Fee: \$695

Nicholas School of the Environment
and Earth Sciences
Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/shortcourses/courses/upcoming.html
- NEPA Certificate Program**
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.

Fee: Included in registration for constituent courses.

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

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Training Opportunities

(continued from previous page)

- **NEPA and Related Requirements**

Washington, DC: December 8-10
Fee: \$995 (\$495 for lawyers who are full-time government employees)

- **Environmental Law**

Washington, DC: February 16-18
Fee: \$895

- **Species Protection and the Law: Endangered Species Act, Biodiversity Protection, and Invasive Species Control**

Washington, DC: April 6-8
Fee: \$895

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

- **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.
720-859-0380
info@envirotrain.com
www.envirotrain.com

e-NEPA: Revised Document Submittal Procedures

The Office of NEPA Policy and Compliance has revised the procedures for submitting NEPA documents for posting on the DOE NEPA Web Site. The NEPA Office notified the DOE NEPA Community of these procedures by a memorandum dated November 5, 2004. The revised procedures are intended to avoid potential loss of data and delays that may result from security screening of mail or transmission of large electronic files via e-mail.

For an EIS, send the following as soon as available (preferably when the document is sent to the printer) **by overnight delivery service:**

- One printed copy
- Web-formatted electronic files (CD, floppy disk, zip disk)*
- A completed DOE NEPA Document Certification and Transmittal Form (available at: www.eh.doe.gov/nepa/docs/certificationformupdate2004.pdf)

To: GTI Federal
125 South Carroll Street, Suite 200
Frederick, MD 21701
ATTN: Marian Carter – DOE/EH-33
(301-668-7280 – verification)

Also, send two printed copies of the EIS as soon as available to the Office of NEPA Policy and Compliance (address at right).

Please address any comments or questions about Web publication or other matters regarding the DOE NEPA Web site to Denise C. Freeman at denise.freeman@eh.doe.gov or 202-586-7879. 

For an EA, finding of no significant impact, supplement analysis, or other NEPA document, send the following within two weeks of their availability **by overnight delivery service:**

- Three printed copies
- Web-formatted electronic files*
- A completed DOE NEPA Document Certification and Transmittal Form (available at: www.eh.doe.gov/nepa/docs/certificationformupdate2004.pdf)

To: Ms. Carol Borgstrom
Office of NEPA Policy and Compliance, EH-42
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585-0119

* We recommend using a CD envelope labeled: “**CD enclosed, Do Not Scan.**” Please do not send electronic files by e-mail.

EAs and EISs Completed July 1 to September 30, 2004

EAs

Savannah River Operations Office

DOE/EA-1501 (7/20/04)

Construction, Operation, and Closure of the Burma Road II Borrow Pit at the Savannah River Site, South Carolina

Cost: \$19,000

Time: 2 months

Strategic Petroleum Reserve

Project Management Office

DOE/EA-1497 (9/3/04)

Strategic Petroleum Reserve West Hackberry Facility Raw Water Intake Pipeline Replacement Project, Cameron and Calcasieu Parishes, Louisiana

Cost: \$158,000

Time: 6 months

DOE/EIS-0343 (69 FR 41476, 7/9/04)

(EPA Rating: EC-2)

COB Energy Facility, Klamath County, Oregon

Cost: The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 30 months

DOE/EIS-0349 (69 FR 52668, 8/27/04) (Amended

FEIS NOA to correct date - 69 FR 53916, 9/3/04)

(EPA Rating: EC-2)

BP Cherry Point Cogeneration Project, Whatcom County, Washington

Cost: The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 26 months

EISs

Bonneville Power Administration

DOE/EIS-0340 (69 FR 45707, 7/30/04)

(EPA Rating: LO)

Northeast Oregon Hatchery Program Grande Ronde - Imnaha Spring Chinook Hatchery Project, Oregon

Cost: \$750,000

Time: 32 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 and average cost of two EAs for which cost data were applicable was \$88,500.
- Cumulatively, for the 12 months that ended September 30, 2004, the median cost for the preparation of 10 EAs for which cost data were applicable was \$41,439; the average was \$87,408.
- For this quarter, the median and average completion time of two EAs was four months.
- Cumulatively, for the 12 months that ended September 30, 2004, the median completion time for 14 EAs was 8 months; the average was 10 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS for which cost data was applicable was \$750,000.
- Cumulatively, for the 12 months that ended September 30, 2004, the median cost for the preparation of six EISs for which cost data were applicable was \$1,560,250; the average was \$2,627,500.
- For this quarter, the median completion time for three EISs was 30 months; the average was 29 months.
- Cumulatively, for the 12 months that ended September 30, 2004, the median completion time for eight EISs was 31 months; the average was 34 months.

Recent EIS-Related Milestones (September 1 to November 30, 2004)

Notices of Intent

Office of Fossil Energy

DOE/EIS-0372

The Northeast Reliability Interconnect, Hancock, Penobscot, and Washington Counties, Maine
November 2004 (69 FR 63514, 11/2/04)

Office of Nuclear Energy, Science and Technology

DOE/EIS-0373

Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems, Idaho
November 2004 (69 FR 67139, 11/16/04)

Draft EISs

Bonneville Power Administration

DOE/EIS-0346

Salmon Creek Project, Okanogan County, Washington
September 2004 (69 FR 53916, 9/3/04)

Office of Environmental Management/ Grand Junction Office

DOE/EIS-0355

Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah
November 2004 (69 FR 65426, 11/12/04)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Revised Record of Decision for the Electrical Interconnection of the Summit/Westward Project, Columbia and Clatsop Counties, Oregon
October 2004 (69 FR 63145, 10/29/04)

DOE/EIS-0349

BP Cherry Point Cogeneration Project, Whatcom County, Washington
November 2004 (69 FR 68139, 11/23/04)

Notices of Cancellation

Bonneville Power Administration

DOE/EIS-0367

Transmission Policy-Level, Oregon
November 2004 (69 FR 68138, 11/23/04)

National Energy Technology Laboratory

DOE/EIS-0280

Clean Power from Integrated Coal/Ore Reduction (CPICOR) Project, Vineyard, Utah
October 2004 (69 FR 62440, 10/26/04)

DOE/EIS-0304 (previously DOE/EIS-0282)

McIntosh Unit 4 Pressurized Circulating Fluidized Bed Demonstration Project, Lakeland, Florida
October 2004 (69 FR 62440, 10/26/04)

DOE/EIS-0362

Next-Generation Circulating Fluidized Bed (CFB) Coal Generating Unit, Fountain, Colorado
October 2004 (69 FR 62440, 10/26/04)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program

Environmental Impact Statement

(DOE/EIS-0246)

DOE/EIS-0246-SA-41*

Willamette Basin Mitigation - Green Island Conservation Easement Acquisition, Lane County, Oregon
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0246-SA-42

Blue Creek Winter Range - Spokane Reservation (Acquisition of Lantzy West and Rajewski (Allotment 1052) Properties), Spokane Indian Reservation, Washington
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0246-SA-43

Amazon Basin (Willow Creek - Eugene Wetlands) - Cuddeback Land Acquisition, Lane County, Oregon
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0246-SA-44

Hellsgate Big Game Winter Range - Wildlife Mitigation Project, Okanogan and Ferry Counties, Oregon
(Decision: No further NEPA review required)
September 2004

* Not previously reported in LLQR

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Recent EIS-Related Milestones (September 1 to November 30, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0246-SA-45

Protect & Restore Wildlife Habitat Coeur d'Alene Tribe - Hangman Acquisition (1 parcel, 910 acres), Benewah County, Idaho

(Decision: No further NEPA review required)

October 2004

Watershed Management Program Environmental Impact Statement

(DOE/EIS-0265)

DOE/EIS-0265-SA-170*

Tapteal Bend Riparian Corridor Restoration Project, Benton County, Washington

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-174*

Blue Creek Site Restoration Project, Walla Walla County, Washington

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-175*

Malarkey Ranch Culvert Replacement Project, Columbia County, Oregon

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-176*

Gravel Push-Up Dam Removal, Lower North Fork John Day River, Murphy Cottonwood Creek Diversion, Grant County, Oregon

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-177

Klickitat Watershed Enhancement Project - Klickitat Meadows Restoration, Yakima County, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-178

Yakima Tributary Access and Habitat Program - Pellicer Barrier Removal, Yakima County, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-179

Joseph Creek Steelhead Restoration Project, Wallowa County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-180

Hood River Fish Habitat - East Fork Irrigation District, Hood River County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-181

Swamp Creek Hardwood and Wetland Restoration Project, Wallowa County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-182

Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-183

Bear Creek Road Work, Wallowa County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-184

Idaho Model Watershed Habitat Projects - L-3AO Irrigation Diversion Modification, Lemhi County, Idaho

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-185

Grays Bay Estuary Habitat Rehabilitation Project, Wahkiakum County, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-186

Habitat Projects Lake Roosevelt Tributaries - Roaring Creek Culvert Replacement, Ferry County, Washington

(Decision: No further NEPA review required)

October 2004

DOE/EIS-0265-SA-187

Yakima Tributary Access and Habitat Program - East Branch Wilson Creek, Sorensen Properties, Kittitas County, Washington

(Decision: No further NEPA review required)

October 2004

* Not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (September 1 to November 30, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-188

Umatilla Habitat Improvements/Sears Creek Culvert Replacement, Umatilla County, Oregon
(Decision: No further NEPA review required)
October 2004

DOE/EIS-0265-SA-189

Tucannon River Model Watershed - Howard Irrigation Efficiency Project, Garfield County, Washington
(Decision: No further NEPA review required)
October 2004

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

DOE/EIS-0285-SA-225*

Vegetation Management for Echo Lake - Monroe # 1, 500 kV Transmission Line Corridor, King and Snohomish Counties, Washington
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0285-SA-226*

Vegetation Management and Danger Tree Removal along Swan Valley - Teton No. 1 & 2 Transmission Line Corridor, Bonneville and Teton Counties, Idaho, and Teton County, Wyoming
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0285-SA-227

Vegetation Management along the Tanner Tap to Snoqualmie Lake Traditional No. 1, from Structure 1/1 to 5/21, King County, Washington
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0285-SA-228

Removal of Unwanted Vegetation along the Right-of-Way of the Reston-Fairview #2 230 kV Transmission Line Corridor, Douglas and Coos Counties, Oregon
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0285-SA-229

Vegetation Management along Santiam - Alvey, Marion - Alvey and Lookout Point - Alvey Transmission Line Corridors, Lane County, Oregon
(Decision: No further NEPA review required)
October 2004

DOE/EIS-0285-SA-230

Removal of Unwanted Vegetation along the Right-of-Way (ROW) of the 115 kV Lane - Wendson # 1 and 230 kV Lane - Wendson # 2 Transmission Lines, Lane County, Oregon
(Decision: No further NEPA review required)
October 2004

DOE/EIS-0285-SA-231

Vegetation Management along the Roundup - La Grande Transmission Line Corridor, Umatilla County, Oregon
(Decision: No further NEPA review required)
October 2004 

* 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 July 1 and September 30, 2004.

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

- *Internal scoping meeting.* The internal scoping meeting was an effective tool to ensure that the EA contained clear, concise information that accurately reflected the proposed action.
- *Multi-pronged approach.* The use of mailings, public open-house meetings, the Web site, and meetings by special request followed by secondary scoping, made the scoping process successful. Secondary scoping included follow-up meetings during project development/analysis and a briefing for a project management team composed of several partner entities (Federal, state, and tribal) to recognize issues and respond consistently through common talking points.
- *Preliminary design review.* The scoping process was facilitated by focusing on reasonable alternatives during a preliminary design review process.
- *Joint public meetings.* Public meetings and notices were used for the NEPA scoping process and for the state energy facility site certification process, which was an effective dual-purpose use of time.

What Didn't Work

- *Incomplete scoping of project details.* The project details had not been fully scoped when the NEPA review began.

Data Collection/Analysis

What Worked

- *Feedback from landowners.* Performing site visits with concerned landowners to gather information on issues and meaningful analysis measures was useful to understanding and addressing their specific issues.

- *Monitoring trends.* Groundwater flow monitoring and well testing over several years provided useful data.
- *Computer-generated visual simulations.* Computer-generated visual simulations of before and after shots of project sites were useful for data collection and analysis.
- *Use of tables.* A table summarizing impacts from all alternatives was useful for quick reference during the EA review process.

What Didn't Work

- *Accelerated schedule.* The archaeological and protected species surveys had to be completed on an accelerated schedule to support the document schedule.
- *Alternative interpretation of Wild and Scenic Rivers Act.* An impact analysis/methodology problem occurred when the U.S. Forest Service, the agency ultimately responsible for making an effects determination pursuant to the Wild and Scenic Rivers Act, had a different interpretation of how to analyze impacts on Wild and Scenic River values.
- *Duplicative work.* Using existing NEPA documentation would have reduced duplication of work and accelerated completion time during data collection.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Concurrent document review.* Concurrent review of the draft document by contractor and DOE staff facilitated completion of the EA on schedule.
- *Close project teamwork and rapid responses.* The project team worked closely together and responded quickly to issues.
- *Regular meetings.* Regular meetings of the EIS team during the development of the EIS were very effective.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- *Experienced and dedicated NEPA staff.* The NEPA staff was experienced and dedicated. They provided rapid responses to questions and requests for information. This facilitated the timely completion of the document.
- *Document review timelines.* Closely monitoring timelines for review of document parts by team members as parts were developed was very effective in keeping the document on schedule.
- *Good relationships.* Cooperative relationships with the state and other stakeholders facilitated timely document completion.

Factors that Inhibited Timely Completion of Documents

- *Accelerated project schedule.* The accelerated project schedule made timely completion of the NEPA review challenging.
- *Project design changes and staff turnover.* Changes in the proposed action and the project management team made timely completion of the document challenging.
- *Arbitrary timelines.* Establishing timelines based on external budgetary or process issues and not environmental compliance was ineffective in keeping the document on schedule.
- *Resource commitment from other agencies.* The lack of resources from another agency caused delays in the project.
- *Geographic locations.* The distance between the contractor and the NEPA Document Manager required additional time to schedule the mailing of documents, such as the administrative record, at the end of the NEPA process.

Teamwork

Factors that Facilitated Effective Teamwork

- *Communication between DOE and contractor.* A good working relationship and constant communication between the contractor and DOE facilitated effective teamwork.
- *Clear statement of work.* Teamwork between DOE and the contractor was facilitated by having a clear statement of work for the contractor and an understanding of deliverables, document format, and writing style.
- *Accessibility of data.* Accessibility of data facilitated effective teamwork.

Factors that Inhibited Effective Teamwork

- *Shifting project managers.* Having the same project manager throughout the draft document review process would have created a more efficient process.
- *Availability of General Counsel.* The limited time available to the (overworked) General Counsel caused minor delays.

Process

Successful Aspects of the Public Participation Process

- *Announcements published in an Environmental Bulletin.* Publishing the notice of intent to prepare the document, availability of the draft document for review, and notice of availability of the finding of no significant impact in a site's Environmental Bulletin was beneficial to the public participation process.
- *Draft EIS hearings.* A highly attended draft EIS hearing was beneficial to the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *Mailing list errors.* A separate agency department managing the mailing list for the public participation process made several mailing errors, including omissions and unnecessary and duplicate mailings.
- *Lack of participation from special interest groups.* Representatives of special interest groups, including fishermen who may be affected, were unresponsive to our attempts to involve them throughout the EA process. Input from these groups would have been valuable.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Timely decisionmaking.* Management decided that a new source for structural fill was needed for site projects, and the NEPA review was completed to ensure minimal impact to the environment.
- *Project scope definition.* The NEPA review caused the project sponsor to define the project scope and locate the project components to minimize potential environmental impacts.
- *Evaluation of alternatives.* The EA process facilitated informed and sound decisionmaking in the evaluation of alternatives.
- *Regional agency review.* The NEPA analysis was the basis for Northwest Power Planning Council review.
- *Interagency satisfaction.* Agencies were satisfied with the processes involving NEPA, the Endangered Species Act, cultural resources, and coordination requirements.
- *Addressed impacts and costs.* The NEPA process informed decisionmaking by addressing impacts and costs to determine appropriate courses of action and potential mitigations.

Enhancement/Protection of the Environment

- The environment was protected as a result of the NEPA process.
- The environment was protected and enhanced by incorporating mitigation at the front end of the project, as discussions with the state's department of wildlife occurred during the NEPA process. This will result in additional protection of some natural resources and enhance the success of restoration/enhancement efforts following completion of the project.
- The NEPA process ensured protection of the environment by the conservation and recovery of endangered species of fish. Wild and scenic river values were also protected by design and mitigation.

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 4 questionnaire responses were received for EAs and 3 responses were received for EISs, 7 out of 7 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process allowed for advance planning of mitigation and responsiveness to public safety and environmental concerns expressed by agencies.
- A respondent who rated the process as "4" stated that the NEPA review was a useful planning tool in making decisions during project planning stages and useful for environmental protection.
- Another respondent who rated the process as "4" stated that the NEPA review aided in better defining and planning the project scope.
- A respondent who rated the process as "3" stated that the NEPA process ensured that all alternative sites were evaluated for suitability, and the equipment used for the excavation was reviewed for impacts on the environment.
- Another respondent who rated the process as "3" stated that the NEPA process helped non-Federal partners recognize the Federal government's responsibility to study ways to protect special resources, even though the proposed project itself had "white hat" intentions.
- Two respondents who rated the process as "3" stated that the NEPA process was useful for public information, however, environmental protection was assured through the state energy facility siting process. DOE's role was relatively limited. LL

**LESSONS
LEARNED**

March 1, 2005; Issue No. 42

First Quarter FY 2005

New Assistant Secretary Shaw Promotes NEPA as Essential to Energy Mission and Goals

In a recent interview for *Lessons Learned Quarterly Report*, John Spitaleri Shaw, the new Assistant Secretary for Environment, Safety and Health (EH), enthusiastically expressed his view of the value of the NEPA process to the Department of Energy (DOE): “NEPA is an essential platform for providing useful information to decisionmakers and the public, supporting good decisionmaking, and thus advancing DOE’s mission. Without NEPA, we would likely experience significant deficiencies in protecting the environment for future generations.”

NEPA Supports DOE Decisionmaking and Environmental Protection

Mr. Shaw views NEPA as fundamental to informed decisionmaking: “Once environmental resources are significantly damaged, we generally cannot go back to remedy things. It is important to consider environmental factors from the beginning.” NEPA requires consideration of different ways of meeting a need, he continued. “This process can identify alternatives, features, or mitigations that improve a proposal. At its best, by promoting the identification of adverse impacts before project implementation, NEPA helps avoid unintended consequences, unnecessary adverse impacts, and implementation delays.”

Early planning, Assistant Secretary Shaw believes, is key to effective use of NEPA for environmental protection. “In the earliest stages of project development, we should start thinking about strategies for NEPA compliance, as well as for implementing other environmental programs, such as pollution prevention and environmental management systems,” he stated.

EH Is Dedicated to Assisting Senior Managers

Mr. Shaw discussed his plans to provide support to Departmental Offices in their NEPA reviews. “I want to ensure that senior managers continue to be engaged in planning and executing an effective NEPA compliance program, one that supports timely implementation of the Department’s programs and projects as well as sound

environmental policies and practices. I have already taken steps to communicate with all Program and Field Offices regarding the importance of NEPA, especially as a tool for assisting the Department in its environmental efforts, and offered my Office’s assistance. I plan to meet with each Secretarial Officer to discuss how to integrate the NEPA process with planning and decisionmaking, review the status of each Program’s NEPA compliance activities, and explore how my Office can best assist in the NEPA process.” (See text box, page 3.)

Mr. Shaw wants the Department to continue to look to EH to help provide the leadership and tools for using the NEPA process to support good decisionmaking. “To ensure success in DOE’s NEPA

(continued on page 3)



John Spitaleri Shaw tells us that the Department’s environmental program is what attracted him to DOE when he was outside the government.

Green Book, Second Edition, Issued; see page 4

Inside *LESSONS LEARNED*

Welcome to the 42nd quarterly report on lessons learned in the NEPA process. We are pleased to introduce our new Assistant Secretary for Environment, Safety and Health. John Spitaleri Shaw is a strong supporter of good NEPA compliance, as evidenced during our interview with him and in his February 16, 2005, memorandum, both of which are summarized in this issue.

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Carol Bongstrom
Director

Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 2, 2005. Contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 2, 2005

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2005 (January 1 through March 31, 2005) should be submitted by May 2, 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 printed in the September issue each year.

Printed on recycled paper



EH Brief Provides Information on Consultation with Native Americans

The Office of Air, Water and Radiation Protection Policy and Guidance, Office of Environment, Safety and Health, issued an information brief in December 2004 on consulting with American Indian and Alaska Native tribal governments. Consultation is defined as a government-to-government process of seeking, discussing, and considering the views of others on a wide range of environmental and cultural resource management issues. Consultation requirements are based on the special relationship between the Federal government and tribal governments and are included in treaties, Executive Orders, and Federal laws.

The information brief identifies existing requirements, lists non-DOE resources for identifying participants in the consultation process, and summarizes the consultation process. The brief is intended to assist DOE managers in fulfilling their consultation responsibilities and building stable and enduring relationships with tribes. It does not contain any new Departmental policy or guidance.

DOE NEPA regulations contain provisions for notifying tribes of NEPA actions and soliciting comments from tribes (10 CFR 1021.301). In addition, the Council on

Environmental Quality's NEPA regulations state that tribes may be cooperating agencies in NEPA reviews (40 CFR 1508.5).

DOE has issued guidance, *Effective Public Participation under the National Environmental Policy Act, Second Edition* (August 1998) that lists requirements specific to NEPA and presents recommendations applicable to all consultations, including those with tribal governments. DOE's *Directory of Potential Stakeholders for DOE Actions under NEPA* (July 2004) identifies Departmental points of contact for American Indian and Alaska Native tribal issues, who can assist in identifying appropriate participants for consultation regarding NEPA reviews. Both documents are available on the DOE NEPA Web site (www.eh.doe.gov/nepa) under Guidance.

The information brief is available at www.eh.doe.gov/oeqa/cultural under Policy & Guidance Documents. For more information, contact Lois Thompson, Office of Air, Water and Radiation Protection Policy and Guidance, at lois.thompson@hq.doe.gov or 202-586-9581. 

Assistant Secretary Shaw Promotes NEPA

(continued from page 1)

process, it is incumbent on EH to work hand-in-hand with other DOE Offices, not only on fundamental environmental concepts but also in implementing our NEPA guidance. My staff will continue to work extensively with NEPA Compliance Officers and NEPA Document Managers, providing technical assistance to help them meet their responsibilities.”

Guidance, Available Online, Is a Valuable NEPA Tool

“EH also provides many tools to facilitate NEPA compliance,” Mr. Shaw noted, referring to the DOE NEPA Web site (www.eh.doe.gov/nepa), which provides a comprehensive collection of NEPA guidance; milestone, status, and public involvement information for DOE NEPA reviews in progress; and annual NEPA planning summaries. “My Office will continue to develop NEPA guidance in response to the needs and priorities identified by the DOE NEPA Community,” he committed.

Mr. Shaw emphasized that EH has issued extensive NEPA guidance on conducting an effective NEPA process and preparing adequate NEPA documents, especially environmental impact statements. “Our guidance should be followed. As a Department, there is always room for improvement, and I encourage Program and Field Offices to more diligently implement our guidance, which will help them carry out their environmental responsibilities.”

In response to a question about using the Internet in the NEPA process, Mr. Shaw said, “EH is committed to

Shaw Reaches Out to DOE Managers on NEPA Implementation

Assistant Secretary Shaw issued a memorandum to Secretarial Officers and Heads of Field Organizations on February 16, 2005, that is a strong statement in support of NEPA, noting that this year marks the 35th anniversary of that “landmark legislation for the protection of our environment.” He urges continued top management engagement in the NEPA process, states his intention to meet with each Program head regarding NEPA issues and activities, comments on the value of annual planning summaries, and acknowledges the contributions of NEPA Compliance Officers and NEPA Document Managers.

The memorandum is available on the DOE NEPA Web site at www.eh.doe.gov/nepa under Guidance.

My vision is for a strengthened environmental component in the Department’s programs where the best NEPA practice allows DOE to meet its overall mission and improve its standing in affected communities.

– John Spitaleri Shaw
February 16, 2005, Memorandum

support the President’s Management Agenda across the board. DOE was an early leader in using the Internet to provide access to guidance, NEPA documents, and NEPA process information. We will continue to pursue e-government activities in our NEPA program.” He continued, “As Assistant Secretary, part of my civic duty to the President is to promote what is critical to achieving DOE’s goals. I am committed to strengthen – through good NEPA compliance – the environmental component in all of DOE’s strategic goals.”

EH is the “Green Conscience” of the Department

Mr. Shaw advocates personal responsibility for environmental goals. “I am the green conscience of the Department,” he said, “and I believe that acting on environmental values, even in small or symbolic ways, gets us in the habit of incorporating environmental stewardship in our larger actions – making it part of the Department’s way of doing business. Our actions reinforce our commitments. For this reason, I consider individual behaviors such as recycling, office energy conservation, and Earth Day observance to be worthwhile. Turn off those lights and computers when they’re not in use!”

John Spitaleri Shaw was sworn in as Assistant Secretary for Environment, Safety and Health on January 11, 2005, after serving as Acting Assistant Secretary since July 2004. Mr. Shaw joined the Department in April 2002 as Principal Deputy Assistant Secretary for Environment, Safety and Health, working with DOE sites on matters concerning the health and safety of DOE employees, and then served as DOE’s Deputy Chief of Staff and White House Liaison. He has practiced law in the private sector and has served as Majority Counsel for the Senate Government Affairs Committee. Mr. Shaw is a graduate of Syracuse University and Catholic University of America Law School. LL

DOE Issues Updated, Expanded *Green Book*

The second edition of DOE's *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* was issued by the Assistant Secretary for Environment, Safety and Health in December 2004. The Office of NEPA Policy and Compliance updated the guidance with the assistance of DOE's NEPA Compliance Officers (NCOs) and the Office of the General Counsel to better meet the needs of DOE's NEPA Community.

We expect this guidance to promote clarity, accuracy, and consistency in preparing EAs and EISs to better support decisionmaking.

– John Spitaleri Shaw

Since its first publication in May 1993, the *Green Book*, as the document is commonly known, has been the cornerstone of DOE's expanding collection of NEPA guidance. (See text box, *Green Book* vs. *Green Books*.) The *Green Book* follows the format for an EIS recommended by the Council on

Environmental Quality (CEQ) in its NEPA regulations (40 CFR 1502.10). (See text box, page 5.) Most sections of the updated *Green Book* begin with a background summary of applicable requirements, and each section contains recommendations regarding the content of an EA or EIS.

A Year in the Making

"We started a year ago looking at how we could update the *Green Book* to reflect recent DOE topic-specific guidance and experience implementing NEPA," explained Jim Daniel, Unit Leader, NEPA Office. "We critically examined every paragraph. We didn't aim to change what wasn't broken, but we took a fresh look at the entire document."

The NEPA Office received more than 250 comments from DOE's NCOs in response to a request in spring 2004. (See *LLQR*, March 2004, page 1.) Most of these comments addressed proposed new sections on impacts and revisions to sections on alternatives, human health effects, and accident analysis. "Not every good suggestion could be used in updating the *Green Book*, however, as many suggestions focused on the NEPA process, while we had chosen to maintain the *Green Book*'s original focus on document content," explained Carl Sykes, who initially led the NEPA Office effort but is now with DOE's National Nuclear Security Administration.

The NEPA Office circulated the first draft update for review within the DOE NEPA Community in June 2004 and discussed proposed changes at the DOE NEPA Community Meeting in July 2004. (See *LLQR*, September

2004, page 9.) This input led the NEPA Office to circulate a second draft for comment in September 2004. The NEPA Office then worked closely with the Office of the General Counsel to finish the guidance.

New Recommendations Promote Flexibility

The *Green Book* encourages EIS preparers to anticipate possible outcomes in planning their EIS analyses. For example, DOE does not always select a single alternative as analyzed in an EIS, but might choose to combine elements of two or more alternatives – a "hybrid" approach that affords the decisionmaker flexibility. A complex waste stream, for example, might best be managed through a combination of technology alternatives. The updated *Green Book* encourages document preparers to consider this possible outcome early in the NEPA process and to separately address the impacts from discrete elements of an action (e.g., construction, operation, transportation).

A recommendation to promote flexibility advocates developing separate alternatives or sub-alternatives that allow a comparison of major mitigation options.

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Green Book vs. Green Books

While the *Green Book* refers to *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition* (December 2004), seven other DOE guidance documents issued by the Office of Environment, Safety and Health have been printed with green covers and are listed below. Recommendations on document preparation contained in them (except for the two checklists) were summarized in the updated *Green Book*.

- *The EIS Comment-Response Process* (October 2004)
- *Recommendations for Analyzing Accidents under the National Environmental Policy Act* (July 2002)
- *Mini-guidance Articles from Lessons Learned Quarterly Reports* (November 2000)
- *Environmental Impact Statement Summary* (September 1998)
- *Glossary of Terms Used in DOE NEPA Documents* (September 1998)
- *Environmental Impact Statement Checklist* (November 1997)
- *Environmental Assessment Checklist* (August 1994)

All are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under Guidance.

Updated *Green Book* Issued (continued from previous page)

This approach would help the decisionmaker to better understand and choose among mitigation options that would lessen the impacts of an alternative.

Other recommendations for flexibility emphasize the importance of identifying the range of reasonable alternatives. One such recommendation advocates the evaluation of technically feasible alternatives that appear impractical but could become reasonable if circumstances change. Another emphasizes the need for EAs to analyze alternatives.

I strongly urge the DOE NEPA Community to read and use the Green Book every day – at least Monday through Friday!

– Carol Borgstrom, Director, NEPA Office

Update Consolidates Guidance on a Gamut of Issues

Of the eight new sections in the *Green Book* that address impact areas, one is based on DOE regulations (Floodplain and Wetland Environmental Review Requirements, 10 CFR Part 1022), one on DOE NEPA Office topic-specific guidance (Clean Air Act conformity requirements), and two on CEQ guidance (Environmental Justice and Cumulative Impacts). A new section on Biological Impacts states that environmental monitoring requirements under DOE Order 450.1, *Environmental Protection Program*, may provide data for evaluating potential impacts. The section also notes that the DOE Standard, *A Graded Approach for Evaluating Radiological Doses to Aquatic and Terrestrial Biota* (DOE-STD-1153-2002), provides examples of representative species that could serve as indicators of radiological impacts.

The section on Compliance with Other Requirements now contains an expanded discussion on integrating other environmental reviews with the NEPA process. The section emphasizes that compliance with applicable requirements cannot be relied on as evidence that an alternative would not have potential for significant impact. A new section on Mitigation recommends considering mitigation for all impact areas and evaluating pollution prevention strategies and technologies beyond those inherent in an alternative.

The NEPA Office distributed 300 printed copies of the updated *Green Book* to the DOE NEPA Community and posted the document on the DOE NEPA Web site at www.eh.doe.gov/nepa under Guidance. For more information or printed copies, contact Jim Daniel at james.daniel@eh.doe.gov or 202-586-9760. 

Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition

Contents

1. How to Apply These Recommendations
2. Document Summary
3. Purpose and Need for Action
4. Description of Alternatives, Including the Proposed Action
 - 4.1 Proposed Action
 - 4.2 Range of Reasonable Alternatives
 - 4.3 No Action Alternative
 - 4.4 Describing Alternatives
5. Affected Environment
6. Environmental Impacts (Effects)
 - 6.1 Impact Identification and Quantification
 - 6.2 Human Health Effects
 - 6.3 Biological Impacts** NEW
 - 6.4 Transportation Impacts
 - 6.5 Accident Analysis
 - 6.6 Environmental Justice** NEW
 - 6.7 Cumulative Impacts** NEW
 - 6.8 Compliance with Other Requirements
 - 6.8.1 Endangered Species Act**
 - 6.8.2 Clean Air Conformity Requirements**
 - 6.8.3 Floodplain and Wetland Environmental Review Requirements** NEW
 - 6.8.4 National Historic Preservation Act**
 - 6.9 Mitigation** NEW
 - 6.10 Comparison of Impacts
 - 6.11 Conclusions in EAs and EISs
7. List of Preparers, List of Agencies and Persons Consulted, and Distribution List
8. Appendices, References, and Index
- 9. Responses to Comments** NEW
10. General Document Quality and Readability
 - 10.1 Objectivity
 - 10.2 Writing Quality
 - 10.3 Graphics and Data Treatment (Units, Statistics)
 - 10.4 Glossary** NEW

Forest Service Cuts EIS Requirement for Land Management Plans



The Forest Service, an agency of the Department of Agriculture, has issued final regulations that modify its land and resource management planning process and eliminate a requirement to prepare an EIS for each plan, a provision of Forest Service procedures in place since 1979. In conjunction with the new regulations (36 CFR Part 219; 70 FR 1023; January 5, 2005), the Forest Service published a proposed categorical exclusion (70 FR 1062) that would apply to these plans.

The new regulations state the Forest Service's current understanding that, based on its experience, a land management plan is comprised of five strategic components – such as identification of land uses suitable to an area – that do not approve projects or activities and, therefore, do not have specific impacts that can be analyzed in an EIS.

Regulations Link Environmental Management Systems and NEPA

The new Forest Service planning regulations (36 FR 219.5) require each of the 126 Forest Service administrative units to implement an environmental management system (EMS) that contains procedures for identifying environmental conditions and monitoring to keep such information current. "Therefore, through the implementation of EMS, administrative units will be continually collecting and evaluating the data necessary to create any documents that may be required by NEPA. This will make the creation of accurate and relevant NEPA documents more efficient," said the Forest Service in the preamble to its regulations.

NEPA Review to Focus on Proposed Projects

The first Forest Service planning regulations (adopted in 1979 and modified in 1982 and 2000) required preparation of an EIS for each land management plan. "At the time, the Forest Service believed that the NEPA document prepared for a plan would suffice for making most project-level decisions. However, the agency came to understand that this approach to complying with NEPA was impractical, inefficient, and sometimes inaccurate," the agency wrote in the preamble to its final regulations (page 1031). "Over the course of implementing [the National Forest Management Act] during the past 25 years, the agency has learned that environmental effects of projects and activities cannot be meaningfully evaluated without knowledge of the specific timing and location of the projects and activities."

The Forest Service states that it expects to complete more than 100 land management plans and revisions during the next decade (preamble to final regulations, page 1024). "At the time of plan approval," the agency stated, "the Forest Service does not have detailed information about what projects and activities will be proposed over the expected 15-year life of a plan, how many projects will be approved, where they will be located, or how they will be designed." The Forest Service continued, saying it "must expect the unexpected" and will face numerous situations where analyses contained in the EIS that accompanied a plan cannot be relied upon when considering specific projects and activities. For example, the Forest Service notes that fire, flood, insects, and disease may "make unanticipated projects necessary or force changes in the projects and the effects of projects that were contemplated," and that the extent of these changes "have made it increasingly impractical to tier project-level NEPA analysis and documentation to the plan EIS."

Forest Service Points to Supreme Court Decisions

The Forest Service cites two Supreme Court decisions in the justification for its proposed categorical exclusion for land management plans. In both, the Court made a distinction between a land management plan that sets goals and an agency decision that results in a specific Federal action.

In *Ohio Forestry, Inc. v. Sierra Club et al.* (1998), the Court determined that a challenge to the Forest Service land management plan for Ohio's Wayne National Forest was not ripe for judicial review. The Court concluded, "Although the Plan sets logging goals, selects the areas of the forest that are suited to timber production, and determines which 'probable methods of timber harvest' are appropriate, it does not itself authorize the cutting of any trees."

In *Norton et al. v. Southern Utah Wilderness Alliance et al.* (2004), the Court made a similar determination in a case involving a Department of the Interior, Bureau of Land Management plan. The Court wrote that "land use plans are a preliminary step in the overall process of managing public lands – 'designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.'" (See *LLQR*, September 2004, page 20.)

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New Forest Service Regulations *(continued from previous page)*

If Adopted, Categorical Exclusion Would Be Added to *Handbook*

While Forest Service policies and broad procedures for the land management planning process are established in regulations (36 CFR Part 219), specific directives, instructions, responsibilities, and guidance are provided in the *Forest Service Handbook*, to which the Forest Service would add the new categorical exclusion (at 1909.15, Chapter 30, Categorical Exclusion from Documentation). The proposed categorical exclusion is for: “Development, revision, or amendment of land management plan components, or portions thereof, pursuant to 36 CFR part 219 *et seq.*, except where extraordinary circumstances exist as defined in section 30.3 paragraph 3.”

The Forest Service states that those extraordinary circumstances might arise from the “[d]evelopment, revision, or amendment of land management plans or components, or portions thereof, that propose projects or activities.” The Forest Service adds, “The degree of the effect of the project or activity on resource conditions, rather than the mere presence of resource conditions, determines whether further analysis and documentation in an EA or EIS is required.”

Public comment on the proposed categorical exclusion may be submitted through March 7, 2005. More information about the Forest Service land management planning regulations is available on the Web at www.fs.fed.us/emc/nfma/index2.html. The *Handbook* is available at www.fs.fed.us/im/directives. 

EIS Distribution Guidance in Preparation Who Gives What to Whom, When and How

Once approved and printed, an EIS needs to reach stakeholders in a timely manner and in a format useful to them to avoid potential EIS schedule and project delays. The DOE Office of NEPA Policy and Compliance is preparing guidance on EIS distribution to help NEPA Document Managers plan how best to meet Council on Environmental Quality (CEQ) and DOE regulations for EIS distribution and maximize benefits from stakeholder participation in the EIS process. Meeting challenges introduced by use of the Internet to identify potentially interested and affected parties and provide EISs to them will be highlighted.

Guidance to Outline Procedures, Provide Templates

The guidance will address procedures internal to DOE, e.g., developing and maintaining an EIS distribution list, obtaining concurrences and signatures on distribution letters, posting an EIS on the DOE NEPA Web site, and filing an EIS with the Environmental Protection Agency. Previous *LLQR* discussions on EIS distribution (such as *LLQR* September 2003, page 10, and June 2003, page 6) will be incorporated and expanded.

In providing tips on a distribution list for an EIS, for example, the guidance will emphasize the importance of keeping the list up-to-date. In this regard, it will provide a post-card template for use in verifying stakeholder interest in receiving EIS information or copies of

draft or final EISs via the U.S. Postal Service. To aid timely distribution, templates for letters to Congress, environmental groups, and citizens are being prepared.

e-NEPA Challenges to Be Addressed

Recently DOE NEPA Document Managers have had difficulty providing copies of final EISs to all commentors, as required by CEQ regulations, because return addresses on e-mail or fax comments were not provided or were invalid, or the mass e-mail from DOE was rejected as spam. For three recent EISs, DOE received numerous duplicate comments – in one case thousands – from one computer server or one fax machine.

The guidance will present general approaches to e-distribution to avoid or minimize problems related to e-mail or fax comments, such as those described above. Because e-NEPA procedures are evolving, the NEPA Office is consulting with other agencies on their experiences and procedures.

Lessons Learned by NEPA Community Needed

The NEPA Office will provide the draft guidance to the DOE NEPA Community, soliciting its comments and lessons learned. Direct suggestions and questions about this guidance, or EIS distribution issues generally, to Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771. 

CEQ Issues Revised Cooperating Agency Reporting Requirements

The Council on Environmental Quality (CEQ) has issued revised procedures for Federal agencies to report on cooperating agency involvement in their EISs and EAs. Modifying the reporting requirements established in January 2002, CEQ Chair James Connaughton established simplified procedures and a new format in a December 23, 2004, memorandum to Heads of Federal Agencies. The revised procedures and report format are intended to provide consistent information on the cooperating agency status of Federal agencies with “jurisdiction by law or special expertise,” states, local governments, and tribes.

The CEQ memorandum, with the new report format and Frequently Asked Questions as attachments, are found at ceq.eh.doe.gov/nepa/regs/guidance.html.

Reporting Requirements Simplified

The new procedures change the reporting period from 6 to 12 months, aligned with the fiscal year, and the information to be provided in the report will be less detailed than in the previous biannual reports.

- For each EIS for which a Federal agency publishes a notice of intent during the fiscal year, the report will list the EIS title, names of cooperating agencies, and the status of the EIS. In addition, the report will list the names of agencies that declined an invitation to participate as a cooperating agency, that requested but failed to reach agreement on establishing cooperating agency status, and whose cooperating agency status was ended and the reason(s) for those actions. The report will update this information for EISs reported in previous years.
- A Federal agency will report the total number of EAs completed during the fiscal year (that is, for which the agency issued a finding of no significant impact or a notice of intent to prepare an EIS), the number of EAs with one or more cooperating agencies, and the reason(s) agencies did not accept invitations or reach agreement to participate as a cooperating agency or ended a cooperating agency status before completing an EA.



DOE NEPA document preparation teams are encouraged to consider potential cooperating agencies early in the NEPA process and to consult with their NEPA Compliance Officer if questions arise on this subject. The benefits of cooperating agency participation in NEPA reviews and CEQ’s initiatives to promote cooperating agency relationships are described in *LLQR*, March 2002, page 1.

Metrics to Be Developed by Working Group

CEQ has established a Cooperating Agency Metrics Working Group to develop qualitative and quantitative measures that can be applied to the reports to assess the impact of cooperating agencies on improving agency NEPA processes and decisionmaking. The Working Group plans to survey Federal agency NEPA contacts in March to solicit suggestions for cooperating agency metrics, information on agency practices concerning mechanisms (such as a memorandum of agreement) for establishing cooperating agency status, and agency approaches to collecting its cooperating agency information used to prepare the annual report to CEQ. DOE’s representative on the Metrics Working Group, and the contact for further questions about cooperating agency reporting, is Yardena Mansoor, who can be reached at yardena.mansoor@eh.doe.gov or 202-586-9326. 

Implementing the Revised Requirements

The first report under the revised requirements, covering fiscal year 2005, is to be submitted to CEQ by January 3, 2006.

The Office of NEPA Policy and Compliance will

- identify EISs and EAs to be included in DOE’s report based on information in the monthly *DOE EIS and EA Status Chart* and Lessons Learned Questionnaires
- contact NEPA Compliance Officers and NEPA Document Managers, as appropriate, to
 - identify cooperating agencies
 - obtain information on requests that did not result in agreements to participate
 - obtain information on cooperating agency relationships that were ended before document completion.

International Association for Impact Assessment Conference Offers Global Perspectives

The International Association for Impact Assessment (IAIA), an organization of 2,700 members representing more than 100 countries, is holding its 25th anniversary conference in Boston from May 31–June 3, 2005. Conference sessions are organized on a theme of exploring fundamental questions of ethics and quality in the professions that use impact assessment approaches.

In a recent presentation about the Conference to a Council of Environmental Quality meeting of Federal NEPA Contacts, IAIA Executive Director Rita Hamm described the Association as “an authority on best practices for impact assessment,” and the Conference as “an international forum for communications and networking.”

Charlotte Bingham, the Conference Program Committee Co-chair (and Lead Environmental Specialist, Quality Assurance and Compliance Division, World Bank), encouraged Federal NEPA practitioners to expand their perspective to learn from others. She observed that U.S.

“We have a lot to learn from the rest of the world,” said Anne Miller, Director, Office of Federal Activities, Environmental Protection Agency, expressing her enthusiastic endorsement of the Conference.

environmental professionals consider themselves ahead of the rest of the world in environmental impact assessment, but other countries are grappling successfully with the same issues. “The Conference is an opportunity to learn and share what you know,” she said.

The Conference program – which also includes keynote speakers, practitioners’ forums, concurrent sessions on a broad range of topics, a poster session and exhibits, and technical visits – is found on the “Conferences” link on the Association’s Web site (www.iaia.org), along with registration and training information.

Before the Conference, on May 29 and 30, IAIA offers nine training courses, including Designing Effective Environmental Impact Assessment Training; Mainstreaming Biodiversity in Environmental Impact Assessment for Improved Environmental Decision-Making; and Concepts, Process and Methods of Social Impact Assessment: A Basic Course. Conference registration will be accepted through May 12, 2005, online at the Association’s Web site, by mail, or by fax, and after that date only on-site. Conference registration is \$550 for IAIA members; \$650 for nonmembers. Registration and payment for pre-Conference training are required by March 31. 

IAIA’05



Theme-related forums will address questions such as:

- What is ethical conduct in impact assessment?
- What are the standards of quality for impact assessment?
- Should there be a global standard?
- Is quality determined by the document, the process, or the outcome?

IAIA

was organized in 1980 to bring together researchers, practitioners, and users of various types of impact assessment from all parts of the world and from many disciplines and professions. Members include corporate planners and managers, public interest advocates, government planners and administrators, private consultants and policy analysts, and university and college teachers and their students. One aim of IAIA is to develop approaches and practices for comprehensive and integrated impact assessment. IAIA believes the assessment of the environmental, social, economic, cultural, and health implications of proposals to be a critical contribution to sound decisionmaking processes and to equitable and sustainable development.

IAIA publishes a quarterly journal, *Impact Assessment and Project Appraisal*, with peer-reviewed research articles, professional practice ideas, and book reviews of recently published titles. The Association also issues a quarterly newsletter to provide members with current information concerning association activities and events as well as professional news in the field of impact assessment. More information is available on the organization’s Web site, www.iaia.org.

NEPA Featured at NAEP 30th Annual Conference

Global Standards, Ethical Practices to Be Discussed

“Inspiring Global Environmental Standards and Ethical Practices” is the theme of the 30th Annual Conference of the National Association of Environmental Professionals (NAEP) to be held April 16–19, 2005, in Alexandria, VA, just across the Potomac River from Washington, DC. NEPA factors heavily in the conference agenda, which includes the 16th Annual NEPA Symposium and a special NEPA Seminar.



“This year’s theme focuses on balancing the needs of natural and human environments and finding solutions that can bridge competing interests,” wrote Conference Co-chairs John Irving, Idaho National Engineering and Environmental Laboratory, and Michael Herbaugh, Department of Defense, in their Conference invitation. “During this conference, we will discuss success stories and best practices that inspire global standards and practices to the environmental community.”

The NEPA Symposium includes presentations on implementation experience by Federal and state agencies and the private sector. Speakers also will discuss trends in environmental impact assessment, NEPA case law, the use of categorical exclusions, and “Painting the Images of NEPA.” Other topics to be addressed in regard to NEPA implementation include the Endangered Species Act, protecting cultural heritage properties, and adaptive management.

The special NEPA Seminar features presentations by Horst Greczmiel, Council on Environmental Quality (CEQ) Associate Director for NEPA Oversight, and Dinah Bear, General Counsel, CEQ, on the past, present, and future of CEQ. Nicholas Yost, former CEQ General Counsel, will discuss NEPA implementation issues. The Seminar also will include a NEPA Law Round Table designed to answer participants’ questions, with representatives from the Natural Resources Defense Council, Federal Highway Administration, Department of Defense, and U.S. Army Corps of Engineers.

In addition, NEPA is a prominent topic among planned presentations in the Conference’s Homeland Security track. Presenters will address balancing NEPA’s public involvement needs with sensitive information, and case studies of NEPA reviews of security-related actions. NEPA also will be discussed in conference tracks on Public Participation, New Technologies for Environmental Assessment, Smart Growth and Sustainability, Transportation, and Poster Sessions.

Conference registration is \$595 for NAEP members; \$695 for nonmembers. Additional information, including a registration form, is available on the NAEP Web site (www.naep.org).

NAEP offers the following courses on Saturday, April 16, 2005, in conjunction with its annual conference:

Morning

- Integrating NEPA with the ISO 14001 Environmental Management System
- A Multi-Level, Multi-Systems Approach to Sustainability and Success
- Introduction to the Section 404 Process

Afternoon

- Tools and Techniques to Reduce Project Delays and Improve Environmental Performance
- Building Strategic Alliances
- Expert Testimony

Full Day

- Writing the Perfect EA/FONSI or EIS

Half-day courses: \$150 for NAEP members; \$250 for nonmembers

Full-day course: \$250 for NAEP members; \$350 for nonmembers

Transitions

New NEPA Compliance Officers

Argonne Site Office: Donna Green

Donna Green has been designated NEPA Compliance Officer (NCO) for the Argonne Site Office under the 2004 “OneSC” reorganization of the Office of Science. Ms. Green is the Team Leader for Environmental and Emergency Management and has been making NEPA recommendations and managing environmental assessments for many years. She recently contributed an *LLQR* feature article on protection of a restored wetland at Argonne National Laboratory. (See *LLQR*, December 2003, page 6.) Ms. Green can be reached at donna.green@ch.doe.gov or 630-252-2264.

Office of Science NCO Clarence Hickey explains:

*The reorganized Office of Science is called “OneSC” to signify that the Headquarters Program Office, its 10 Site Offices at the national laboratories, and the 10 national laboratories are integral parts of DOE’s nationwide science complex. Under OneSC, the Headquarters Office of Science provides policy and direction, as well as scientific program development and management. Program execution and implementation functions are the responsibilities of the Site Offices, whose Managers have the NEPA responsibilities assigned to Heads of Field Organizations under DOE Order 451.1B, NEPA Compliance Program. The Argonne Site Office is the second OneSC Office to establish a NEPA program and designate a NEPA Compliance Officer. (The other is the Princeton Site Office, whose NCO, Allen Wrigley, was introduced in *LLQR*, September 2004, page 20.)*

Ohio Field Office: Lydia Boada-Clista

Lydia Boada-Clista has been designated as NCO for the Ohio Field Office following the retirement of Mike Reker (more, next page). Ms. Boada-Clista is currently the Transportation and Waste Manager for the Ohio Field Office. She has participated in the Office’s NEPA activities for more than 8 years and has been with the Ohio Field Office for 10 years serving in various program management capacities in the environment, safety, and health arena. Previously, she worked for the U.S. Environmental Protection Agency for 10 years. Ms. Boada-Clista can be reached at lydia.boada-clista@ohio.doe.gov or 513-246-0087.

(Dan Sullivan continues to serve as NEPA Compliance Officer for the West Valley Demonstration Project of the Ohio Field Office; he can be reached at daniel.w.sullivan@wv.doe.gov or 716-942-4016.)

Kansas City Site Office: Curtis Roth

The new NCO for the Kansas City Site Office, National Nuclear Security Administration (NNSA), is Curtis Roth, Environment, Safety and Health Program Manager. He has been with the Kansas City Office since joining DOE in 1983 and has experience in waste management, utilities construction and maintenance, and environmental engineering. Mr. Roth can be reached at curtis.roth@nnsa.doe.gov or 816-997-5713.

David Caughey, the NCO since 1995, has transitioned to other responsibilities within the Site Office.

National Energy Technology Laboratory (NETL): John Ganz

Relocating from the Ohio Field Office to Morgantown, West Virginia, John Ganz now serves as NETL’s NCO, following the retirement in January 2005 of Lloyd Lorenzi (more, next page). Mr. Ganz has significant NEPA experience as the original NCO for the former Morgantown Energy Technology Center from 1990 to 1996. Before joining DOE in 1990, he participated in NEPA project and program reviews for the Departments of the Army, Agriculture, and the Interior. Mr. Ganz can be reached at john.ganz@netl.doe.gov or 304-285-5443.

NETL was established in 1999, replacing the Federal Energy Technology Center (FETC), which had combined the former Morgantown Energy Research Center and the Pittsburgh Energy Research Center. The former National Petroleum Technology Office (Tulsa, Oklahoma) joined NETL in 2000. NETL is DOE’s center for petroleum, gas, and coal research and technology development.

NETL – Tulsa Office: Jesse Garcia

Jesse Garcia, who joined NETL’s Tulsa Office in 2000, now serves as its NCO following the retirement of Gary Walker (more, next page). As an Environmental Project Manager, Mr. Garcia’s current areas of responsibility include overseeing a variety of projects pertaining to produced water, geographic information systems, and streamlining access to Federal lands. He also has worked with NETL’s Historically Black Colleges and Universities program for advanced research. Mr. Garcia can be reached at jesse.garcia@netl.doe.gov or 918-699-2036.

(David Alleman continues to serve as the Alternate NCO for the NETL Tulsa Office; he can be reached at david.alleman@netl.doe.gov or 918-699-2057.)

(continued on next page)

Transitions (continued from previous page)

NEPA Community Retirements

The Office of NEPA Policy and Compliance offers good wishes to former NEPA Compliance Officers Henry Garson, Lloyd Lorenzi, Mike Reker, and Gary Walker on their retirements, all in January 2005.

Henry Garson has a record of long and varied service to DOE's NEPA and environmental programs, including as Assistant General Counsel for Environment, Director of the Office of Environment in the Office of New Production Reactors, and counsel and NCO for the Office of Defense Programs and later for NNSA. He made significant contributions to the New Production Reactor EIS; the site-wide EISs for Los Alamos, Lawrence Livermore, Sandia, Nevada Test Site, Pantex, and Y-12; and many other Defense Programs' programmatic and project EISs. When he retired after 35 years of Federal service, Mr. Garson was Associate General Counsel of NNSA.

Lloyd Lorenzi served as NCO continuously since 1992 for the former Pittsburgh Energy Research Center and its successor organizations, FETC and NETL. He was a frequent speaker at DOE NEPA Community Meetings, including the most recent one in July 2004. (See *LLQR*, September 2004, page 4.) Under his leadership,

DOE completed many EAs and EISs for the Clean Coal Technology Program and launched the Carbon Sequestration Programmatic EIS in early 2004. (See *LLQR*, June 2004, page 6.)

Mike Reker joined DOE's predecessor, the Energy Research and Development Administration, in 1976 and continued at various DOE offices until his retirement. He worked in the Ohio Field Office from its founding in 1994, where he held a range of environmental responsibilities, including serving as NCO since 2004.

Gary Walker was one of the original NCOs designated in 1991 when that position was established through Secretary of Energy Notice 15-90. Mr. Walker served initially as NCO for the Office of Naval Petroleum Reserves in California, and later for the National Petroleum Technology Office in Tulsa, which became part of NETL.



DOE-wide NEPA Contracts Update

Debra Keeling Assumes Contract Administrator Duties

David Gallegos, DOE-wide NEPA Contract Administrator since fall 1999, writes: "Over the last five years, I had the opportunity to serve DOE's NEPA community in administering the DOE-wide NEPA Contracts. It has been a pleasure to work with many of you in helping to make this program the success that it is. I have been transferred to a new buying division dedicated to supporting the National Nuclear Security Administration's Office of Secure Transportation. Therefore, effective immediately, Debra Keeling, NNSA Service Center, will assume the DOE-Wide NEPA Contract Administrator duties. I will be available to assist Ms. Keeling during the transition."

On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance thanks David Gallegos for his dedicated contributions to cost-effective and efficient NEPA contracting. He assisted in DOE's successful procurement in 2002 of six five-year DOE-wide NEPA support contracts and helped prepare guidance on using these contracts. We wish him continued success in his new responsibilities.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact Debra Keeling at dkeeling@doeal.gov or 505-845-6249. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting.

Description	DOE Contact	Date Awarded	Contract Team
LANL Supplemental Site-wide EIS	Elizabeth Withers 505-667-8690 ewithers@doeal.gov	11/22/2004	SAIC
EA for the Decontamination and Decommissioning of the Zero Power Reactor at Argonne National Laboratory	Kenneth Chiu 630-252-2376 ken.chiu@ch.doe.gov	11/23/2004	Battelle
Fast Flux Test Facility Decommissioning EIS	Doug Chapin 509-373-9396 douglas_h_chapin@rl.gov	12/27/2004	SAIC



DOE Litigation Updates

State of Washington v. Abraham et al. (E.D. Wash.):

The court will hear oral arguments on April 28, 2005, on Plaintiff's August 2004 request for a preliminary injunction barring shipment of low-level and mixed low-level waste and a motion by DOE to lift the May 2003 court-ordered preliminary injunction that bars the shipment of transuranic (TRU) and mixed-TRU waste to the Hanford site. In the interim, DOE has agreed not to accept the shipment of off-site-generated low-level and mixed low-level waste at Hanford. At issue is the adequacy of DOE's NEPA reviews related to waste management and disposal at Hanford, including the *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and Record of Decision (ROD) (69 FR 39449; June 30, 2004).

[Case No.: 03-CT-5018]

Note: This case formerly was cited in LLQR as Columbia Riverkeeper and State of Washington et al. v. Abraham et al. Columbia Riverkeeper and three other non-profit groups filed a complaint in April 2003 (case no.: CV-03-5044-AAM) seeking a declaration that DOE violated NEPA in determining to ship certain TRU wastes to Hanford in its Revised ROD (67 FR 56989; September 6, 2002) for the Waste Management Programmatic EIS (DOE/EIS-0200, May 1997). This case was combined with a similar case filed by the State of Washington. Columbia Riverkeeper did not challenge DOE's subsequent ROD for the Hanford Solid Waste EIS (69 FR 39449; June 30, 2004); Washington did challenge

the 2004 ROD, as described above. On October 26, 2004, the court severed the two cases, and on December 16, 2004, the court dismissed the Columbia Riverkeeper complaint as moot.

Border Power Plant Working Group v. Abraham et al. (S.D. Calif.):

DOE issued Presidential Permits based on an EA and finding of no significant impact for the construction, operation, maintenance, and connection of two electric transmission lines that cross the U.S.-Mexico border. The court found the EA inadequate, and DOE prepared an EIS for the *Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004). The court has deferred setting aside the permits until September 26, 2005. This allows time for DOE to issue a ROD and for plaintiffs to review the administrative record and determine whether they intend to raise additional issues before the court. (See *LLQR*, June 2004, page 16; December 2003, page 7; and September 2003, page 22.)

[Case No.: 02-CV-513]

State of Nevada v. Department of Energy et al.

(D.C. Cir.): These consolidated cases involve the State of Nevada's challenge to DOE's ROD 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.) The court has issued a briefing schedule, with final briefs due in June 2005.

[Case Nos.: 04-1082 and 04-1319]

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.

- **Cumulative Impacts Assessment (FED104: Cumulative Impacts Assessment)**

Washington, DC: March 8-10
Washington, DC: June 21-23

- **Introduction to NEPA/309 Review (FED103: NEPA/309 Review)**

Washington, DC: April 12-14

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

- **Clear Writing for NEPA Specialists**

Logan, UT: March 15-17
Fee: \$885 (GSA contract: \$795)
Las Vegas, NV: July 13-15
Fee: \$1,060 (GSA contract: \$945)
until April 13

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Baltimore, MD: April 5-8
Fee: \$1,110 (GSA contract: \$995)
Price, UT: April 12-14
Fee: \$885 (GSA contract: \$795)
San Francisco, CA: May 17-20
Fee: \$1,110 (GSA contract: \$995)

- **Overview of the NEPA Process**

Las Vegas, NV: April 13
Fee: \$220 (GSA contract: \$195)

- **Cumulative Impact Analysis and Documentation**

Las Vegas, NV: April 14-15
Fee: \$660 (GSA contract: \$595)
Atlanta, GA: June 22-24
Fee: \$835 (GSA contract: \$745)
until March 22
Portland, OR: June 28-30
Fee: \$835 (GSA contract: \$745)
until March 28

- **Reviewing NEPA Documents**

Salt Lake City, UT: April 18-20
Fee: \$885 (GSA contract: \$795)
San Diego, CA: July 20-22
Fee: \$835 (GSA contract: \$745)
until March 20

- **Socio-economic Impact Analysis for NEPA Specialists**

Logan, UT: May 5-6
Fee: \$660 (GSA contract: \$595)

- **NEPA Project and Program Management**

Boise, ID: May 11-13
Fee: \$885 (GSA contract: \$795)

- **How to Manage the NEPA/CEQA Process and Write Effective NEPA Documents**

Ontario, CA: May 24-26
Fee: \$835 (GSA contract: \$745)
until February 26

- **Overview of the NEPA Process/ Team Building for NEPA Specialists**

Reno, NV: July 27-29
Fee: \$835 (GSA contract: \$745)
until March 27

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

- **NEPA: Your Definitive and Practical Guide**

San Francisco, CA: March 11
Fee: \$395 (\$350 if multiple registrants)
Austin, TX: April 8
Fee: \$395 (\$325 if multiple registrants)

CLE International
800-873-7130
registrar@cle.com
www.cle.com/dev

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Training Opportunities

(continued from previous page)

- **Accounting for Cumulative Impacts in the NEPA Process**

Durham, NC: March 14-16
Fee: \$695

- **Making the NEPA Process More Efficient: Scoping and Public Participation**

Durham, NC: March 16-18
Fee: \$695

- **The Law of NEPA**

Durham, NC: May 24-26
Fee: \$695

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

- **NEPA Certificate Program**

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.

Fee: Included in registration for constituent courses.

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

- **Species Protection and the Law: Endangered Species Act, Biodiversity Protection, and Invasive Species Control**

Washington, DC: April 6-8
Fee: \$895

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

- **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 Workshop**

Honolulu, HI: April 12-14

Fee: \$850 (government: \$650) until March 11
\$950 (government: \$750) after March 11

- **Assessing Cumulative Impacts**

Honolulu, HI: April 15 (half day)

Fee: \$250 (government: \$175) until March 11
\$300 (government: \$200) after March 11

Tetra Tech, Inc.
877-468-3872
Spring2005@ttsfo.com
www.ttsfo.com/NEPA

- **NEPA: Recent Developments and Case Law**

Cupertino, CA: March 14

Fee: \$226

University of California Santa Cruz
831-427-6600
nepaclass@ttsfo.com
www.ttsfo.com/NEPA

EAs and EISs Completed October 1 to December 31, 2004

EAs

**Golden Field Office/
Office of Energy Efficiency and Renewable Energy**
DOE/EA-1506 (11/23/04)
*Changing World Technologies' Thermal Conversion
Process Commercial Demonstration Plant,
Weld County, Colorado*
Cost: \$174,000
Time: 15 months

**National Energy Technology Laboratory/
Office of Fossil Energy**
DOE/EA-1493 (EA, 8/31/04; FONSI, 12/3/04)
*Greenidge Multi-Pollutant Control Project at the AES
Greenidge Generating Station, New York*
Cost: \$160,000
Time: 10 months

DOE/EA-1498 (11/17/04)
*Advanced Multi-Product Coal Utilization By-Product
Processing Plant, Carroll County, Kentucky*
Cost: \$32,000
Time: 10 months

**Oak Ridge Operations Office/
Office of Nuclear Energy, Science, and Technology**
DOE/EA-1488 (12/10/04)
*U-233 Disposition, Medical Isotope Production and
Building 3019 Complex Shutdown at the Oak Ridge
National Laboratory, Oak Ridge, Tennessee*
Cost: \$99,000
Time: 11 months

**Rocky Flats Field Office/
Office of Environmental Management**
DOE/EA-1492 (10/27/04)
Rocky Flats Surface Water Changes, Colorado
Cost: \$60,000 (prepared by Federal employees without
contractor support)
Time: 10 months

**Strategic Petroleum Reserve
Project Management Office/Office of Fossil Energy**
DOE/EA-1505 (11/24/04)
*Proposed Increase in the Facility Capacity and
Petroleum Inventory at the Strategic Petroleum
Reserve's Bryan Mound Storage Facility, Texas*
Cost: \$51,000
Time: 5 months

Western Area Power Administration
DOE/EA-1470 (10/28/04)
Harry Allen-Mead 500 kV Transmission Line, Nevada
Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 21 months

EIS

Office of Fossil Energy
DOE/EIS-0365 (68 FR 61796, 12/17/04)
(EPA Rating: EC-2)
*Imperial-Mexicali 230-kV Transmission Lines,
Imperial County, California*
Cost: The cost for this EIS was paid by the
applicants; therefore, cost information does not apply
to DOE.
Time: 14 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

Adequacy of the EIS

- Category 1 – Adequate
- Category 2 – Insufficient Information
- Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 six EAs for which cost data were applicable was \$80,000; the average was \$96,000.
- Cumulatively, for the 12 months that ended December 31, 2004, the median cost for the preparation of 15 EAs for which cost data were applicable was \$51,000; the average was \$87,000.
- For this quarter, the median completion time of seven EAs was 10 months; the average was 12 months.
- Cumulatively, for the 12 months that ended December 31, 2004, the median completion time for 18 EAs was 10 months; the average was 11 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended December 31, 2004, the median cost for the preparation of four EISs for which cost data were applicable was \$1,776,000; the average was \$3,325,000.
- For this quarter, the completion time for one EIS was 14 months.
- Cumulatively, for the 12 months that ended December 31, 2004, the median completion time for seven EISs was 32 months; the average was 35 months.

Recent EIS-Related Milestones (December 1, 2004, to February 28, 2005)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0374

*Klondike III Wind Project Interconnection,
Sherman County, Oregon*

February 2005 (70 FR 7488, 2/14/05)

National Nuclear Security Administration

DOE/EIS-0238-S1

*Supplemental Environmental Impact Statement to
the Final Site-Wide Environmental Impact Statement
for Continued Operation of the Los Alamos National
Laboratory, Los Alamos and Santa Fe Counties,
New Mexico*

January 2005 (70 FR 807, 1/5/05)

Western Area Power Administration

DOE/EIS-0376

*Construction and Operation of the Proposed White
Wind Farm Project, Brookings County, South Dakota*
February 2005 (70 FR 8359, 2/18/05)

Notice of Cancellation

Office of Fossil Energy

DOE/EIS-0307

*Presidential Permit Application, Public Service
Company of New Mexico, Arizona*

February 2005 (70 FR 8580, 2/22/05)

Records of Decision

Bonneville Power Administration

Business Plan

Environmental Impact Statement

DOE/EIS-0183

Hopkins Ridge Wind Energy Project,

Columbia County, Washington

December 2004 (69 FR 76929, 12/23/04)

Arlington Wind Interconnection Project,

Gilliam County, Oregon

January 2005 (70 FR 3686, 1/26/05)

Policy for Power Supply Role for Fiscal Years

2007-2011 (Regional Dialogue)

February 2005 (70 FR 7489, 2/14/05)

Office of Environmental Management

DOE/EIS-0218

*Revised Record of Decision for Proposed Nuclear
Weapons Nonproliferation Policy Concerning Foreign
Research Reactor Spent Nuclear Fuel*

December 2004 (69 FR 69901, 12/1/04)

(continued on next page)

Recent EIS-Related Milestones (December 1, 2004, to February 28, 2005)

(continued from previous page)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0169-SA-09
*Yakima/Klickitat Fisheries Project, Cle Elum and
Kittitas County, Washington*
(Decision: No further NEPA review required)
January 2005

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

DOE/EIS-0265-SA-190*
*Habitat Projects Lake Roosevelt Tributaries - Bridge
Creek Passage/Habitat Improvements Phase II,
Ferry County, Washington*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-191*
*Tucannon River Model Watershed - Tucannon Ranch
Irrigation Efficiency Enhancement Project, Columbia
County, Washington*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-192*
*Idaho Model Watershed Habitat Projects -
Gini Canal - Garden Creek Crossing Structure,
Lemhi County, Idaho*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-193*
*Idaho Model Watershed Habitat Projects - Philips
Slough Fence, Custer County, Idaho*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-194*
*Blind Slough Restoration Project - Addendum
(Monitoring Plan), Clatsop County, Oregon*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-195*
*Upper Salmon Basin Watershed Projects - Goddard
Stockwater Project, Lemhi County, Idaho*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-196*
*Upper Salmon Basin Watershed Projects -
Bauchman (Ives) Stockwater Project, Custer County,
Idaho*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-197*
*Idaho Model Watershed Habitat Projects - Hayden
Creek Fence Crossing, Lemhi County, Idaho*
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0265-SA-198
*Sandy River Delta Habitat Restoration, Multnomah
County, Oregon*
(Decision: No further NEPA review required)
December 2004

DOE/EIS-0265-SA-199
*Pine Creek Conservation Area, Wheeler County,
Oregon*
(Decision: No further NEPA review required)
January 2005

DOE/EIS-0265-SA-201
*Secure and Restore Critical Fish Habitats Flathead
Basin, Montana*
(Decision: No further NEPA review required)
January 2005

DOE/EIS-0265-SA-202
*Rainwater Wildlife Area - Ongoing Operations
and Maintenance Activities, Columbia County,
Washington*
(Decision: No further NEPA review required)
February 2005

DOE/EIS-0265-SA-203
*Protect and Restore Mill Creek Watershed, Idaho
County, Idaho*
(Decision: No further NEPA review required)
February 2005

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* Not previously reported in LLQR

Recent EIS-Related Milestones (December 1, 2004, to February 28, 2005)

(Supplement Analyses, continued from previous page)

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

DOE/EIS-0285-SA-232*

Vegetation Management along the Lower Monumental - Hanford 500 kV Transmission Line, Grant and Franklin Counties, Washington
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0285-SA-233*

Vegetation Management along Hanford Ostrander No. 1 500 kV Transmission Line Corridor, Multnomah County, Oregon
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0285-SA-234*

Vegetation Management along the ROW of the 500 kV Captain Jack - Olinda Transmission Line Corridor, Klamath County, Oregon
(Decision: No further NEPA review required)
November 2004

DOE/EIS-0285-SA-235

Vegetation Management along the ROW of the 500 kV Ashe - Marion # 2 Transmission Line Corridor, Wasco and Clackamas Counties, Oregon
(Decision: No further NEPA review required)
December 2004

DOE/EIS-0285-SA-236

Vegetation Management along the Olympia - Satsop No. 2 230 kV Transmission Line Corridor, Thurston and Grays Harbor Counties, Washington
(Decision: No further NEPA review required)
December 2004

DOE/EIS-0285-SA-237

Vegetation Management along the Shelton - Fairmount No. 4 230 kV Transmission Line Corridor, Mason and Jefferson Counties, Washington
(Decision: No further NEPA review required)
December 2004

DOE/EIS-0285-SA-238

Vegetation Management along the Big Eddy - Ostrander No. 1 500 kV Transmission Line Corridor, Clackamas County, Oregon
(Decision: No further NEPA review required)
January 2005

Fish and Wildlife Implementation Plan Environmental Impact Statement (DOE/EIS-0312)

DOE/EIS-0312-SA-01

Updated Proposed Action for the Federal Columbia River Power System Biological Opinion Remand
(Decision: No further NEPA review required)
December 2004 

* Not previously reported in LLQR

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2004.

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

- *Pre-scoping research.* Investigation of reasonable alternatives prior to initiating document preparation greatly facilitated the efficiency of the EA scoping process.
- *Participation at another agency's scoping process.* The EA scoping process was enhanced by DOE's participation at a scoping meeting sponsored by another agency.
- *Confidentiality agreement.* DOE and the contractor made efforts to ensure that the project staff was comfortable with confidentiality agreements and that the agreements were adhered to.

Data Collection/Analysis

What Worked

- *Accessible subject matter experts.* Easy access to and direct interaction with subject matter experts smoothed the data collection process significantly.
- *Use of sliding-scale approach.* The use of the sliding-scale approach made the impact analysis easier to perform and minimized reader distraction by excluding unimportant details.
- *Use of GIS.* The use of a Geographic Information System for data collection and presentation enhanced the data collection and analysis process.
- *Use of existing documents.* DOE was able to draw from another agency's finding of no significant impact (FONSI) in preparing its own. A joint FONSI was suggested but it was not pursued due to DOE's requirement to indicate what mitigation measures were needed to render any potentially significant impacts insignificant.

What Didn't Work

- *Early development of tribal consultation plan.* Developing a tribal consultation plan at the beginning of the process and gaining support from all Federal agencies would have enhanced the EA process.
- *Difficulty gathering information.* Project staff was hesitant to provide information about the technology. This made gathering information needed for the EA difficult.
- *Limited information.* The impact analysis and methodology could have been better if more information needed for analysis had been available.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Close coordination between contractor and DOE.* Close coordination between the Management and Operations contractor and DOE facilitated timely completion of the EA.
- *Electronically-shared documents.* Concurrent access of electronically shared files made the resolution of comments and incorporation into the final document highly efficient as multiple users were able to easily review and post comments.
- *Regularly scheduled meetings.* The applicant, DOE, and another Federal agency with jurisdiction related to the project had regular meetings and conference calls to discuss document progress and completion. This facilitated timely completion of the EA.
- *Partial jurisdiction.* Since DOE's jurisdiction was limited to a small part of the project, DOE's delay in issuing its FONSI did not impact the project schedule. DOE's FONSI was issued well ahead of DOE taking any action related to the project.

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What Worked and Didn't Work

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- *Review deadlines and concurrence.* Document reviews were kept on schedule by establishing deadlines and presuming concurrence if responses were not received on time.

Factors that Inhibited Timely Completion of Documents

- *Staff turnover.* Timely completion of the document was interrupted by the assignment of a new EA manager in the middle of the document preparation process.
- *Lost document.* Timely completion of the document was inhibited when the contractor lost the corrected electronic draft of the document and the NEPA Document Manager had to use a hard copy of the edited version to retype corrections page-by-page.
- *Headquarters review time.* Program office review created a month delay for the completion of the EA.
- *Financial issues.* Due to financial considerations, the applicant did not task the EA contractor to prepare DOE's mitigation action plan. DOE staff prepared the plan in house, which resulted in delays.
- *Confidential information.* Completing the EA on time was challenging due to hesitancy of project staff to provide confidential information.
- *Inexperienced Preparers.* The NEPA contractor appeared inexperienced in EIS preparation and had weak writing skills.
- *Lack of ownership.* There was no one person on the contractor staff nor in the Program Office who was familiar with the entire document.
- *Disagreement on how to address major issues.* We were unable to meet milestone dates because we did not reach agreement on language for addressing major issues until very late in the process of responding to public comments. This was a strong example of an EIS that could have benefited from the comment-response guidance that EH recently issued (after the team was well along in managing the comments).

Teamwork

Factors that Facilitated Effective Teamwork

- *Open communication.* Open communication within DOE and between DOE and the contractor facilitated effective teamwork.

- *Common goals.* Teamwork was facilitated by a DOE project team with a common goal and completion milestone. The team worked together in an expedited manner to meet these goals and milestones.
- *Active consultant.* Effective teamwork between DOE and the contractor was facilitated by a consultant who was an active member of the EA preparation team.
- *Cooperation and common interest.* The NEPA Compliance Officer, NEPA Document Manager, and the contractor all worked well together and had a common interest in completing the EA. This teamwork facilitated the document preparation process.

Factors that Inhibited Effective Teamwork

- *Insufficient cooperation on National Historic Preservation Act compliance.* Another agency had the lead for National Historic Preservation Act (NHPA) compliance. The other agency did not honor DOE's requests to consult with tribes when the cultural resource inventory report was completed. DOE initiated its own consultation consistent with DOE's American Indian and Alaska Native Tribal Government Policy.
- *Lack of direct contact.* Due to the lack of face-to-face interactions with the project team, it was difficult to establish good working and trusting relationships. The project team was uncooperative and slow to respond when asked for information through any communication mode.

Process

Successful Aspects of the Public Participation Process

- *Community input.* DOE provided a presentation on the project and EA to the Environmental Advisory Committee to seek input, comments, and suggestions. Suggestions were successfully received from community representatives.
- *Accommodation of different agency procedures.* Another agency issued an EA for a 30-day comment period. DOE requested that the EA be amended to address public and agency (including DOE) input. In response, the other agency issued an EA erratum with its FONSI. DOE adopted the other agency's EA and the EA erratum as DOE's final EA.

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What Worked and Didn't Work

(continued from previous page)

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Reduction of impacts to air quality.* The NEPA process was a fully integrated part of agency planning and decisionmaking. It greatly affected decisionmaking regarding the project and ultimately led to the inclusion of mitigation activities at the conceptual stages of the project. These will serve to greatly reduce impacts to air quality in an area that has already been classified as a severe ozone non-attainment area.
- *Confirmation of a beneficial project.* The NEPA process confirmed the initial evaluation of a beneficial project with few, if any, negative impacts on the human/natural environment.
- *Defined scope.* The NEPA process was used to clearly define the scope of the action.
- *Guidance need identified.* Before DOE adopted the other agency's EA and erratum, DOE learned that the applicant was considering a different routing option for interconnecting a transmission line with a substation. DOE prepared an erratum to address this option and approved the erratum with the EA adoption. Guidance is needed to cover similar situations where issuing a revised EA would not be warranted.
- *Decision to fund technology.* The NEPA process facilitated DOE's decision to provide funding to develop a technology.

Enhancement/Protection of the Environment

- The environment was protected as a consequence of the NEPA evaluation of this project as air emissions resulting from a portion of the proposed action will be mitigated 100%.
- The environment will be enhanced by a successful project, which will reduce emissions across the board for this plant.

- The environment was protected as a result of the NEPA process.
- The environment was protected as numerous mitigations will be implemented to protect sensitive environmental resources. To further protect the environment, DOE and another agency will require that a monitor report to them during the construction.
- As a result of the NEPA process, the environment at the site and surrounding community will be protected and enhanced.

Effectiveness of the NEPA Process

For the past quarter, in which 5 questionnaire responses were received for EAs and 2 responses were received for EISs, 3 of the respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process resulted in mitigation activities being "built into" the project at the conceptual stage. This will effectively lower air emissions resulting from the proposed action.
- Another respondent who rated the process as "5" stated the NEPA process was used to clearly define the scope of the action.
- A respondent who rated the process as "4" stated that the results of the NEPA process will be integrated into another agency's development plan, DOE's mitigation action plan, and terms for granting a transmission line easement. In addition, the EA will be used to define conditions for interconnection at a substation.
- A respondent who rated the process as "2" stated that the NEPA process did not impact this particular project.
- A respondent who rated the process as "0" stated that the decision to fund the project was already clear. 

**LESSONS
LEARNED**

June 1, 2005; Issue No. 43

Second Quarter FY 2005

Who Has More Than 500 Years of NEPA Experience? A Closer Look at the DOE NEPA Compliance Officers



NCO (ĕn-sē-ō) *abbr.* NEPA Compliance Officer.

1. One of a cohort of 47 Department of Energy employees assigned NEPA compliance responsibilities for a Program Office or Field Organization.
2. A busy, high-achiever who encourages “productive harmony” among Federal actions, human populations, and the natural environment.
3. An individual practiced in the fine arts of stress management, negotiation, and communication.

Who are these 47 individuals? What inspires their commitment to the environment? How do they carry out their NCO responsibilities? What challenges do they face?

On the occasion of the 35th anniversary of NEPA, the DOE Office of NEPA Policy and Compliance distributed a questionnaire to gather data and elicit wisdom on the NCO experience. We analyzed the quantitative data and looked for themes in the narratives. From this information, we drew five conclusions about the NCO cohort.

Finding #1: NCOs Know NEPA

The DOE NCOs are widely diverse in their training and professional experience – but in aggregate they represent an immense resource of environmental knowledge relevant to NEPA responsibilities.

Some respondents became NCOs less than a year ago – one just started in May; two have served for 15 years,

since the position was instituted. The average NCO has served in that capacity for seven years, and, collectively, the 37 NCO respondents to the survey have dedicated 245 years to leading DOE’s NEPA compliance efforts.

These measures, however, understate their NEPA experience. Taking into account their environmental work for DOE, other agencies (including state and local governments), contractors, and universities, NCOs have an average of 15 years and an aggregate of over 500 years of experience related to NEPA!

(continued on page 4)

1970 **35** NEPA 2005 Spotlight on Environmental Excellence

DOE Plans November NEPA Conference

In recognition of the 35th anniversary of NEPA, the Office of Environment, Safety and Health, with the support of DOE Program Offices and in partnership with the Council on Environmental Quality, is pleased to announce a conference with the theme of *NEPA 35: Spotlight on Environmental Excellence*. The two days of training and presentations will take place in the historic Hotel Washington in Washington, DC, on November 2 and 3, 2005, with optional meetings to be scheduled on November 4.

Members of DOE’s NEPA Community are urged to “save the dates.” Further details, including registration procedures, will be provided by the Office of NEPA Policy and Compliance.

Inside *LESSONS LEARNED*

Welcome to the 43rd quarterly report on lessons learned in the NEPA process. In this issue we take a look at our hard-working NEPA Compliance Officers, who share bits of wisdom (and a little humor) gained from their lessons learned implementing NEPA. Countless thanks to all NCOs for their dedication, flexibility, and perseverance. As always, we welcome your suggestions for continuous improvement.

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Carol Bongstrom

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 August 1, 2005. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 1, 2005

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2005 (April 1 through June 30, 2005) should be submitted by August 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 printed in the September issue each year.

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CEQ Asks Federal Agencies to Lead NEPA Modernization

With the objective to make “concrete progress,” James L. Connaughton, Chair, Council on Environmental Quality (CEQ), recently asked the Heads of Federal Agencies to designate a senior official to meet with him to begin implementing the work of the CEQ NEPA Task Force. CEQ selected 21 recommendations from over 50 in the Task Force report, *Modernizing NEPA Implementation* (September 2001; *LLQR*, December 2003, page 1) for Federal agency leadership or support in developing guidance or conducting demonstration projects.

“Fully recognizing the value that NEPA provides, the CEQ NEPA Task Force examined the concern that the NEPA process is losing its focus to help federal agencies make better informed decisions,” said Mr. Connaughton. “The task force looked closely at current, often out-dated, practices to develop recommendations for making the NEPA process more effective, efficient and timely.”

The recommendations, “designed to improve and reinvigorate agency NEPA practice,” fall under seven broad areas – Adaptive Management and Environmental Management Systems, Aligning NEPA and Other Laws,

I look forward to working with you in modernizing the NEPA process to help us all make better informed and environmentally sound decisions.

– James L. Connaughton
May 2, 2005, Memorandum
to Heads of Federal Agencies



Categorical Exclusions, Collaboration, Environmental Assessments, Programmatic Analyses, and Training. John Spitaleri Shaw, Assistant Secretary for Environment, Safety and Health, will represent DOE at the upcoming meeting on June 7, 2005, to express agency interest, based in part on consultation by the Office of NEPA Policy and Compliance with DOE’s NEPA Compliance Officers, some of whom volunteered to participate in work groups.

Additional information on the CEQ NEPA Task Force, including a copy of its report, is available on the Task Force’s Web site at <http://ceq.eh.doe.gov/ntf>. 

Congressional NEPA Task Force Begins Regional Hearings

Seeking a comprehensive Congressional review of NEPA implementation, Representative Richard Pombo (R-CA), Chairman of the House of Representatives Committee on Resources, established a bipartisan Task Force in April 2005 on Improving the National Environmental Policy Act, led by Representative Cathy McMorris (R-WA). Representative Tom Udall (D-NM) is the Ranking Member on the Task Force.

“Like any major policy put in place decades ago, it is time to examine this 35-year-old law and find ways in which we can improve its efficacy and efficiency,” said Task Force member Representative Greg Walden (R-OR). “I look forward to working with colleagues from both sides of the aisle to accomplish this goal.”

The Task Force is charged with making recommendations for improvement. Its purpose is to promote the intent of NEPA – that Federal decisions be made in an appropriate, environmentally sound manner, rather than being driven by litigation.

“One of the trademarks of NEPA is to take into account public comment,” said Representative McMorris,* so the Task Force will hold six public regional hearings covering 23 states “to hear testimony from our farmers, our ranchers, developers, the environmental community and others on how NEPA impacts their community, the economy and our quality of life.”



Rep. Cathy McMorris, Chair, Congressional NEPA Task Force, has raised concerns regarding delays, costs, and litigation.

Diverse Views Expressed at Northwest Hearing

The Task Force held its first hearing, “The Role of NEPA in the States of Washington, Oregon, Idaho, Montana, and Alaska,” on April 23, 2005, in Spokane, Washington. Twelve invited witnesses expressed their views on NEPA implementation (excerpted below). Some speakers expressed support for preserving the NEPA process as a framework for sound decisionmaking while others urged making significant changes to the NEPA process to

alleviate cost, delay, and litigation. The complete written testimony of the hearing speakers is available on the Task Force Web site (resourcescommittee.house.gov/nepataskforce.htm under Schedule). The Task Force plans to conduct the five remaining hearings (not yet scheduled) and issue a report on findings and recommendations, and invites additional input via e-mail to nepataskforce@mail.house.gov.

Excerpts from Written Testimony at the Spokane Hearing

Editor’s note: In selecting excerpts, we have tried to illustrate the variety of opinions presented in the testimony of the hearing witnesses. We have not captured all of the topics and complexity of views expressed.

NEPA Is a Suitable Tool for Country’s Needs:

The public perception of impending environmental crisis was probably more acute and widespread in 1969 than it is today, when many environmental problems tend to be harder to see. A declining species or gradual change in ocean or atmospheric chemistry is not as apparent to the average person as a belching smokestack or burning river. . . . It may be fair to say that the law was written in a simpler era, at least to the extent that the polarities of good and bad, dirty and clean, were in sharper contrast. But it badly shortchanges . . . NEPA itself to say that the law was written for a simpler era and, as such, is not a good fit for today. . . .

NEPA is inspired, forward looking, valuable, and entirely suitable as written to our country’s contemporary needs. The risk of poorly informed government action is a non-partisan, 50-state, enduring problem, and NEPA is a vital tool in limiting that risk. . . .

The real problem with NEPA is not that it is too green or not green enough. Most of the criticism of NEPA, whether the critic recognizes it or not, is rooted in the way the law is implemented, not in the fact that the law seeks [to] protect the quality of the human environment. The problem is that parties with different values compete for primacy in agency decision-making and agencies sometimes do not administer or manage the competition effectively.

Thomas C. Jensen, Esq., Sonnenschein, Nath & Rosenthal, LLP
Chairman, National Environmental Conflict Resolution Advisory Committee
U.S. Institute for Environmental Conflict Resolution

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* Issue paper, “Taskforce to Improve the National Environmental Policy Act will highlight its economic impacts on Eastern Washington,” April 8, 2005; www.house.gov/apps/list/speech/wa05_mcmorris/issue_050408_nepa.html.

A Closer Look at NCOs (continued from page 1)

Three-quarters of the responding NCOs chose undergraduate majors in the natural sciences or engineering; others majored in fields such as law enforcement, political science, sociology, anthropology, and management. More than 80 percent of responding NCOs have one or more graduate degrees, in fields of study spanning the natural sciences and engineering, mathematics, business administration, public administration, education, and law.

This diversity of educational backgrounds and professional experience among the NCOs supports NEPA's emphasis on interdisciplinary analysis.

NCO Wisdom

The NEPA process isn't always environmental and certainly is not the panacea, but it is a good place to begin a dialog with the public about environmental issues.

The process and the documentation, therefore, need integrity and honesty and need to be done correctly the first time, every time.



Finding #2: NCOs Believe in NEPA

NCOs share an appreciation for the environment and a belief in the values represented in NEPA. Their environmental commitment stems from experiences in their childhood, education, and careers.

Many respondents described how their childhood experiences inspired their respect for the environment. One NCO explained, "I grew up on a peninsula on Narragansett Bay in Rhode Island and spent hours exploring the woods, the bay, and the salt marshes. My grandparents had a summer home on the Delaware River in southern New Jersey – which gave me access to the river, the ocean, and the Pine Barrens. I was always comparing and contrasting the different environments and dreamed of pursuing a career related to the outdoors." Another NCO grew up on a farm and "saw the importance of balancing the needs of people and protecting our environment." Another NCO attributed his environmental inspiration to birding since the age of 14 – and noticing the decline in habitat and species numbers and diversity since 1968.

One-quarter of the respondents explained that their interest in the environment resulted from their education: "As an undergraduate, the instructor for my first environmental

regulations class was very knowledgeable, helpful, and a good mentor."

One-third of the responding NCOs reported that their early work experiences strongly influenced their interest in pursuing an environmental career. One NCO explained, "My decision to pursue an environmental career probably started during my first Government job. I spent two summers while in high school working for the Youth Conservation Corps in Allegheny National Forest in Pennsylvania . . . trying to remediate abandoned oil wells with straw and seed. I saw the desperate need for up-front planning, and I saw how futile my job was in the absence of that."

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I am

- ✓ *the "NEPA Concierge" – bring your NEPA baggage here; come here for NEPA directions (but without tips).*
- ✓ *the NEPA counselor and psychologist, without either couch or license.*
- ✓ *the NEPA coach, advisor, consultant, and quasi-legal counselor (without license again).*
- ✓ *the NEPA Field Judge (or more appropriately the line judge) who watches for NEPA infractions and then throws the flag, sometimes inflicting a penalty by sending the NEPA ball back for more work; sometimes resulting in a total rework of project design and location, and then a new NEPA document.*
- ✓ *the NEPA referee between opposing points of view in the implementation of NEPA.*
- ✓ *the NEPA news anchor; bringing both good and bad news to the organization.*
- ✓ *the NEPA facilitator, arbitrator, and corporate communicator.*
- ✓ *the NEPA educator and explainer.*

I'm the one who looks out for the program and organization in terms of NEPA timing, cost, and project impact. I am supposed to keep the office out of NEPA trouble, which is best done when I am involved in the earliest stages or phases of new projects and research programs. . . . How do I handle it? I endeavor to have "NEPA authority." That is not the "authority" that is influence coming from or with position, place in the organization, high salary, large office, or for whom I work. It is the authority that is influence based on trust.

– NCO Respondent

A Closer Look at NCOs (continued from previous page)

Today, these NCOs bring their appreciation and knowledge of environmental issues to the DOE table. They have accepted responsibility for NEPA compliance and environmental stewardship at their sites and programs. But their answers suggest that NEPA is not just a “day job” for them – they truly believe in NEPA. “NEPA is an effective planning tool to prevent environmental impacts at the conceptual stage of a project,” said one NCO. Another explained, “Compliance with NEPA has made DOE aware of its responsibilities to the American people for the natural environment and the safety and health of populations at and near its sites.”

Many NCOs have established goals for themselves to make sure that NEPA is upheld. For example, one NCO has the goal to “ensure all projects/programs have taken NEPA into consideration.” Another said, “My goal is to provide our field offices with the environmental support they need to ensure that the Agency’s actions are in compliance with NEPA.”

Many NCOs reported that they strive to take their responsibilities even further – “to achieve NEPA compliance while raising the NEPA bar,” as one NCO expressed it. For example, they reported goals to “streamline the NEPA process,” “produce quality analysis for the decisions to be made,” and “make sure that everyone involved understands and supports the NEPA process.”

Finding #3: NCOs Wear Many Hats

Our hard-working NCOs have long “to-do” lists. Some reported that NEPA responsibilities are a full time job, demanding “90 to 150” percent of their time. Others, at sites with minimal NEPA-related activity, spend much less time: “My Office typically has very few NEPA actions. Of these, almost all are categorical exclusions.” A few reported that their NCO activities ebb and flow with the project tide. The respondents reported spending, on average, about one-third of their time on NCO duties.

About half of the respondents write all or portions of EAs, and almost all participate in reviewing them. EISs are also on most

(continued on next page)

Birth of the NEPA Compliance Officer

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

NCO Responsibilities under DOE O 451.1B, NEPA Compliance Program

(Paragraph 5.d – Abridged)

A NEPA Compliance Officer shall:

- (1) Develop office NEPA procedures.
- (2) Make categorical exclusion determinations and issue associated floodplain and wetland documents.
- (3) Report to the DOE NEPA Office on lessons learned after completing each EIS and EA.
- (4) Coordinate office NEPA compliance strategies.
- (5) Advise on NEPA-related matters.
- (6) Recommend to the Head of the Office whether an EA or EIS is appropriate or required.
- (7) Assist with the NEPA process and document preparation.
- (8) Advise on the adequacy of NEPA documents.
- (9) Participate in periodic NEPA meetings and workshops; provide NEPA training and disseminate NEPA guidance and information.
- (10) Notify the DOE NEPA Office promptly – generally, within two weeks of:
 - (a) The designation of a NEPA Document Manager.
 - (b) A determination to prepare an EA.
 - (c) A transmittal of an EA to states, tribes and, when applicable, members of the public, other Federal agencies, and local governments for preapproval review.
 - (d) A determination to prepare an EIS.
- (11) Provide NEPA Office promptly – generally, within two weeks:
 - (a) An approved EA and finding of no significant impact.
 - (b) A proposed finding of no significant impact.
 - (c) [Removed and reserved]
 - (d) An approved draft or final EIS.
 - (e) An EIS record of decision.
 - (f) A mitigation action plan and corresponding annual mitigation report.
 - (g) An EIS supplement analysis and any determination based on it.

A Closer Look at NCOs (continued from previous page)

NCOs' to-do lists, with one-quarter of the respondents participating in writing them and three-quarters involved in their review. Eighteen NCOs are currently NEPA Document Managers, and an additional 12 have recently been a NEPA Document Manager. Almost half of the respondents provide NEPA training as part of their duties, either as formal classes or informal guidance.

Almost all of the respondents (92 percent) reported that they have diverse responsibilities in addition to those of the NCO. They are responsible for "contract management," "maintaining and updating project results with the office data management system," "Endangered Species Act compliance," "employee concerns," "emergency management," "environmental research," "acting in the absence of the director," "Environment, Safety, and Health-related activities," and "other duties as assigned, including digital photographer and webmaster."

In addition, DOE's NCOs take the time to serve others. "I also chair the Department's Holocaust Remembrance Committee and co-chair the Native American Heritage Committee," said one NCO. Another NCO was in Vietnam assisting Electricity Vietnam with its PCB (polychlorinated biphenyl) program when the NCO questionnaire arrived.

Finding #4: NCOs Are "Troopers"

Several respondents indicated that life as an NCO is not always easy. Many explained that it can be difficult to be a voice of in-depth environmental deliberation when others are focused on tight deadlines and budgets. One NCO stated that the biggest challenge of being an NCO is "getting project managers to understand when they need to consider NEPA. Engineers like to get from the desk-and-drawing phase to the 'let's go build it' phase as quickly as possible, and anything that hinders that is not viewed favorably." Another NCO agrees: "The biggest challenge is always telling a project manager, who has come to the table late, that the NEPA process is going to take time and, by the way, the public will have an opportunity to comment."

Speaking of public comment, our research demonstrates that many NCOs have developed a unique skill set to cope with challenges in this area. Half of the respondents recounted unusual experiences at public meetings that necessitated on-the-spot, tactful, and creative communication skills. One NCO explained, "Many people have come to public meetings just to confront 'the government.' Reading an EIS comment that involves lizards from Mars, or trying to end stream-of-consciousness public meeting expositions that bear no relationship to NEPA, or DOE for that matter, are certainly bizarre experiences." Several respondents suggested

that, on the basis of such experiences at public meetings, "extra-terrestrial outreach" should be considered for addition to the list of NCO responsibilities.

Finding #5: NCOs Help Each Other

Seventy-five percent of the respondents said that they consult with other NCOs while performing their duties, and many reported frequent consultations. NCOs communicate with each other on a variety of project-specific challenges, such as to learn others' "experience with applying categorical exclusions." Many NCOs also reported coordinating with each other on inter-site issues, such as "coordination of reviews of their actions regarding my site and my site's actions regarding their sites."

Additionally, NCOs work together to ensure consistency across sites and projects. For example, one said, "We strategize on approach and try to have a uniform approach to 'odd' NEPA issues that arise." Consultations with fellow NCOs also foster innovation: "I have always consulted with my peers on any issue – for fresh ideas, tested approaches (not re-inventing the wheel), and their sites' expertise."

While most of these interactions are self-initiated, some are more structured. "I participate in a monthly conference call with the other NCOs at my Program's site offices." 

NEPA has come a long way, and DOE has come a long way. DOE is to be commended for the focus and vision it has developed for NEPA compliance.

– NCO Respondent

Acknowledgements

We sincerely appreciate the NCOs' efforts in support of NEPA and thank them for letting us take a closer look into their responsibilities, opinions, and backgrounds. In the NEPA Office, we consider it a privilege to work with such a diverse group of skilled and thoughtful people. Their efforts are the foundation for DOE's successful NEPA program.

NCO Wisdom

As NCO, if your management trusts that you are working for the best interests of the organization, you can accomplish a great deal.



Earth Day 2005: Greening DOE

“We at DOE should be proud of the progress we have made in protecting human health and safeguarding the natural environment around DOE sites since the first Earth Day 35 years ago,” said Assistant Secretary for Environment, Safety and Health John Spitaleri Shaw in his 2005 Earth Day Message. He led DOE’s Earth Day commemoration on April 22 by planting a tree and inaugurating the Environment, Safety and Health Pollution Prevention (P2) Star Awards Program to recognize exemplary performance in integrating pollution prevention to reduce risk, protect natural resources, and enhance site operations. The new P2 Star Awards Program is an extension of the DOE pollution prevention award program now in its 11th year.



Assistant Secretary Shaw planted a tree on Earth Day outside the DOE Forrestal Building in Washington, DC.

“Our goal at DOE is to ensure that environmental concerns are factored into all of our planning and decision making. To make this happen, we depend on environmental management systems and pollution prevention programs. . . . By building sound pollution prevention measures into our environmental management systems, we can attain ‘beyond compliance’ results that help reduce the environmental footprint as well as the life-cycle costs of our facilities and operations,” Mr. Shaw said.

Leaders in DOE Program Offices received P2 Star Awards at the Headquarters ceremony for pollution prevention activities under their Programs’ auspices, with parallel awards given to site representatives at the DOE/NNSA P2 Workshop, held May 25, 2005, in Las Vegas.

- **Lawrence Livermore National Laboratory:** General Ronald Haeckel, National Nuclear Security Administration, accepted the award for the Chemistry Environmental Services’ (an on-site environmental analytical laboratory) strategy for rigorous radioactive characterization and a program to identify and segregate hazardous materials. These activities reduced mixed waste generation by 44 percent and significantly reduced personnel exposure to hazardous waste streams.
- **National Renewable Energy Laboratory, National Energy Technology Laboratory, and Savannah River Site:** Doug Faulkner, Office of Energy Efficiency and Renewable Energy, received the award on behalf of the “Green Fleet Team” which has significantly reduced petroleum consumption through efficiency measures and alternative fuel use.
- **Strategic Petroleum Reserve:** John Shages, Office of Fossil Energy, accepted the award for the Strategic Petroleum Reserve environmental management system, which includes a project that applies oil degasification technology to maximize retention of valuable product while reducing waste and air emissions. This project also received a White House Closing the Circle Honorable Mention.
- **Office of Legacy Management:** Bob Baney accepted the award on behalf of the Office for a program for reusing laboratory equipment and supplies, which transferred \$3 million worth of instrumentation systems, precious metals, and analytical equipment to colleges, universities, and DOE laboratories
- **Office of Science:** Dr. Donald Erbschloe, Office of Science, received the award for the Pacific Northwest National Laboratory’s “environmentally preferable purchasing” requirements in the site environmental management system, which resulted in high volumes of recycled-content product purchases and redistribution and reuse of chemicals instead of disposal.
- **Savannah River Site:** The Office of Environmental Management was recognized for a Savannah River Site program that recycles unserviceable cargo containers for use as waste disposal containers, which has yielded an estimated \$12 million in savings over three years.

For more information on Earth Day or the P2 Star Awards, see www.eh.doe.gov/p2/earthday.html or contact Jane Powers, Office of Pollution Prevention and Resource Conservation Policy and Guidance, at jane.powers@eh.doe.gov or 202-586-7301. 

EPA Rates All Action Alternatives in Absence of Preferred Alternative

Moab EIS Cap-in-Place Alternative Rated “Environmentally Unsatisfactory”

Residents of Moab, Utah, disagree about the origin of their town’s name: Is it a Biblical reference to a Dead Sea locale or a Paiute word for “mosquito water?” Yet one thing is for sure – the uranium mill tailings site nearby is a source of soil and ground water contamination, and DOE is responsible for cleaning it up. As such, DOE is preparing an EIS to evaluate remediation strategies and their potential environmental impacts.

In its *Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Draft Environmental Impact Statement* (Draft EIS; DOE/EIS-0355D, November 2004), DOE analyzed four action alternatives but did not express a preference among them. As a result, the Environmental Protection Agency (EPA) rated each alternative separately and determined that one warranted a rating of Environmentally Unsatisfactory – Insufficient Information (EU-2). (EU is EPA’s most unfavorable rating for environmental impact; the 2 is a rating on a scale from 1 to 3 of the adequacy of the EIS. See text box for EPA rating definitions.) This experience offers an opportunity to better understand EPA’s rating practices and to consider possible consequences of not identifying a preferred alternative in a draft EIS. (After publication of the Draft EIS, DOE announced its selection of a preferred alternative; see below.)

Former Commercial Site Impacting River

The Moab site is the location of a former commercial uranium ore processing facility and approximately 11.9 million tons of mill tailings and tailings-contaminated



The Moab site is 750 feet from the west bank of the Colorado River, the principal surface water resource for the region. The uranium mill tailings pile covers approximately 130 acres of the 439-acre site.

soil being stored in an unlined pile. Located adjacent to the Colorado River, the tailings pile averages 94 feet above the floodplain.

Radioactive contaminants in ground water exceed EPA limits in *Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings* (40 CFR Part 192). Additionally, the EIS indicates that discharge of ground water containing toxic contaminants (primarily ammonia) may be affecting four Federally-endangered fish species in the river – the Colorado pikeminnow, razorback sucker, humpback chub, and bonytail chub.

Congress transferred responsibility for remediation of the site from the Nuclear Regulatory Commission to DOE in 2001. The Office of Environmental Management, through the Grand Junction Office in Colorado, is preparing the EIS and managing the remediation.

On-site or Off-site Disposal? No Preference Stated in Draft EIS

DOE proposes to remediate the surface contamination at the Moab site and vicinity properties and to implement a ground water compliance strategy. The EIS analyzes five alternatives: capping the pile on-site, disposing of the material at one of three off-site locations in Utah (Klondike Flats, Crescent Junction, or White Mesa Mill), and no action. Off-site transportation options include truck, rail, and slurry pipeline. DOE also proposes ground water remediation under each action alternative. Twelve Federal, state, local, and tribal agencies, including EPA, are cooperating in preparation of the EIS.

Council on Environmental Quality regulations implementing NEPA require an agency to identify a preferred alternative in a Draft EIS if one exists (40 CFR 1502.14(e)). For the Moab EIS, DOE did not state a preference in the Draft, saying that it “will be identified in the Final EIS after consideration of public comments, the information provided in this EIS, and other factors, including the costs of the alternative actions.”

EPA Rates Individual Alternatives

With no preferred alternative identified, EPA rated each of the four action alternatives separately. This practice is outlined in EPA’s policy and procedures: “If . . . a

(continued on next page)

Moab EIS *(continued from previous page)*

preferred alternative is not identified, or if the preferred alternative has significant environmental problems that could be avoided by selection of another alternative, or if there is reason to believe that the preferred alternative may be changed at a later stage, the reviewer should rate individual alternatives.” (EPA’s *Policy and Procedures for the Review of Federal Actions Impacting the Environment* manual is available on the Web at www.epa.gov/compliance/resources/policies/nepa.)

The cap-in-place alternative received an EU-2 rating based on “the potential for prolonged environmental and public health risk that could result from the continued release of

toxic contaminants to ground and surface waters because of potential failure of the proposed remedy.” Referring to similarly constructed caps, EPA noted that DOE’s low water infiltration rate assumptions would be difficult to maintain and that even a small increase in the rate of infiltration would cause “much higher concentrations in ground water, which may adversely impact surface water after the projected 80-year operation period for the ground water remediation system.” Additionally, EPA commented, “Four flood events since the 1880s had a river stage high enough to inundate a portion of the tailings pile.”

(continued on next page)

Summary of EPA Rating Definitions and Follow-up Action*

Environmental Impact of the Action

LO – Lack of Objections The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO – Environmental Objections The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1 – Adequate EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce the environmental impacts of the action. The identified additional information, data analyses, or discussion should be included in the final EIS.

Category 3 – Inadequate EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* Appendix to EPA’s *Policy and Procedures for the Review of Federal Actions Impacting with the Environment*, available on the Web at www.epa.gov/compliance/resources/policies/nepa.

Moab EIS *(continued from previous page)*

EPA rated the White Mesa Mill off-site alternative EO-2, Environmental Objections – Insufficient Information. Under this alternative, DOE would move the tailings 85 miles south to privately-owned land at an active uranium mill site. EPA stated a concern with the adequacy of ground water protection at the White Mesa Mill site and noted that this site “adversely affects ten or more Native American traditional cultural properties.”

The off-site alternatives at Klondike Flats and Crescent Junction each received ratings of EC-2, Environmental Concerns – Insufficient Information. Both alternatives involve moving the tailings north to land managed by the Bureau of Land Management. EPA found that neither site would cause adverse impacts to aquatic resources or

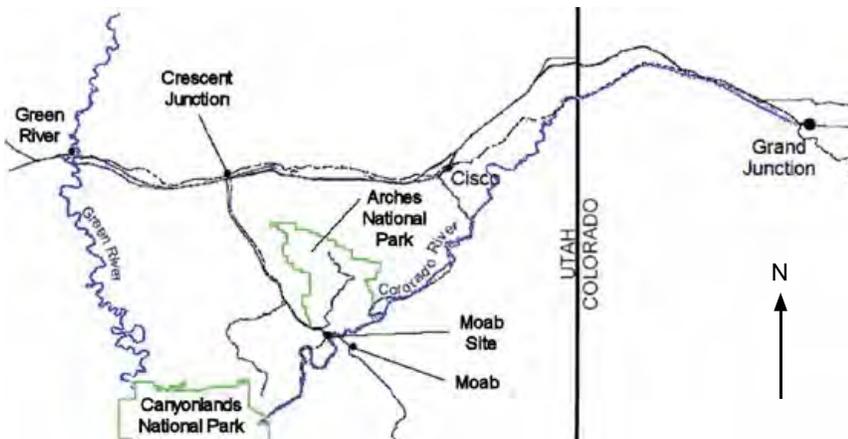
wetlands, but that truck and slurry transport could pose environmental concerns.

Based on its review, EPA recommended that “DOE fully consider the benefits of either the Klondike Flats site or the Crescent Junction site using rail transport in order to provide a secure geologic setting that offers the best opportunity for long-term public health and environmental protection.”

DOE Announces Crescent Junction Preference

DOE announced its preference for off-site disposal at the Crescent Junction site, and active ground water remediation at the Moab site, in an April 2005 news release, which stated that these preferences will be included in the Department’s Final EIS. DOE also announced a preference for rail as the primary mode of transportation.

The Office of Environmental Management, through the Grand Junction Office, is responding to approximately 1,600 public comments received on the Draft EIS and plans to issue the Final EIS this summer. Additional information on the Moab project can be found on the Web at <http://gj.em.doe.gov/moab> or by contacting Don Metzler, Moab Project Director and NEPA Document Manager, at dmetzler@gjo.doe.gov or 970-248-7612. 



The Moab site is located approximately three miles from the city of Moab, Utah. Arches National Park has a common property boundary with the site, and the park entrance is less than one mile northwest of the site. Canyonlands National Park is located about 12 miles to the southwest. Crescent Junction, DOE’s preferred off-site disposal location, is about 30 miles to the northwest.

Adverse EPA Ratings are Rare for DOE

An EPA rating of a draft EIS as “EU – Environmentally Unsatisfactory” or “Category 3 – Insufficient Information” is sometimes referred to as an “adverse” rating. An adverse EPA rating indicates that EPA may refer the proposal to the Council on Environmental Quality if EPA is unable to resolve the issues with the preparing agency. (See text box, page 9.)

Only four of the approximately 330 DOE EISs issued since 1978 received an adverse rating (two “EUs” and two “3s”), according to Office of NEPA Policy and Compliance records. Before the Moab EIS, the last adverse rating was for a draft EIS issued in 1987.

NCO Wisdom

Lesson 1: Trust but verify.

Lesson 2: If you demonstrate that you know what you are talking about, people will trust you, and if you follow lesson 1, you will know what you are talking about.



Update on Cape Wind Project

The U.S. Army Corps of Engineers' experience in its Cape Wind Energy Project Draft Environmental Impact Statement (DEIS) raises several questions related to determining the appropriate scope of NEPA reviews for applicant proposals and demonstrates the complexity of this issue. (See *LLQR*, December 2004, page 10, for more on the EIS.)



The applicant in this situation is Cape Wind Associates, LLC, who proposes to construct and operate a wind-powered electrical generating facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. The facility, which would be the United States' first offshore wind farm, would include 130 wind turbine generators, an electrical service platform, and a submarine and upland cable system to transmit a maximum electrical output of 454 megawatts to the New England regional power grid, which includes users on Cape Cod and the islands of Martha's Vineyard and Nantucket.

The Environmental Protection Agency (EPA) rated the Corps' 3,800-page DEIS "Inadequate." (See text box, page 9.) "We do not believe that the DEIS provides enough information to fully characterize baseline environmental conditions, the substantial environmental impacts of the proposed project, and alternatives that avoid or minimize those impacts," wrote EPA Regional Administrator Robert Varney in a February 2005 letter to the Corps. "Without this information we do not believe an adequate mitigation and monitoring plan can be developed, nor can a decision be made as to whether the project is environmentally acceptable and in the public interest."

EPA found the DEIS inadequate in two principal areas – the range of alternatives considered and the supporting data provided – and recommended that the Corps prepare a supplemental DEIS for public review.

Purpose and Need/Range of Alternatives Questioned

In the DEIS, the Corps expressed its approach to defining the purpose and need as follows: "The [Corps] considers and expresses the proposed activity's underlying purpose and need from a public interest perspective when appropriate, but generally focuses on the Applicant's purpose and need statement. The [Corps] exercises independent judgment in defining the purpose and need for the project from both the Applicant's and the public's perspectives." For the Cape Wind proposal, the Corps stated: "The purpose and need as independently determined by the [Corps] is: to provide a utility-scale renewable energy facility providing power to the New England grid." In the DEIS, the Corps defined "utility-scale" facilities as those with generating capacities between 200 and 1,500 megawatts.

EPA concluded that "the 'utility-scale' component of the purpose and need definition, as it has been defined in the DEIS, prevents the consideration of smaller commercial energy projects that . . . could provide renewable energy for use in New England." EPA explained, "The applicant has asserted that projects smaller than the proposed project are not economically feasible because of the upfront infrastructure costs. To the best of our knowledge no independent review by the Corps of whether smaller scale projects . . . are economically feasible has been conducted. An examination of smaller scale alternatives with correspondingly smaller impacts . . . could sharpen the EIS's presentation of both benefits and tradeoffs associated with the Cape Wind proposal."

In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative.

– Letter from EPA Regional Administrator Varney

For the Cape Wind project, the Corps needs to decide whether or not to issue a permit. In the DEIS, the Corps stated: "A permit will be granted unless the district engineer determines, after weighing and balancing the public interest factors, that it would be contrary to the public interest (33 CFR 320.4(a)). Therefore, the District Engineer will grant the permit, grant the permit with modifications or conditions, or deny the permit."

The White House Task Force on Energy Project Streamlining has considered the Cape Wind project. (See article page 13.) In its January 2005 *Summary of Major Accomplishments*, the Task Force notes that the Cape Wind project came to the attention of the Task Force because "Stakeholders requested that the EIS consider alternative energy sources at other locations." The *Summary* further stated, "Because this would be the first offshore wind project in the U.S., novel cross-agency technical and policy issues have been raised . . . The Task Force was able to bring the various federal agencies together to coordinate their individual efforts."

(continued on next page)

NCO Wisdom

Be Patient

. . . NEPA Works.



Cape Wind Draft EIS *(continued from previous page)*

Subsequently, the Corps convened a peer review committee consisting of “six internationally recognized experts in wind energy” to review EIS issues, including the purpose and need and range of alternatives. The Corps summarized the committee’s comments in the DEIS.

Although the Corps’ potential decisions in this applicant situation are narrow, the Corps nevertheless analyzed, in addition to the applicant’s proposal, three location alternatives for a utility-scale wind farm. The Corps did not, however, analyze smaller-scale wind farm projects because it determined that such projects would not meet the underlying purpose and need.

Adequacy of Supporting Data Challenged

EPA found that the DEIS lacked an adequate baseline of environmental data and that conclusions about potential environmental impacts were not all supported. Areas of the DEIS that were affected include aquatic, air quality, and avian impacts. For example, EPA stated, “In general, we believe that the efforts to characterize avian baseline conditions, and subsequently impacts from the proposed project, fall short of the specific recommendations of the [U.S. Fish and Wildlife Service] and other recognized avian experts. This shortcoming . . . must be addressed with supplemental study. . . .”

What Now for the Corps?

The Corps also received nearly 5,000 comments on the DEIS from a wide range of interests, both supporting and opposing the project or wanting further study. Commentors included the Department of the Interior, National Marine Fisheries Service, Coast Guard, Massachusetts Governor Mitt Romney, Massachusetts Coastal Zone Management Office, Massachusetts Audubon Society, and many other organizations, units of

“As the first shallow water offshore project under review in the United States, utility-scale projects like Cape Wind are important to our national interest and a critical first step to building a domestic, globally competitive wind industry. Success in this project could also lay the foundation for a focused national investment to develop offshore wind technology in the coming years.

The Department has a strong interest in exploring our homeland energy resources to ensure that we continue to meet our Nation’s growing need for affordable and reliable energy. With over 900 gigawatts of potential power located in offshore areas adjacent to major demand load centers, we must work together to tap this resource in a responsible manner.”

“Projects like Cape Wind are responsive to the Administration’s policy to increase renewable energy development. . . .”

– David K. Garman, Assistant Secretary,
Energy Efficiency and Renewable Energy
Letter to the U.S. Army Corps of Engineers,
New England District, March 31, 2005

government, and individuals. The Corps is reviewing these comments to determine what additional information or analysis may be necessary to respond to the comments and whether a supplemental EIS is needed.

The DEIS is available on the Corps’ New England District Web site (www.nae.usace.army.mil) under Massachusetts, then Projects. Comments on the DEIS can be found at www.nae.usace.army.mil/projects/ma/ccwf/deiscomments.htm. 

NEPA Staff Position Open

Apply by June 20

The Office of NEPA Policy and Compliance is looking to hire one new Environmental Protection Specialist, GS-0028, at the GS-13 or -14 level. The person would work in the areas of nuclear energy, science, material disposition, nonproliferation and national security, defense activities, fossil energy, waste management, and energy efficiency and renewables.

The vacancy announcement was issued May 20, 2005, and will remain open until June 20, 2005. The position is open to qualified DOE and other Federal employees, as well as to qualified non-Federal employees. Applicants must apply on-line; paper (hardcopy) applications are no longer accepted. Additional information is available on the Web at <https://jobsonline.doe.gov>. The announcement numbers are HQ-05-EH-04-235 for the merit promotion (Federal employees) and PN-EH-04-235 for the public notice (non-Federal applicants).

If you’re looking for a challenging job, a headquarters position in Washington, DC, or a promotion within the NEPA field, we hope you will apply. Otherwise, please help us spread the word about this vacancy.

How to Streamline Without Cutting Corners

The White House Task Force on Energy Project Streamlining, working with diverse and competing interests, searched for ways to expedite Federal approvals of energy projects without cutting corners on environmental protection. Following more than three years of effort, the Task Force issued its *Summary of Major Accomplishments* (January 2005), highlighting its work.

Task Force Tackled Agencies' Conflicting Priorities

The Task Force most often facilitated energy projects where approval or permitting involved multiple Federal agencies and helped agencies identify and remove impediments to timely decisions. As the report acknowledges, "Because of statutory, regulatory, or public interest concerns, agency-specific responsibilities often have different review and analysis procedures and time frames. In many situations, the result is conflicting resource management responsibilities, repetition of similar review processes, unnecessary expenditure of resources, and time delays in permitting of energy projects."

The Task Force realized after its first year that "success in moving projects forward often resulted in other projects getting less attention and falling to the bottom of the pile." When the Task Force focused on systemic solutions, it found that "improvements in the overall coordination process among federal agencies can be achieved under existing laws" and identified common themes to improve Federal decisionmaking. (See text box.)

The intent of NEPA is to ensure that the Federal government has the necessary information for decisionmaking. We supported that by brokering interagency meetings that allowed early, face-to-face discussion on the issues.

– Bob Middleton, former White House Task Force Director

Task Force Engaged in the NEPA Process

Five of the 20 projects highlighted in the report involved ongoing EISs (i.e., two EISs prepared by DOE and one each by the National Park Service, Forest Service, and U.S. Army Corps of Engineers; all but the Corps of Engineers' EIS have since been completed). In a typical scenario described in its report, an interested party (e.g., a company seeking government approval of an energy project) contacted the Task Force for assistance moving past some perceived obstacle in the decisionmaking process. The Task Force, acting as a "one-stop shop" by providing a single point of contact and liaison for all stakeholders, responded to requests for assistance

Common Themes to Improve Federal Decisionmaking

- Need for early and effective interagency coordination, while respecting the primacy of key state and Federal permitting entities
- Need for more geographic consistency across regional and field offices
- Need for deadlines and improved coordination and efficiency of NEPA document preparation and review process
- Need to designate a lead agency with authority to coordinate multiple permitting processes
- Need for adequate resources or prioritization of resources within the Federal agencies
- Need for more emphasis on conservation and environmental protection

Source: *White House Task Force on Energy Project Streamlining Summary of Major Accomplishments*

by contacting the involved Federal agencies, hosting meetings between interested parties, or otherwise improving lines of communication. It used its influence to "keep things moving."

"My time on the Task Force was an exceptional experience for two reasons," reflected Mr. Middleton, Task Force Director, now Director of Indian Energy Resource Development, Department of the Interior. "First and foremost, I had the opportunity to work with over two dozen exceptionally dedicated and knowledgeable government experts who epitomized what is best about Federal service. And, second, our team worked on many interesting and complex issues and projects that are important to the future of the Nation. It doesn't get better than that."

The Task Force was established in 2001 by the Council on Environmental Quality (CEQ) at the direction of Executive Order 13212, *Actions to Expedite Energy-Related Projects*, with rotating membership from staff of the White House; CEQ; the Departments of Agriculture, Energy, Commerce, and the Interior; and the Environmental Protection Agency. (See *LLQR*, September 2001, page 16; March 2004, page 11; and September 2004, page 1.)

For more information, see the White House Task Force's Web site at www.etf.energy.gov or contact Brian Mills, Office of NEPA Policy and Compliance and former White House Task Force member, at brian.mills@eh.doe.gov or 202-586-8267. 

Excerpts from Written Testimony *(continued from page 3)*

Complex Documentation Hides NEPA's Message; Reviewer Bias Counters Local Prerogative:

NEPA's core messages were clear and simple These messages can still be found in NEPA but the trends of NEPA implementation can leave them deeply hidden by procedures that are too long and complicated and documents and reports that no ordinary citizen, much less a busy public official, would ever be able to understand.

So one of the innovations and changes we have urged is that the documents prepared under NEPA be simpler and clearer. . . .

[W]e believe that . . . [some EPA reviewers] have taken up substantive agendas that are not sanctioned in NEPA or any other federal law. The employees holding these "reviewer" responsibilities have great power, because they can grant or withhold ratings of [an] EIS that are very important in whether an EIS can survive public scrutiny.

[EPA] should be constrained . . . from participating . . . in ways that are contradictory to local land use judgments.

Douglas B. MacDonald, Secretary
Washington State Department of Transportation

NEPA Documents Should Address Consequences of Permit Conditions:

[The witness described a recent experience regarding licensing a hydroelectric project. The commentor said that the Federal Energy Regulatory Commission (FERC) prepared an EIS that did not include or "endorse" all conditions on the license set by the Department of the Interior and U.S. Forest Service. These two agencies, the commentor continued, did not prepare separate NEPA documentation for the conditions and instead relied on the FERC EIS, even though they "filed comments noting that they do not support the findings" in it.]

What is needed is better coordination between agencies. When one federal agency relies on another agency's NEPA document, then they should be bound to support the results, or at a minimum, prepare a separate NEPA document to support any decision in conflict with the other agency's conclusions. Clearly, the agencies should be working together for a better decision and not against each other and leave the public . . . empty handed.

One coordinated NEPA review by all involved agencies should be enough.

Bob Geddes
Public Utility District No. 1
of Pend Oreille County, Washington



Several speakers discussed excessive documentation. (Photo submitted to the Task Force by Abigail Kimbell, U.S. Forest Service.)

Commitments of Resources and Time Are Excessive:

The original [EIS] was a sizeable 592 pages with the appendices, but this seems paltry compared to over 15,000 pages now in the administrative record [shown in photo]. . . . As the required analysis and documentation increases, these limited resources must also be committed to re-assessing projects that have previously been initiated thus adding another level of delay.

Abigail R. Kimbell
Regional Forester, Region 1,
U.S. Forest Service

State Regulations Address Perceived NEPA Problems:

[The witness described how Montana's Environmental Policy Act addresses perceived NEPA problems. It requires, among other things, that state agencies:]

- Consult with the project sponsor regarding alternatives identification.
- [Set a] clear time limit and a time limit extension process for completing environmental review.
- Conduct a meaningful "no-action" alternative review, looking at all impacts of the project's non-completion.
- Consider regulatory impacts on private property.

Michael S. Kakuk, Kakuk Law Offices, P.C.

NEPA Promotes Broader Thinking, Protects the Public:

NEPA is also the law that not only requires federal agencies to "look before they leap," but also forces them to . . . think outside of the box. NEPA's requirement that decision makers prepare . . . an adequate range of alternatives . . . forces agencies to look beyond the "our way or the highway" approach. . . .

(continued on next page)

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

The process is long and it involves listening to the public and sister agencies, but NEPA prevents many mistakes that would cost the public a lot more in the long run. . . . Rather than eliminate hundreds of single family homes along the . . . alternative routes, citizen input convinced the transportation planners to move the freeway to a railroad corridor, saving those homes and creating the potential for commercial development in another area of town.

John Roskelly
Eastern Washington
Growth Management Hearings Board

Excessive Documentation Creates Legal Risk:

When [EAs] were being successfully challenged in court, we were told that “bigger and better” [EISs] would get the process moving again. These “bigger and better” documents have only presented those who wish to stop all land management activities more procedural targets to challenge in court.

Duane Vaagen, President
Vaagen Brothers Lumber

NEPA Is Inappropriately Used as a Master Permitting Process:

Another reason for escalating time and costs to complete NEPA has been pressure on agencies to require all other permits and approvals be obtained before completing the NEPA process. This presents a catch 22 scenario. . . . NEPA was not intended to be the master approval of a project. . . .

Luke Russell, Director, Environmental Affairs
Coeur d’Alene Mines Corporation

Inconsistent Agency Administration Is a NEPA Problem:

NEPA – like so many federal laws and regulations – can be applied to any situation in a manner that is largely dependent on the demeanor of the agency staff that has jurisdiction in the manner. . . .

William Kennedy, Chairman
Board of Directors, Family Farm Alliance

NEPA Deters Regulatory Improvements:

The most inconsequential regulatory changes are delayed. . . . [O]ne fisherman who delivers fish to our company sought a minor regulatory change in the description of fishing gear. The current regulations were promulgated in the 1980’s; since that time, advances in technology and the desire to reduce bycatch and deploy environmentally friendly nets have led to significant modifications in how fishing gear is built and used. The request was to change the gear definitions in regulations to match what is commonly used so fishermen would not be cited for using illegal gear. The advice received from federal regulatory staff was to make the request next year because the time and effort required under NEPA to address this minor regulatory change was so great that it might not get done if handled separately, rather than as part of a larger regulatory package.

Craig Urness, General Counsel
Pacific Seafood Group

Public Participation Is Invaluable:

Citizens may end up disappointed in a result, but our organization has yet to encounter anyone who regretted participating or who did not feel empowered by NEPA. Americans want to be part of our government’s decisions. To alter this cornerstone of civic engagement would betray those who have already given of their time and energy and those who have yet to discover this priceless tool of democracy.

Janine Blaeloch, Director
Western Land Exchange Project

Provide Resources to Do NEPA Correctly:

NEPA’s promise of project review and public involvement must be safeguarded, not sacrificed in the name of expediency. Some would blame NEPA for delaying projects, but examining projects in detail and predicting outcomes and thereby providing good information for decisions is good business sense. Rather than amending or otherwise circumventing NEPA, I would urge you to ensure that the federal agencies responsible for implementing the law get the resources they need to do the job right and in a timely manner.

Paul Fish, President
Mountain Gear, Inc.



NCO Wisdom

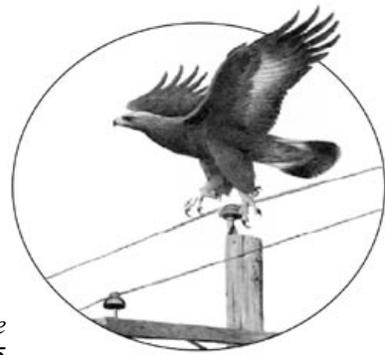
We need to change the perception of NEPA and focus on marketing it as a useful management tool.



Avian Protection Plans Help Safeguard Birds from Electrocutions and Collisions

Electrocutions are a particular threat to birds with large wingspans, such as eagles, hawks, and owls, all species that are protected under the Migratory Bird Treaty Act. [Collisions] are a problem for many different bird species. Birds also can cause power outages and fires, resulting in increased costs and inconvenience for electric utilities and their customers.

U.S. Fish and Wildlife Service Press Release
April 18, 2005



New voluntary guidelines to help protect migratory birds from power line electrocutions and collisions should aid DOE in fulfilling its responsibilities under Executive Order 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds*, and the Migratory Bird Treaty Act. One such responsibility, under the Executive Order, is to ensure that potential impacts on migratory birds are considered in NEPA analyses. (See text box.)

The U.S. Fish and Wildlife Service and the Avian Power Line Interaction Committee (APLIC)* jointly prepared the voluntary *Avian Protection Plan Guidelines* (available at <http://migratorybirds.fws.gov>). The guidelines provide recommendations for developing plans to help protect and conserve migratory birds from electrocutions and collisions with electrical transmission lines. The guidelines are intended to serve as a “tool box” from which an organization can select and tailor components that best fit its specific needs while furthering bird conservation.

The guidelines, which will be periodically updated as new information and resources become available, reflect the latest technology and science, and include detailed recommendations on training, permit compliance, construction design standards, nest management, bird reporting systems, risk assessment methods, mortality reduction measures, bird enhancement options, and public awareness. The guidelines are intended to be used in conjunction with APLIC’s *Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996* and *Mitigating Bird Collisions with Power Lines: The State of the Art in 1994*, or future editions of those documents.

For more information on the Avian Protection Plan guidelines, contact Nicholas Throckmorton, U.S. Fish and Wildlife Service, at nicholas_throckmorton@fws.gov or 202-208-5636. For more information on DOE activities

with respect to migratory birds and their protection, contact Lee Banicki, DOE’s Office of Air, Water and Radiation Protection Policy and Guidance, at leroy.banicki@eh.doe.gov or 202-586-5193. **LL**

Implementing Avian Protection

Executive Order 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds*, (66 FR 3853; January 17, 2001) requires agencies to avoid or minimize the negative impact of their actions on migratory birds and to ensure that environmental analyses under NEPA evaluate the effects of proposed Federal actions on such species. (For additional information on the Executive Order, see *LLQR*, September 2001, page 11.)

The Migratory Bird Treaty Act protects migratory birds by governing the taking, killing, possession, transportation, and importation of such birds, their eggs, parts, and nests. The Act implements treaties for the protection of shared migratory bird resources that have been signed by the United States with Canada, Japan, Mexico, and Russia. (A summary of the Act is available at www.eh.doe.gov/oepa/laws/mbta.html.)

On March 15, 2005, the U.S. Fish and Wildlife Service published a list of 125 bird species (70 FR 12710; available at <http://migratorybirds.fws.gov>) that are not native to the United States and, therefore, are not protected under the Migratory Bird Treaty Act. These species may, however, be protected under other laws or treaties (e.g., the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Endangered Species Act, the Wild Bird Conservation Act). In addition, state and local governments may protect non-native, human-introduced species.

* APLIC (www.aplic.org) has 30 members including utility organizations, consumer- and investor-owned electric utilities, the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture Rural Utilities Service, and DOE’s Bonneville and Western Area Power Administrations.

University Students, Many Others Use DOE NEPA Web Site

The DOE NEPA Web site, initiated more than a decade ago to serve the needs of the Department's NEPA practitioners, is valuable to many others seeking NEPA guidance. Inquiries directed to the Office of NEPA Policy and Compliance reveal that Web-site visitors from other Federal agencies, state governments, consulting and law firms, and universities also read and use our Web resource.

Most recently, an instructor from the University of Maine requested copies of the "Green Book" (*Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition*, December 2004; *LLQR*, March 2005, page 5), which he had found on the DOE NEPA Web site. Senior Instructor and Undergraduate Coordinator Mark Anderson uses this cornerstone NEPA document preparation guidance, along with other DOE NEPA guidance, in his upper-level undergraduate course, Environmental Assessment and Management Techniques, which is offered as part of the Bachelor of Science Program in Ecology and

Environmental Sciences (www.umaine.edu/nrc). The purpose of this course is to build an understanding of the principles of environmental impact assessment and environmental management systems in both the public and private sectors, and to evaluate the practice of these techniques in government and private sector settings. The final assignment is an evaluation of a draft EIS of the student's choice. DOE's NEPA *Lessons Learned Quarterly Report* also is assigned reading in this course, Mr. Anderson reports.

The Office of NEPA Policy and Compliance recognizes that its Web site (www.eh.doe.gov/nepa) serves a broad and often anonymous public, not just the DOE NEPA Community and its stakeholders interested in DOE's proposed actions. We welcome inquiries and aim to provide assistance to all who request it. The DOE NEPA Webmaster is Denise Freeman, who can be reached at denise.freeman@eh.doe.gov or 202-586-7879. 

CEQ Reports Progress in Cooperating Agency Participation

The Council on Environmental Quality (CEQ) recently reported on progress made by Federal agencies in involving tribal, state, and local governments, as well as other Federal agencies, as formal cooperating agencies in their NEPA process. In a May 26, 2005, memorandum to Heads of Federal Agencies, CEQ Chair James L. Connaughton summarized information from Federal agencies' biannual reports to CEQ covering March 2002 through February 2004. He observed that, "Overall progress in providing formal cooperating agency status to federal, tribal, state and local agencies has been good. However, the effort is not yet fully realized."

As CEQ reports:

- Cooperating agencies were involved in approximately 40 percent of EISs and approximately eight percent of EAs.
- Lead Federal agencies are increasingly considering designating formal cooperating agencies when beginning their NEPA processes.
- Tribal, state, and local government agencies are becoming more aware of their roles and responsibilities as cooperating agencies.

- A lack of capacity or resources (e.g., training, time, personnel) is a major factor for not establishing formal cooperating agency status when agencies might otherwise wish to do so.
- Lead Federal agencies frequently engage Federal, tribal, state, and local agencies during the NEPA process without formal cooperating agency status. This occurs more often when Federal lead agencies are proposing regulatory actions or preparing an EA.

CEQ recently simplified its reporting requirements, including changing to an annual report conforming to the fiscal year. (See *LLQR*, March 2005, page 8.) The report will continue to provide an overview of how often cooperating agency status is used and the reasons that formal status is not employed, and help identify the challenges faced in increasing participation in Federal NEPA analyses and decisions. The report covering October 1, 2004, through September 30, 2005, is due in January 2006. For more information on DOE's cooperating agency reports to CEQ, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NCO Wisdom

The most valuable lesson is that you do make a difference. Often times it seems to be just paperwork, but when you get to use the planning process to influence the use of pollution control equipment or siting of a facility in a less environmental impacting area, you really do make a difference.



2005 NAEP Conference Focused on Bridging Competing Environmental Interests

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



The 30th annual conference of the National Association of Environmental Professionals (NAEP), in Alexandria, Virginia, April 16-19, 2005, offered more than 150 papers, panel discussions, and poster sessions on a broad range of topics, including a special “NEPA Symposium.” This year’s conference theme, “Inspiring Global Environmental Standards and Ethical Practices,” focused on balancing the needs of natural and human environments by identifying solutions that can bridge competing interests.

U.S. Representative Chris Van Hollen (D-MD), the keynote speaker, addressed the contribution of environmental professionals. He acknowledged the need for a strong code of professional ethics so that, as “stewards of expertise,” environmental professionals can provide scientifically valid analyses that are not subjugated to political positions. Streamlining and modernization, he warned, should not be used to undermine the protections offered by the NEPA process – alternatives analysis and public participation.

NEPA Symposium Surveys Issues and Developments in Current Practice

Twenty-five presentations on aspects of the NEPA process and a panel discussion on NEPA case law comprised the conference’s featured “NEPA Symposium.” (See case study.) The presentations explored many aspects of NEPA practice, NEPA case law, and innovative e-government approaches to conducting and managing the comment-response process and overall development of NEPA documents.

Eight Awards Recognized Environmental Excellence

NAEP presented eight Environmental Excellence Awards to recognize significant achievements in environmental practice. “The goal of the Environmental Excellence Awards is to recognize nationally significant proven environmental practice achievements from across the country,” said Awards Chairman Jim Melton. NAEP President Gary Kelman added, “This year’s national competition reflects outstanding and significant achievements, unique methodologies, and state-of-the-art environmental practice.”

The prestigious President’s Award for NEPA Excellence was presented to the EIS preparation team for the *Alaskan Way Viaduct and Seawall Replacement Project Environmental Impact Statement*: U.S. Department

of Transportation, Federal Highway Administration, Washington Division; Washington State Department of Transportation; Seattle Department of Transportation; and Parametrix. The EIS was recognized for outstanding application of two techniques:

- Reader-friendly “plain language” text organized in question-and-answer form, with all technical analysis contained in appendices.
- Highly explanatory, well-designed graphics that compare features or impacts of all the action alternatives on a single page or facing pages, and in a way that highlights the differences among them and deemphasizes their common elements.

The project Web page, www.wsdot.wa.gov/projects/viaduct, contains the draft EIS, over 4,500 public comments, a videosimulation of the preferred alternative, and many additional features.

The National Environmental Excellence Award for Best Available Environmental Technology recognized *Regional Pollution Prevention through Sustainable Product Stewardship: Degassing Crude Oil to Reduce Emissions from Customer Facilities*, a nomination submitted by DynMcDermott Petroleum Operations Company, DOE’s management and operating contractor for the U.S. Strategic Petroleum Reserve. (This project also received a Pollution Prevention Star Award; see page 7.)

Other awards (listed on the NAEP Web site) were presented for excellence in Environmental Management, Public Involvement/Partnership, Education, Planning Integration, Conservation, and Environmental Stewardship.

Call for Papers, Award Nominations for 2006 Conference in Albuquerque

“Global Perspectives on Regional Issues: The Future for Environmental Professionals,” is the theme for the 2006 NAEP Conference, which will be held April 23-26, in Albuquerque, New Mexico. Conference information is provided on the Association’s Web site (www.naep.org), including instructions for submitting an abstract for a paper or poster session (due September 30, 2005) or a nomination for an Environmental Excellence Award (due January 15, 2006). For additional information, contact Gary Kelman, Chair, NAEP Conference Committee, at gkelman@mde.state.md.us.

NAEP Case Study – Using the NEPA Process to Meet New Challenges

In a particularly interesting presentation at the NAEP meeting, Mark Prescott, U.S. Coast Guard, and Don Beckham and Alan Finio, Engineering-Environmental Management, Inc., described the challenges involved in the NEPA process for licensing the construction and operation of deepwater liquefied natural gas (LNG) terminals. The example illustrates the complexity of integrating NEPA with the requirements of other laws and regulations for a project that introduces new applications of complex technologies – all within a tight timetable.

Administrative Background: The Deepwater Port Act of 1974, initially applicable to offshore oil terminals on the Outer Continental Shelf, was amended in 2002 to allow the licensing of facilities for the importation of LNG. The Act contains strict timelines for review: Department of Transportation/Maritime Administration (the lead for financial review) and Department of Homeland Security/U.S. Coast Guard (the lead for environmental and safety review) must issue a notice of availability of a final EIS within 240 days of receiving a complete license application. License applicants must meet certain criteria, including demonstrating that the project will be constructed with the best technology to minimize adverse impacts on the marine environment and complying with the Clean Water Act; Federal Water Pollution Control Act; Coastal Zone Management Act; and Marine Protection, Research and Sanctuaries Act. In determining whether a proposed deepwater port serves the national interest, environmental impacts are balanced against delay in meeting a need and the costs of supplying the energy, as well as national security and other factors.

Technical Background: When natural gas is liquefied by cooling to -260° F, its volume is reduced to one six-hundredth of its volume at standard temperature and pressure. In this form, it is relatively safe to transport and store. A heat source is needed to warm the LNG to restore its original volume (revaporization); the three principal sources are heat exchange with ambient air or available water, and burning fossil fuel (e.g., some of the natural gas).

Early Experience: The first two deepwater LNG projects were licensed with only minor interruptions to the schedule established by the Deepwater Port Act. The projects did not draw significant public attention, probably because industry developments seemed familiar to local populations and no part of the projects took place onshore. The National Atmospheric and Oceanographic Administration's National Marine Fisheries Service (NOAA Fisheries Service), however, questioned the use of millions of gallons of ocean water per day for LNG revaporization, which would entrain billions of fish eggs and larvae each year. Yet, NOAA Fisheries Service did not object to the first two licenses, which were conditioned on the applicants monitoring water intakes to determine impacts.

By spring of 2004: Many additional deepwater port projects had been announced or proposed, including six in the Gulf of Mexico. Feedback from NOAA Fisheries Service and environmental organizations clearly established a need for better approaches to impact analysis, including cumulative analysis. As a result, after publication of the draft EIS for Shell's Gulf Landing Deepwater Port the review clock for several projects was stopped for up to three months to develop an agreed-upon methodology for assessing fisheries impacts and obtain additional data on other issues. Soon after the publication of the final EIS, NOAA Fisheries Service disagreed with the finding that adverse impacts were long-term and *minor*, and threatened to refer the issue to the Council on Environmental Quality. High-level deliberations among senior managers of the concerned Federal agencies resulted in Department of Commerce/NOAA agreeing to allow the project to proceed under assurances of a rigorous monitoring and mitigation plan. The spirit, if not the letter, of Congressional intent was met; integrating the NEPA process with the licensing process identified controversies early in the project and permitted the applicants and agencies to address them in a timely and efficient manner. Stopping the mandated timeline caused minor delay, a more attractive choice than basing NEPA review on inadequate information, which could lead to litigation or license denial.

NAEP Legal Session – Advice to Applicants from “Implementing NEPA”

“Participate fully in scoping to learn what others perceive the real issues to be, then deal with them. An applicant is better protected by a full rather than skimpy approach to inclusion in the EIS.”

“There is wisdom in NEPA's basic message – look before you leap environmentally so that you can prevent problems in the first place rather than having to repair or clean them up after they occur. Both the applicant and the agency, as well as the public, share an interest in ensuring that the requirements of the law and of its implementing regulations are followed.”

– Nicholas C. Yost
Sonnenschein, Nath & Rosenthal, LLP
(formerly General Counsel, Council on Environmental Quality)

Transitions

New NEPA Compliance Officers

Oak Ridge Operations Office: Gary Hartman

Gary Hartman, who was recently designated the NEPA Compliance Officer (NCO) for the Oak Ridge Operations Office, joined DOE in December 1989 from the Tennessee Valley Authority (TVA). Mr. Hartman has more than 25 years of NEPA experience at DOE and TVA combined. He has served as the NEPA Document Manager for the Y-12 Site-wide EIS, the Paducah and Portsmouth Depleted Uranium Hexafluoride Conversion Facility EISs, and several EAs. He can be reached at hartmangs@oro.doe.gov or 865-576-0273.

Science/Brookhaven Site Office: Caroline Polanish

Caroline Polanish has been designated NCO for the Brookhaven Site Office under the 2004 "OneSC" reorganization of the Office of Science. Ms. Polanish serves as the Subject Matter Expert for NEPA, Cultural Resources, Quality Assurance, and Waste Management in the Operations Management Division at Brookhaven, and has been making NEPA recommendations and coordinating the NEPA program for several years. She can be reached at polanish@bnl.gov or 631-344-5224.

(continued on next page)

Farewell to Longtime Bonneville NCO Tom McKinney

After more than 25 years with the Bonneville Power Administration (BPA), Tom McKinney has left government service. During that time, he was an important contributor to the continuous improvement of DOE's NEPA Program.

As NEPA Compliance Officer for the past decade, Mr. McKinney advised a large in-house NEPA

team within BPA's Office of Environmental Planning and Analysis. Preparing focused NEPA documents, he advised, makes the NEPA process more effective in meeting its purpose of fostering excellent action, not generating paperwork – even excellent paperwork – as expressed in the Council on Environmental Quality Regulations. "My goal is environmental protection, which I believe we can best achieve through efficient, concise, and timely documents presenting information relevant and useful to the decisions at issue."

During his tenure with BPA, Mr. McKinney contributed to revisions of DOE's NEPA regulations and guidance, including the "Green Book." Due to his interest in efficient environmental review processes, he specifically urged revision of the Department's original floodplain and wetland environmental review regulations (10 CFR Part 1022), which DOE reissued in August 2003.

I regard my NEPA Ninja button [from DOE's 1995 celebration of the 25th Anniversary of NEPA] as a campaign medal. With NEPA Section 101 in one's heart and Section 102 in one's head, a true NEPA Ninja protects our planet using the weapons of diligence, reason, and efficiency.

– Tom McKinney



"I'm pleased we were able to refine DOE's floodplain and wetlands regulations during my career. We ratcheted a review process down instead of up for a change, with no loss of environmental protection."

Mr. McKinney was a regular participant in DOE NEPA Community Meetings. Most recently, in June 2004, he described BPA's strategy for using

supplement analyses to efficiently undertake NEPA review for projects under three broad BPA programmatic EISs, and for merging NEPA review with environmental management systems to more effectively protect the environment during project implementation. (See *LLQR*, September 2004, page 11.)

Mr. McKinney, who can be reached at tcmckinney@coho.net or 503-805-1166, will continue his environmental career in consulting, offering support to BPA's new NCO as needed. Inquiries on BPA NEPA matters should be addressed to Kathy Pierce at kspierce@bpa.gov or 503-230-3962.

On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance thanks Tom for his many contributions and for being a great NEPA Ninja. 

Transitions

New NCOs *(continued from previous page)*

NNSA/Livermore Site Office: Dan Nakahara

The new NCO for the Livermore Site Office, National Nuclear Security Administration, is Dan Nakahara, Assistant Manager, Environmental Stewardship Division. He has been with the Livermore Site Office since 1999, and with DOE since 1985. He has more than 15 years experience in managing waste management and environmental restoration projects. Mr. Nakahara can be reached at daniel.nakahara@oak.doe.gov or 925-423-8394.

Tom Grim, the previous Livermore Site Office NCO, will continue to serve as NEPA Document Manager for the *Site-wide EIS for the Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS*. 

Welcome Marthea Rountree, EPA Office of Federal Activities

DOE has a new Federal Agency NEPA Liaison in the Environmental Protection Agency, NEPA Compliance Division of the Office of Federal Activities. Marthea Rountree is now the point of contact for DOE NEPA-related inquiries and the primary EPA reviewer of DOE's EISs at the national level. Ms. Rountree joined EPA in September 2004 after serving on the NEPA staff of the Office of the Chief of Naval Operations. She observed, "I believe that I can translate many aspects of my NEPA experience with the Navy to help DOE meet its challenges. I look forward to involvement in your EISs and continuing the collaborative relationship previously established between DOE and EPA." Ms. Rountree can be reached at rountree.marthea@epa.gov or 202-564-7141.

DOE-wide NEPA Contracts Update

Debra Keeling: DOE-wide NEPA Contract Administrator

As announced in the March 2005 issue of *LLQR*, Debra Keeling is the new DOE-wide NEPA Contract Administrator, assuming the responsibilities formerly carried out by David Gallegos. Ms. Keeling transitioned from the Air Force Research Laboratory, Space Vehicles Contracting Division, to the DOE/NNSA Acquisition Team in December 2004. Previously, she worked briefly with the contracting department of the General Services Administration's Public Building Service and in private industry, following a rewarding contracting career with the U.S. Air Force.

Ms. Keeling reminds NEPA Document Managers that, at the end of each task under the DOE-wide NEPA contracts, they should evaluate contractor performance as described in *A Brief Guide: DOE-Wide National Environmental Policy Act Contracts* (Part II, Step 8; available on the DOE NEPA Web site at www.oh.doe.gov/nepa under DOE-wide NEPA Contracting) and provide the completed evaluation to her.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded and assistance using these contracts, contact Debra Keeling at dkeeling@doeal.gov or 505-845-6249. Information and resources for potential users of these contracts, including how to issue a task order, are available on the DOE NEPA Web site at www.oh.doe.gov/nepa under DOE-wide NEPA Contracting. 

Description	DOE Contact	Date Awarded	Contract Team
EA for the Proposed Consolidation of Neutron Tritium Target Loading Production, New Mexico	Susan Lacy slacy@doeal.gov 505-845-5542	4/28/2005	AGEISS
EIS for the Mesaba Energy Clean Coal Power Initiative Project	Richard Hargis hargis@netl.doe.gov 412-386-6065	5/5/2005	Potomac-Hudson



DOE Litigation Updates

Court Allows Some Waste Shipments to Hanford while Halting Others

The United States District Court for the Eastern District of Washington on May 13, 2005, issued an order regarding the NEPA claims in *State of Washington v. Bodman et al.** The court (1) removed the preliminary injunction in place since May 2003 on shipping 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 groundwater issues.

TRU Waste Shipments

The court issued a preliminary injunction in 2003 barring TRU waste shipments to Hanford because it concluded that DOE's *Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (Waste Management PEIS; DOE/EIS-0200, May 1997)* and subsequent record of decision (ROD; 63 FR 3629; January 23, 1998) committed the Department to prepare project-level NEPA review prior to shipment of TRU waste to Hanford. The court lifted this injunction in May 2005 after determining that DOE fulfilled its NEPA commitment through the *Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington (Hanford Solid Waste EIS; DOE/EIS-0286, January 2004)* and subsequent ROD (69 FR 39449; June 30, 2004), but left in place a preliminary injunction on shipping TRU-mixed waste until DOE establishes that additional such shipments would not violate the State of Washington Hazardous Waste Management Act or that other considerations warrant dissolving the injunction.

LLW and MLLW Shipments

Plaintiff had requested in August 2004 that the 2003 preliminary injunction be expanded to also include LLW and MLLW. Plaintiff contends that the *Waste Management PEIS* lacks sufficient site-specific detail for selecting Hanford as a regional disposal facility and that DOE's

selection of Hanford as a regional disposal facility occurred outside the NEPA process. Plaintiff also contends that DOE erred in declaring Hanford groundwater "irreversibly and irretrievably committed" and that the analysis of groundwater in the *Hanford Solid Waste EIS* is inadequate.

In regard to the selection of Hanford as a regional disposal facility for LLW and MLLW, the court affirmed DOE's decisionmaking process. The preferred alternative in the *Waste Management PEIS* stated DOE's intent to select two or three disposal sites from a list of six potential sites, including Hanford, after further consultation with stakeholders. After issuing the Final PEIS, DOE identified its preferred disposal sites in a *Federal Register* notice (64 FR 69241; December 10, 1999) and subsequently issued a ROD (65 FR 10061; February 25, 2000); the plaintiff challenged this procedure.

The court concluded that DOE had conducted a sufficiently detailed analysis in the *Waste Management PEIS* to support selection of Hanford as a regional disposal site for LLW and MLLW. In addition, the court concluded that "it is insignificant that the identification of specific site preferences did not occur until two and one half years after issuance of the PEIS. . . . There was adequate 'public participation.'"

The court agreed that a project-level NEPA analysis – the *Hanford Solid Waste EIS* – was needed to follow the programmatic review. Plaintiff challenged the adequacy of this EIS, most importantly in regard to its groundwater analyses.

In the *Hanford Solid Waste EIS*, DOE declares that "current contamination would preclude the beneficial use of groundwater underneath portions of the Hanford site for the foreseeable future" (i.e., portions of groundwater beneath Hanford are "irretrievably committed"). Plaintiff contends that DOE made this declaration in order to preclude future claims for natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act, which provides that the government is not liable where it demonstrates that damages to natural resources were specifically identified in an EIS as an irreversible and irretrievable commitment of natural resources.

(continued on next page)

* Formerly *State of Washington v. Abraham et al.*

DOE Litigation Updates (continued from previous page)

The court, however, agreed with DOE's claim that the statement in the EIS is an appropriate implementation of NEPA and Council on Environmental Quality requirements to identify any such commitment of resources. Moreover, the court referred to statements by DOE in the June 2004 ROD and during the litigation that the Department intends to continue meeting commitments to remediate groundwater at Hanford as "sufficient to preclude DOE from attempting to alter its position in the future" to avoid such remediation.

In response to one aspect of plaintiff's claims about groundwater analysis in the *Hanford Solid Waste EIS*, the court issued a preliminary injunction in May 2005 on the shipment of LLW and MLLW to Hanford. The EIS provided estimates of potential groundwater contamination

from iodine-129 and technetium-99. Plaintiff raised inconsistencies between these estimates and the estimates provided by DOE in other recent documents.

The court found the issues regarding iodine-129 estimates sufficiently compelling to conclude that plaintiff should be allowed 90 days in which to conduct discovery "to ascertain the basis for the apparent inconsistencies . . . and whether that affects the reasonableness of DOE's analysis." Plaintiff also can conduct discovery on the issues regarding technetium-99, though the court found those less compelling. After the discovery period, parties will submit additional motions to the court.

[Case No.: 03-CT-5018]

New Litigation Challenges DOE Categorical Exclusion for Rulemaking on Alternative Fuel Vehicles

Center for Biological Diversity et al. v. U.S. Department of Energy et al. (N.D. Calif.): The complaint in this suit claims 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 litigation is related to an earlier case filed in 2002 in which plaintiffs successfully raised similar claims.

The complaint states that DOE violated NEPA when it promulgated a rule in which it determined not to adopt "a regulatory requirement that owners and operators of certain private and local government fleets acquire alternative fueled vehicles" (69 FR 4219; January 29, 2004). DOE based its decision on "findings that such a requirement would not appreciably increase the percentage of alternative fuel and replacement fuel used by motor vehicles" and "this would make no more than a negligible contribution to the achievement of the replacement fuel goals set forth in" the Energy Policy

Act. DOE determined that this rule "will not require any government entity or any member of the public to act or to refrain from acting" and, therefore, is covered under a categorical exclusion listed in 10 CFR Part 1021, Subpart D, Appendix A, paragraph A.5, which applies to rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being interpreted or amended.

The plaintiffs state that DOE's decision not to promulgate these requirements withholds "action that would reduce petroleum consumption and its attendant environmental damage. Given the huge number of vehicles in the U.S., even small percentage changes have significant environmental impacts." Thus, plaintiffs contend, DOE must prepare an EIS.

A case management conference on the two, related cases is scheduled for July 14, 2005.

[Case Nos.: 02-00027 and 05-01526]

Other DOE NEPA Litigation in Brief

State of Nevada v. Department of Energy et al. (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.) Opening briefs have been filed, with final briefs due in July 2005.

[Case No.: 04-1082]

Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al. (9th Cir.): This case is an appeal of a district court ruling on September 10, 2004, that DOE's EA is sufficient for a proposed Biosafety Level 3 (BSL-3) facility at Lawrence Livermore National Laboratory. Briefing is scheduled to end in June 2005; no hearing date has been set.

[Case No.: 04-17232] 

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.

- **Cumulative Impacts Assessment (FED104: Cumulative Impacts Assessment)**
Washington, DC: June 21-23
No fee

Introduction to NEPA/309 Review (FED103: NEPA/309 Review)
Washington, DC: August 9-11
No fee

Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
- **Cumulative Impacts Assessment (FED104: Cumulative Impacts Assessment)**
San Francisco, CA: July 26-28
No fee

Environmental Protection Agency
Office of Federal Activities
415-972-3847
allen.summer@epa.gov
www.netionline.com
- **Cumulative Impact Analysis and Documentation**
Atlanta, GA: June 22-24
Fee: \$885 (GSA contract: \$795) until June 8

Portland, OR: June 28-30
Fee: \$885 (GSA contract: \$795) until June 14

Las Vegas, NV: August 18-19
Fee: \$660 (GSA contract: \$595) until August 4

Clear Writing for NEPA Specialists
Las Vegas, NV: July 13-15
Fee: \$835 (GSA contract: \$795) until June 29

Salt Lake City, UT: October 17-19
Fee: \$835 (GSA contract: \$745) until July 17

Reviewing NEPA Documents
San Diego, CA: July 20-22
Fee: \$885 (GSA contract: \$795)
- **National Environmental Policy Act for Legal Professionals**
Salt Lake City, UT: September 8
Fee: \$395 (GSA contract: \$395)
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Salt Lake City, UT: September 26-28
Fee: \$835 (GSA contract: \$745) until June 26
- **Team Building for NEPA Specialists**
Salt Lake City, UT: September 29-30
Fee: \$630 (GSA contract: \$565) until June 29

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
- **Environmental Litigation**
Boulder, CO: June 22-25
Fee: \$995 (government: \$495)

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

(continued on next page)

Training Opportunities

(continued from previous page)

- **Implementation of the National Environmental Policy Act**

Durham, NC: September 12-16
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/continuing/
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@env.duke.edu
www.env.duke.edu/del/continuing/
certificates.html

- **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 Workshop**

San Francisco, CA: August 16-18
San Francisco, CA: September 12-14
Fee: contact Tetra Tech

- **Assessing Cumulative Impacts**

San Francisco, CA: August 19 (half day)
San Francisco, CA: September 15 (half day)
Fee: contact Tetra Tech

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

NCO Wisdom

Establish a good NEPA program so that your successors do not have to reinvent the wheel.



EAs and EISs Completed January 1 to March 31, 2005

EAs

Bonneville Power Administration

DOE/EA-1485 (2/7/05)

Nisqually Transmission Line Relocation Project, Washington

Cost: \$175,000

Time: 18 months

Office of Fossil Energy

DOE/EA-1490 (1/14/05)

Presidential Permit Application, Sharyland Utilities 138 kV DC Texas-Mexico Transmission Line, Texas
Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 15 months

DOE/EA-1503 (11/10/04)*

Vermont Electric Power Company Northern Loop Project, Vermont

Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 15 months

Golden Field Office/

Office of Energy Efficiency and Renewable Energy

DOE/EA-1516 (1/14/05)

Proposed Clipper Windpower, Inc., Low Wind Speed Turbine Demonstration Project, Wyoming

Cost: \$41,000

Time: 3 months

Grand Junction Project Office/

Office of Legacy Management

DOE/EA-1313 (3/20/05)

Ground Water Compliance at the Monument Valley, Arizona, Uranium Mill Tailings Site, Arizona

Cost: \$40,000

Time: 69 months

Nevada Site Office/

National Nuclear Security Administration

DOE/EA-1494 (6/30/04)*

Activities Using Biological Simulants and Releases of Chemicals at the Nevada Test Site, Nevada

Cost: \$375,000

Time: 15 months

DOE/EA-1499 (9/2/04)*

Radiological/Nuclear Countermeasures Test and Evaluation Complex, Nevada Test Site, Nevada

Cost: \$15,000

Time: 5 months

DOE/EA-1512 (10/21/04)*

Aerial Operations Facility Modifications, Nevada Test Site, Nevada

Cost: \$50,000

Time: 7 months

Y-12 Site Office/

National Nuclear Security Administration

DOE/EA-1510 (2/1/05)

Alternate Financed Facility Modernization, Tennessee

Cost: \$100,000

Time: 14 months

EIS

Office of Fossil Energy

DOE/EIS-0336 (70 FR 15315, 3/25/05)

(EPA Rating: EC-2)

Tucson Electric Power Company Sahuarita - Nogales Transmission Line, Arizona

Cost: The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 44 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.)

* Not previously reported in LLQR

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$50,000; the average was \$114,000.
- Cumulatively, for the 12 months that ended March 31, 2005, the median cost for the preparation of 15 EAs for which cost data were applicable was \$80,000; the average was \$109,000.
- For this quarter, the median completion time of 9 EAs was 15 months; the average was 18 months.
- Cumulatively, for the 12 months that ended March 31, 2005, the median completion time for 21 EAs was 11 months; the average was 14 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended March 31, 2005, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1,776,000; the average was \$1,434,000.
- For this quarter, the completion time for one EIS was 44 months.
- Cumulatively, for the 12 months that ended March 31, 2005, the median completion time for 7 EISs was 32 months; the average was 30 months.

Note: For the past six quarters, the median EIS completion time has exceeded the Department's 15-month goal. The Office of NEPA Policy and Compliance is studying the reasons for this trend.

Recent EIS-Related Milestones (March 1 to May 31, 2005)

Advance Notice of Intent

Office of Environmental Management
DOE/EIS-0375
Disposal of Greater-Than-Class-C Low-Level Waste Environmental Impact Statement
May 2005 (70 FR 24775, 5/11/05)

Western Area Power Administration
DOE/EIS-0377
Construction and Operation of the Proposed Big Stone II Power Plant and Transmission Project, South Dakota and Minnesota
May 2005 (70 FR 30716, 5/27/05)

Notices of Intent

Bonneville Power Administration and Office of Electricity Delivery and Energy Reliability
DOE/EIS-0378
Port Angeles - Juan de Fuca High Voltage Direct Current Transmission Project, Washington
May 2005 (70 FR 23855, 5/5/05)

Withdrawal of Notice of Intent

Office of Fossil Energy
DOE/EIS-0339
Presidential Permit Application, GenPower 500 kV Submarine Electric Transmission Cable from Nova Scotia to New York, New York
March 2005 (70 FR 10611, 3/4/05)

Bonneville Power Administration
DOE/EIS-0379
Rebuild of the Libby (FEC) to Troy Section of BPA's Libby to Bonners Ferry 115 kV Transmission Line, Montana
May 2005 (70 FR 23856, 5/5/05)

Final EIS

National Nuclear Security Administration/Oakland Operations Office
DOE/EIS-0348
Site-wide EIS for the Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS, Livermore, California
April 2005 (70 FR 22306, 4/29/05)

(continued on next page)

Recent EIS-Related Milestones (March 1 to May 31, 2005)

(continued from previous page)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Business Plan: Leaning Juniper Wind Project, Wasco, Gilliam, Sherman, and Morrow Counties, Oregon

March 2005 (70 FR 14662, 3/23/05)

DOE/EIS-0183

Business Plan: Big Horn Wind Energy Project, Klickitat County, Washington

April 2005 (70 FR 17078, 4/4/05)

DOE/EIS-0340

Northeast Oregon Hatchery Program Grande Ronde - Imnaha Spring Chinook Hatchery Project, Oregon

March 2005 (70 FR 14457, 3/22/05)

DOE/EIS-0342

Wanapa Energy Center Interconnection, Umatilla County, Oregon

March 2005 (70 FR 10612, 3/4/05)

Office of Fossil Energy

DOE/EIS-0365

Imperial-Mexicali 230-kV Transmission Lines, Imperial County, California

April 2005 (70 FR 21189, 4/25/05)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0169-SA-10*

Yakima Fisheries Project - Fall Chinook Research Program at Stiles & Edler Ponds, Kittitas County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0169-SA-11*

Yakima/Klickitat Fisheries Project - Lake Cle Elum Coho Acclimation Site, Cle Elum, Kittitas County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0169-SA-12*

Yakima/Klickitat Fisheries Project - Under the Operations and Maintenance Program (O&M), The Vegetation Management Plan Requires Herbicide Spraying for Weed Control in the Upper Yakima River in Kittitas County, Washington

(Decision: No further NEPA review required)

February 2005

Business Plan Environmental Impact Statement (DOE/EIS-0183)

DOE/EIS-0183-SA-06

Memorandum of Agreement between Bonneville Power Administration (BPA) and Bonneville Environmental Foundation (BEF) to Help Support BEF's Renewable Resources Activities

(Decision: No further NEPA review required)

May 2005

Hood River Fisheries Project Environmental Impact Statement (DOE/EIS-0241)

DOE/EIS-0241-SA-01

Hood River Production Program Activities, Hood River County, Oregon

(Decision: No further NEPA review required)

May 2005

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

DOE/EIS-0265-SA-200

Asotin Model Watershed Program - George Creek Meander Reconstruction and Riparian Planting Project on Hagenah Property, Asotin County, Washington

(Decision: No further NEPA review required)

March 2005

DOE/EIS-0265-SA-204*

Kalispel Resident Fish Project, Pend Oreille County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0265-SA-205*

Restore McComas Meadows/Meadows Creek Watershed, Idaho County, Idaho

(Decision: No further NEPA review required)

February 2005

* Not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (March 1 to May 31, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-206

Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington
(Decision: No further NEPA review required)
March 2005

DOE/EIS-0265-SA-207

Improvement of Anadromous Fish Habitat and Passage in Omak Creek - Culvert Replacement (2005 SOW Performance and Budget Period), Omak, Washington
(Decision: No further NEPA review required)
April 2005

DOE/EIS-0265-SA-208

Final Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington
(Decision: No further NEPA review required)
April 2005

DOE/EIS-0265-SA-210

Pine Hollow Watershed Enhancement - Jackknife Watershed Projects, Sherman County, Oregon
(Decision: No further NEPA review required)
May 2005

DOE/EIS-0265-SA-211

Upper Red River Restoration Project, Idaho County, Idaho
(Decision: No further NEPA review required)
May 2005

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

DOE/EIS-0285-SA-239*

Vegetation Management along the Port Angeles - Sappho No. 1, 115 kV Transmission Line Corridor, Clallam County, Washington
(Decision: No further NEPA review required)
February 2005

DOE/EIS-0285-SA-241*

Vegetation Management along the Ostrander - Troutdale No. 1, 500 kV Transmission Line Corridor, Clackamas and Multnomah County, Oregon
(Decision: No further NEPA review required)
February 2005

DOE/EIS-0285-SA-242*

Vegetation Management along the Longview - Chehalis No. 1 230 kV Transmission Line Corridor, Cowlitz County, Washington
(Decision: No further NEPA review required)
February 2005

DOE/EIS-0285-SA-243*

Pearl Substation Project, Clackamas County, Oregon
(Decision: No further NEPA review required)
February 2005

DOE/EIS-0285-SA-244*

Vegetation Management along the John Day - Marion Transmission Line Corridor, Clackamas County, Oregon
(Decision: No further NEPA review required)
February 2005

DOE/EIS-0285-SA-245

Vegetation Management for Portion of the Big Eddy - Ostrander 230-500kV Transmission Line, Wasco and Hood River County, Oregon
(Decision: No further NEPA review required)
March 2005

DOE/EIS-0285-SA-246

Vegetation Management along the Satsop - Aberdeen No. 3, 230 kV (Reference line) Transmission Line Corridor, Grays Harbor County, Washington
(Decision: No further NEPA review required)
March 2005

DOE/EIS-0285-SA-247

Vegetation Management along the 230 kV Santima - Toledo #1 Transmission Line Corridor, Linn, Benton and Lincoln Counties, Oregon
(Decision: No further NEPA review required)
March 2005

DOE/EIS-0285-SA-248

Approval for the Use of Two New Herbicides: Flumioxazin and Sulfentrazone, Idaho, Montana, Oregon, Washington, and Wyoming
(Decision: No further NEPA review required)
March 2005

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (March 1 to May 31, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-249

Vegetation Management along the Albany and the Alderwood Tap Transmission Line Corridors, Lane and Linn County, Oregon

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-250

Vegetation Management for the McNary - Santiam No. 1 230 kV Transmission Line Corridor, Marion and Wasco County, Oregon

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-251

Vegetation Management along the Chehalis - Centralia No. 2, 115 kV Transmission Line Corridor, Lewis County, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-252

Vegetation Management along the Chehalis - Centralia No. 1, 69 kV Transmission Line Corridor, Lewis County, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-253

Vegetation Management along the Satsop Park - Cosmopolis No. 1, 115 kV Transmission Line Corridor, Grays Harbor County, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-254

Vegetation Management along the Dworshak - Taft Transmission Line Right of Way (ROW), Clearwater, Latah and Shoshone County, Idaho and Mineral County, Montana

(Decision: No further NEPA review required)

May 2005

DOE/EIS-0285-SA-255

Vegetation Management along the Franklin - Walla Walla 115 kV Transmission Line Corridor, Walla Walla County, Washington

(Decision: No further NEPA review required)

May 2005

DOE/EIS-0285-SA-257

Vegetation Management along the Kitsap - Bangor and Kitsap - Bremerton No. 1, 115 kV, Transmission Line Corridor, Kitsap County, Washington

(Decision: No further NEPA review required)

May 2005

Fish and Wildlife Implementation Plan Environmental Impact Statement

(DOE/EIS-0312)

DOE/EIS-0312-SA-02

Columbia Basin Riparian Conservation Easement Program, Washington

(Decision: No further NEPA review required)

March 2005

Lower Red River Meadow Stream Restoration Project Environmental Assessment

(DOE/EA-1027)

DOE/EA-1027-SA-01*

Red River Restoration Project O&M, Idaho County, Idaho

(Decision: No further NEPA review required)

January 2005

Avian Predation on Juvenile Salmonids in the Lower Columbia River Environmental Assessment

(DOE/EA-1374)

DOE/EA-1374-SA-04

Avian Predation on Juvenile Salmonids in the Lower Columbia River Research Project, Washington

(Decision: No further NEPA review required)

March 2005 **LL**

NCO Wisdom

Integrate the NEPA process with the rest of the decisionmaking process and, when in doubt, be more inclusive than exclusive.



* 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 January 1 and March 31, 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

- *Public comments.* The comment process was successful in obtaining public opinion. Comments were mostly positive, though some users wanted public meetings held on the EA.

What Didn't Work

- *Identification of radionuclides.* Initially, there were issues in identifying the number and quantity of radionuclides to be used as a bounding case for the EA.
- *Difficulty in meeting with potentially affected parties.* There were difficulties in setting up one-on-one meetings with elderly people who did not show up at the public meetings, but would potentially be affected.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Continuous communication.* A thorough internal scoping meeting along with constant and timely communication among the document manager, the contracted EA writer, and the EA review team established in the scoping meeting contributed to prompt attention to the document.
- *Use of data from other EAs.* The cost of the EA was kept very low (\$15,000) by using information from other relevant EAs. We were able to cut-and-paste complete sections from other documents.
- *Adherence to deadline.* A deadline was established for EA comments and strictly adhered to.

Factors that Inhibited Timely Completion of Documents

- *Complex issues.* Complicated issues regarding the project and the Endangered Species Act consultation took time to resolve with all the Federal agencies and tribal governments.
- *Stakeholder comments received after public issuance.* A pre-draft copy was forwarded to the major stakeholder for comments prior to issuing the EA for public comment. However, the stakeholder did not submit substantial comments until after issuance of the document, so the expectation that providing an advance copy would save time and effort did not prove true.

Teamwork

Factors that Facilitated Effective Teamwork

- *Matrix support.* Effective DOE teamwork resulted from excellent cooperation of the matrix of Environment, Safety and Health support staff.
- *Using Federal staff.* Using internal specialists rather than contractors was much easier and more cost effective.
- *Effective coordination.* The established EA review team consisting of the Document Manager, the contracted EA writer, the program NEPA Compliance Officer, the legal reviewer, and the project manager effectively coordinated the draft EA review and comment process to minimize the time and iterations needed for revisions of the draft EA.
- *Continuous communication.* Constant communications via phone and e-mail between the Document Manager and the contracted EA writer to ensure on-time deliverables exemplified effective teamwork.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- *Coordination of NEPA and technical issues.* Since the NEPA Compliance Officer co-manages the site, he considered the EA from both a NEPA and a technical perspective. He worked closely with the document manager to resolve technical issues. Their proximity and frequent contact helped them identify a major discrepancy between the EA and the proposed work plan, which was then easily resolved.

Process

Successful Aspects of the Public Participation Process

- *Sufficient time for state comments.* Though the state agencies took more time than anticipated to comment on the draft EA, this did not impact the project schedule. The state agencies appreciated the Department's efforts to involve them in the EA review process.

Unsuccessful Aspects of the Public Participation Process

- *Difficulty obtaining stakeholder cooperation.* No public comments were received on the draft EA. However, now that work has begun on a final EA and finding of no significant impact (FONSI), stakeholder buy-in to do the work has been difficult to obtain. We decided not to hold public meetings in this case because public meetings were held previously on the same work plans.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Timely decisions.* The NEPA process was useful in that it forced decisions to be made about the project in a timely fashion that eliminated procrastination on some important topics.
- *Defined project.* The NEPA process was a good tool that helped define the project and allowed agencies to understand and decide how to proceed.
- *Safety and environmental compliance requirements.* This EA established environmental compliance requirements and safety envelopes for the project.

Enhancement/Protection of the Environment

- The NEPA process drives the project team to an awareness about the environment that would not have occurred without it.
- There were environmental impacts due to the project, but mitigations, especially through Endangered Species Act consultation, helped lessen impacts.

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 4 questionnaire responses were received for EAs, 2 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the NEPA process resulted in mitigation to lessen impacts, helped neighbors understand the project, and helped agencies to agree on how to proceed.
- A respondent who rated the process as "3" stated that some decisions were already driven by other factors, but the NEPA process provided data for other decisions. The NEPA process also validated decisions.
- A respondent who rated the process as "2" stated that the project was pre-planned, but the NEPA process was useful in providing in-depth analysis in environmental and safety impacts of the project.
- A respondent who rated the process as "1" stated that the DOE Program Office "knows what needs to be done," and the EA in this case was to be used to help obtain "permission" to do the work. After issuing the EA and FONSI, problems surfaced regarding "stakeholder buy-in." 

LESSONS LEARNED

September 1, 2005; Issue No. 44

Third Quarter FY 2005

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.

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Carol Bampton

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.

Printed on recycled paper



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. 

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.)

(continued on page 13)

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

“**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)

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.”

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

(continued on next page)

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 NEPA net 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*. 

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.

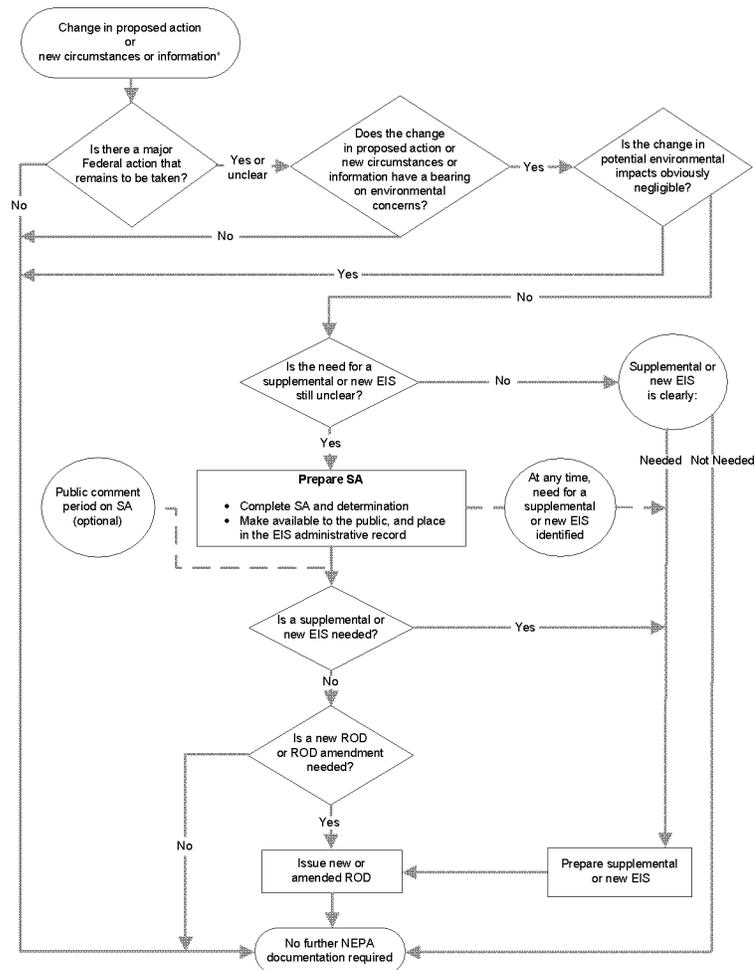
An SA is the document DOE uses to determine whether a supplement to an EIS should be prepared pursuant to Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1502.9(c)). These regulations require a supplement to an existing draft or final EIS if an agency “makes substantial changes 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.”

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

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



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

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.

(continued on next page)

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

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/oepec/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/oepec/nepacontacts under Regional Contacts.

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.

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.

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”

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.

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. 

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

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

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.

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.

(continued on next page)

Moab Uranium Mill Tailings Remedial Action Project

(continued from previous page)

- **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.

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 transportation 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.

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.



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. Dructor, 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
(continued on next page)

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 Zavakil, 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 these 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 

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.

Transitions

Retirement: Clarence Hickey, Office of Science

By: Lee Jessee and Yarden 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.

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.

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.

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-incident-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 tonnes¹ 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. 

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.tetrattechNEPA.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-208¹

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 

* 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.

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What Worked and Didn't Work

(continued from previous page)

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. 

NEPA and DOE Through the Years



1970

1971

1972

1973

1974

The National Environmental Policy Act (NEPA) Signed into Law by President Nixon on January 1, 1970 (Public Law 91-190)

Clean Air Act, Section 309 (Authorized EPA to Review EISs)

Environmental Quality Improvement Act (Established the President's Office of Environmental Quality to Staff CEQ)

E.O. 11514, Protection and Enhancement of Environmental Quality

Interim CEQ NEPA Guidelines

Final CEQ NEPA Guidelines

Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission (D.C. Cir.) – comply with NEPA “to the fullest extent possible;” satisfying other laws not sufficient

Natural Resources Defense Council v. Morton (D.C. Cir.) – reasonable alternatives not limited to those an agency can adopt

Revised CEQ NEPA Guidelines Published in *Federal Register* (40 CFR Part 1500)

SCRAP v. United States (Sup. Ct.) – 1st NEPA case accepted by Supreme Court (But Court's decision based on the Interstate Commerce Act, not NEPA)

Minnesota Public Interest Research Group v. Butz (8th Cir.) – consider indirect and direct effects

1975

1976

1977

1978

1979

Sierra Club v. Morton (D.C. Cir.) – comprehensive agency program requires an EIS

Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma (Sup. Ct.) – NEPA yields to conflict in statutory authority

Kleppe v. Sierra Club (Sup. Ct.) – court's role is to ensure that “agency has taken a ‘hard look’ at environmental consequences”

DOE Organizational Act (Established DOE)

E.O. 11988, Floodplain Management

E.O. 11990, Protection of Wetlands

E.O. 11991, Amends E.O. 11514, Directs CEQ to Issue NEPA Regulations

Strategic Petroleum Reserve, Bryan Mound Salt Dome, EIS (DOE/EIS-0001)

CEQ NEPA Regulations (40 CFR Parts 1500–1508)

DOE Order 5440.1, National Environmental Policy Act Compliance Program

Natural Resources Defense Council v. Energy Research and Development Administration (D. D.C.) – EIS required to address long-term implications of tank waste storage at Hanford

Cumulative Production/Consumption Effects of Crude Oil Price Incentive Rulemakings Programmatic EIS (1st Programmatic EIS)

E.O. 12114, Environmental Effects Abroad

DOE NEPA Regulations (10 CFR Part 1021, Adopted CEQ Regulations)

DOE Regulations for Compliance with Floodplains/Wetlands Protection (10 CFR Part 1022)

Andrus v. Sierra Club (Sup. Ct.) – CEQ's interpretation of NEPA entitled to “substantial deference”

Gasoline Deregulation EIS

Mound Facility EIS (1st Site-wide EIS)

Los Alamos Site-wide EIS

Savannah River High-Level Radioactive Waste EIS

CEQ – Council on Environmental Quality
CFR – Code of Federal Regulations
EIS – Environmental Impact Statement
E.O. – Executive Order
EPA – Environmental Protection Agency



Laws, Regulations, Orders



Court Decisions



Events



Meetings



Guidance



Key Environmental Impact Statements

NEPA and DOE Through the Years

1980-1989

1980	1981	1982	1983	1984
<p>DOE Order 5440.1A</p> <p>1st DOE NEPA Guidelines</p> <p>Commercially-Generated Radioactive Waste Management EIS</p> <p>Geothermal Demonstration Program, Baca Ranch, NM, EIS</p> <p>Hanford Double-Shell HLW Tanks EIS</p> <p>Rocky Flats Plant Site-wide EIS</p> <p>Savannah River Double-Shell HLW Tanks EIS</p> <p>Spent Power Reactor Fuel Storage EIS</p> <p>Waste Isolation Pilot Plant EIS</p>	<p>DOE Begins Using Memos-to-File (Case-by-Case Determination that EA or EIS Not Needed)</p> <p>CEQ 40 Questions</p> <p>1st DOE NEPA Compliance Guide</p> <p>BPA Role in the Pacific Northwest Power Supply System EIS</p> <p>Solvent Refined Coal-I Demonstration Project, Daviess County, KY, EIS</p> <p>Solvent Refined Coal-II Demonstration Project, WV, EIS</p>	<p>DOE Order 5440.1B (Included Memos-to-File)</p> <p>Revised DOE NEPA Guidelines (Established Typical Classes of Actions)</p> <p>Liquid-Metal Fast Breeder Reactor Program, Supplemental EIS</p> <p>Livermore Site-wide EIS</p> <p>Oak Ridge Radioactively-Contaminated PCBs Incinerator EIS</p> <p>Potential Conversion of 42 Powerplants from Oil to Coal or Alternate Fuels EIS</p> <p>Savannah River Defense Waste Processing Facility EIS</p> <p>West Valley Liquid HLW Management EIS</p>	<p>Revised DOE NEPA Guidelines (Established Typical Classes of Actions)</p> <p><i>Natural Resources Defense Council v. Vaughan</i> (D. D.C.) – EIS required on restart of L-Reactor at Savannah River</p> <p>Hanford PUREX EIS</p> <p>Pantex Site-wide EIS</p>	<p>BPA Residential Weatherization Program EIS</p> <p>Savannah River L-Reactor Restart EIS</p>
1985	1986	1987	1988	1989
<p>DOE Order 5440.1C</p> <p>Revised DOE NEPA Guidelines (Established Typical Classes of Actions)</p> <p>Office of Environment, Safety and Health Created by Consolidating ES&H Oversight Responsibilities</p> <p>Durango, CO, Uranium Mill Site Remediation EIS</p> <p>Tucson Aqueduct/ Central Arizona Project EIS</p>	<p>Amended CEQ NEPA Regulations (Deleted Requirement for Worst-Case Analysis)</p> <p>Mead-Phoenix +500-kV DC Transmission Line EIS</p>	<p>Revised DOE NEPA Guidelines (Consolidated Guidelines and Established Typical Classes of Actions)</p> <p>Hanford High-Level, Transuranic and Tank Waste Disposal EIS</p> <p>Savannah River Groundwater Protection EIS</p> <p>Weldon Spring CERCLA Feasibility Study/Remedial Action EIS (Cancelled after Draft; see 1993)</p>	<p>1st DOE-wide NEPA Meeting, Washington, DC</p> <p>Updated DOE NEPA Compliance Guide</p> <p>DOE Guidance Clarifies Workers Are Part of Human Environment</p> <p>California-Oregon Transmission Project EIS</p> <p>Special Isotope Separation Project EIS</p> <p>Superconducting Super Collider EIS</p>	<p>Revised DOE NEPA Guidelines</p> <p><i>Marsh v. Oregon Natural Resources Council</i> (Sup. Ct.) – criteria for supplemental EIS</p> <p>Charlie Creek-Belfield Transmission Line EIS</p> <p>Clean Coal Technology Demonstration Program EIS</p>

BPA – Bonneville Power Administration
 CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
 EA – Environmental Assessment
 HLW – High-Level Waste
 PCB – Polychlorinated Biphenyl

NEPA and DOE Through the Years

1990-1994

1990

- Secretary of Energy Notice (SEN-15-90)
- ✓ Established NEPA Compliance Officers
- ✓ Eliminated Memos-to-File
- ✓ Eliminated Catch-All CX
- ✓ Enhanced State/Tribe Participation

Revised DOE NEPA Guidelines

Lujan v. National Wildlife Federation (Sup. Ct.) – criteria for legal standing

NEPA Meeting, Washington, DC (July)

1st NCO Meeting,
Washington, DC (October)

Continued Operation
of K, L, and P Reactors EIS,
Savannah River

Superconducting Super Collider
Supplemental EIS

WIPP Supplemental EIS I

1991

DOE Order 5440.1D
(Implemented SEN 15-90)

Sierra Club v. Watkins (D. D.C.) – evaluate
alternatives in EAs

NCO Meeting, Washington, DC (March)

NEPA Community Meeting,
Portland, OR (July)

NEPA Conference, *Fulfilling the
Commitment: Implementing the Letter and
Spirit of NEPA*, McLean, VA (November)

Hanford Reactors Decommissioning EIS

New Production Reactor EIS
(Draft EIS, Not Finalized)

1992

Revised DOE NEPA Regulations

DOE Order 5440.1E (Conforming Changes
to DOE NEPA Regulations)

“Thank God for NEPA”
– Energy Secretary Watkins,
Testifying before the
House Armed Services Committee
Regarding the New Production Reactor

NEPA/CERCLA Integration Workshop,
Washington, DC (February)

NCO Meeting, Washington, DC (May)

Program Office NCO Meeting,
Washington, DC (August)

NEPA Community Meeting,
Denver, CO (October)

Frequently Asked Questions
on DOE NEPA Regulations

Columbia River Salmon Flow Measures EIS

Livermore Site-wide EIS

1993

Environmental Defense Fund v. Massey
(D.C. Cir.) – extraterritorial application

Public Service Company v. Andrus (D. ID) –
halted spent nuclear fuel shipments
to INEL until EIS prepared

DOE NEPA Web Site Established

NCO Meeting, Arlington, VA (March)

NEPA Community Meeting,
Washington, DC (August)

CEQ: Report on Incorporating Biodiversity
Considerations in NEPA Analysis

CEQ: Pollution Prevention and NEPA

Recommendations for the Preparation
of EAs and EISs (“Green Book”)

BPA Resource Programs EIS

Healy Clean Coal Project EIS

Weldon Spring CERCLA Feasibility
Study/Remedial Action EIS (Begun after
Cancellation of 1987 EIS)

1994

E.O. 12898, Environmental Justice

Secretarial Policy on NEPA

- ✓ DOE Discovers Teamwork
- ✓ NEPA Document Managers Established
- ✓ NEPA/CERCLA Policy
- ✓ EA Approval Authority to Program
and Field Offices
- ✓ 15-month EIS Goal

Environmental Assessment Process
Improvement Team “Bear” Report

DOE NEPA *Stakeholders Directory* Started

Lessons Learned Quarterly Report Started

NCO Meeting, Augusta, GA (February)

NCO Meeting,
Washington, DC (June)

NCO Meeting, Washington, DC (October)

Q&As on Secretarial NEPA Policy

Updated DOE NEPA Compliance Guide

EA Checklist

Effective Public Participation Guidance

Benefits of Site-Wide NEPA Review

Fernald Operable Unit 4 Remedial
Investigation and Feasibility Study EIS

Savannah River
Defense Waste Processing Facility
Supplemental EIS

CX – categorical exclusion
INEL – Idaho National Engineering Laboratory
NCO – NEPA Compliance Officer
WIPP – Waste Isolation Pilot Plant



Laws, Regulations, Orders



Court Decisions



Events



Meetings



Guidance



Key Environmental Impact Statements

NEPA and DOE Through the Years

1995-1999

1995

1996

1997

1998

1999

DOE Order 451.1 (Implemented Secretarial Policy, CX Authority to NCOs, New DOE Order Numbering System)

CEQ Launched NEPANet (Supported by DOE)

Contracting Quality Improvement Team Report

DOE NEPA Program Wins CEQ/NAEP Award

NEPA Quality Team Report

Conference on 25th Anniversary of NEPA, *New Visions, Better Decisions*, Washington, DC (March)

Field NCO Workshop, Albuquerque, NM (August)

NEPA Community Meeting, Los Alamos, NM (September)

Justice Department Memo on Application of NEPA to CERCLA Cleanups

Safe Interim Storage of Hanford Tank Wastes EIS

Savannah River Interim Management of Nuclear Materials EIS

Savannah River Waste Management EIS

Spent Nuclear Fuel Programmatic/ INEL Site-wide EIS

Tritium Supply and Recycle Programmatic EIS

Revised DOE NEPA Regulations

NEPA Contracting Reform Workshop, Washington, DC (March)

NCO Meeting, Washington, DC (October)

NEPA Contracting Reform Guidance

Fissile Materials Storage and Disposition Programmatic EIS

Foreign Research Reactor Spent Nuclear Fuel Programmatic EIS

Hanford Tank Waste Remediation System EIS

Nevada Test Site Site-wide EIS

Stockpile Stewardship and Management Programmatic EIS

DOE Order 451.1A (Made Consistent with 1996 DOE NEPA Regulations)

1st DOE-wide NEPA Task Order Contracts

NEPA Community Meeting, Albuquerque, NM (June)

CEQ: Considering Cumulative Effects Under NEPA

CEQ: Environmental Justice Guidance

EIS Checklist

Guidance on Corrective Actions Under RCRA

BPA Watershed Management EIS

Navajo Transmission Project EIS

Waste Management Programmatic EIS

WIPP-Supplemental EIS II

NAPA Report: DOE Improves NEPA Management Substantially

NCO Meeting, Washington, DC (March)

NEPA Community Meeting, *Improving Performance/Getting Results*, North Las Vegas, NV (October)

CX Determinations (Records) Guidance

Updated DOE NEPA Compliance Guide

EIS Summary Guidance

Glossary of Terms for DOE NEPA Documents

NEPA Document Electronic Publishing Standards and Guidelines

Designating and Supporting NEPA Document Managers

Brief Guide: DOE-wide Contracts

Public Participation Guidance, 2nd Edition

Fourmile Hill Geothermal Project EIS

Rocky Flats Plutonium Residues EIS

CEQ Memorandum on Designation of Non-Federal Agencies as Cooperating Agencies

Accelerator Production of Tritium at Savannah River EIS

Depleted Uranium Hexafluoride Programmatic EIS

INEL Advanced Mixed Waste Treatment Project EIS

Sandia Site-wide EIS

Spallation Neutron Source EIS

Surplus Plutonium Disposition EIS

Tritium Extraction Facility at Savannah River EIS

Tritium Production in Commercial Light Water Reactor EIS

NAEP – National Association of Environmental Professionals
NAPA – National Academy of Public Administration



Laws, Regulations, Orders



Court Decisions



Events



Meetings



Guidance



Key Environmental Impact Statements

NEPA and DOE Through the Years

2000-2005

2000

2001

2002

2003

2004

2005

DOE Order 451.1B
(Added NNSA Requirements)

DOE's NEPA
Lessons Learned Program
Wins NAEP Environmental
Excellence Award

NCO Meeting,
*Looking Back/Moving Forward:
10 Years of DOE NCOs*,
Washington, DC (May)

Clean Air Act
General Conformity Requirements
and the NEPA Process

Mini-guidance Articles from *LLQR*

BPA Vegetation Management
Program EIS

Civilian Nuclear R&D and Isotope
Production/Role of FFTF
Programmatic EIS

Savannah River
Spent Nuclear Fuel
Management EIS

E.O. 13212, Expedite
Energy-Related Projects

NEPA Web Site Responds
to Post-9/11 Security Concerns

NCO Meeting,
NEPA: What's New? What's Next?,
Washington, DC (June)

National Ignition Facility
Supplemental EIS

Savannah River
Salt Processing Alternatives
Supplemental EIS

Y-12 Site-wide EIS

Sierra Club v. Bosworth (N.D. Ca.) –
EIS must address cumulative
impacts stemming from
disconnected actions with similar
timing, geography, and purpose

CEQ Established Task Force
on Modernizing NEPA
(DOE Participant)

Six DOE-Wide NEPA Contracts
Issued

DOE NEPA Web Site Redesigned

NEPA Community Meeting,
Re-Energizing NEPA at DOE,
Washington, DC (July)

CEQ: Cooperating Agency
Guidance (Established Cooperating
Agency Reports)

Accident Analysis Guidance

Policies on Application of NEPA
to CERCLA and RCRA

Geologic Repository
at Yucca Mountain EIS

Idaho High-Level Waste
and Facilities Disposition EIS

Savannah River High-Level Waste
Tanks Closure EIS

Revised Regulations for Compliance
with Floodplains/Wetlands
Protection

Revised DOE NEPA Regulations
(Made Consistent with Revised
Floodplains/Wetlands Regulations)

Hodges v. DOE (4th Cir.) –
Supreme Court declined to hear
challenge of appellate court's
approval of DOE's use
of Supplement Analysis

*Mid-States Coalition for Progress v.
Surface Transportation Board*
(8th Cir.) – consider impacts when
the nature of the effect is reasonably
foreseeable, even if the extent is not

*Citizens for Better Forestry v.
U.S. Department of Agriculture*
(9th Cir.) – public review of and
comment on EA and FONSI

CEQ Task Force Report:
Modernizing NEPA Implementation

NEPA Community Meeting,
Are We There Yet?,
Washington, DC (July)

Interim Actions Guidance

Annual NEPA
Planning Summaries Guidance

Brief Guide: DOE-wide
NEPA Contracts Revised

BPA Fish and Wildlife
Implementation Plan EIS

Chemistry and Metallurgy Research
Building Replacement EIS

*Department of Transportation v.
Public Citizen* (Sup. Ct.) – EIS not
required when agency "lacks the
power to act," issues not raised
during NEPA process cannot be
basis for later judicial
NEPA challenge

*Norton v. Southern Utah Wilderness
Alliance* (Sup. Ct.) – supplemental
EIS not required when no "ongoing
major Federal action"

White House Task Force
on Energy Project Streamlining
(DOE Participant)

10th Anniversary of *LLQR*

10th Anniversary of NEPA
Stakeholders Directory

NEPA *Stakeholders Directory*
Issued as Interactive Software
Application

NEPA Community Meeting,
Getting Better and Better,
Washington, DC (July)

EIS Comment-Response Guidance

Recommendations for the
Preparation of EAs and EISs,
2nd Edition

Hanford Solid Waste EIS

Imperial-Mexicali
Transmission Line EIS

Paducah and Portsmouth DUF₆
Conversion Facility EISs

West Valley
Waste Management EIS

OneSC NEPA Workshop (March)



*NEPA 35: Spotlight
on Environmental
Excellence*,
Washington, DC
(November)

House Resources Committee
NEPA Task Force

IG Audit of INL EIS
(Idaho Operations Office
Complied with NEPA)

CEQ Guidance on the
Consideration of Past Actions
in Cumulative Effects Analysis

CEQ: Emergency Actions
and NEPA

Supplement Analysis Guidance

Updated DOE
NEPA Compliance Guide

Updated Collection
of Mini-guidance Articles from *LLQR*

Livermore Site-wide
and Supplemental Stockpile
Stewardship and Management
Programmatic EIS

Moab Uranium Mill Tailings EIS

Tucson Electric Power
Transmission Line EIS

DUF₆ – Depleted Uranium Hexafluoride
FFTF – Fast Flux Test Facility
FONSI – Finding of No Significant Impact
INL – Idaho National Laboratory (formerly INEL)
LLQR – *Lessons Learned Quarterly Report*
NNSA – National Nuclear Security Administration
OneSC – Office of Science Restructuring
RCRA – Resource Conservation and Recovery Act



Laws, Regulations, Orders



Court Decisions



Events



Meetings



Guidance



Key Environmental Impact Statements

LESSONS LEARNED

December 5, 2005; Issue No. 45

Fourth Quarter FY 2005

NEPA 35: Back to Basics, Back to the Future

The enduring value of the National Environmental Policy Act (NEPA) shone at *NEPA 35: Spotlight on Environmental Excellence*, a conference hosted by the Department of Energy (DOE) in partnership with the Council on Environmental Quality (CEQ) in Washington, DC, on November 2 and 3, 2005. More than 260 NEPA practitioners from DOE and over 20 other Federal agencies, state agencies, and local, tribal, and other organizations gathered to mark the 35th anniversary of the nation’s landmark environmental legislation.

“There is no question that the nation has benefited from the analysis and public dialogue that NEPA set in motion,” said John Spitaleri Shaw, DOE’s Assistant Secretary for Environment, Safety and Health. “Simply stated, the value of NEPA is this: It is much easier to protect environmental resources at the outset of an action than to go back after the fact and try to remedy the situation.”

NEPA practitioners were encouraged to pursue this forward-thinking approach to environmental protection by looking “back to the future,” in the words of CEQ Chairman James Connaughton, to discover how to apply

the core values of NEPA to tomorrow’s decisions. He challenged conference participants to look beyond NEPA’s primary tool, the environmental impact statement (EIS), and to embrace NEPA’s central philosophy of seeking a productive harmony between humans and our environment.



“The core of NEPA still resides in Section 101,” James Connaughton, CEQ Chairman, told conference attendees. One way back to this core, he said, is through integration of NEPA and Environmental Management Systems.

Make NEPA A Better Tool

U.S. Representatives Cathy McMorris and Tom Udall, Chair and Ranking Member, respectively, of the Congressional Task Force on Updating the National Environmental Policy Act, told conference participants via video that some witnesses at Task Force hearings attributed delays and financial hardship to NEPA implementation, while others recounted ways NEPA has empowered citizens and helped protect the environment. Conference participants found that, even in the face of ongoing examination of NEPA and criticism of its implementation, there remains a very positive attitude about its values.

Throughout a half-day of training, two afternoon plenary sessions, and a morning of 13 breakout sessions, participants explored practical ways to make better use of NEPA’s tools. Recognized NEPA experts and practitioners from organizations such as the U.S. Environmental Protection Agency, the National Tribal Environmental

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Breakout Sessions.....	15

Inside *LESSONS LEARNED*

Welcome to the 45th quarterly report on lessons learned in the NEPA process. We thank all those who participated in the *NEPA 35* conference. You made it successful. We hope you are as inspired as we are by the spirit of NEPA Section 101 and the challenge to improve the implementation of NEPA. As always, we welcome your suggestions for continuous improvement.

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Carol Connaughton

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 February 1, 2006. Contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2006 (October 1 through December 31, 2005) should be submitted by February 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.

Printed on recycled paper



NAEP Environmental Excellence Award Nominations Due January 15

The National Association of Environmental Professionals (NAEP) is seeking nominations for its annual National Environmental Excellence Awards. A nomination describes outstanding environmental contributions from a project or program that:

- Represents a national or major achievement involving national organizations, Federal, state, local agencies, or companies
- Represents a national or international contribution to the environment



- Achieves innovation in compliance methodology and/or integration of decisionmaking with environmental regulatory processes.

NAEP offers Environmental Excellence Awards in eight categories: NEPA, Education, Environmental Management, Planning Integration, Public Involvement/Partnership, Environmental Stewardship, Conservation, and Best Available Environmental Technology. The nomination form, which must be received by January 15, 2006, and additional information are available on the NAEP Web site at www.naep.org under Environmental Excellence Awards. 

Congressional NEPA Task Force Ends Hearings, to Report Soon

The House Resources Committee's Task Force on Improving the National Environmental Policy Act held one more hearing this fall (its fifth) on "The Role of NEPA" for the Mid-Atlantic States (September 17, 2005, Norfolk, Virginia) before being re-chartered as the Task Force on Updating the National Environmental Policy Act. The re-chartered Task Force held two hearings last month in Washington, DC, and is building upon the previous work to put forth recommendations on updating NEPA.

The first hearing of the re-chartered Task Force (November 10) was on the "Causes, Effects and Solutions" to NEPA litigation, focusing on issues related to grazing permits and the 1977 lawsuit *Save Our Wetlands v. U.S. Army Corps of Engineers*, which some say contributed to the failure of the flood walls in New Orleans after Hurricane Katrina. The second hearing (November 17) on "Lessons Learned and Next Steps" featured witnesses with practical and academic NEPA experience.

Following the November 17 hearing, Representative Cathy McMorris, Task Force Chair, said, "Today we heard from many experts with combined decades of experience dealing with NEPA procedures. And although I saw a wide variance in opinions, every single witness told me he saw some way NEPA procedures should be improved." The Task Force expects to issue its report in December 2005. (Task Force Web site, under Press Releases, November 17.)

Testimony from 20 witnesses from various professions and industries is excerpted below. 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). (See *LLQR*, June 2005, page 3, and September 2005, page 14, for information on the first four hearings.)

Mid-Atlantic States Hearing

"... NEPA ... is being used successfully to block most new energy projects. The proof of this lies in our failure to permit new, clean nuclear electric generation and new Liquefied Natural Gas ... terminals. ... I believe existing NEPA laws can and will have a negative impact on the environment. ... I believe through the well intentioned efforts of some in the environmental community, using NEPA laws and other regulatory blocking actions, the stage has been set for a record in worst air pollution ever. ... In order to achieve an optimum condition for the environment, NEPA must look at the environmental impacts of not permitting a facility."

Senator Frank Wagner
Virginia Beach, VA

"... NEPA is a good program providing it is used for its intended purpose. We cannot continue to let hundreds of acre timber sales turn into a 3 ft. stack of paperwork, as a result, ending up in the courts because of litigations."

"... We face an uphill battle because of the cost of growing imports and the strict environmental laws in the United States. ... We ask federal and state governments to help us to remain competitive in a global market. When the companies we work for decide that it is no longer profitable to operate in the United States, they will move overseas and by the way some companies already have."

Alverce Holloway, Jr.
Pulp and Paperworkers Resource Council Member

"An amendment to NEPA should establish that the lead agency has overall authority to establish a time schedule for review and all cooperating agencies must act within that time frame. ... [T]he ability to set a deadline should be coupled with a way to enforce the deadline ..."

"An amendment to NEPA could ... establish the opportunity for a developer to engage a lead agency, other regulatory stakeholders, and interested parties in an open process in which all NEPA issues could be identified and dealt with to the satisfaction of those involved. ... [O]n a voluntary basis ... the lead agency would notify all potential cooperating agencies of the opportunity to join this collaborative and advisory 'Team Permitting Group.' ... A schedule for review and processing of all permits would be developed by the lead agency and the Team Permitting Group and all milestone dates for processing would be met by the applicant as well as the agencies involved."

John H. Shafer
Interstate Natural Gas Association of America

"In NAEP's view, many of the allegations raised against NEPA in recent years stem not from either NEPA or the CEQ Regulations, but from government agencies having failed to follow adequately the clear language and intent of both these documents. Nothing in either NEPA or the CEQ Regulations requires agencies to take years to complete environmental studies, or to produce multi-volume documents, or to spend millions of dollars to do so. Furthermore, the record of NEPA litigation shows that in most of the court cases that agencies have lost, the root cause has been their failure to perform the basic

(continued on page 24)

NEPA 35 *(continued from page 1)*

Council, and the National Environmental Conflict Resolution Advisory Committee encouraged participants to continually strive to better define the scope of analysis, identify alternatives that reduce environmental impacts, involve the public, and monitor the results of actions taken subsequent to NEPA reviews.

The DOE Office of NEPA Policy and Compliance distributed copies of a compact disk containing the updated *DOE NEPA Compliance Guide* and printed copies of other guidance documents at its “Guidance-to-Go” exhibit, where it also unveiled its new brochure, *DOE, NEPA, and You: A Guide to Public Participation*. The NEPA Office demonstrated the DOE NEPA Web site, presented a selection of published resources at a “NEPA Practitioner’s Bookshelf” display, highlighted the *Lessons Learned Quarterly Report*, and gave participants a chance to relive the past 35 years of NEPA through a 5-panel, 15-foot-long NEPA timeline (copy attached to this issue). A NEPA Office-sponsored exhibit on Native Americans and Environmental Justice complemented a panel discussion during the conference and a post-conference tour of the National Museum of the American Indian.

Other exhibitors at the conference were the National Association of Environmental Professionals, Parametrix (which displayed an award-winning EIS), Oak Ridge National Laboratory, and four of DOE’s nationwide NEPA contractors (Battelle Memorial Institute; Potomac-Hudson Engineering, Inc.; Science Applications International Corporation; and Tetra Tech, Inc.).

The conference, the dialogue it generated, and the thought and effort that continue to be put into making NEPA more effective, efficient and timely are a tribute to your environmental management and stewardship. My staff and I brought back several concepts and a lot of practical input that will help us realize innovative approaches and develop practical guidance that will bring NEPA “back to the future” by providing a process with a goal of making better decisions that strike a balance and strive to achieve the productive harmony envisioned in NEPA section 101.

– James Connaughton
 Letter to Assistant Secretary Shaw
 November 7, 2005

Several participants reported that, amid all the thoughtful and inspiring information, they appreciated the time during breaks to discuss current NEPA issues with colleagues, to meet newcomers to the NEPA community, and to renew old acquaintances. “I get jaded day-to-day,” said NEPA Compliance Officer Drew Grainger, “then I come here. It’s inspiring. It gets your interest level back up.” Similarly, participants from outside DOE reported a new-found appreciation for DOE and its NEPA implementation. “I realized at this conference the importance of NEPA to DOE,” said Sarah Fields from Moab, Utah. “It was made very clear.” 



Our hats are off to DOE’s NCOs! Andy Lawrence, Deputy Assistant Secretary for Environment, recognized the hard work of DOE’s NEPA Compliance Officers by awarding them each a hat with the NEPA 35 logo and NCO designation. “Wear these hats with pride,” he told them, “and if anybody questions your advice, just point to the hat.”

CEQ Chair Connaughton Promotes “Productive Harmony”

CEQ Chair James Connaughton, in his keynote address, called on NEPA practitioners to go “back to the future” in search of ways to improve NEPA implementation. “Think about that original intent of NEPA, as described in Section 101,” he said. “The challenge of NEPA over the last 35 years has not been a rejection of this central philosophy. It has been a tension of how to successfully fulfill it That is what we are celebrating here today.”

NEPA compliance “is not the compliance of deadlines and documents,” said Mr. Connaughton. “It is the compliance of fulfilling the fundamental balance that the statute describes as productive harmony, which is a phrase I love.” He described productive harmony as “adding economic well-being, adding social well-being, and, in the process, also adding to the overall welfare of our environment and natural resources.”

DOE’s mission to “secure cleaner, safer, more affordable, more reliable, innovative sources of energy that are the very foundation of human welfare” puts DOE in a position to embrace the principle of productive harmony and use NEPA to make smart decisions, Mr. Connaughton said.

Future Trends for NEPA Implementation

Mr. Connaughton next focused on the future of NEPA implementation. “The last 35 years have seen us get really good in America at public input,” he said, but he foresees “public input transforming into public involvement. Section 101 actually called for public involvement, not just input – not just, ‘Thank you for your comments, we’ll get back to you with our decision.’”

CEQ Chairman Connaughton read Section 101(a) of NEPA to conference participants as a reminder of its continuing importance as an expression of the philosophy of sustainable development and personal stewardship:

The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, . . . declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, . . . to create and maintain conditions under which man and nature can exist in productive harmony

Earlier, more reliable, more informed public involvement reduces conflicts at the back end of the process, or at least narrows the areas of potential controversy.

– James Connaughton

Mr. Connaughton highlighted two recommendations from the September 2003 *NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA Implementation*. (See *LLQR*, December 2003, page 1.) First, drawing on 35 years of NEPA experience, Federal agencies should create categorical exclusions for those activities that have no significant impacts. He emphasized that a categorical exclusion must be supported by sound analysis.

Second, agencies should make increased use of Environmental Management Systems (EMSs), “as a tool not just of NEPA compliance, but as a tool of actually meeting the fundamental charge of Section 101 of NEPA.” He said that EMS and NEPA work well together. Information is gathered through the NEPA process, he said, and then EMS provides for monitoring during implementation to check expectations and make adjustments to achieve continuous improvement. He lauded DOE for its EMS leadership within the Federal government.

Global Leadership, Back to the Future

Mr. Connaughton reminded participants that NEPA plays a significant role in U.S. leadership internationally. “We have dozens and dozens of countries around the world that are now implementing a process similar to NEPA,” he said. He recounted recent meetings in which senior environmental officials pointed out their environmental review processes for strategies related to energy development. “Now that is because of us,” Mr. Connaughton said. “That is the leadership that comes out of the United States because of the power of this tool.”

In closing, Mr. Connaughton said that “if I go back to the future on NEPA, NEPA itself demands continual improvement.” CEQ’s mission is to “enable your own creativity, further enable your own innovation, further enable your own experience in finding a better way of accomplishing the nation’s business, the people’s business, in achieving the fundamental goals of this statute.” 

Plenary Sessions Highlight NEPA Successes and Challenges

Plenary sessions at *NEPA 35* brought forth three recurring themes: the strength of the values expressed in Section 101 of NEPA, the procedural flexibility inherent in Section 102, and the practical benefits of early, ongoing public involvement. In his keynote address, Council on Environmental Quality (CEQ) Chairman Connaughton set forth the vision that we can do better with NEPA implementation by embracing its core values. (See page 5.) Representatives of tribal organizations spoke of the importance of advancing environmental justice and seeking ongoing stakeholder involvement. (See page 12.) Thomas Jensen called for collaborative approaches to public involvement in summarizing the final recommendations of the National Environmental Conflict Resolution Advisory Committee. (See page 9.)

In other plenary sessions, summarized below, some of NEPA's most experienced practitioners encouraged participants to take advantage of NEPA's flexibility to provide better support to decisionmakers. Stakeholders reminded participants that communication needs to take place at the local level. CEQ's Associate Director for NEPA Oversight described guidance in the works to help NEPA practitioners deliver better products. In video presentations, the Chair and Ranking Member of the Congressional NEPA Task Force described their work.

35 Years of NEPA Experience: What We've Learned

C. Russell H. Shearer, Principal Deputy Assistant Secretary for Environment, Safety and Health, said that during his years at DOE and as an attorney in private practice, his appreciation of NEPA as a planning tool has grown. He encouraged participants to reevaluate EISs periodically to "make sure that we're doing what we said we would do" and to "look at how we might improve our performance and perhaps even mitigate further the risks or the impacts."



Russell Shearer told participants that "NEPA is not a tool for justifying preconceived notions and conclusions that you've already reached."

Mr. Shearer called on three NEPA veterans for their suggestions on improving

NEPA implementation: Dinah Bear, General Counsel, CEQ; Anne Norton Miller, Director, Office of Federal Activities, Environmental Protection Agency (EPA); and Chris Kearney, Deputy Assistant Secretary, Policy and International Affairs, Department of the Interior (DOI).



"The paperwork is important," said Dinah Bear, "because it is documentation of the process." However, she added, "The documentation, I think, often can be simpler than some want to make it."

better information and training about dispute resolution processes early and often," she continued, "and better ways to manage the paperwork."

Ms. Bear closed by pointing out that analyses of social and economic effects can be improved. "The requirement in our regulations is not to provide a data dump," she said. "The actual requirement is more sophisticated than that. It's figuring out what the social and economic effects are that are interrelated with the environmental effects." She also called attention to Section 101(c) of NEPA, reminding the audience that each person has a responsibility to contribute to the enhancement of the environment.

As Director of the EPA Office responsible for reviewing and commenting on EISs, Ms. Miller said that Federal agencies do a good job with NEPA analyses of projects, but they do less well with reviews of policies, plans, and programs. Similarly, she noted that generally agencies analyze direct impacts well, but have a more difficult time with indirect and cumulative impacts. Problems arise in analysis and in how, when, and who tries to mitigate those impacts, she said.

Pointing to the importance of public involvement, Ms. Miller said that "Collaboration takes time, and so people get frightened by it, but in a very weird way, collaboration streamlines the process." Collaboration

Ms. Bear, who has served at CEQ since 1981, said that "The provisions of the NEPA regulations that deal with the legally enforceable requirements get more attention from agencies than provisions that are intended to promote collaboration, intergovernmental cooperation, and simply management, per se, of the process." To counter this situation, she explained that CEQ has promoted cooperating agency relationships. "We need better

coordination. We need

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Plenary Sessions *(continued from previous page)*

entails early involvement, concurrent reviews, proper scope of review, and availability of all relevant information, she said.

Ms. Miller emphasized two reasons why there is a continued need for paper copies of NEPA documents. “The digital divide is still real,” she said, referring to many Americans’ limited access to computer technology and the Internet. She added that technology changes so that “in 50 years, we’re not going to know how to access” some electronic media currently in use.

Mr. Kearney described what DOI is doing to try to improve its NEPA implementation and maximize the flexibility inherent in NEPA. A 2004 DOI review concluded that “the original purpose and intent of NEPA remains elusive,” he said. He added that focus on the NEPA *process* often has overshadowed problem solving. In response, he said, “We came up with a framework of administrative efforts that sought to promote collaborative efforts and partnerships.” He described DOI guidance on consensus-based management, adaptive management, the use of tiering to build on existing analyses, and how to involve cooperating agencies. (DOI incorporated this guidance into Part 516 of its Departmental Manual; see 69 FR 10866, March 8, 2004, and <http://elips.doi.gov>.)

Productive Harmony: Putting People First

Mr. Shearer asked a panel of three stakeholders “to be frank with us on how we’re doing on working with our stakeholders and tell us how we can improve the substance of our recent NEPA activities.” Sharon Buccino, Senior Attorney, Natural Resources Defense Council; Todd Martin, Chairman, Hanford Advisory Board; and Kathleen Trever, Coordinator-Manager, Idaho National Laboratory Oversight and Radiation Control Program, State of Idaho, responded with candid criticisms of DOE’s NEPA implementation and constructive suggestions for improvement.

“We need to show the leaders in Washington how well NEPA can work,” said Ms. Buccino, offering three suggestions for improving NEPA implementation. First, provide easy access to information, she said, including making documents available online with links to the underlying data and analysis. Second, Ms. Buccino said that the effective use of programmatic EISs can help address cumulative impacts and pointed to the programmatic EIS on corridor rights-of-way being prepared by DOE and DOI. [This was a reference to the EIS on *Designation of Energy Corridors on Federal Land in the 11 Western States* (DOE/EIS-0386), for which DOE and DOI recently

published a notice of intent, 70 FR 56647, September 28, 2005.] She said the approach of identifying transmission and pipeline corridors up front is a very good idea in theory, but the challenge is putting it into practice, especially on a tight timeframe and with limited resources. Finally, she urged improvements in monitoring and data quality, especially when relying on mitigation.

Using handouts of a map modeled after a popular children’s board game, Mr. Martin presented a tour of “NEPALand” to illustrate successful and not-so-successful aspects of public experiences with the NEPA process. The journey begins, he explained, with two “Happy Stakeholders” (one representing the public, the other DOE) embarking on a colorful, curving pathway ultimately leading to “Record of Decision Castle.” If scoping is well conducted, the stakeholders can shortcut via “Scoping Trail;” otherwise, they enter the “Peppermint Public Involvement Forest” where negative public attention about an inadequate NEPA process grows.

He continued describing the trail toward completion of an EIS, pointing out the many areas where perilous terrain can delay the travelers – stops in “Peanut Brittle Analysis House” and “Gramma NEPA Contractor’s House” are necessary when difficulties with transparency and accuracy in the analyses raise issues among stakeholders. Mr. Martin pointed out that, although the Hanford Advisory Board has an excellent rapport with developers of the Hanford Tank Closure EIS, stakeholders are concerned that it is internally delayed in “Mystery Molasses Swamp,” where the cause of an apparent delay in its progress is not clear to them.

In a lively presentation at the end of the day, Ms. Trever also used creative visual aids in her presentation, which centered on

(continued on next page)



When the NEPA process does not go well, said Todd Martin, the public and DOE can be detained by “Litigation Lord Licorice.”



“Don’t be a bucket head,” said Kathleen Trever, who encouraged participants to seek ongoing, effective communication with local stakeholders.

Plenary Sessions *(continued from previous page)*

effective communication with the local public. She said that when people in a public hearing are angry and confused, they are unable to clearly process information. “Basically, they are operating like they have a bucket on their head,” she explained. She demonstrated by placing a blue, plastic bucket over her head, confessing that she has been a “bucket head” herself at times. “At public hearings, we tend to throw more information at the public at precisely the time they are least able to process it,” she emphasized.

“It’s time to rethink how we use NEPA as a communications tool,” she said. Ms. Trever encouraged the audience to recognize that communication should take place at the local level and to build partnerships or coalitions on controversial issues. Early in the process, make sure people in the local community know why you are doing the project, she said.

The Role of NEPA in a Changing World

“NEPA is in deep trouble,” said Ray Clark, former Associate Director for NEPA, CEQ, referring to proposed changes being discussed in Congress. “NEPA is not at fault. We are,” he continued. “The people who have managed this process have let this statute down.”

“The bridge for us to really change the dynamics is adaptive management,” Mr. Clark said. Everything we do to the land is an experiment, he said, and so environmental impacts are unknowable. It does not matter “how many pages you put in an EIS,” he said. “Documents are not going to help. . . . We have to rethink environmental impact analysis.” He added that, “The one thing we have to do to make this jump into adaptive management in EISs is to figure out how to fund monitoring. . . . If you don’t do monitoring, you cannot get to adaptive management.”

Mr. Clark emphasized that Federal agencies need to take more control of the NEPA process. Too much money is going to too few large NEPA contractors, he said, feeding the idea of “Go get me a NEPA.” The NEPA process must be managed from inside Federal agencies, he said. Contract out specific tasks, he recommended, but maintain Federal control of the NEPA strategy and management of the document.

Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, said that CEQ is working to provide additional guidance and support to the NEPA community to improve the quality of analysis and documentation. CEQ aims to

help NEPA practitioners produce work that the project or program manager uses in decisionmaking, he said.

Mr. Greczmiel recalled three trends in NEPA implementation identified at the time of NEPA’s 25th anniversary that remain relevant. First, he pointed to the growth in the number of environmental assessments (EAs) being prepared. Federal agencies prepare more than seven EAs for every EIS, he said. The Work Groups that CEQ has set up to help implement recommendations from the CEQ NEPA Task Force are developing guidance on the preparation of EAs, he said, to help ensure that EAs are a quality product that informs decisionmaking.



Ray Clark (left) and Horst Greczmiel encouraged participants to use adaptive management in conjunction with NEPA to improve environmental protection.

Second, NEPA work is becoming less analytical and more public relations oriented, he said, and added that there is one part of every “thick study” that every senior decisionmaker will read: the Summary. “Why do they read it? Because it’s in plain English; it distills the key points that they need to be aware of, provides them options, and makes a recommendation on how they should proceed. That sounds an awful lot like what a good NEPA document should do,” he said.

Third, Mr. Greczmiel underscored the importance of “reaching out to the publics that we serve.” CEQ has focused attention in recent years on involving cooperating agencies, he said, because “the sooner you engage the people who are going to be affected . . . the better off you will be as you go through the process.” Early involvement does not guarantee that an agency decision will not be challenged, he said, but “you’ll get a lot more support and, more importantly, you’ll get a lot better product because you’re focusing on the things that matter to the people on the ground.”

(continued on page 10)

NEPA Priorities: Policy, Analysis, and Public Engagement

NEPA Section 101 and Environmental Conflict Resolution

“There is a reason to do NEPA that is completely separate from, much better than, and entirely more important than mere compliance,” said Thomas Jensen, Chair, National Environmental Conflict Resolution Advisory Committee, in a plenary session at the *NEPA 35* conference.

In the preface to the Committee’s April 2005 *Final Report*, he and Dinah Bear, Vice Chair, say that the Committee’s call is this: Take to heart and take advantage of Section 101 of NEPA.

- Why take NEPA’s Section 101 to heart? Because it articulates a national policy for the environment that is an elegant and compelling philosophy of balance, innovation, and personal responsibility.
- How to take advantage of Section 101? Use the diverse tools of environmental conflict resolution to find solutions rooted in shared values. NEPA Section 101 and environmental conflict resolution are mutually reinforcing tools.

Background on Congressional Request

In 2000, a bipartisan group of U.S. Senators asked the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation to investigate “strategies



Thomas Jensen, Advisory Committee Chair, told participants in the plenary session that “NEPA, used right, is entirely in sync with our best political traditions.”

Federal actors become partners in a [NEPA] process where the issue is “owned” by all participants without the forfeiture of government’s legal limits and responsibilities.

– Advisory Committee Final Report

for using collaboration, consensus building, and dispute resolution to achieve the substantive goals” of NEPA. The Institute, a Congressionally-established Federal program, conducted initial analytical work in response to the inquiry and, in 2002, created the National Environmental Conflict Resolution Advisory Committee to advise the Institute on how to address its statutory mandates to assist the Federal government in preventing and resolving environmental conflicts and in implementing Section 101 of NEPA.

Environmental conflict resolution, as understood by the Institute, is the use of interest-based, agreement-seeking processes to improve environmental decisionmaking by directly engaging the interested parties in creative problem-solving. These processes include case evaluation by a neutral experienced party, collaborative monitoring, conflict assessment, consensus building, and mediation.

Advisory Committee Recommendations

The Committee’s key recommendations include that the Institute should:

- Develop a “toolkit” of environmental conflict resolution management approaches for Federal executives
- Foster networks and partnerships that promote best practices and promote use of technology for sharing lessons learned
- Obtain funding for and implement the Institute’s participation grant program for communities affected by Federal decisions related to the environment.

Mr. Jensen provided a compact disk with the Advisory Committee’s *Final Report* to conference participants. The Committee’s report, its charter (which expired on April 30, 2005), and other materials are posted on the Institute’s Web site at www.ecr.gov/necrac. (See also *LLQR*, December 2004, page 2 (Draft Report); December 2003, page 12 (DOE’s response to the Institute’s NEPA Section 101 survey); and June 2001, page 9 (the Institute’s pilot projects).) 

Plenary Sessions *(continued from page 8)*

How DOE Senior Managers Use NEPA to Accomplish Missions

As several participants recognized throughout the conference, the importance of senior managers' involvement in the NEPA process cannot be overemphasized. The three senior managers on this panel all agreed, and each underscored that the NEPA process is valuable to their decisionmaking.

Tom D'Agostino, Acting Deputy Administrator for Defense Programs, National Nuclear Security Administration (NNSA), described what he wants to gain from the NEPA process, but he noted that it is important to engrain the NEPA principles of full disclosure, public participation, and alternatives analysis into all decisions, even those that do not require NEPA analysis. "These are sound principles," he said, "and a sound approach to moving forward on all of our decisions."



Tom D'Agostino said that NNSA is focusing on quality assurance in the NEPA process because of the importance of sound analysis as a foundation for decisionmaking.

NNSA is planning to make several major decisions about the future of the nuclear weapons complex, he said, that need to be based on technical, programmatic, and cost factors and impacts on the environment and communities. He said that to use the NEPA process as

a decisionmaking tool, senior managers must be aware of the human and financial resource needs and the time necessary to support a balanced decision.

Leah Dever, Associate Director, Office of Laboratory Policy and Infrastructure, Office of Science, described how NEPA reviews (most often EAs) help inform decisions by the Office of Science on construction projects, research programs, experiments, and land use issues. The Office of Science incorporates NEPA compliance into its project management, she said. "Before we start projects, we start thinking about NEPA, we start thinking about the impacts of what we might be doing," she said.

Ms. Dever described the value she places on public involvement. "It's just a lot of fun, I think, when you have the public meetings or you get the public comments in, and you get to see what the real person out there is



Leah Dever described how NEPA has permeated her career from collecting field data for NEPA analysis to relying on NEPA documents for program decisionmaking.

thinking about with respect to your project," she said. "I will admit that in my past it has caused me to change some decisions, and it has caused me to look at things a little differently. If there's one thing we don't want to ever lose from NEPA, it's the public aspect."

NEPA Compliance Officers (NCOs) have "one of the most important jobs" in DOE, said Ines Triay, Chief Operating Officer, Office of Environmental

Management. "If you, as a senior executive, will share a brain with your NCO, I can assure you that you will be making better decisions."

For environmental cleanups, she said, "The recipe for success is this partnership among the Federal government, the states, the tribal communities, and other interested stakeholders." Therefore,



Ines Triay told participants: "I have found my involvement as a senior executive in the NEPA process probably the most rewarding and eye opening experience that I have had, and probably the one that has taught me the most."

public involvement in the NEPA process is the most important area for senior executives to concentrate on, she emphasized. "The value of cooperating agencies is realizing that, at the end of the day, whether all the cooperating agencies agree with a particular decision or not, we can agree on the way the analysis was conducted."

The NEPA process is "the planning tool" to consider what alternatives go into the

baseline for managing environmental cleanups, Ms. Triay said. "For critical decisions, it is essential that, before we engage in final decisions, we have performed a very thorough analysis of alternatives" with agreement among stakeholders as to how that analysis was conducted. Analytical tools need to be of the highest quality, transparent, and easy to understand, she said.

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Plenary Sessions *(continued from previous page)*

Congressional NEPA Task Force: What Can Be Improved?

Representative Cathy McMorris, Chair, Congressional NEPA Task Force, said via video that hearings held around the country have “let us see first hand how local groups and the Federal government were trying to balance the NEPA procedure while protecting their communities and the environment.” (See related article, page 3.) This input, she said, will help identify “ways Congress can improve the NEPA process so we can devote more time and resources to protecting the environment.” NEPA has a “major impact on our country on an everyday basis. We must review its effects to ensure the best outcome for the environment and for our economy,” she added.

“What started out as an overly vague, single paragraph statute is now many, many pages of regulations, 1,500 court cases, and hundreds of pending lawsuits that are blocking important projects and economic growth in our country,” she said. “We can and must do better.”

“The Task Force does not intend, in any way, to do away with NEPA or environmental safeguards. Yet, projects should not be delayed nor have added costs when it does not result in better environmental decisionmaking,” she said.

Representative McMorris concluded by listing three of the recommendations presented at Task Force hearings: “clearly defining significant environmental impacts, establishing mandatory timeframes, and including environmental benefits, in addition to environmental impacts, for consideration in the NEPA process.”

Representative Tom Udall, Ranking Member of the Task Force, also speaking via video, said that NEPA “has fundamentally served to make our democracy work better by greatly enhancing citizen participation in the process of Federal agency decisionmaking.”

“Too many people try to characterize NEPA as designed simply to protect the environment from harm caused by development or, as some might phrase it, to stand in the way of development,” he said. “Testimony provided to the Task Force, however, has shown that this definition is, at best, incomplete and, at worst, one-sided and inaccurate.”

He expressed concern about attempts in Congress to make piecemeal changes to NEPA requirements before completion of the Task Force’s work. “If there is a problem with NEPA,” Representative Udall said, “I would argue that it lies more in its implementation than within the Act itself.”

Representative Udall called for more consistent application of NEPA across agencies, better training of agency personnel responsible for NEPA implementation, better and more consistent use of technology to increase public participation, and up-to-date resources for citizens and local governments involved in the NEPA process.

Recalling Two Days Focused on NEPA

Assistant Secretary Shaw closed the conference by highlighting some of the themes that were repeated throughout the two days. “We need to remind ourselves that the fundamental purpose of NEPA is embodied in Section 101, which asks us, in part, to ‘create and maintain conditions under which man and nature exist in productive harmony’”

He reminded participants of the need for active public involvement and avoidance of the potential pitfalls found in NEPALand. “Senior managers need to ensure that there is top to bottom agency commitment and engagement in the NEPA process from start to finish,” he said.

Mr. Shaw said that NEPA professionals’ “understanding of environmental management systems [EMSs] can help plug the biggest gaps in NEPA, such as mitigation measurement, monitoring, and, especially, oversight. And you can achieve EMS and NEPA synergies with good communication between the EMS and NEPA communities.”



John Spitaleri Shaw said, “The keys to success in timely decisionmaking are early and continuous communication among agencies and the public.” He closed the NEPA 35 conference with a sincere “Thank You” to all participants for attending this very important event.

The Office of Environment, Safety and Health offered its appreciation to the Offices of Science; Nuclear Energy, Science and Technology; Environmental Management; and Fossil Energy; and the National Nuclear Security Administration for their financial support of NEPA 35: Spotlight on Environmental Excellence. LL

Environmental Justice, NEPA, and Indian Country: Modern Perspectives on Tribal Issues

Native Americans are important stakeholders in DOE decisions, and NEPA analyses must consider potential environmental justice impacts. The *NEPA 35* conference, which was held during National American Indian Heritage Month, focused on these issues in a plenary discussion, through an interactive Native American and Environmental Justice exhibit, and during a tour of the Smithsonian's National Museum of the American Indian.

Environmental Justice on Native American Lands

Environmental justice “touches on practically every aspect of the work that tribal governments do – the provision of health, safety, welfare, technological development, and economic opportunities,” Geoff Blackwell, Director, Strategic Relations and Minority Business Development, Chickasaw Nation Industries, Inc., said in his opening remarks as the moderator of the plenary session.

“When tribes talk about environmental justice, they’re talking about understanding tribes as stakeholders in the sense that other governments are also stakeholders in seeking to protect the environment,” explained David Conrad, Executive Director, National Tribal Environmental Council (www.ntec.org). He indicated that tribes also are concerned about “equity in funding – leveling the playing field for tribes to be able to participate in these processes.”

Referring to keeping the spirit of Section 101 of NEPA alive and well, Mr. Conrad said, “It rings true in tribes that

you have to go out and consult.” However, he added, the process in Section 102 of NEPA does not necessarily fit with traditional tribal institutions for decisionmaking. He encouraged participants to look for flexibility and ways to “embrace how tribes make decisions, combining their modern constitutional government structure and their ancient traditions.” Mr. Conrad noted a provision in the Energy Policy Act of 2005 which creates a national NEPA tribal training center. (See Section 503 of the Act, available at www.gpoaccess.gov/plaws by searching for “Pub.L. 109-058”.) This would provide opportunities for DOE to help build tribal capacities to establish and carry out tribal environmental programs in support of energy-related activities, he said.

“Often we focus too much on the procedural elements of Section 102 as opposed to the policy aspects of Section 101 of NEPA,” said Merv Tano, President, International Institute for Indigenous Resource

Management (www.iiirm.org). By the time those procedural elements are triggered, he explained, NEPA can “only be used as a shield” to protect a tribe’s interests from the encroachments of a proposed Federal activity. He asked the audience to consider how to use NEPA not only as a shield, but also as a sword to advance tribal interests. He suggested that DOE and tribes should view NEPA “not as a process,” but as the way to achieve “development that is culturally appropriate, economically sustainable, environmentally sound, and supportive of the tribes’ political integrity and the tribes’ social fabric.”

Mr. Tano commended DOE for efforts to involve stakeholders in many of its environmental management decisions through cooperative agreements, community networks, and other mechanisms. He said that such efforts often are



“As a core value, environmental justice is pervasive to the tribal world,” said Geoff Blackwell. He moderated the panel discussion during the second day’s plenary and led participants on a tour of the National Museum of the American Indian after the conference (text box, next page).



Nicolas Targ (left) summarized court decisions upholding the need to include environmental justice analysis in NEPA documents. David Conrad (middle) emphasized the need to enhance tribal capacity to participate in the NEPA process. Merv Tano (right) said that if agencies fulfill the spirit of Section 101 of NEPA, they will achieve environmental justice.

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Environmental Justice and Indian Country

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truer to the spirit of NEPA than DOE's implementation of the EIS process.

Nicolas Targ, Associate Director for Environmental Justice Integration, Office of Environmental Justice, U.S. Environmental Protection Agency (EPA), identified common issues affecting Native American populations, such as unique exposure pathways and scenarios, cumulative risks and impacts, population vulnerabilities, and the lack of meaningful participation in the decisionmaking process. He reviewed the history of Federal environmental justice policy, pointing out that courts have upheld the need to include an adequate environmental justice analysis in NEPA reviews.

He described EPA resources for environmental justice analysis, including the *Environmental Justice Geographic Assessment Tool* (formerly called *EnviroMapper for Environmental Justice*), which provides information relevant to assessing health, environmental, cumulative, and other impacts. These resources are available on the Web at www.epa.gov/compliance/environmentaljustice.

Interactive Exhibit Links DOE Facilities and Indian Sacred Sites

When evaluating a proposed action with the potential to impact places held as sacred by Native Americans, consider that the areas of potential impact could extend well beyond the boundaries of the proposed action and that the affected populations could include persons far removed geographically from the site of the proposed



At the exhibit on "Native Americans and Environmental Justice," participants viewed resources to help them prepare NEPA analyses.

action. This was one of the messages in an interactive exhibit entitled "Native Americans and Environmental Justice" sponsored by the NEPA Office. The exhibit also emphasized that, whereas NEPA practice includes delineation of an area of impact and mitigation to reduce impacts, disclosure and delineation of sacred places and the offer of mitigation can be an affront to Native Americans.

The exhibit included two posters: one showing Indian Country as defined by the 2000 Census and one showing DOE facilities with an overlay of sacred places. A computer display enabled the user to scroll over a map to identify sacred places in close proximity to DOE sites. 

Museum Tour Reinforces Learning Experience

On the day after the *NEPA 35* conference, some participants joined Geoff Blackwell, Chickasaw Nation Industries, Inc., on a tour of the Smithsonian's National Museum of the American Indian (www.nmai.si.edu). Participants enjoyed the museum's permanent exhibitions, *Our Universes*, *Our Peoples*, and *Our Lives*, which present important ideas and experiences in Native American life and history. Tour participants viewed a segment from the award-winning film *Homeland: Four Portraits of Native Action*, highlighting environmental justice issues associated with energy-related undertakings in Indian Country. The museum's Library Director, Dr. Christopher Turner, then provided an overview of Federal agency research resources on tribal environmental justice issues and a related bibliography.

To cap off the tour, lunch was available at the museum's Mitsitam Native Foods Café, which features Native American cuisine. The tour provided a valuable learning experience and opportunity to see one of Washington's newest and most popular museums.



Smithsonian's National Museum of the American Indian, the last museum to be constructed on the National Mall in Washington, DC, opened in September 2004.

NEPA 35 Provided Valuable Training for Conference Participants

“If you can’t teach it, take it,” was the advice given when the NEPA 35 training classes were announced. More than 150 participants took advantage of this opportunity on the first day of the conference, filling each class. Participants included most of the DOE NEPA Compliance Officers (NCOs) and NEPA Document Managers attending the conference, as well as persons from DOE program offices, other Federal agencies, and non-Federal agencies and organizations.

Each person could attend two of the five courses designed and presented by staff from the DOE Office of NEPA Policy and Compliance:

- DOE Supplement Analysis (SA) Process
- NEPA Fundamentals: Principles and Process
- Using the *Green Book* to Avoid NEPA Pitfalls (offered twice)
- Effective Leadership: NEPA Compliance Officers and NEPA Document Managers
- EIS Comment Response and EIS Distribution

All five courses received high marks (average of 4 on a scale of 1–5) for being very useful and relevant. “Our site is going through the supplement analysis process right now,” said one NCO. “I attended the class this morning; it was very helpful.”

Another NCO said, “The NCO training class [Effective Leadership] was great because I’m new. I just wish it could have been a whole day long!”

While most participants said the length of the training sessions was “just right,” several participants echoed the

As a final check on the readability of your EIS – read it.

– Carol Borgstrom, Green Book training



Participants viewed a flowchart in the class on the DOE Supplement Analysis Process taught by Jeanie Loving, Office of NEPA Policy and Compliance (left).

call for more in-depth training, and some requested that multiple levels of training be offered to accommodate different levels of experience and skills. Several participants also suggested that training be offered again in other formats and venues. In response, the Office of NEPA Policy and Compliance is exploring further training opportunities for 2006.

Each participant who successfully passed a written test received a Certificate of Training. (If you attended one of the sessions, passed the test, and have not yet received your certificate, please contact Jim Daniel at james.daniel@eh.doe.gov or 202-586-9760.) The courses were based, for the most part, on NEPA guidance and requirements documents available on the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide. 

True or False

Following are sample test questions from each of the five courses taught at NEPA 35. Answers are below.

- | | |
|---|-----|
| 1. If done properly, an SA can substitute for a supplemental EIS. (SA Process) | T F |
| 2. All environmental issues in an EIS should be analyzed at the same level of detail. (NEPA Fundamentals) | T F |
| 3. The statement of the agency’s purpose and need is critical to identifying the range of reasonable alternatives. (<i>Green Book</i>) | T F |
| 4. DOE should ensure that NEPA support service contractors have and apply QA/QC procedures. (Effective Leadership) | T F |
| 5. When presenting responses to comments on a draft EIS in a final EIS, each comment submitted on a draft EIS must be responded to individually or by reference to another response (an individual response or response to a summary comment). (EIS Comment Response) | T F |

Answer Key: 1-5 1-4 1-3 1-2 1-1

Breakout Sessions Tackle Timely Issues

In 13 breakout sessions divided among three time slots, presenters from DOE, other Federal agencies, state agencies, NEPA contractors, and the general public offered participants in-depth analyses of timely NEPA issues.

Cooperating Agency Involvement: What's in It for Me?

Like a marriage, cooperating agency relationships have benefits and challenges, concluded a panel moderated by Shane Collins, Natural Resources Manager, Western Area Power Administration (Western). She provided an overview of Western's experiences as both a cooperating and a lead agency, noting that Western uses the scoping process to identify potential cooperating agencies. "Engaging a cooperating agency or becoming a cooperating agency can result in better decisions, streamlined processes, and elimination of duplicative efforts," she said.

"As a state agency, you can have the best of all worlds. You get to assist in guiding the development of the EIS, as well as to provide comments on the document," said Suzanne Dahl, Project Manager, Department of Ecology, State of Washington. She discussed the State's cooperation with DOE on Hanford site issues and the importance of all states' involvement in NEPA, especially those states that have their own version of NEPA because they usually adopt the Federal EIS. To make the cooperating agency relationship work, Ms. Dahl suggested nurturing the relationship with constant care and attention, defining roles and responsibilities up front, and establishing dispute resolution processes at the start.

Cynthia Moses-Nedd, Liaison, National Association of Counties, Bureau of Land Management, Department of the Interior (DOI), outlined procedures to effectively establish a cooperating agency relationship. "A local or state agency should choose the projects to cooperate on carefully and cautiously," she said, and only after "serious consideration of the cost in both personnel time and support dollars." She compared the relationship between cooperating and lead agencies to a marriage: "Open and early communication, full disclosure between parties, and trust can be the result of successful cooperation, but counseling may be needed to work out disagreements."



During two well-attended breakout sessions, Ted Boling explained why the "cumulative impact analysis should be the most important and interesting part of a NEPA document."

Cumulative Impacts

Agencies must consider the broader context for environmental impacts of proposed actions in addition to their direct incremental impacts, said Ted Boling, Deputy General Counsel, CEQ. In that regard, he noted, actions that by themselves would not result in significant environmental impacts may be the "tipping point" for potential significant cumulative impacts, which is why cumulative impacts are sometimes referred to as "the straw that breaks the back of the environmental camel."

After capturing participants' attention with his rendition of Sam Cooke's "Wonderful World (Don't Know Much)," Mr. Boling kept their attention as he reviewed relevant history, case law, regulations, and key content of two CEQ resources regarding cumulative impact analysis: *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997), and *Guidance*

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* presented twice

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on the Consideration of Past Actions in Cumulative Effects Analysis (June 2005). (Both documents are available on the DOE NEPA Web site, www.eh.doe.gov/nepa, under NEPA Compliance Guide.)

CEQ NEPA regulations state: “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 . . .” (40 CFR 1508.7). Mr. Boling observed, however, that CEQ regulations might have been clearer had the words “impacts of” been added so that the statement would read: “. . . when added to the *impacts of* other past, present, and reasonably foreseeable future actions . . .” The existing wording, he surmised, may have misled the Ninth Circuit Court of Appeals in *The Lands Council et al. v. Powell et al.* (395 F.3d 1015, 9th Cir. 2005) to conclude that an adequate cumulative impacts analysis in an EIS generally must include a detailed catalogue of past, present, and future projects without first determining that such information is relevant and useful for evaluation of specifically-identified cumulative effects of a proposed action.

CEQ’s June 2005 guidance, however, makes it clear that such cataloging of past actions is not required unless the information is relevant and useful to decisionmakers, Mr. Boling said. Further, he noted that agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions. (See *LLQR*, September 2005, page 40, for further details on the June 2005 guidance.)

Emphasizing the importance of scoping to identify cumulative effects issues, assessment goals, time frame, geographical scope, and other factors of concern, Mr. Boling strongly recommended reading CEQ’s 1997 handbook for further insights into cumulative effects analyses. In particular, he referred to Figure 2.2 as a useful graphic for explaining concepts such as time frames and thresholds of significance in cumulative impacts analyses.

Environmental Management Systems, Adaptive Management, and NEPA

Although Environmental Management Systems (EMSs) and NEPA were developed separately, they are similar in philosophy – both promoting and working toward good environmental values, explained Ed Piñero, Federal Environmental Executive. “There is a natural synergy between EMSs and NEPA,” he said, specifying that the strongest synergy can occur in the monitoring and oversight of mitigation measures, where NEPA is weak but EMS is strong.

The key to integrating the two, Mr. Piñero explained, is effective communication between the EMS and NEPA programs within an agency, which DOE already is doing. “DOE has been very progressive in getting NEPA folks and EMS folks communicating,” Mr. Piñero said.

Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, said, “If NEPA is to realize its full potential, it needs to move forward into adaptive management.” He explained that the idea of adaptive management has been around for a long time and has the backing of CEQ and several Executive Orders, such as E.O. 13148, *Greening the Government Through Leadership in Environmental Management*.

Mr. Greczmiel described a NEPA/EMS cycle with four key points:

- Look at NEPA as a facet of the EMS
- Get training, resources, and management backing
- Look at the “significant aspects” of the EMS when conducting a NEPA analysis
- After impacts are identified through the NEPA analysis, track them through the EMS.

He explained that monitoring and oversight leads to the idea of adaptive management. If mitigation measures are not working, the EMS would catch those impacts early, he said, enabling the agency to respond more quickly.

Examining Excellence in an Award-winning EIS

*Tell a story, engage the reader,
make it visual, make it brief.*

This mantra is the key to writing NEPA documents that are more useful to decisionmakers and the public, according to Stephanie Miller, Senior Environmental Planner,

(continued on next page)

Reader-Friendly Tool Kit

The Washington State Department of Transportation has compiled recommendations for preparing environmental documents, based in part on experience preparing the Alaskan Way Viaduct EIS. The *Reader-Friendly Document Tool Kit* is available on the Web at www.wsdot.wa.gov/environment/compliance/ReaderFriendly.htm. The tool kit provides recommendations and examples for document organization, text, tables, graphics, and technical appendices. Chapter 4, Tools for Developing the EIS/EA, may be of particular interest to NEPA practitioners.

Breakout Sessions (continued from previous page)

Parametrix. She presented techniques used to prepare the *Alaskan Way Viaduct and Seawall Replacement Project EIS*, which examines alternatives for replacing a central highway in downtown Seattle. This multibillion dollar project would have major impacts on safety, traffic, and the urban environment.

Earlier this year, this draft EIS – issued by the Federal Highway Administration, Washington State Department of Transportation, and City of Seattle – earned the National Association of Environmental Professionals (NAEP) President’s Award for NEPA Excellence. (See *LLQR*, June 2005, page 18; also see page 2 of this issue for the 2006 call for NAEP award nominations.)



Steve Miller, Office of the General Counsel, examines the award-winning EIS as Stephanie Miller, Parametrix, describes how the document’s large format and visual design contribute to its readability.

The EIS uses a question-and-answer format to help “tell a story” and “engage the reader,” Ms. Miller said. This provides context and explains the relevance of each section of the EIS. “Making it visual” involves using well-designed graphics in place of or in addition to tables wherever possible; “making it brief” is achieved by placing technical analysis in appendices, she said.

Keeping the main body of the EIS focused on a concise comparison of impacts of the alternatives, Ms. Miller observed, saved time and effort, minimized last-minute changes, improved consistency, enhanced credibility, and elicited more informed public comment. (The Draft EIS and related information are available on the project Web site at www.wsdot.wa.gov/projects/viaduct.)

Robert Cunningham, Assistant Director, National Forest System, Land and Realty, U.S. Forest Service, Department of Agriculture, said that budgets and schedules must be flexible so that information gained through an environmental review can lead to meaningful action. “A clear and easy-to-read environmental document improves our understanding, increasing the likelihood we can find workable solutions to complex problems,” he added.

Getting More from the DOE-Wide NEPA Contracts

Contractor representatives exchanged views on how DOE could be more effective in managing the six task-order contracts (indefinite delivery/indefinite quantity) that DOE has in place for NEPA document preparation and related environmental tasks. The session was moderated by Donald Garcia, Acting Manager, Acquisition Department, NNSA Service Center, which administers the contracts on behalf of DOE. He gave an overview of contract features, emphasizing the speed with which task orders can be issued and the independence of program and site contracting officers in so doing.

The contract managers discussed improving the statement of work that DOE provides in requests for task orders. Charlotte Johnson, Science Applications International Corporation, and Lucy Swartz, Battelle Memorial Institute, provided handouts on the ideal statement of work to focus the discussion with Jeff Lawrence, AGEISS Environmental, Inc.; Joseph Rivers, Jason Associates Corporation; Fred Carey, Potomac-Hudson Engineering; Jay Rose, Tetra Tech, Inc.; and session participants. (Mr. Rose provided a sample Quality Assurance Program Plan for an EIS, and the other managers confirmed that their firms use quality assurance plans.)

The contract managers emphasized the need for upfront planning of the scope of an EIS with senior management as well as NEPA Document Managers to try to minimize “scope creep.” They agreed that contractors guard against this by increasing cost estimates when features of the EIS scope are vague.

Along these lines, the contract managers stressed the importance of putting as much information as possible into a statement of work. They pointed out that when information on alternatives and locations, or assumptions to use, are not provided, it is likely that different contractors will provide and base their proposals on different assumptions. They urged DOE to specify the maturity of data that are available for analysis in the EIS and the contractor’s role in supporting public meetings, and they emphasized that DOE should estimate the number and schedule of internal reviews as realistically as possible.

Some expressed concern that NEPA Document Managers (i.e., those evaluating the contractor proposals) often do not have experience in estimating costs, although this is often an evaluation criterion in awarding a task order. All agreed that DOE should consider providing contractors a

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Breakout Sessions (continued from previous page)

draft statement of work for comment, before requesting proposals, to identify features that contractors find uncertain and to help provide a consistent basis for work proposals.

Getting Senior Managers Involved in the NEPA Process

Three DOE managers spotlighted the importance of getting senior managers involved in the NEPA process. Gary Lanthrum, Director, Office of National Transportation, Office of Civilian Radioactive Waste Management; Howard Gnann, Senior Technical Advisor to the Manager, Office of River Protection; and Alice Williams, Director, Office of Environmental Projects and Operations, and Deputy Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration (NNSA), offered valuable insights on how to make it happen.

Mr. Lanthrum explained that senior DOE managers learned through the NEPA process that a new rail line needed to support the proposed Yucca Mountain repository may disrupt cattle grazing. Such stakeholder issues exemplify the importance of NEPA to senior managers because, he noted, a project manager would not necessarily think of cattle grazing as an issue to be addressed.

DOE senior managers are required to complete NEPA training under DOE Order 361.1A, Chapter IV, *Acquisition Career Development Program*, “Department of Energy Project Management Career Development Program Module.”

Mr. Gnann explained that senior management involvement in the planning and preparation of an EIS is always necessary – and is essential at a complex site such as Hanford. “Senior managers need to take the time to understand the issues,” he said, “whether they’re rooted in technical detail or exist in the perspectives of our stakeholders, in order to make the hard choices sometimes necessary to produce a high quality NEPA foundation for our program decisions.”

Session moderator Alice Williams encouraged NEPA Compliance Officers and NEPA Document Managers to “make it their business to be the first in line to brief new senior managers.” Ms. Williams emphasized the importance of ensuring that NEPA staff at Headquarters and in the field work together throughout the NEPA process, especially in getting early concurrences on NEPA documents.

Panelists emphasized that senior management attention and engagement is a two-way street. On one hand, senior managers should learn about the NEPA process and issues important to the public, as well as provide guidance and resources to their document preparation teams. On the other hand, NEPA Compliance Officers and NEPA Document Managers should seek and maintain active senior management involvement. Simple measures, such as regularly-scheduled meetings among senior managers, document preparation teams, and cooperating agencies, can go a long way toward ensuring support optimum for a NEPA review, panelists agreed.

In addition, panelists pointed out the benefit of including, not only the analysts and writers, but also the NEPA Compliance Officer and staff from cognizant Headquarters Program Offices, the Office of NEPA Policy and Compliance, and the Office of the General Counsel as fully participating members of the NEPA document preparation team throughout the process.

The Green Book: An Essential Tool

Jim Daniel, Office of NEPA Policy and Compliance, provided an overview of the second edition of *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (December 2004), also known as the *Green Book*. He explained that the new version updates and expands the original guidance document issued in 1993. The changes reflect DOE’s experience implementing NEPA and topic-specific guidance issued by DOE and CEQ in the intervening years.

Recommendations in the *Green Book* focus on document preparation, not the NEPA process, he said, and all the recommendations require good judgment and should be applied according to the sliding scale. “Focus on what’s important,” Mr. Daniel said.

The revised *Green Book* addresses ten topics not included in the first edition. Mr. Daniel summarized the new recommendations regarding analysis of biological impacts, environmental justice, cumulative impacts, and mitigation. He also summarized new recommendations regarding integration of NEPA with environmental review requirements concerning endangered species, clean air, floodplain and wetlands protection, and historic preservation. Two other new topics address responses to comments on a draft EIS and inclusion of a glossary in an EIS, he explained.

Mr. Daniel emphasized steps to ensure the quality of information relied upon in an EA or EIS. “Provide

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Breakout Sessions (continued from previous page)

sufficient data and references to allow independent review of analytical methods and results,” he said, and “always ensure that the information and conclusions in the EA or EIS are consistent throughout the document and with referenced documents.”

The *Green Book* is available on the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide.

Lessons to Learn from NEPA Litigation

How can agencies avoid NEPA litigation, and how can they prevail when litigation is unavoidable? Bruce Diamond, Assistant General Counsel for Environment, DOE, moderated a panel of two distinguished NEPA specialists: Wells Burgess, Assistant Chief, Natural Resources Section, Environment and Natural Resources Division, Department of Justice, and Robert Dreher,* Deputy Executive Director, Georgetown Environmental Law and Policy Institute.



Wells Burgess, Bruce Diamond, and Robert Dreher (left to right) said that the lead agency should carefully address dissenting internal views and controversies among agencies.

For perspective, the panel presented some statistics: Federal agencies prepare about 50,000 EAs and 500 EISs annually. About 100 of these documents are challenged in court (about 0.2 percent of

the total), and about 20–30 of these challenges result in injunctions. The panelists explained that, although the government prevails in the majority of NEPA lawsuits, agencies consider NEPA litigation such a significant threat because of the adversarial nature of the experience and the potential for delay.

To avoid litigation, the panel advised engaging stakeholders to be involved beginning with scoping, fully disclosing impacts, and addressing stakeholders’ concerns (including acknowledging those concerns that are not specific to environmental impacts). “Reasonableness is the touchstone of the entire process,” said Mr. Dreher

* Mr. Dreher is author of *NEPA Under Siege: The Political Assault on the National Environmental Policy Act* (Georgetown Environmental Law and Policy Institute, Georgetown University Law Center, 2005), which was made available at the breakout session. For copies, e-mail gelpi@law.georgetown.edu or call 202-662-9850.

The panel advised not to use the NEPA process as a technique for justifying the agency’s predetermined preferences by narrowing the statement of purpose and need to the point where meaningful alternatives are eliminated. Also, panelists cautioned that agency failure to carry out mitigation commitments in a finding of no significant impact is a growing area of NEPA litigation. (DOE’s NEPA regulations (10 CFR 1021.331) require a mitigation action plan for certain mitigation commitments, and DOE Order 451.1B, *National Environmental Policy Act Compliance Program*, requires an annual progress report on implementation of such mitigation commitments.)

NEPA 101: Catch the Spirit

This session continued Mr. Connaughton’s emphasis on Section 101 of NEPA expressed during his keynote address. (See page 5.) Panelist Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office, explained that Section 101 is “an inspiring statement on environmental policy, but it’s been largely ignored.” Mr. Grainger suggested two things that NEPA practitioners nonetheless can do to further Section 101 goals: look at indirect and cumulative impacts, and focus more attention on mitigating unavoidable impacts.

Similarly, panelist Ellen Smith, Environmental Sciences Division, Oak Ridge National Laboratory, stated that “the real purpose of Section 101 is to mitigate and minimize adverse impacts.” She suggested four ways to champion Section 101: (1) look as hard as possible at mitigating impacts, (2) make NEPA an educational process since Section 101 “pushes us to be responsible about providing leadership in environmental quality,” (3) ensure that agencies regularly review their lists of categorical exclusions and actions normally requiring an EA or EIS, and (4) extend NEPA methods to all spheres of society.

“Section 101 is truly the heart and soul of NEPA,” said panelist Kathy Pierce, NEPA Compliance Officer, Bonneville Power Administration. She provided the audience with a comprehensive history of Section 101 and stated that more than 100 countries have adopted their own versions of NEPA – based largely on Section 101.

Programmatic and Site-wide EISs

Making effective use of programmatic and site-wide EISs has been a longstanding practice at DOE, enabling the Department to implement a wide range of missions, observed panel moderator Eric Cohen, Office of NEPA Policy and Compliance. To illustrate, Mr. Cohen circulated (continued on next page)

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a list of the 54 programmatic EISs (PEISs), including 11 site-wide EISs, that DOE has completed since 1978. He noted the Department's significant investment in these analyses, including 26 PEISs issued since 1994. These PEISs addressed some of the Department's most technically complex and controversial programs, including defense activities, waste management, and spent nuclear fuel disposal. Review of lessons learned from DOE's and other agencies' experience preparing PEISs will help DOE continue to make effective use of PEISs, he said.

To that end, Jay Rose, former DOE NEPA Compliance Officer and Document Manager for NNSA, described major defense complex PEISs, including the Stockpile Stewardship and Management PEIS (DOE/EIS-0236, 1996) and the Tritium Supply and Recycling PEIS (DOE/EIS-0161, 1995). Mr. Rose noted that these documents supported real decisions, and he described how subsequent EISs were effectively tiered from them. For example, site-wide EISs for four defense complex facilities were tiered from the Stockpile Stewardship and Management PEIS. Three EISs (the "tritium trilogy") were tiered from the Tritium PEIS, ultimately enabling the Department to decide how to meet tritium production needs, he said.

Crate Spears, Missile Defense Agency (MDA), Department of Defense, also noted that tiering from PEISs can be effective. MDA is preparing a PEIS on the Ballistic Missile Defense System, which will update the PEIS issued in 1994 by MDA's predecessor, the Ballistic Missile Defense Organization. The Draft PEIS was issued in September 2004. (See MDA's PEIS Web site at www.mda.mil/peis/html/home.html.)

Heino Beckert, Document Manager for DOE's ongoing Carbon Sequestration PEIS (DOE/EIS-0366), explained that the PEIS will focus on research and development to promote commercialization of technologies to help the nation meet carbon reduction goals. The PEIS will be generic in nature, analyzing "model projects" rather than site-specific proposals. The advantage of this approach, Mr. Beckert said, is more efficient analysis of cumulative impacts, which will support effective tiering of project-specific NEPA documents.

Stakeholder Perspectives: How Are We Doing?

NEPA would not be possible without public participation, said moderator Betty Nolan, Senior Advisor for Intergovernmental and Community Integration, DOE Office of Congressional and Intergovernmental Affairs before she introduced a panel of three DOE stakeholders who have been involved in the NEPA process

(Sarah Fields, resident, Moab, Utah; Lorraine Anderson, Member, Arvada (Colorado) City Council; and Susan Gawarecki, Executive Director, Oak Ridge Reservation, Local Oversight Committee).

Ms. Fields, who was very active throughout preparation of the EIS for the *Remediation of the Moab Uranium Mill Tailings* (DOE/EIS-0355, August 2005), explained that the key to the success of Moab's NEPA process was coming to an agreement on what action needed to be taken (i.e., moving the tailings pile). She recalled, however, a public scoping meeting at which there were no Native American interpreters or transcripts provided, and she suggested that DOE base its public participation approach on a dedication to fairness and impartiality.

The cleanup of DOE's Rocky Flats plant in Colorado involved an agreement between DOE, EPA, and the State. Ms. Anderson explained that the local community was concerned about the cleanup, especially about future land use issues and downstream water quality. DOE, EPA, and the State responded to this concern by ensuring that site cleanup goals were consistent with the community's priorities. She noted that the partnership between the government and the local community was key to building trust and accountability and indicated that this experience is relevant to DOE NEPA processes.

Ms. Gawarecki presented some challenges encountered in preparing EISs for the Oak Ridge Reservation. The most significant concern with regard to public participation, she explained, was that difficult issues were not discussed with the public because of the pressure to meet deadlines. There also were problems with the EIS analyses and the lack of realistic alternatives, she said.

Views from the EPA Review

Robert Hargrove, Director, NEPA Compliance Division, Office of Federal Activities, EPA, provided an overview of the system EPA uses to review draft and final EISs. Pursuant to Section 309 of the Clean Air Act, EPA is required to review all EISs and publish its findings in the *Federal Register*. Mr. Hargrove explained that the most important issues identified during an EPA review typically are related to water quality, air quality, groundwater, sole source aquifers, wetlands, hazardous waste, environmental justice, or cumulative impacts.

In existence for 20 years, EPA's system rates both the proposed project and the EIS itself. Therefore, he said, it is possible to have a good project but an inadequate document. Mr. Hargrove said that, overall, ratings of draft and final EISs have been getting better. He reported that

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Breakout Sessions (continued from previous page)

EPA has rated 62.8% of DOE's final EISs as "LO" (Lack of Objections) and only 2.3% as "EO" (Environmental Objections). (The EPA rating of recent DOE draft EISs is included in each issue of *LLQR* under "EAs and EISs Completed." See page 39, which also includes EPA's rating definitions.)

Mr. Hargrove explained that a final EIS may be referred to CEQ (pursuant to 40 CFR Part 1504) if the action is environmentally unacceptable because of possible violations of national environmental standards or policies; severity, geographical scope, or duration of impacts; importance as a precedent; or availability of environmentally preferable alternative(s). Possible actions that CEQ may take upon referral include concluding the matter has been resolved, sending the matter back for further coordination, publishing findings or recommendations, and submitting the matter to the President for resolution. There have been 27 referrals since 1970, Mr. Hargrove said, none of which involved a DOE EIS.

Who, What, When, Where Why, and How? Integrating NEPA with Other Environmental Requirements

The CEQ regulations direct Federal agencies to prepare EISs "concurrently with and integrated with" other environmental reviews to the fullest extent possible (40 CFR 1502.25 (a)). Moderated by James "Bo" Saulsbury, Oak Ridge National Laboratory, subject matter experts addressed the best ways to coordinate NEPA reviews. A common element in their discussions was that early and continual discussions among agencies is key to good coordination, and it is particularly important for agencies to agree early on the alternatives to be analyzed.

Tom McCulloch, Advisory Council on Historic Preservation, emphasized that it is important to notify in advance the Advisory Council, the State Historic Preservation Officer, and the Tribal Historic Preservation Officer, as appropriate, when an agency intends to comply with Section 106 of the National Historic Preservation Act through NEPA. Once adverse impacts to historic properties are identified, consultation is needed to determine how to resolve them. Resolution can range from full preservation to total loss of historic properties, he said.

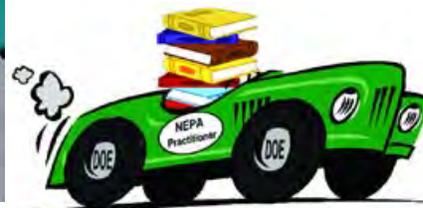
Jim Serfis, Fish and Wildlife Service (FWS), and Craig Johnson, National Marine Fisheries Service (NMFS), addressed implementation of Section 7 of the Endangered Species Act. Both FWS and NMFS provide early technical assistance in identifying potentially affected species, and Mr. Serfis advised that an EA or EIS should always address endangered species, if only to state that none are potentially affected. FWS prefers formal consultation on a well-defined project, e.g., the preferred alternative between the draft and final EIS, he said. While early involvement is emphasized by both agencies, Mr. Johnson described how NMFS is directing more time and energy earlier in the NEPA process through informal consultation, as a proposed action and the suite of alternatives to be analyzed are developed. The aim, he explained, is for the NMFS "reasonable and prudent alternative" to be encompassed in the NEPA review.

Pamela Stephenson, Federal Highway Administration, described that agency's "NEPA-404 Merger Process" for the NEPA process, the Army Corps of Engineers' permitting process under Section 404 of the Clean Water Act, and a state's permit application to the Corps. The aim, she explained, was for the Army Corps of Engineers' "Least Environmentally Damaging Practicable Alternative" to be considered by all involved agencies at the earliest possible time. 



Did you get your "Guidance to Go" at NEPA 35?

Caroline Polanish, new NEPA Compliance Officer, Brookhaven Site Office, picked up copies of NEPA guidance from the "Guidance to Go" exhibit. It's never too late to get your NEPA guidance. Drive by the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide or e-mail your request to askNEPA@eh.doe.gov.



The Participants Made NEPA 35 a Success

“I came to meet other people who have been doing this longer. I am the first NCO at my site,” said one of the more than 40 DOE NEPA Compliance Officers participating in NEPA 35. For many participants, meeting with other NEPA practitioners will be among the most memorable aspects of the conference. And for the speakers, the “commitment and hard work” of the participants were apparent and appreciated.

More than 260 people from over 50 government agencies and other organizations participated in NEPA 35. This diversity of people, each with an interest in improving NEPA implementation, made the conference a success.

Federal Government

- U.S. Congress
- Advisory Council on Historic Preservation
- Council on Environmental Quality
- Department of Agriculture (Forest Service)
- Department of Commerce (National Oceanic and Atmospheric Administration, National Marine Fisheries Service)
- Department of Defense (Missile Defense Agency, U.S. Navy, U.S. Army Corps of Engineers)
- Department of Energy
- Department of Health and Human Services (Food and Drug Administration)
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of Justice
- Department of the Interior (Bureau of Land Management, Fish and Wildlife Service)
- Department of Transportation (Federal Highway Administration)
- Department of Veterans Affairs
- Environmental Protection Agency
- General Services Administration
- National Aeronautics and Space Administration
- National Environmental Conflict Resolution Advisory Committee
- National Indian Gaming Commission
- National Science Foundation
- Nuclear Regulatory Commission
- Small Business Administration
- U.S. Agency for International Development
- U.S. Postal Service

Other Agencies, Organizations, and Others

- City of Arvada (Colorado)
- DOE National Laboratories
- Georgetown Environmental Law and Policy Institute
- Hanford Advisory Board
- International Institute for Indigenous Resource Management
- Moab, Utah, resident
- National Association of Environmental Professionals
- National Tribal Environmental Council
- Natural Resources Defense Council
- Oak Ridge Reservation Local Oversight Committee
- State of Idaho
- State of Washington

Private Companies

- AGEISS Environmental, Inc.
- Alion Science and Technology
- Analytical Services, Inc.
- Battelle Memorial Institute
- BWXT Pantex, LLC
- Chickasaw Nation Industries, Inc.
- Dyn McDermott Petroleum Operations Co.
- EG&G
- Honeywell International, Inc.
- Fluor Hanford, Inc.
- ICF Consulting
- Jason Associates Corporation
- Navarro Research and Engineering, Inc.
- Parametrix, Inc.
- Potomac-Hudson Engineering, Inc.
- Project Performance Corporation
- Science Applications International Corporation
- Sentech, Inc.
- S.M. Stoller Corporation
- Technology and Management Services, Inc.
- Tetra Tech, Inc.

I've been doing NEPA for 25 years. I still have my "NEPA Ninja" pin from a previous conference. I had to be here. I couldn't miss it. I couldn't NOT come!

– DOE NEPA Compliance Officer

NEPA 35: Spotlight on Environmental Excellence



This conference makes me realize that, day-to-day, I take my responsibility for granted. Listening to the speakers, I see that people are really counting on me. There is a lot of responsibility in this position.

– DOE NEPA Compliance Officer

Excerpts from Congressional Testimony *(continued from page 3)*

planning functions that NEPA requires. . . . Attempts to defend such failures have often consumed more time and funds than it would have taken to produce at the outset the NEPA analysis and documents that the courts eventually required.”

“Any objective Congressional review of NEPA should include an evaluation of the professional staff levels, funding, opportunities for training and advancement, and work loads in ‘front line’ NEPA offices, and should make appropriate recommendations for improving their capabilities. . . . Agency officials responsible for NEPA compliance need support and encouragement to do objective, professional work from the outset, rather than more pressure to rush through the process in order to meet rigid deadlines or to support predetermined decisions.”

Gary F. Kelman, C.E.P., President
National Association of Environmental Professionals

“A significant issue with the current NEPA process is that there is no clear end point. . . . There need to be specific, prescribed time frames for completion of the various aspects of the NEPA process, including agency review and decision making.”

“NEPA needs to be revised to provide a clear definition of the types and number of alternatives that must be considered . . . [and] to prevent project opponents from extending the process by suggesting alternatives as a stalling tactic.”

Charles J. Spainhour
Corporate Manager of Environmental Services
Vulcan Materials Company

“Adequate review of projects at the front end saves time and money in the long run, since it lessens the need for difficult remedies to fix big mistakes. Because NEPA ensures balance, common-sense and openness in federal decision-making, it is an effective tool to keep ‘Big Government’ in check. . . . On the heels of Hurricane Katrina, when there is widespread distrust as to whether government can protect the public, it is vital that we have in place mechanisms to hold government accountable. There are right ways and wrong ways to design a highway or even build a levee. By ensuring that there is good science and local input, the government is much more likely to get it right.”

“ . . . [U]nder the guise of speeding up projects, some want to waive environmental review requirements and shut people out of the decision-making process. As Americans committed to a democratic process, we can’t let that happen.”

Glen Besa
Appalachian Regional Director, Sierra Club

“NEPA provides a safety net, a guarantee that any significant federal action, or federal action taken on behalf of private industry, will require analysis, public notice, and comment. To ‘streamline’ NEPA is to threaten the guarantee that our region’s citizens, even if excluded from legislative decisions affecting our natural resources . . . will always be included in the final decision on permitting the use of those natural resources.”

“I am left to conclude that if we had done all that NEPA required, we would have made different decisions along the way . . . that would have lessened the bills we are paying today.”

William A. Stiles, Jr.
Vice President, Wetlands Watch

NEPA Litigation: The Causes, Effects and Solutions

“I believe that the problem with NEPA lies in four areas: The first of which is litigation abuse. . . . The second problem with NEPA results from excessive demands for information – much in the form of ‘modeling’ in [EIS] proceedings. . . . The problem here is that when you are seeking a permit and agencies must sign off on that permit, the applicant is not in a good position to object to excessive demands of those agencies. . . . The third problem is simple delay. Agencies often do not adhere to the deadlines that they set for themselves. When the government wants a delay, it simply ‘stops the clock’ Finally, there is a recurring problem of recalcitrance on the part of a few Federal employees who happen to oppose a project and use their power inappropriately to deny the permit. . . . [R]einstating the [White House] Task Force [on Energy Projects], an overseer, or an ombudsman could prove helpful.”

Former U.S. Senator J. Bennett Johnston

“The law should be reconsidered to provide protection against the misuse of procedural provisions. At the very least, the required cost/benefit analysis should require a broader and more comprehensive weighing of costs and benefits. . . . Somewhere, somehow, the law must insure a full assessment of damages and potential consequences to include such potential benefits as the protection of the lives and property of the people”

Robert E. Winn
Partner, Sessions, Fishman & Nathan, LLP

“I do not believe that NEPA was ever intended to halt natural resource use . . . or to deprive families and rural economies of livelihoods. . . . [T]oday’s interpretation by the courts and regulatory regime have made NEPA one

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

of two primary federal environmental laws that are the vehicles for environmental elitists to stop use of federal lands, causing great harm and destruction along the way. A whole cottage industry of so-called environmental groups has sprung up using the courts for the admitted purpose of eliminating land use.”

“Even more disturbing is the fact that while land and wildlife management agencies and land users are devoting resources, manpower and funding to NEPA compliance and litigation, fewer and fewer resources are available to enhance the land. . . . [T]here must be revision of NEPA to relieve the burden imposed by litigation or the threat of litigation.”

Caren Cowan, Executive Director
New Mexico Cattle Growers' Association

“ . . . [A] more sensible balance must be struck between environmental paperwork and actual conservation as this dynamic relates to grazing. Given the scarce financial resources land managing agencies have to carry out their important work, it only makes sense for funding to be focused as much as possible on producing tangible results by managing the resource on the ground.”

“Part of the agencies' challenge in completing environmental documentation can be addressed by more closely tailoring the paperwork requirements to the actual environmental profile presented by grazing or an activity ancillary to grazing. For example, it seems irrational to produce full-scale NEPA documentation for longstanding continuing activities that have long-ago made their imprint on the landscape”

Brenda Richards
Federal Lands Committee Chairman
Idaho Cattle Association
Idaho Director, Public Lands Council

“Litigation is not cheap, and private entities and public interest groups generally employ it only as a last resort. Although the pace of NEPA litigation has increased somewhat during the last four years, there is no evidence that any of this increased litigation is ‘frivolous’”

“The lawsuit [*Save Our Wetlands v. U.S. Army Corps of Engineers*] brought by local fishermen and a local environmental group was entirely justified, because the EIS filed by the Corps was clearly inadequate. The court found that ‘the picture of the project painted in the FEIS was not in fact a tested conclusion but a hope by the persons planning the project that it could in fact be constructed so as to meet the environmental objectives set out in the FEIS.’”

“Although some recent commentators have stated unequivocally that the court's injunction prevented the barrier project from going forward, the injunction should

have delayed the barrier option only for as long as it took the Corps to remedy the problems that the court had identified in the EIS. The court would have lifted the injunction as soon as the Corps simply updated the EIS with adequate hydrologic modeling, conducted a more thorough biological assessment, and considered a few reasonable alternatives.”

Thomas O. McGarity
President, Center for Progressive Reform

“The Task Force is to be commended for seeking public input However, . . . the 5 hearings it has held to date do not begin to provide a comprehensive picture of the public's experience with NEPA and its implementation, nor can they offer an accurate reflection of the many positive experiences and broad support for NEPA among private citizens and public officials. Unfortunately, several of the hearing venues were changed at the last minute, moving from centrally located population centers to more isolated communities, in some cases changing from weekend to weekday schedules. In some cases proponents of NEPA were denied an opportunity to offer testimony.”

“More often than not NEPA litigation does not prevent projects from happening; it only provides insurance that all alternatives are considered and the best information is available and utilized. It allows the public an opportunity to voice concerns and be part of the democratic process.”

“In 1977, . . . Save Our Wetlands filed suit and secured an injunction . . . [which] concluded that the region ‘would be irreparably harmed’ if the barrier project was allowed to continue and chastised the . . . Corps . . . for a shoddy job. The Judge required the Corps to properly study its proposed massive new levee construction project before moving forward. The Corps eventually decided on its own to pursue an alternative plan.”

Debbie Sease
Legislative Director, Sierra Club

“What does the New Orleans experience tell us about NEPA? The Act treats a project such as the Lake Pontchartrain project, critical to the survival of hundreds of thousands of people, in the same way as one . . . with no immediate impact on life or death issues. In New Orleans, it gave environmental zealots who, hopefully, may not have understood the consequences of their actions, a weapon with which to endanger the survival of the people of a major American city.”

“I believe NEPA must be fine tuned. But we must be careful not to throw out the baby with the bathwater. . . . In the case of projects involving immediate life or death considerations like Lake Pontchartrain and Vicinity, the balancing and disclosure principles of NEPA should still apply but the power of the courts to enjoin such projects

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

should be abrogated. . . . [A] certification program could be enacted into law wherein an agency head could certify such a project as critical to the preservation of human life and thus exempt . . . from the threat of injunction”

Joseph A. Towers*
Ret. U.S. Army Corps of Engineers

NEPA: Lessons Learned and Next Steps

“NEPA is a landmark statute that is as relevant today as when Congress passed it in 1969. At its core, Section 101 of NEPA lays out a clear bipartisan vision of sustainable development [W]e continue to encourage agencies to be proactive in engaging the public in NEPA activities at all levels. Early involvement by a better informed public narrows potential conflicts – we know this from 35 years of practice and experience.”

“One fact stands clear, the challenges, hurdles, or barriers to effective NEPA implementation typically are not with the Act. In fact, it is how NEPA regulations are implemented that most needs improving and modernization. . . . [W]e must also ensure that interested parties participate in the ongoing dialogue and are closely associated with our decisions. In doing so, we ensure that interested parties have a sense of ownership of the outcome, even if the outcome is not exactly as they want.”

“It is a testament to the vitality of NEPA that the statute has not been changed in 35 years in any substantial measure. . . . We take great pride at the federal level that 20 states have adopted a State-level environmental planning process that is similar to NEPA. Furthermore, many countries around the world have taken NEPA as a model for their own environmental review practices. But we can and we must do better. We must renew our efforts to provide decision makers and the public with relevant and timely environmental analyses that add value to the way federal agencies go about their business. . . . Senator John Chafee, one of the greatest environmental statesmen of the Senate, described NEPA as a ‘tall order, but an important one.’ I agree and look forward to the Committee’s report and recommendations.”

James L. Connaughton
Chairman, Council on Environmental Quality

“. . . I make specific *proposals to reduce delay*, which include . . . expediting judicial review, . . . statutes of limitations, expediting preparation of the administrative record, priority for NEPA suits, and the joinder of NEPA and comparable state claims.”

* Witness was not present but his testimony was submitted for the record.

“About half of the states have some sort of statute or order based on NEPA, and a smaller number of these states have analogous laws whose reach is more pervasive than NEPA”

“There are . . . measures . . . which should *not* be adopted to deal with issues of delay. These proposals cut not fat but muscle. They imperil NEPA and all the good that it does. Congress should not exempt actions from NEPA. A proposed action either does or does not significantly impact the environment.”

“Congress should not eliminate or reduce the obligation to consider alternatives. The alternatives analysis is what NEPA is about – looking for better ways of doing things”

“Congress should not squeeze the public out of the NEPA process. The public plays a major role in the NEPA process [C]itizens . . . can have real-world observations to make which can beneficially influence the decision.”

“Congress should not curtail judicial review. . . . [T]he courts . . . review Federal agency actions under NEPA under the highly deferential ‘arbitrary or capricious standard,’ which gives the agency the benefit of the doubt. This opportunity for judicial review should not be curtailed. Congress . . . provided no alternate enforcement mechanism for NEPA. Only judicial review under the Administrative Procedure Act (the same statute under which most Federal agency action is reviewable) insures the enforcement of NEPA.”

Nicholas C. Yost
Former General Counsel
Council on Environmental Quality

“The Task Force received a letter this fall from every living former chair of [CEQ], respected environmental leaders who served Presidents Nixon, Ford, Carter, George H.W. Bush, and Clinton. That letter identified three basic principles underlying NEPA: (1) ‘consideration of the impacts of proposed government actions on the quality of the human environment is essential to responsible government decision-making,’ (2) ‘analysis of alternatives to an agency’s proposed course of action is the heart of meaningful environmental review,’ and (3) ‘the public plays an indispensable role in the NEPA process.’”

“Unfortunately, the Task Force to date has focused on a narrow, and almost uniformly negative, set of concerns: complaints raised by representatives of businesses that use federal public lands and natural resources for economic benefit that compliance with the Act’s procedures imposes burdens and delays on their activities. The Task Force has shown little apparent interest in how NEPA protects *environmental values*, in fulfillment of Congress’s original

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

goals for the Act. Perhaps for that reason, the Task Force appears not to have been particularly interested in the views of conservationists and recreationists who, not surprisingly, see the value of NEPA and other environmental laws in a very different light from business users of federal lands and resources. Moreover, the Task Force virtually ignored the people with the most hands-on experience in implementing NEPA: federal officials responsible for complying with the Act.”

“Although much criticism of NEPA is unwarranted, there are important improvements that can and should be made to the NEPA process to better protect environmental values, in fulfillment of Congress’s purposes. None of these improvements would require legislation

First, agency promises during the course of the NEPA review process to mitigate the adverse effects of federal actions should be recognized by the agencies as binding commitments A second useful reform would be to enhance monitoring of the environmental effects of projects after they are completed. . . . A meaningful effort to improve NEPA’s implementation thus must include commitments of additional resources so that agencies can carry out their responsibilities . . . effectively and efficiently.”

Robert G. Dreher, Deputy Executive Director
Georgetown Environmental Law and Policy Institute
Georgetown University Law Center

“NEPA was never meant to be a statute that enabled delay, but rather a vehicle to promote balance However, in its current state, NEPA generates far more documents than it does actual decisions The area of the NEPA process which would yield the greatest reduction in project delay is frivolous and malicious litigation which subverts the NEPA process [W]hen abused, NEPA litigation allows a small minority of individuals to hijack the NEPA process in an attempt to perpetually delay projects simply for the sake of delaying them.”

[Recommendations include:]

- A set time limit on project related NEPA lawsuits
- Consideration of the environmental benefits of proposed projects as opposed to just their impacts. Also, the environmental consequences of not undertaking a project should also be considered.
- NEPA litigation should be limited to only those issues that have been fully raised and discussed during the public comment period for a project
- Establishment of a dispute resolution process
- In compliance with President Bush’s executive order on environmental streamlining, the NEPA review process must be shortened and coordinated among the various federal agencies that take part in it.

- Where possible, duplicative review and analysis should be eliminated”

Nick Goldstein, Staff Attorney
American Road and Transportation Builders Association

“Public outcry should be eliminated as a determinant for a decision on whether an EA or an EIS is the appropriate vehicle for NEPA compliance, and judicial review should not be the primary mechanism for ensuring NEPA compliance. To minimize legal maneuvering, CEQ, as an independent agency with NEPA expertise, should be empowered to resolve most NEPA disputes administratively prior to court action, and a time limit for filing litigation should be established.”

“. . . NEPA should not force the equal inclusion of alternatives throughout the analysis process regardless of feasibility.”

“We should not be distracted by the self-serving arguments of narrow special interests. The fundamental issue is not the battle between environmental protection and economic development; it is the inherent conflict between long-term and short-term decision-making. A longer, broader perspective realizes that what is good for the environment is also good for the economy – and by definition, good for people.”

Alan Harwood, AICP
Principal and Vice President, EDAW, Inc.

“My suggested legislative amendments fall into the following four over-arching categories:”

- Clarify and revise the scope of agencies’ NEPA obligations (clarify the alternatives an agency must analyze, provide for short form EISs, impose timelines and cost caps on NEPA documentation, make use of adaptive management techniques, expand the use of categorical exclusions, clarify that agencies need not examine impacts that are not reasonably foreseeable).
- Impose requirements on NEPA plaintiffs to discourage frivolous lawsuits (require exhaustion of administrative remedies, strengthen bond requirements for plaintiffs seeking injunctions, impose a 180-day statute of limitations on NEPA claims, provide for responsibility for attorneys’ fees).
- Permit increased participation in litigation by project proponents and other interested parties
- Provide courts with more guidance (establish a standard of review within the NEPA statute, clarify remedies when a NEPA violation is found).

John C. Martin
Patton Boggs LLP



Got a General Question About the DOE NEPA Process?

askNEPA@eh.doe.gov

The Office of NEPA Policy and Compliance now maintains an e-mail address to receive general inquiries regarding DOE NEPA guidance or procedures from members of the DOE NEPA Community and the public. (Inquiries regarding a specific EA or EIS, however, should continue to be directed to the NEPA Document Manager identified for the respective NEPA document.) Messages received will be acknowledged promptly and forwarded to NEPA Office staff for appropriate action.

Do you want copies of the new public participation brochure *DOE, NEPA, and You*; the November 2005 *DOE NEPA Compliance Guide*; or other DOE NEPA guidance material? ***askNEPA@eh.doe.gov***

Do you want follow-up materials from the *NEPA 35* conference? ***askNEPA@eh.doe.gov***

Do you have a DOE NEPA question and don't know which staff member to contact? ***askNEPA@eh.doe.gov***

Are you preparing a notice that identifies a contact for general information on DOE's NEPA process? Use this text:

For general information on the DOE NEPA process, write to Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0119; call 202-586-4600 or leave a message at 800-472-2756; fax to 202-586-7031; or send an e-mail to ***askNEPA@eh.doe.gov***. 

EH Launches E-mail Document Notification Service

The Office of Environment, Safety and Health (EH) now provides e-mail notification as certain documents are published on an EH Web site, such as the DOE NEPA Web site. The EH Document Notification Service announces *Lessons Learned Quarterly Report*, Schedules of Key Environmental Impact Statements, Notices of Intent, EISs, Records of Decisions, and EH publications on topics other than NEPA.

Interested persons may subscribe through the EH Web site (*www.eh.doe.gov*) under EH Document Notification System. Subscribers must provide their name, organization, telephone number, and e-mail address and select publications of interest.

For comments or questions regarding the Service, contact Marian Carter at *marian.carter@eh.doe.gov* with a copy to Teresa Peacher at *teresa.peacher@eh.doe.gov*. 

DOE-wide NEPA Contracts Update

Agustin Archuleta: DOE-wide NEPA Contracts Administrator

Agustin Archuleta, the new DOE-wide NEPA contract administrator, has assumed the responsibilities formerly held by Mary Henry. Mr. Archuleta is a Level III certified acquisition professional with the National Nuclear Security Administration. He transferred from the Air Force Research Laboratory in January 2005 and has over 20 years of professional experience in the Federal government and private industry.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. Mr. Archuleta can be contacted at *aarchuleta2@doeal.gov* or 505-845-4686. NEPA Document Managers should provide him with copies of all new task awards and modifications as they are issued and contractor performance evaluations after task completion. 

Description	DOE Contact	Date Awarded	Contract Team
Supplement Analysis: Sandia National Laboratory Site-wide EIS	Susan Lacy <i>slacy@doeal.gov</i> 505-845-5542	9/30/2005	Tetra Tech, Inc.
Biosafety Level 3 Laboratory, Los Alamos National Laboratory	Lisa Cummings <i>lcummings@doeal.gov</i> 505-667-4667	11/28/2005	Tetra Tech, Inc.

On the January To-Do List: Prepare Annual NEPA Planning Summary



It's that time of year again – time for DOE top managers to prepare their annual NEPA planning summaries. A NEPA planning summary is a tool that promotes attainment of project schedule and budget goals, helps avoid duplicative analyses, and identifies sources of information for cumulative impact analyses. It helps get senior managers involved early in the NEPA process through their allocation of financial and staff resources, and

enhances public involvement by providing consolidated information on a Program or Field Office's NEPA activities and plans.

Access to the schedules for all EISs helps the Office of NEPA Policy and Compliance in its planning to make staff resources available for EIS review and approval. Knowledge of all EAs and EISs being prepared or planned throughout the Department also helps the NEPA Office identify trends and crosscutting issues.

The NEPA Office will continue to post Program and Field Office annual NEPA planning summaries on the DOE NEPA Web site as they are received to assist in making them available to the public. Preparation guidance and electronic report forms are available on the DOE NEPA Web site at www.eh.doe.gov/nepa/summaries.html.

For further information, contact Lee Jessee, NEPA Office, at lee.jessee@eh.doe.gov or 202-576-7600.

DOE Order Requirements

Among the responsibilities listed in DOE O 451.1B, *National Environmental Policy Act Compliance Program*, each Secretarial Officer and Head of a Field Organization shall, for matters under the office's purview, submit an annual NEPA planning summary to the Assistant Secretary for Environment, Safety and Health by January 31 of each year and make it available to the public (paragraph 5.a.(7)).

An annual NEPA planning summary (paragraph 4.d) describes briefly: (1) the status of ongoing NEPA compliance activities, (2) any EAs expected to be prepared in the next 12 months, (3) any EISs expected to be prepared in the next 24 months, and (4) the planned cost and schedule for completion of each NEPA review identified. Every three years (next in 2007), the summary for each Field Organization will include an evaluation of whether a site-wide EIS would facilitate future NEPA compliance efforts.

Transitions

New NEPA Compliance Officer

National Nuclear Security Administration: Alice C. Williams

Alice Williams, recently designated as the NEPA Compliance Officer for the National Nuclear Security Administration (NNSA), has many years of NEPA-related experience as a senior DOE manager. She worked in the field for EG&G Idaho (contractor) for 11 years before joining DOE's Idaho Operations Office where she served for 13 years. Her work at the Operations Office included many aspects of the NEPA process (e.g., the draft New Production Reactor EIS, DOE/EIS-0144, 1991, and the Spent Nuclear Fuel Programmatic EIS, DOE/EIS-0203, 1995), and she held the position of Deputy Assistant Manager for environmental activities. Ms. Williams then served as Site Manager for the West Valley Demonstration Project in New York for three years, where she oversaw the initiation of the Site Decommissioning EIS (DOE/EIS-0226).

Her field experience taught her the importance of early involvement of staff from Headquarters' Program Offices and the Office of Environment, Safety and Health, as well as the importance of effective stakeholder involvement and the necessity for a robust Administrative Record.

She joined the Office of Environmental Management in the fall of 2003 as Associate Deputy Assistant Secretary for Waste Disposition and Logistics. In 2004, she transferred to NNSA and currently serves in a dual capacity as Director for Environmental Projects and Operations and as Deputy Associate Administrator for Infrastructure and Environment.

Ms. Williams received her bachelor's degree in Chemistry from Montana State University and a master's degree in Chemical Engineering from the University of Idaho.

CEQ Addresses Katrina Emergency Actions and NEPA

The Council on Environmental Quality (CEQ) reacted quickly to assist Federal agencies dealing with the need to take emergency actions in the aftermath of Hurricane Katrina. In a September 8, 2005, memorandum, *Emergency Actions and NEPA*, CEQ provided information on how to comply with NEPA during emergencies. An attachment to the CEQ memorandum reviews the CEQ NEPA regulatory provisions (40 CFR 1506.11) and guides NEPA practitioners on how to determine whether NEPA is triggered. The advice emphasizes that agencies should not delay immediate actions necessary to secure lives and the safety of citizens, but should consult with CEQ about alternative arrangements for NEPA compliance as soon as feasible. A second attachment provides advice on preparing focused, concise, and timely EAs, including examples of a brief statement of purpose and need, description of existing conditions, and other elements of an EA.

CEQ's memorandum also announces the establishment of two groups that will distribute information at a later time: a White House interagency group on policies to guide long-term rebuilding efforts and a National Response Plan environmental coordination group on long-term recovery.

In addition, on September 14, 2005, CEQ forwarded guidance from the U.S. Fish and Wildlife Service Southeast Regional Director (Atlanta) on ensuring compliance with the Endangered Species Act and the National Historic Preservation Act in agency actions after the hurricane.

The DOE NEPA Compliance Guide (www.eh.doe.gov/nepa under NEPA Compliance Guide) contains the September 8 memorandum, and CEQ's NEPAnet (<http://ceq.eh.doe.gov/nepa/nepanet.htm>) provides both these communications on emergency actions and NEPA.



After Katrina, DOE Extends Scoping for Site Selection for Strategic Petroleum Reserve Expansion EIS

Due to the extraordinary circumstances created by Hurricane Katrina in the region of the candidate sites for the expansion of the Strategic Petroleum Reserve, DOE revised the schedule for the public scoping period announced in the notice of intent to prepare an EIS for site selection (70 FR 52088; September 1, 2005). DOE extended the scoping period by two weeks and announced it would hold one meeting as scheduled, reschedule one to a later date, schedule one meeting in a new location, and cancel two previously announced meetings (70 FR 56649; September 28, 2005).

The three scoping meetings were held and scoping closed on October 28, 2005. During this period, the Governor of Mississippi asked DOE to consider an additional site for new storage capacity. In light of this request, DOE scheduled another scoping meeting near the proposed new site for December 7, 2005, and reopened the public scoping period to December 19, 2005 (70 FR 70600; November 22, 2005).

DOE's NEPA regulations (10 CFR 1021.311(d))* address such schedule changes. DOE provided the required 15 days notice before the dates of the rescheduled meeting and the newly scheduled meetings.

Under Section 303 of the Energy Policy Act of 2005, DOE has one year to complete a proceeding to select sites for expansion and new storage to accommodate the Strategic Petroleum Reserve's authorized volume of one billion barrels, up from the current storage capacity of 727 million barrels. (See *LLQR*, September 2005, page 3.) Accordingly, DOE is planning to issue the draft EIS in February, the final EIS in July, and a record of decision in August 2006.

For additional information, see the project Web site at www.fe.doe.gov/programs/reserves/SPR_Expansion_EIS/expansion_eis.html or contact Donald Silawsky, NEPA Document Manager, Office of Petroleum Reserves, at donald.silawsky@hq.doe.gov or 202-586-1892.



* DOE's NEPA regulations (10 CFR 1021.311(d)) state that "... DOE shall announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the *Federal Register*, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date, or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the *Federal Register* or in other ways as appropriate."

NEPA and the Flooding of New Orleans

In the search for answers to the question why New Orleans flooded after Hurricane Katrina, some observers have pointed to a NEPA lawsuit, *Save Our Wetlands v. U.S. Army Corps of Engineers*. On December 30, 1977, the U.S. District Court for the Eastern District of Louisiana found a 1974 EIS prepared by the U.S. Army Corps of Engineers to be inadequate and enjoined the Corps of Engineers from continuing construction of the hurricane protection project for New Orleans until it issued a revised EIS that satisfied the requirements of NEPA.

The court was critical of modeling used in preparation of the EIS. "As written the EIS actually precludes both public and governmental parties from the opportunity to fairly and adequately analyze the benefits and detriments of the proposed plan and any alternatives to it," the court concluded.

By 1985, the Corps of Engineers had completed a revised EIS that recommended a different alternative than that envisioned in the 1974 EIS. In recent Congressional testimony, the Government Accountability Office (GAO) said, "These changes are not believed to have had any role in the levee breaches recently experienced as the high-level design selected was expected to provide the same level of protection as the original barrier design."

Reviews are ongoing to better understand all the causal factors and identify potential changes to New Orleans' levee system.

The GAO testimony, *Army Corps of Engineers: Lake Pontchartrain and Vicinity Hurricane Protection Project* (GAO-05-1050T, September 28, 2005), discusses the history of the hurricane protection project, which was authorized in 1965. The testimony is available on the GAO Web site at www.gao.gov. 

NCO Served with FEMA in Mississippi

Elizabeth Withers, NEPA Compliance Officer for the Los Alamos Site Office, answered the call from the Federal Emergency Management Agency (FEMA) for Federal agency volunteers to assist in Hurricane Katrina Disaster Relief. In late October, Ms. Withers accepted a 30-day field assignment to work in southern Mississippi. At the Disaster Recovery Center in Beaumont, she assisted county residents in filing claims with FEMA.

After 10-hour days filled with paper, computer, and telephone tasks, she volunteered on her day off with the nearby Best Friends animal humane center. That center was accepting rescued pets from New Orleans, and Ms. Withers soon realized that owner-pet connections could be increased by matching the FEMA database of resident addresses and current telephone numbers to the Best Friends' records of locations where cats and dogs were rescued.

Although we missed Ms. Withers at the NEPA 35 conference, we applaud her work with FEMA.

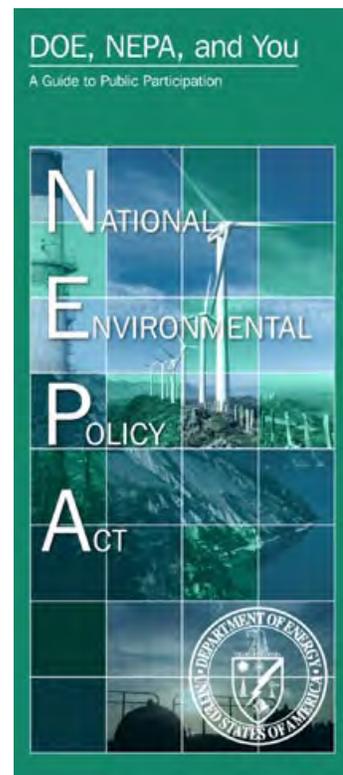


Helping the Public Help Us: *DOE, NEPA, and You: A Guide to Public Participation*

Public participation in the NEPA process works best when the individuals involved understand the purpose of NEPA and are familiar with the procedural steps of the NEPA process, including their opportunities to become involved through activities such as scoping and document review. Seeking to encourage effective public participation, the Office of NEPA Policy and Compliance, in consultation with the Office of Congressional and Intergovernmental Affairs and the Office of the Assistant General Counsel for Environment, developed *DOE, NEPA, and You: A Guide to Public Participation* to provide this information to the public in a concise, reader-friendly form.

This tri-fold brochure, first distributed to the DOE NEPA Community at the *NEPA 35* conference, highlights opportunities for the public to be involved in DOE's NEPA process. It depicts the EIS process graphically and describes each step in the preparation of an EIS. Helpful tips are included, such as "During the scoping process, tell DOE what EIS information you would like to receive (e.g., a summary of the EIS or the full document on CD or on paper)." The brochure's question and answer format also describes environmental assessments and categorical exclusions and directs readers to sources of additional information on DOE's NEPA program.

Designed to fit in a standard #10 envelope, the brochures can be easily distributed by mail or at public meetings or hearings. Bulk copies of the brochure are available to NEPA Compliance Officers, NEPA Document Managers, and Public Affairs officials for use in their public outreach efforts. The brochure also is available electronically on the DOE NEPA Web site at www.eh.doe.gov/nepa under Selected Guidance Tools. To obtain copies, send complete mailing information and number requested to askNEPA@eh.doe.gov. For further information, contact Denise Freeman, Office of NEPA Policy and Compliance, at denise.freeman@eh.doe.gov or 202-586-7879. 



Guidance on EIS Distribution Coming Soon

Have you written an EIS and then wondered whether to print it or issue it on compact disk? Have you been uncertain to whom to send the EIS? Do you understand when and how to "file" the EIS with the U.S. Environmental Protection Agency and what the filing accomplishes?

DOE's Office of NEPA Policy and Compliance is preparing guidance on EIS distribution to help DOE NEPA practitioners, particularly its NEPA Document Managers and NEPA Compliance Officers, in efficient and effective distribution of a draft, final, or supplemental EIS, and other NEPA documents as appropriate. The guidance will present strategies for success, focusing on key elements of initial planning, and will address the opportunities and challenges posed by the electronic age. Templates for EIS distribution-related communications, a timeline of EIS distribution activities, and excerpts from

regulations and other guidance related to EIS distribution will be included in the guidance.

The NEPA Office provided a preliminary draft of the guidance to the DOE NEPA Community for its information in October 2005 and presented key elements of the guidance in one of the training sessions at the *NEPA 35* conference (see page 14). Following minor changes to this early version in December 2005, the NEPA Office will seek comments on the draft guidance from the DOE NEPA Community, including the Offices of the General Counsel, Congressional and Intergovernmental Affairs, and Public Affairs, and plans to then issue the guidance in early 2006. Contact Carolyn Osborne, Office of NEPA Policy and Compliance, at carolyn.osborne@eh.doe.gov or 202-586-4596, with any questions on this guidance effort. 

New DOE NEPA Compliance Guide Issued on Compact Disk

If you attended the NEPA 35 conference, you already have a copy of the November 2005 DOE NEPA Compliance Guide issued by the Office of NEPA Policy and Compliance. Almost all you need to know about NEPA at DOE is at your command on this single compact disk: a compendium of laws, executive orders, regulations, policies, guidance, and other information relevant to NEPA compliance. Replacing the August 1998 edition, the new DOE NEPA Compliance Guide is intended to assist NEPA practitioners by providing a comprehensive reference collection of directives and guidance.

The DOE NEPA Compliance Guide is organized into three volumes.

- *Volume 1: General NEPA References* includes laws, environmental executive orders, Council on Environmental Quality regulations and guidance, and NEPA-related policies from other Federal agencies.
- *Volume 2: DOE NEPA Regulations and Guidance* includes the DOE's regulations, orders, and policy. DOE NEPA guidance is organized by topic: NEPA document preparation, site-wide NEPA reviews, public participation, and other aspects of the NEPA process.



- *Volume 3: Related Environmental Review Requirements* provides regulations for environmental review and consultation requirements – concerning air quality, biota, cultural resources, and land use and special land and water designations – that should, to the fullest extent possible, be conducted concurrently with and integrated with the NEPA process. This is a new volume not included in previous editions of the Guide.

The DOE NEPA Compliance Guide is linked from the main page of the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide. Also posted with the Guide is a “Companion to Compact Disk,” which contains the preface and detailed contents of the three volumes.

The DOE NEPA Compliance Guide was distributed at the NEPA 35 conference and is being mailed to members of the DOE NEPA Community. To request (additional) copies of the compact disk, send your complete mailing address to askNEPA@eh.doe.gov. For more information, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE Guidance Documents Updated

Two DOE guidance documents were updated in October 2005 for inclusion in the new DOE NEPA Compliance Guide. These two references are quite useful, although they may have a low profile within the DOE NEPA Community. The NEPA Office encourages NEPA practitioners to reacquaint themselves with *The Environmental Style* (Volume 2: 2-12) and *Mini-Guidance Articles from Lessons Learned Quarterly Reports* (Volume 2: 5-7).

The Environmental Style

Both General Counsel and NEPA Office staff seek clarity in DOE's EAs and EISs. “Our NEPA documents must be well reasoned and well written,” advises R.P. (Paul) Detwiler, Deputy General Counsel, National Nuclear Security Administration (formerly of the Office of Assistant General Counsel for Environment), in his newly revised *The Environmental Style: Writing Environmental Assessments and Impact Statements*.

In this 11-page guide, he provides suggestions for presenting the required content of an EA or EIS and addresses word usage practices that cause recurring problems in NEPA documents. For example, he advises writers to avoid “freight trains” of three or more nouns and adjectives – a hallmark of technical jargon. *The Environmental Style* serves as a good companion to the *Green Book* as a practical guide to writing readable NEPA documents.

More Mini-Guidance

On occasion, *LLQR* includes articles that contain procedural interpretations and recommendations developed by the Office of NEPA Policy and Compliance in consultation with the DOE NEPA Community, including the Office of the Assistant General Counsel for Environment. These mini-guidance articles address problems identified in the course of preparing, reviewing, and issuing NEPA documents – often in response to specific requests from DOE's diverse group of NEPA practitioners.

The Office of NEPA Policy and Compliance has updated the collection of *Mini-guidance Articles from Lessons Learned Quarterly Reports* to now include those from December 1994 to September 2005. (The previous edition was issued in November 2000.)

Nature of Comments on Draft EIS Allows Comment-Response Addendum as Final EIS

DOE received three oral comments at one of two public hearings and six comment letters as a result of a recent 45-day public comment period for the *Bangor Hydro-Electric Company Northeast Reliability Interconnect Draft EIS* (DOE/EIS-0372). Although the small number of comments received is noteworthy for an EIS, it was the nature of the comments and responses needed that was the critical factor in allowing DOE to prepare a Comment-Response Addendum for the Draft EIS, rather than rewriting it as a Final EIS.

Bangor Hydro-Electric Company has applied to DOE for an amendment to a Presidential permit for a 345-kilovolt electric transmission line from near Bangor, Maine, to cross the international border near Baileyville, Maine, where the line would connect to electric transmission facilities in New Brunswick, Canada. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service were cooperating agencies in DOE's preparation of the EIS. Comments received included corrections of species and wetlands locations, and requests for more information on mitigation actions committed to by the applicant and on the rationale for DOE's preferred alternative.

Responses Limited to Factual Corrections, Clarifications

Under the Council on Environmental Quality regulations (40 CFR 1503.4) if changes in a draft EIS in response to comments are minor and confined to making factual corrections and explaining why the comments do not warrant further agency response, agencies may write the responses on errata sheets and attach them to the draft EIS instead of rewriting it. In such cases only the comments,

the responses, and the changes and not the final statement need be distributed. However, the entire document with a new cover sheet is to be filed with EPA as the final EIS.

It is worthwhile to consider whether the nature of comments received on an EIS would allow a comment-response addendum to be prepared, as this approach to a final EIS can save time and money, by avoiding both rewriting the draft EIS and printing the rewritten EIS for distribution to the public.

However, while the potential to save time and money in final EIS preparation is tempting, undue focus on trying to follow the comment-response addendum approach for some situations can be counterproductive. For example, if indeed responses are simple corrections and clarification, but the number of responses is so voluminous that errata apply to most of the pages, the EIS would be rendered unreadable and preparation of a comment-response addendum would be inappropriate.

DOE has rarely issued a comment-response addendum, rather than rewriting the draft EIS. Two such cases were for Hanford EISs: *Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, WA* (DOE/EIS-0119, 1991) and *Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, WA* (DOE/EIS-0245, 1996). A third was for *Sale of Naval Petroleum Reserve No.1 (Elk Hills), Kern County, CA, Supplemental EIS/Program Environmental Impact Report* (DOE/EIS-0158-S2, 1997).

For information on the Bangor Hydro-Electric EIS, contact Jerry Pell, NEPA Document Manager, at jerry.pell@hq.doe.gov or 202-586-3362. 

Minerals Management Service to Complete EIS on Offshore Wind Park



Based on expanded authority provided in the Energy Policy Act of 2005, the Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, has replaced the U.S. Army Corps of Engineers as lead agency for preparing an EIS on the Cape Wind Project. The proposed 454-megawatt wind-powered electrical generating facility, located on Horseshoe Shoals in Nantucket Sound, Massachusetts, could be the first offshore wind energy project in Outer Continental Shelf (OCS) waters, and has been featured in two previous *LLQR* articles.

The Corps of Engineers began work on the EIS following receipt of an application by Cape Wind Associates, LLC, for the project in November 2001 and issued a Draft EIS in November 2004. (See *LLQR*, December 2004, page 10.) MMS was one of 17 cooperating agencies in preparing the Draft EIS. DOE also was a cooperating agency, with the Office of Energy Efficiency and Renewable Energy providing technical support. The Corps of Engineers accepted public comments on the Draft EIS through February 24, 2005.

The Corps of Engineers received more than 5,000 comments on the Draft EIS, including from the Department of the Interior. Many comments challenged the adequacy of the EIS scope and analysis and recommended issuance of a revised Draft EIS. The U.S. Environmental Protection Agency rated the document as “inadequate,” citing concerns about the range of alternatives considered and the analysis of avian and other impacts. (See *LLQR*, June 2005, page 11.)

MMS will build upon the analysis conducted by the Corps of Engineers and plans to issue its own Draft EIS in spring 2006. First, MMS expects to publish a notice in the *Federal Register* this month to solicit additional public comments. MMS will address any additional comments received and incorporate data collected by the applicant over the past year in its Draft EIS. Among the issues MMS has identified for additional analysis are newly identified alternatives to the proposed action, air emissions from construction activities, operational safety,

and long-term monitoring through decommissioning. In addition, according to MMS Environmental Division staff, MMS will apply principles of adaptive management to the Draft EIS in keeping with the agency’s cradle-to-grave management approach. For example, MMS will explore the monitoring of avian impacts to help assess any appropriate mitigation opportunities.

Congress Expands MMS Authority

Since its establishment in 1982, MMS has been responsible for managing natural gas, oil, and other mineral activities on offshore Federal lands, including the OCS. The Energy Policy Act of 2005 expands this authority to include activities that would “produce or support production, transportation, or transmission of energy from sources other than oil and gas.” (See Section 388 of the Act, available at www.gpoaccess.gov/plaws by searching for “Pub.L. 109-058”.)

This change makes MMS the lead Federal agency for permitting the Cape Wind Project, as well as other offshore wind energy projects under Federal jurisdiction, including the proposed Long Island (New York) Offshore Wind Park (www.lipower.org/cei/offshore.html). This Park would consist of 40 offshore wind turbine generators with a combined generating capacity of about 140 megawatts and be located 3.7 miles southeast of Jones Beach State Park. MMS plans to begin the scoping process for this project in January 2006.

The Energy Policy Act directs MMS to issue regulations by May 2006, as necessary to carry out its new responsibilities.

Additional information on MMS’s renewable energy projects is available on the Web at www.mms.gov/offshore/RenewableEnergy/RenewableEnergyMain.htm. For more information on the Cape Wind EIS, contact Rodney Cluck, MMS Environmental Division, at rodney.cluck@mms.gov or 703-787-1087.

Additional Information on Offshore Wind Power

- DOE Office of Energy Efficiency and Renewable Energy Web site (www.eere.energy.gov) under Wind & Hydropower Technologies Program.
- *A Framework for Offshore Wind Energy Development in the United States*, a report issued in September 2005 by the Massachusetts Technology Collaborative (a state agency), DOE, and GE, available on the Web at www.mtpc.org/offshore/final_09_20.pdf.



Litigation Updates

DOE NEPA Litigation in Brief

Border Power Plant Working Group v. Department of Energy et al. (S.D. Calif.): The plaintiffs allege that DOE and the Bureau of Land Management 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. After a conference with a magistrate to explore the possibilities for settlement failed to lead to such discussions, the court scheduled a case management conference for February 17, 2006. A hearing on the intervener utilities' pending motion to dismiss the Clean Air Act claim is scheduled for January 23, 2006. (See *LLQR*, September 2005, page 25; 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]

Center for Biological Diversity et al. v. Department of Energy et al. (N.D. Calif.): A hearing is scheduled for March 2, 2006, on the 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 and operators of certain private and local government fleets acquire alternative fueled vehicles" (69 FR 4219; January 29, 2004). (See *LLQR*, June 2005, page 23.) [Case Nos.: 02-00027 and 05-01526]

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The court granted the Government's request for an extension until December 7, 2005, to answer the plaintiff's complaint that DOE is in violation of NEPA and a stipulation settling a prior lawsuit. The plaintiffs claim DOE segmented the analysis of the proper response to the waste at the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): The plaintiffs

allege that DOE's cleanup activities at the Energy Technology Engineering Center (ETEC) are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. The lawsuit challenges the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated finding of no significant impact. The EA sets forth a path to remediate and close ETEC. (See *LLQR*, December 2004, page 16.) Parties engaged in settlement negotiations under the court's Alternative Dispute Resolution program but were unable to reach an agreement. The case will be referred back to the court. [Case No.: 04-04448]

State of Washington v. Department of Energy (E.D. Wash.): Parties are to submit a joint status report to the court by January 10, 2006. The court has granted an extension of the discovery period until January 12, 2006. (See *LLQR*, September 2005, page 24.) [Case No.: 03-5018]

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 use in the disposal of spent nuclear fuel and high-level nuclear waste at Yucca Mountain. (See *LLQR*, December 2004, page 17.) Oral argument was held October 18, 2005. The case is fully briefed, and DOE is awaiting the court's ruling. [Case No.: 04-1082]

Touret et al. v. NASA et al. (D. R.I.): The plaintiffs filed a motion on November 21, 2005, to supplement the Administrative Record. Defendants NASA and DOE have until December 12, 2005, to file a response. The plaintiffs, individuals living near Brown University, allege that the *Environmental Assessment for the Partial Funding of a Proposed Life Sciences Building at Brown University, Providence, Rhode Island* (NASA/03-GSFC-02/DOE/EA-1473, July 2003) is inadequate and that an EIS is required. DOE was a cooperating agency in preparation of the EA. [Case No.: 04-00198]

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.

- **FED104: Cumulative Impacts Assessment**

Washington, DC: January 17-19

No fee

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

- **OEJ901: Introduction to Environmental Justice**

Web-based: Various times

No fee

Environmental Protection Agency
Office of Federal Activities
202-564-2606
ali.mustafa@epa.gov
www.netionline.com

- **Reviewing NEPA Documents**

Logan, UT: December 7-9

Fee: \$885 (GSA contract: \$795)

Las Vegas, NV: March 13-15

Fee: \$885 (GSA contract: \$795)

until March 3

- **NEPA Effects Analysis and Documentation**

Las Vegas, NV: December 13-15

Fee: \$885 (GSA contract: \$795)

San Diego, CA: February 7-9

Fee: \$830 (GSA contract: \$745)

until December 7

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Las Vegas, NV: January 24-27

Fee: \$1,110 (GSA contract: \$995)

until January 14

Salt Lake City, UT: March 27-29

Fee: \$835 (GSA contract: \$745)

until December 6

- **Overview of the NEPA Process Environmental Compliance Overview**

Phoenix, AZ: February 7-9

Fee: \$835 (GSA contract: \$745)

until December 7

- **Emergency Actions and NEPA**

Houston, TX: March 7-9

Fee: \$835 (GSA contract: \$745)

until January 7

- **Reviewing NEPA Documents/ NEPA Writing Workshop**

Las Vegas, NV: March 13-17

Fee: \$1,210 (GSA contract: \$1,095)

until March 3

- **NEPA Writing Workshop**

Las Vegas, NV: March 16-17

Fee: \$660 (GSA contract: \$595)

until March 6

- **Cumulative Impact Analysis and Documentation**

Salt Lake City, UT: March 30-31

Fee: \$635 (GSA contract: \$565)

until December 9

- **Clear Writing for NEPA Specialists**

Salt Lake City, UT: April 3-5

Fee: \$835 (GSA contract: \$745)

until January 3

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

Training Opportunities

(continued from previous page)

- **Socioeconomic Impact Analysis Under NEPA**

Durham, NC: February 15-17

Fee: \$750

- **Implementation of the National Environmental Policy Act**

Durham, NC: March 13-17

Fee: \$1,100

- **Accounting for Cumulative Effects in the NEPA Process**

Durham, NC: April 5-7

Fee: \$750

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

- **National Environmental Policy Act From Nuts and Bolts to New Legislation—Everything You Need to Know**

Tampa, FL: January 20

Fee: \$395 (GSA contract: \$345)

- **NEPA: Your Definitive and Practical Guide**

Tucson, AZ: January 20

Fee: \$395 (GSA contract: \$345)

- **NEPA—National Environmental Policy Act Turning Complexities Into Strategies**

San Francisco, CA: February 13

San Diego, CA: March 17

Fee: \$495 (GSA contract: \$445)

Continuing Legal Education (CLE)

800-873-7130

www.cle.com

- **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

EAs and EISs Completed July 1 to September 30, 2005

EAs

Naval Petroleum and Oil Shale Reserves/ Office of Fossil Energy

DOE/EA-1544 (8/1/05)

*Salt Creek 3D Project, Naval Petroleum Reserve #3
(NPR-3), Wyoming*

Cost: EA was adopted from the Bureau of Land
Management; therefore, no funds were needed to
complete this EA.

Time: 3 months

Pantex Site Office/

National Nuclear Security Administration

DOE/EA-1533 (8/30/05)

*Proposed Gas Main and Distribution System
Upgrade for Pantex Plant, Amarillo, Texas*

Cost: \$100,000

Time: 7 months

Western Area Power Administration

DOE/EA-1395 (8/24/05)

*Right-of-Way Maintenance in the California
Sacramento Valley, Sacramento, California*

Cost: \$422,000

Time: 55 months

DOE/EA-1524 (7/25/05)

East Side Peaking Project, South Dakota

Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.

Time: 5 months

DOE/EA-1542 (8/26/05)

Burleigh County Wind Energy Project, North Dakota

Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.

Time: 1 month

EISs

Bonneville Power Administration

DOE/EIS-0353 (70 FR 48704, 8/19/05)

(EPA Rating: LO)

*South Fork Flathead Watershed Westslope Cutthroat
Trout Conservation Project, Montana*

Cost: \$56,000

Time: 27 months

Office of Environmental Management/ Grand Junction Office

DOE/EIS-0355 (70 FR 45389, 8/5/05)

(EPA Rating: EC-2 for preferred alternative)*

*Remediation of the Moab Uranium Mill Tailings,
Grand and San Juan Counties, Utah*

Cost: \$3,282,000

Time: 32 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

* See LLQR, June 2005, page 8, for EPA ratings of the other alternatives.

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median and average costs of 2 EAs for which cost data were applicable were \$261,000.
- Cumulatively, for the 12 months that ended September 30, 2005, the median cost for the preparation of 19 EAs for which cost data were applicable was \$60,000; the average was \$105,000.
- For this quarter, the median completion time for 5 EAs was 5 months; the average was 14 months.
- Cumulatively, for the 12 months that ended September 30, 2005, the median completion time for 26 EAs was 7 months; the average was 13 months.

EIS Costs and Completion Times

- For this quarter, the median and average costs of 2 EISs for which cost data were applicable were \$1,700,000.
- Cumulatively, for the 12 months that ended September 30, 2005, the median cost for the preparation of 3 EISs for which cost data were applicable was \$3,300,000; the average was \$2,800,000.
- For this quarter, the median and average completion times for 2 EISs were 30 months.
- Cumulatively, for the 12 months that ended September 30, 2005, the median completion time for 5 EISs was 32 months; the average was 30 months.

Recent EIS-Related Milestones (September 1 to November 30, 2005)

Notices of Intent

National Nuclear Security Administration/ Los Alamos National Laboratory

DOE/EIS-0388

Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, New Mexico

November 2005 (70 FR 71490, 11/29/05)

National Nuclear Security Administration/ Y-12 National Security Complex

DOE/EIS-0387

Site-wide Environmental Impact Statement for the Y-12 National Security Complex, Oak Ridge, Tennessee

November 2005 (70 FR 71270, 11/28/05)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0386

Designation of Energy Corridors on Federal Land in the 11 Western States

September 2005 (70 FR 56647, 9/28/05)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0382

Mesaba Energy Project Integrated Gasification Combined Cycle (IGCC) Demonstration Plant Northern Minnesota Iron Range, Itasca County, Minnesota

October 2005 (70 FR 58207, 10/5/05)

Office of Fossil Energy/

Strategic Petroleum Reserve Office

DOE/EIS-0385

Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas

September 2005 (70 FR 52088, 9/1/05)
[DOE issued two additional notices. The first extended the scoping period (70 FR 56649), and the second reopened the scoping period to consider an additional site (70 FR 70600). See related article, page 30.]

Draft EIS

Western Area Power Administration

DOE/EIS-0358*

Construction and Operation of the Proposed Wellton-Mohawk Generating Facility, Yuma County, Arizona

October 2005 (70 FR 42318, 7/22/05)

Final EIS

Office of Fossil Energy

DOE/EIS-0372

Presidential Permit Application, Northeast Reliability Interconnect (Bangor Hydro-Electric), Bangor, Maine

November 2005 (70 FR 71139, 11/25/05)

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (September 1 to November 30, 2005)

(continued from previous page)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Business Plan: Goodhoe Hills and White Creek Wind Energy Projects, Klickitat County, Washington
November 2005 (70 FR 71113, 11/25/05)

National Nuclear Security Administration/ Lawrence Livermore National Laboratory

DOE/EIS-0348 and DOE/EIS-0236-S3

Final Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic Environmental Impact Statement, Alameda County and San Joaquin County, California
November 2005 (70 FR 71491, 11/29/05)

Office of Environmental Management/ Grand Junction Office

DOE/EIS-0355

Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah
September 2005 (70 FR 55358, 9/21/05)

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0200

Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste
October 2005 (70 FR 60508, 10/18/05)

[Regarding Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio; see DOE/EIS-0200-SA-02, next page.]

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0246-SA-48*

Sand Creek Property Transfer, Bonner County, Idaho
(No further NEPA review required)
August 2005

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

DOE/EIS-0265-SA-224*

Protect and Enhance John Day Anadromous Fish Habitat - Oxbow Mine Tailings Restoration, Grant County, Oregon
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-225*

North Fork John Day Anadromous Fish Habitat Enhancement Project, Grant and Umatilla Counties, Oregon
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-226*

Satus Creek Watershed Restoration Project, Yakama Reservation, Washington
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-227

Tucannon River Model Watershed-Broughton Land Company Irrigation Efficiency/Flow Enhancement, Columbia County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-228

Tucannon River Model Watershed - Hovrud Irrigation Efficiency/Flow Enhancement, Columbia County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-229

Implement Fisheries Enhancement Opportunities on the Coeur d'Alene Reservation (2006 SOW), Coeur d'Alene Indian Reservation, Benewah County, Idaho
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-230

Yakima Tributary Access and Habitat Program - South Fork Cowiche Creek - Thornton Property, Yakima County, Washington
(No further NEPA review required)
September 2005

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (September 1 to November 30, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-231

Yakima Tributary Access and Habitat Program - Garretson Fish Passage and Screening - Cowiche Creek, Yakima County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-232

Tucannon River Model Watershed - Turner Farms Alternative Livestock Watering Project, Columbia County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-233

Twisp/Methow Salmon Recovery Foundation (MSRF) Side Channel Reconnection Project - Phase 1, Okanogan County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-234

Ahtanum Creek Watershed Restoration Project, Yakama Reservation, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-235

Haskill Creek Restoration Project, Whitefish, Flathead County, Montana
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-236

Chewuch Diversion Dam Fish Passage Renovation Project, Okanogan County, Washington
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-237

Marracci/WDFW (Washington Dept. of Fish and Wildlife) Diversion Dam Fish Passage Renovation and Ditch Piping Project, Twisp and Okanogan County, Washington
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-238

Walla Walla River Basin Fish Habitat Enhancement, Walla Walla County, Washington
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-239

Protect and Restore the Lapwai Creek Watershed, Nez Perce Reservation, Nez Perce County, Idaho
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-240

Yakima Tributary Access and Habitat Program - Wilson Creek - Eaton Property Instream Habitat Improvements, Kittitas County, Washington
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-241

Idaho Model Watershed Projects for FY05, Lemhi County, Idaho
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-242

SWSC-01, Warm Springs - Fish Screen, Custer County, Idaho
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-243

Yakima Tributary Access and Habitat Program - Snow Mountain Ranch - South Fork Cowiche Creek Dam Removal and Creek Restoration, Yakima County, Washington
(No further NEPA review required)
November 2005

Office of Environmental Management

Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/EIS-0200)

DOE/EIS-0200-SA-02

Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio
(No further NEPA review required)
September 2005 (70 FR 53353, 9/8/05)
[See related Amended Record of Decision, previous page.] 

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 July 1 and September 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

- *Communication.* Quarterly public and cooperating agency meetings kept all informed of progress.
- *Meetings with cooperating agencies.* Areas of analytical disagreement and consequences of differing opinions were formally identified.
- *Coordination and communication with interested parties.* Coordination and communication with tribes, property owners, and agencies prior to beginning the NEPA process improved awareness of the project.
- *Sensitivity to tribal cultures.* When planning a public hearing on a Native American Reservation, be aware of the cultural sensitivities of that particular tribe. Be prepared to adapt to tribal customs. The local DOE Tribal liaison should be present at all Native American interactions.
- *Poster session.* Because public outreach was minimal and the emotional fervor against the proposed action was elevated, we found it helpful to have a public meeting format that provided an informal component such as an upfront poster session.
- *Education.* The focus of the public meeting was more on the educational aspect of the program to avoid an "us versus them" scenario.

Data Collection/Analysis

What Worked

- *Agency interest.* Twelve cooperating agencies were vested in supplying data.
- *Early data collection.* The proponent collected a great deal of data prior to the NEPA process, helping DOE expedite EA completion.

What Didn't Work

- *Old records.* Data collection was more difficult and time consuming than expected. Since this was a unique project, we used approaches that we had not used before. Some of the research material dated back to the 1940s and 1950s. Also, there were land use searches involving the county courthouse.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Secretarial priority and real time involvement.* Secretarial priority and real time involvement of all field and Headquarters personnel helped facilitate the timely completion of the EIS.
- *Constant communication.* Maintaining good communication between the project contacts and the NEPA team was very advantageous to the EA process.
- *Management involvement.* Strong commitment from management and proponents facilitated timely completion of the EA.
- *Team member participation.* Meetings were held with participation from the project team, NEPA team, and DOE NEPA Compliance Officer. There were no surprises during any version of the EA, and the finding of no significant impact was signed without major delay.

Factors that Inhibited Timely Completion of Documents

- *Unrealistic deadline.* The completion deadline was overly ambitious.
- *Level of NEPA review.* The NEPA documentation for this project could have been approved at a lower level of documentation (i.e., categorical exclusion rather than an EA) and completed earlier.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

Teamwork

Factors that Facilitated Effective Teamwork

- *Management commitment.* Management commitment to the project made resources available.
- *Frequent communication.* Frequent communication helped facilitate effective teamwork.
- *Team meetings.* Meetings were held as necessary to discuss issues as they arose. The EIS preparation team made joint decisions and changes as appropriate.

Factors that Inhibited Effective Teamwork

- *Management changes.* There were several changes in management at the Field Office and Headquarters over the life of the project.
- *Failure to involve Headquarters.* Failure to routinely and actively involve the Office of Environment, Safety and Health and the Office of the General Counsel delayed EIS approval.

Process

Successful Aspects of the Public Participation Process

- *Frequent public meetings.* Quarterly public meetings kept the public informed and aided the Department's credibility.

Unsuccessful Aspects of the Public Participation Process

- *Failure to identify preferred alternative.* Failure to identify a preferred alternative in the draft EIS challenged the Department's credibility and markedly increased the number of comments on the draft EIS.
- *Lengthy decision process.* The public was dissatisfied with the length of the Federal government's decision process.

- *Late public notification.* Although public participation was successful in the EA notification phase, it should have been done much earlier than it was.

- *No public feedback.* We had no feedback from the public on the EA process.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Influence on decisionmaking.* The EIS process helped to promote informed and sound decisionmaking. Public comments on the draft EIS clearly influenced DOE's decision.
- *Planning process.* The NEPA planning process assisted in ensuring a better project.
- *Environmental issues brought to light.* The NEPA process identified several environmental issues that had not been considered by the project people. These issues were addressed in the EA, and mitigation was proposed, including the timing for part of this project, that would avoid adverse impacts.
- *Use of M&O contractor.* Costs were kept to a minimum by using the M&O contractor's NEPA team to prepare the EA as part of its regular duties.
- *Use of Federal staff.* The EIS was prepared mostly "in house," which kept the costs down.

What Didn't Work

- *Better criteria needed.* Better criteria should be used for including or excluding cooperating agencies. Better criteria also should be used for eliminating alternatives from further consideration once identified in a notice of intent.
- *Delay to consider new alternative.* There was a six-month delay during completion of the draft EIS to consider a new alternative that DOE ultimately determined was not reasonable.

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What Worked and Didn't Work

(continued from previous page)

Enhancement/Protection of the Environment

- *Reduced risk.* The outcome of the EIS was that long-term risk to the environment will be significantly reduced.
- *Enhanced environment.* Two commentors noted that the environment was protected as a result of the EA process.

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 3 questionnaire responses were received for EAs and EISs, 3 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that without the draft EIS and public comment, the ROD would have been different.
- A respondent who rated the process as “4” stated that, although it appeared a decision had been made about the project, the EA brought out environmental issues and assisted decisionmakers on location and timing for the project, based on input from the environmental resources subject matter experts.
- A respondent who rated the process as “3” stated that project proponents understood agency requirements and presented a project that would meet criteria. **LL**

LESSONS LEARNED

March 1, 2006; Issue No. 46

First Quarter FY 2006

Collaboration Yields Win-Win Solution at Hanford

The Department of Energy (DOE) and the State of Washington have moved away from confrontation toward collaboration to constructively address environmental issues at the Hanford Site. Following focused discussions in late 2005, they resolved a legal dispute involving the Hanford Solid Waste EIS (DOE/EIS-0286, 2004) that had lasted more than two years.



The potential for groundwater contamination from the Hanford Site to reach the Columbia River is a major regional environmental concern.

Under a Settlement Agreement, the State will cooperate with DOE in the preparation of a new EIS that will provide an integrated evaluation of proposed waste management activities at Hanford and a comprehensive, site-wide reanalysis of groundwater impacts. As discussed

below, the Agreement emphasizes transparency and quality assurance in the NEPA process.

Secretary Samuel W. Bodman, in announcing the Agreement on January 9, 2006, said both parties “will be able to shift their focus and resources away from litigation and toward partnership and our shared cleanup goals.”

At the same time, Jay Manning, Director, Washington Department of Ecology (Ecology), said “the state will have meaningful input into developing the [new] EIS, which will enhance our ability to protect Hanford groundwater and make better waste-management decisions.”

(continued on page 4)

DOE Applies “Alternative NEPA Arrangements” After Ordering Coal Power Plant to Operate

Even though the action may result in significant environmental impacts under NEPA, the Secretary of Energy was able to issue an Emergency Order directing a coal-fired power plant near Washington, DC, to operate under certain limited conditions without preparing an environmental impact statement (EIS). Before issuing the Order on December 20, 2005, DOE consulted with the Council on Environmental Quality (CEQ) on “alternative arrangements” for compliance with NEPA, as provided in the CEQ regulations at 40 CFR 1506.11, *Emergencies*.

Under the Order, the Mirant power plant, located in Alexandria, Virginia, is required to maintain operations under specified conditions to meet electricity reliability needs in Washington, DC.

As agreed upon with CEQ, DOE will carry out fundamental components of the EIS process, as follows:

- Prepare a “Special Environmental Analysis” no later than August 2006;
- Continue consultations with the Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality (DEQ);
- Provide opportunities for public involvement, including soliciting comments and posting publicly available information on Web sites; and
- Identify possible further mitigation measures.

(continued on page 8)

Inside *LESSONS LEARNED*

Welcome to the 46th quarterly report on lessons learned in the NEPA process. DOE's senior managers play a vital role in NEPA implementation as evidenced by the settlement of Hanford NEPA litigation. Their participation in every EIS is important to ensure the scope and schedule support DOE's needs, as shown by an analysis of EIS metrics in this issue. As always, we welcome your suggestions for continuous improvement.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 1, 2006. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2006 (January 1 through March 31, 2006) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web 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 printed in the September issue each year.

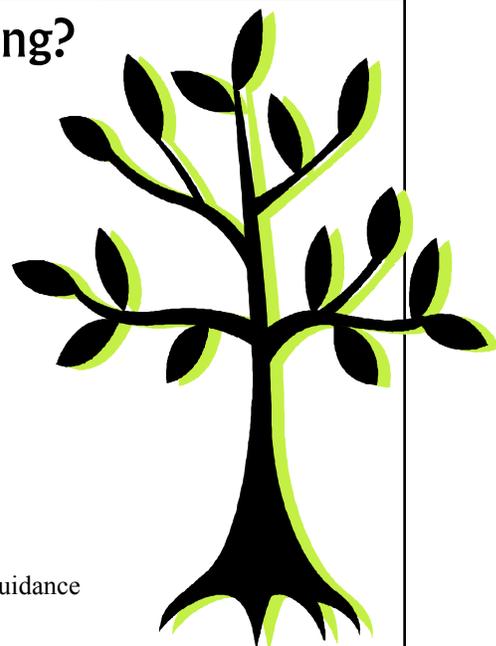
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Earth Day 2006: How Are You Celebrating?

In the June 2006 issue of *LLQR*, we would like to spotlight your organization's observance of Earth Day. Send a photo and caption, additional text (optional), and contact information to askNEPA@eh.doe.gov with subject: LLQR Earth Day 2006.

The DOE Office of Environment will sponsor displays in the DOE Forrestal Building (1000 Independence Ave., SW., Washington, DC) lower lobby from April 20–28:

- ✓ *Protection and Enhancement of Watersheds and Endangered Species*
Office of Air, Water, and Radiation Protection Policy and Guidance
(also in the Germantown Main Lobby)
- ✓ *DOE and NEPA Through the Years: 1970–2005*
Office of NEPA Policy and Compliance
- ✓ *Greening DOE*
Office of Pollution Prevention and Resource Conservation Policy and Guidance



Congressional NEPA Task Force Staff Issues Initial Report

The Task Force on Updating the National Environmental Policy Act of the Committee on Resources, U.S. House of Representatives, released a staff-prepared report titled *Initial Findings and Draft Recommendations* (Initial Report) for public comment on December 21, 2005. It has been reported that more than 200 substantive public comments were received by the February 6, 2006, deadline. The Administration determined not to provide comments on the draft staff report.

The Initial Report identifies nine groups of findings – regarding the provisions of the statute, agency implementation practices, and implications for stakeholders – and proposes 22 recommendations for improving NEPA.

NEPA is a valid and functional law in many respects. However, there are elements of NEPA that are causing enough uncertainty to warrant modest improvements and modifications to both the statute and its regulations. To do nothing would be a disservice to all stakeholders who participate in the NEPA process.

– Initial Report, page 30

Proposed Changes to NEPA

Thirteen of the draft recommendations propose to amend the NEPA statute. Recommended amendments would create a new definition of “major Federal action” and specify “unambiguous criteria” for when to prepare EISs, EAs, categorical exclusions, and supplemental NEPA documents. One amendment would require agencies to “pre-clear” projects with the Council on Environmental Quality (CEQ), which would monitor court and other decisions on NEPA procedures and advise Federal agencies of their applicability. Other recommendations would establish EIS page limits (150 pages for most projects) and time limits for completing EISs and EAs (18 and 9 months, respectively). The Initial Report also recommends NEPA amendments to limit the alternatives analyzed in an EIS to those that are economically and technically feasible and are “supported by feasibility and engineering studies”; require “extensive discussion” of the no action alternative; and clarify how agencies should evaluate the effects of past actions in cumulative impacts assessments.

The Initial Report further recommends amending NEPA to grant cooperating agency status to any tribal, state, local, or other political subdivision that requests it and to

incorporate parts of the CEQ regulations regarding the role of a lead agency (40 CFR 1501.5) when multiple agencies are involved in an action. To address litigation issues, a recommended amendment would add a citizen suit provision that would establish a time period for filing challenges and guidelines on who has standing to sue. This amendment also would limit settlement agreements that forbid or severely limit activities of businesses that were not part of the initial lawsuit. Another amendment would create a “NEPA Ombudsman” within CEQ to resolve conflicts in the NEPA process.

Expanding CEQ’s Regulations and Role

The Initial Report recommends new provisions for the CEQ regulations that would require agencies to give more weight to local comments, allow state environmental reviews to satisfy NEPA requirements in some cases, require binding commitments for mitigation proposals, and focus future impacts analysis on concrete rather than “reasonably foreseeable” actions. In addition, CEQ would be directed to require agencies to consult formally with interested parties throughout the NEPA process.

The Initial Report also recommends new responsibilities for CEQ: to assess NEPA compliance costs and recommend cost ceiling policies to Congress and to conduct three studies on NEPA. Two studies would examine the interactions and overlaps of NEPA with other environmental laws and state “mini-NEPAs.” A third study would focus on NEPA staff at Federal agencies, detailing their experience and suggesting staff recruitment and retention measures.

Next Steps: Final Recommendations after Comment Review

The Initial Report states that it is based on staff review of the testimony of 66 witnesses in seven nationwide hearings that the Task Force held between April and November of 2005 and more than 3,000 additional written comments submitted. For testimony excerpts, see *LLQR*, June 2005, page 3; September 2005, page 14; and December 2005, page 3. The full testimonies and complete Initial Report (30 pages) are available on the Task Force Web site (<http://resourcescommittee.house.gov/nepataskforce.htm>).

Although comments on the Initial Report have not been posted on the Task Force Web site as of this writing, several comment letters that may be of interest to our readers are available on other Web sites, e.g., Environmental Law Institute, www2.eli.org/pdf/eli_nepa_comments.pdf; National Association of Environmental Professionals, www.naep.org; and State of Nevada, www.state.nv.us/nucwaste/news2006/pdf/nv060206nepa.pdf. 

Collaboration at Hanford (continued from page 1)

The process that culminated in the Agreement began last August with several face-to-face meetings and weekly conference calls. The discussions received priority attention from senior managers in DOE Headquarters Offices, including Environmental Management (EM), General Counsel, and Environment, Safety and Health; the Hanford Field Offices (Richland Operations Office and Office of River Protection); and the State of Washington Department of Ecology and the Office of the Attorney General; as well as support from the Department of Justice. The parties worked in good faith to find common ground and a path forward as an alternative to protracted litigation. The timeline below summarizes the NEPA and litigation history involving the Hanford Solid Waste EIS, leading to the issuance of a Notice of Intent for the new EIS (71 FR 5655; February 2, 2006).

Comprehensive Scope for New EIS

To implement the Agreement, DOE will expand the scope of its ongoing Tank Closure EIS (DOE/EIS-0356) in a new EIS for Tank Closure and Waste Management (DOE/EIS-0391). As currently planned, the new EIS will:

- Build on the analyses initiated in 2003 for the Tank Closure EIS, including potential impacts of retrieval of tank waste and closure of certain tanks, as well as treatment and disposal of retrieved low-activity radioactive waste;
- Update and revise the Solid Waste EIS analyses, including a re-evaluation of potential impacts from on-site disposal of low-level and mixed low-level radioactive waste generated at Hanford and other DOE sites;

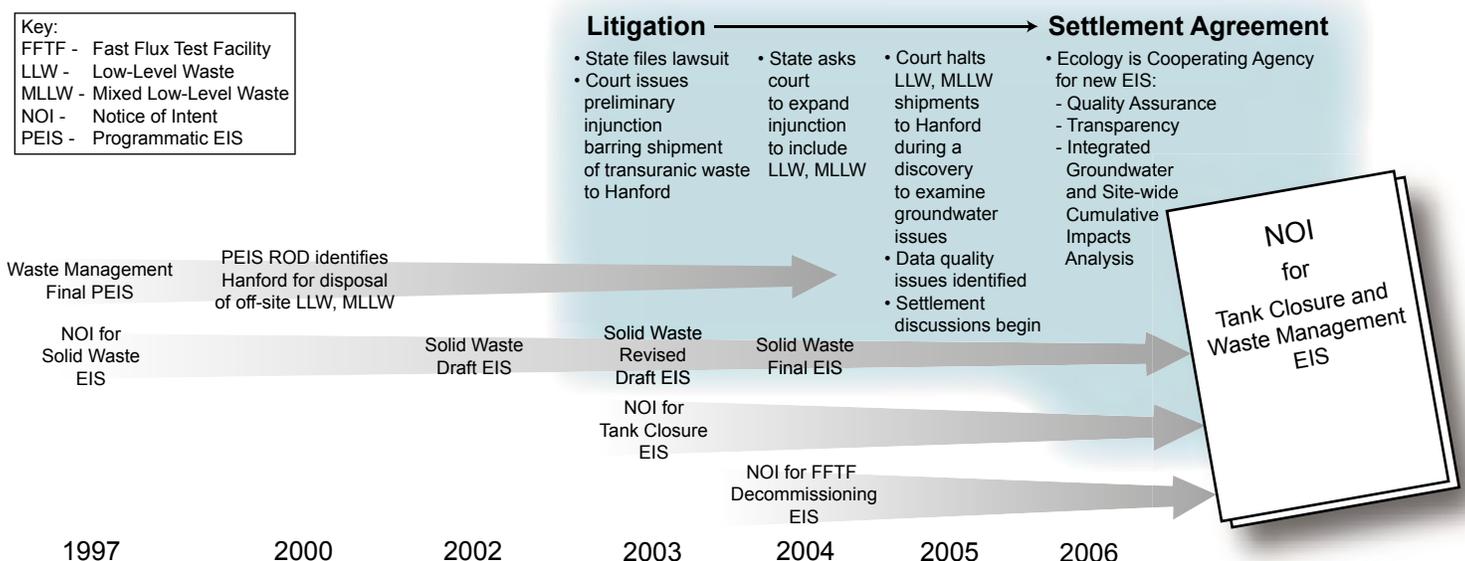
- Include a site-wide, quantitative analysis of the cumulative impacts of other past, present, and reasonably foreseeable actions at Hanford; and
- Complete the analyses initiated in 2004 for the Decommissioning of the Fast Flux Test Facility EIS (DOE/EIS-0364).

The State's role as a Cooperating Agency will help achieve our shared cleanup goals for the Hanford Site. Where we disagree on technical matters, DOE and Ecology will run sensitivity analyses on impact estimates. Where there are policy differences, DOE will provide the State an opportunity to express its views in the new EIS.

***– Dr. Ines Triay
Chief Operating Officer
Office of Environmental Management***

DOE will share data and analyses with Ecology in a transparent manner throughout preparation of the new EIS so that Ecology can independently verify analytical methodology and EIS results. Further, DOE and Ecology – jointly recognizing the complexities and uncertainties of groundwater modeling – will collaborate to develop the technical approaches to be used for the groundwater evaluation. Ecology's expertise and knowledge of the site can help ensure the adequacy of the new EIS analyses.

(continued on next page)



Collaboration at Hanford *(continued from previous page)*

While the Tank Closure and Waste Management EIS is being prepared, DOE will continue current waste management and remediation operations at Hanford. With certain exemptions identified in the Agreement, DOE will not ship off-site waste to Hanford until the new EIS has been completed and appropriate Record(s) of Decision issued. Upon completion, the new EIS will supersede the Solid Waste EIS and encompass the scope of the two ongoing EISs.

Quality Assurance Lesson Learned

A key element of the Settlement Agreement is an emphasis on quality assurance, stemming from the identification of discrepancies in the Solid Waste EIS groundwater analyses that came to light during the litigation. (This experience prompted a wider examination of quality assurance in DOE NEPA documents. See text box.)

The State had initiated litigation in 2003 on issues related to the importation of radioactive and hazardous waste from other DOE sites for storage, processing, or disposal, as had been decided under the Waste Management Programmatic EIS (DOE/EIS-0200, 1997) and associated Records of Decision. In 2004, DOE issued the Solid Waste EIS, which included site-specific evaluations of managing low-level, mixed low-level, and transuranic wastes from Hanford and other DOE sites. Later that year, the State amended its lawsuit to challenge the adequacy of this EIS. In the process of responding to the State's discovery requests for information, DOE was informed by its EIS-preparation contractor in July 2005 of several differences in groundwater analyses between the Solid Waste EIS and its underlying data. DOE promptly notified the court and the State. (See *LLQR*, September 2005, page 25; June 2005, page 22; and June 2003, page 12.)

(continued on next page)

Do We Take Quality Assurance for Granted in NEPA Documents?



The Department's experience last year regarding quality assurance issues with the Hanford Solid Waste EIS prompted a re-examination of DOE's quality assurance plans for NEPA documentation. Assistant Secretary for Environment, Safety and Health John Spitaleri Shaw issued a memorandum to Secretarial Officers and Heads of Field Organizations on January 10, 2006, requesting confirmation that NEPA quality assurance plans are in place, as required by DOE Order 451.1B, paragraph 5.a(3).

Under the Council on Environmental Quality (CEQ) NEPA regulations, agencies must ensure the "scientific integrity" of their NEPA analyses (40 CFR 1502.24). Further, the CEQ regulations specify that environmental information in NEPA documents "must be of high quality" and that "accurate scientific analysis" is "essential to implementing NEPA" (40 CFR 1500.1). DOE's 1996 *National Environmental Policy Act Contracting Reform Guidance* recommends project-specific quality assurance plans. (This guidance and a model statement of work for contractors preparing DOE NEPA documents are available on the DOE NEPA Web site at www.eh.doe.gov/nepa/contracting.html.) Mr. Shaw requested that Departmental organizations identify when their organizational quality assurance plans were signed or revised and whether project-specific plans are in place for EAs and EISs.

In preparing responses for their Offices, several NEPA Compliance Officers commented that this reminder prompted a review and revision of their Office quality assurance plan. Kathy Pierce of the Bonneville Power Administration said, "I see this as an opportunity to revamp our QA documentation in a thoughtful effort to develop a readily useable and useful QA plan."

"It is important to have a well-conceived quality assurance plan and to ensure its implementation," emphasized Carol Borgstrom, Director, Office of NEPA Policy and Compliance. "Everyone involved in the process – whether contractor, NEPA Document Manager, NEPA Compliance Officer, or reviewing official – should take responsibility for ensuring high quality and 'scientific integrity' in our NEPA documents," she said.

To date, responses to Mr. Shaw's memorandum have been received from nearly all Program and Field Offices. A preliminary review of these responses suggests that although there are project-specific quality assurance plans for some EISs, many projects rely on the organization's general quality assurance plan supplemented by the contractor's quality assurance plan. The preliminary review also indicates that few EAs have specific quality assurance plans.

NAEP Annual Conference: April 23–26 in Albuquerque

The National Association of Environmental Professionals (NAEP) will hold its 31st Annual Conference, *Global Perspectives on Regional Issues: The Future for Environmental Professionals in the Next 30 Years*, April 23–26, 2006, in Albuquerque, New Mexico – coinciding with the city’s 300th anniversary celebration. “This year’s conference focuses on issues with global implications that can be addressed regionally and locally,” according to the registration brochure.

The conference is organized around 12 “tracks” or sets of presentations related by subject area. The “NEPA Symposium” track features discussion of the outcomes of the Congressional NEPA Task Force (related article, page 3), in addition to future issues for NEPA, tools and techniques, unique EISs, and legislation and litigation. Other tracks include Environmental Health and Safety Management Systems,

Energy Water Nexus, Homeland Security Issues and the Environment, Geospatial Technology, and Health Impact Assessment. Local field trips offer the opportunity to learn more about the unique ecological features of the Sandia Mountains or the engineering and environmental aspects of a Rio Grande water diversion project.



Six pre-conference NEPA training courses, including “Advanced Tools and Techniques for Solving NEPA and Environmental Planning Problems,” “Integrating NEPA with the ISO 14001 EMS,” and “Managing an Interdisciplinary Team in Large Scale Planning Projects,” are offered on April 23.

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

Collaboration at Hanford *(continued from previous page)*

In September 2005, Dr. Ines Triay, Chief Operating Officer, EM, convened a team of DOE experts to conduct a quality assurance review of the Solid Waste EIS. The team’s January 2006 report on the EIS’s data quality, control, and management issues identified additional discrepancies.

In conducting its review, the team sampled computer files and compared calculations to results reported in the Solid Waste EIS for the groundwater, human health and safety, and transportation analyses. The team also reviewed management issues, including contracting arrangements, qualifications of DOE personnel, and whether appropriate quality assurance plans were in place. “The lack of formal data verification and validation processes along with the absence of [quality assurance] oversight activities by both the contractor and Federal agency led to the data inaccuracies found in the [EIS],” the team concluded.

The report contains several recommendations for improving software and management quality assurance and determining the significance of the data quality errors. One of the report’s most significant recommendations is to redo the groundwater impacts analysis.

The Settlement Agreement, data quality report, and related information are available through the EM Web site at www.em.doe.gov under Featured Items. The State’s announcement of the Agreement is available on Ecology’s Nuclear Waste Program Web site at www.ecy.wa.gov/programs/nwp under Current News. The Notice of Intent to prepare the Tank Closure and Waste Management EIS and other information related to the EIS are available on the DOE NEPA Web site at www.eh.doe.gov/nepa. For further information, contact Jeanie Loving at jeanie.loving@eh.doe.gov or 202-586-0125. **LL**

Groundwater – a Key Regional Issue

The Hanford Site is approximately 586 square miles.



For more than four decades, Hanford’s mission involved nuclear research and development, and the production of nuclear weapons materials, resulting in a variety of hazardous and radioactive wastes. Existing and newly generated wastes are disposed of in the Central Plateau. The potential for these wastes to reach the groundwater, and eventually the Columbia River, is a significant concern in the region. Nearly 50 miles of the river flow through the site. The cities of Richland, Pasco, and Kennewick, and downstream communities in Washington and Oregon, rely on the river for drinking water, agriculture, and other uses.

DOE Solicits Early Comments on FutureGen EIS Process

The Department of Energy initiated the NEPA process for the FutureGen Project by issuing an Advance Notice of Intent (ANOI) to prepare an EIS on February 16, 2006 (71 FR 8283). The ANOI invites early public comment, due March 20, 2006, on the proposed scope of the EIS, including the Department's plans for determining the range of reasonable alternative host sites to be analyzed in the EIS. Site selection involves a competitive procurement process conducted in partnership with an industry consortium.



Artist's conception of the proposed FutureGen Facility.

What is FutureGen?

FutureGen is an approximately \$1 billion project involving the design, construction, and operation by a private-sector entity of a near-zero-emissions coal-fired electric power and hydrogen gas production plant integrated with the capture and geologic sequestration of carbon dioxide. The Office of Fossil Energy through the National Energy Technology Laboratory (NETL) envisions that the proposed 275-megawatt power plant and carbon dioxide sequestration project would contribute to the nation's energy security. The project is intended to prove the technical and economic feasibility of a large-scale integrated application of advanced clean coal technologies and showcase emerging technologies that could further address environmental concerns about the use of coal.

DOE's proposed action is to provide up to \$700 million to implement the project through a Cooperative Agreement with FutureGen Industrial Alliance, Inc. The Alliance, a consortium of large industrial companies that produce a significant portion of the nation's coal and coal-fueled electricity, would provide an estimated \$250 million for the project, and would plan, design, construct and operate the power plant and geologic sequestration facility with DOE oversight, as described in the Cooperative Agreement, signed in December 2005.

Highly Competitive Process Expected

The Alliance will conduct a site competition to identify candidate sites suitable for the FutureGen Facility. The selection process will be open to states, tribes, private organizations, and other interested parties and will use site *qualifying* (i.e., mandatory) and *scoring* criteria (e.g., measures of power plant and sequestration site suitability, availability of infrastructure, environmental and other factors). DOE will approve the selection plan.

In view of preliminary expressions of interest from proponents of candidate sites in about 20 states, the site selection process likely will be highly competitive.

The Alliance is now considering comments on a draft request for proposals (RFP) and plans to issue a final RFP in March 2006. The draft RFP proposes qualifying and scoring criteria for the power plant (including transmission line, transportation, and pipeline corridors) and the geologic formation for carbon dioxide sequestration. Following the RFP, the Alliance will review proposals to identify in a report to DOE those that the Alliance determines to be reasonable from a technical, environmental, and economic perspective.

Based on its review of the Alliance's identification of candidate sites and other relevant information, DOE will identify a preliminary range of reasonable alternatives to be analyzed in the EIS, which DOE will announce in a Notice of Intent planned for July 2006. After completing the EIS, DOE may identify in a record of decision one or more sites that DOE regards as acceptable. The Alliance would then select a host site from among those sites, if any, and conduct extensive site characterization. DOE would review the site characterization data and prepare a supplemental analysis to determine whether a supplemental EIS is required.

Additional information about FutureGen is available on the Office of Fossil Energy Web site at www.fossil.energy.gov/programs/powersystems/futuregen/index.html; the NETL Web site at www.netl.doe.gov, and the Alliance Web site at www.futuregenalliance.org. The ANOI is available on the DOE NEPA Web site at www.doe.eh.gov/nepa under What's New. The NEPA Document Manager is Mark McKoy, who can be contacted at mmckoy@netl.doe.gov or 304-285-4426. 

Alternative NEPA Arrangements

(continued from page 1)

Emergency Order Addresses Electricity Reliability Concerns

Mirant Corporation ceased plant operations on August 24, 2005, after its modeling had indicated that the plant's coal-fired operations caused or contributed to significant localized exceedances of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. On the same day, the DC Public Service Commission filed a petition with DOE for an Emergency Order under Section 202(c) of the Federal Power Act, asserting that the plant's closure reduced the reliability of the electrical supply to the central DC area (much of the central business district, many Federal institutions, and the regional waste water treatment plant), placing this area at risk of a blackout and, if the blackout lasted longer than a day, the release of untreated sewage to the Potomac River.

The Mirant plant, consisting of five generating units, is one of only three sources of electricity to the central DC area. The other sources are two 230,000-volt (230-kV) transmission lines that deliver electricity from other generating sources on the regional electric grid. Under North American Electric Reliability Council standards, a power system must always be operated with sufficient reserves to compensate for the sudden failure of an area's most important single generator or transmission line. To maintain a minimally reliable electric power system, the Mirant plant must be available to operate when one of the 230-kV lines serving the central DC area is out of service. Just days before issuance of the Order, one of those lines "tripped." DOE also learned that maintenance on the lines was needed in January 2006.

The Secretary's Emergency Order, which extends through October 1, 2006, was issued after an exhaustive review of the facts, and consultation with Federal and state officials responsible for environmental compliance and the private entities responsible for electricity transmission. The Order directs Mirant to, among other things, (1) operate the plant to produce power to meet demand in the central DC area during any period in which one or both of the 230-kV lines is out of service, and (2) keep as many generating units operating, and take measures to reduce the start-up time of units not operating, to provide this reliability without causing or significantly contributing to exceedance of the NAAQS.

In response to requests from the City of Alexandria, the DC Public Service Commission, and DEQ, DOE granted on February 17, 2006, a rehearing of the Order for the limited purpose of further consideration and has invited comments and information concerning the plant's current operational status by March 23, 2006. (The Order and related materials are posted on the DOE Web site for this matter, identified below.)

Consultations and Analyses to Address Mitigation Options

After emergency action, CEQ advocates a forward-looking approach to provide value to decisionmaking, and this approach guided DOE in its consultations with CEQ before and after issuance of the Emergency Order. In a letter confirming that DOE had completed the necessary consultation, CEQ General Counsel Dinah Bear stated, "The alternative arrangements proposed in your January 18, 2006 letter are limited to the immediate actions necessary to reduce electricity supply risks to acceptable levels, provide for local involvement and informed decision-making, and otherwise comply with NEPA in a manner appropriate to the nature and scope of the emergency described in the associated Federal Register notice."

(continued on next page)



The Mirant plant is next to a high-rise residence, where modeling indicated potentially high levels of sulfur dioxide. (Map: MapQuest; photo: Google Earth)

Alternative NEPA Arrangements *(continued from previous page)*

DOE issued its *Federal Register* Notice (71 FR 3279, January 20, 2006) within 30 days of issuing the Order, in compliance with its NEPA regulations (10 CFR 1021.343(a)), to document the emergency and set forth the steps it intends to take to comply with NEPA. In a Special Environmental Analysis, DOE will examine potential impacts resulting from issuance of the Order and reasonably foreseeable impacts from possible changes in operations of the plant until two additional transmission lines planned to serve the central DC area are installed in about two years. The Analysis will describe any steps that DOE believes can be taken to mitigate the environmental impacts from its Order.

DOE is continuing to consult with EPA and DEQ concerning information on emissions, modeling results, potential further mitigation measures, and any changes to the operation of the plant. For example, Mirant has proposed use of “trona” – sodium sesquicarbonate, a naturally occurring substance similar to baking soda – and/or lower sulfur coal to manage air emissions. In addition, EPA will act as a cooperating agency in preparation of the Analysis to provide information regarding the environmental effects of plant operations.

Public Has Opportunities to Access Documents and Provide Comments

DOE currently is evaluating public comments on Mirant’s compliance plan and on the January 2006 Notice, in which DOE invited comment on its alternative arrangements and issues to be addressed in the Special Environmental Analysis. Comments were received from the City of Alexandria, the Georgetown University Law Center Institute for Public Representation on behalf of three “Riverkeeper” organizations, the local Sierra Club, and the Southern Environmental Law Center on behalf of itself and the American Lung Association of Virginia.

Issues raised for consideration in the Special Environmental Analysis include adverse health impacts from long-term exposure to emissions of criteria air pollutants, including particulate matter and nitrogen oxides in addition to sulfur dioxide; lack of conformity to the State Implementation Plan for criteria pollutants; and impacts from emissions of hazardous air pollutants, such as hydrogen chloride. Concern was expressed that increased disposition of substances such as particulate matter and metals in the watershed can adversely affect water quality and should be analyzed. Commentors also requested analysis of impacts from sustained use of trona on air and water quality and traffic, and analysis of alternative measures to address electricity reliability.

DOE will make the Analysis available to the public on the Web sites identified below as well as announce its availability in the *Federal Register*, and will consider

DOE Emergency Actions and NEPA

DOE has prepared Special Environmental Analyses under the emergency provisions of the CEQ and DOE regulations only three other times, most notably for the Cerro Grande wildfire near Los Alamos National Laboratory in 2000 (*LLQR*, September 2001, page 4; September 2000, page 1; and June 2000, page 1). DOE also prepared Special Environmental Analyses in 1991 for Bonneville Power Administration’s action to save the endangered sockeye salmon on the Snake River and for the threatened failure of the Par Pond Dam at the Savannah River Site. In 2004, DOE invoked the emergency provisions to consult with CEQ on a classified action to transport nuclear material from Libya (*LLQR*, June 2004, page 8).

Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance for actions necessary to control the immediate impacts of the emergency. The arrangements take the place of an EIS and only apply to Federal actions that may have significant environmental impacts.

CEQ issued guidance on “Emergency Actions and NEPA” on September 8, 2005, to help agencies comply with NEPA while taking necessary immediate action in the wake of Hurricane Katrina. (See *LLQR*, December 2005, page 30.)

public input in determining appropriate further mitigation measures and any additional actions it may take. The Web sites also will identify which mitigation measures DOE adopted, and for any measures not adopted, why not.

Publicly available documents, including the Order, Mirant’s compliance plan, DOE’s Notice concerning alternative arrangements, and public comments are available via DOE’s Web site for this matter at www.electricity.doe.gov/about/dcpssc_docket.cfm. DOE also will post on this Web site information regarding the environmental effects of ongoing or alternative operations of the plant (e.g., ambient air quality data and results of air quality modeling) that the Department receives from Mirant, EPA, and DEQ. DOE will post the Special Environmental Analysis and discussion of any future decisionmaking in this matter on the above Web site and on the DOE NEPA Web site at www.eh.doe.gov/nepa.

For further information on technical issues, contact Lawrence Mansueti, Office of Electricity Delivery and Energy Reliability, at lawrence.mansueti@hq.doe.gov or 202-586-2588. For information on the DOE NEPA process, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

DOE Provides Comments on Interagency Work Groups' Draft NEPA Guidance



Twelve interagency Work Groups are developing guidance to improve NEPA implementation. Under the leadership of Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), the Work Groups support implementation of recommendations from the NEPA Task Force report to CEQ, *Modernizing NEPA Implementation* (September 2003). (See *LLQR*, June 2005, page 2, and September 2005, page 2.) CEQ plans to first coordinate draft guidance with all Federal agencies, then issue it for public review, respond to comments, and issue final guidance.

In a series of requests, CEQ asked Federal agencies for comments on preliminary guidance products and for other information to support the Work Groups. The Office of NEPA Policy and Compliance circulated the requests within DOE and provided consolidated DOE comments.

Programmatic NEPA Documents

On January 19, 2006, the NEPA Office provided comments on draft interim guidance on programmatic analyses. This guidance addresses a concern expressed in the NEPA Task Force report that agencies need to clarify in their programmatic NEPA documents the relationship between the programmatic document and future tiered NEPA analyses, and provide a “roadmap” of how interested parties will be involved in the future analyses. In response to a specific request for case studies, the NEPA Office provided information about two DOE programmatic EISs that effectively implemented the aim of the guidance: *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs* (DOE/EIS-0203), and the *Hanford Comprehensive Land Use Plan* (DOE/EIS-0222). A separate Work Group is preparing broader guidance on the development and use of programmatic analyses.

NEPA and EMS Processes

Two CEQ requests addressed draft products that Work Groups are preparing on aspects of NEPA and environmental management systems (EMSs), including (1) case studies for a handbook of useful practices for using EMS or adaptive management processes to facilitate NEPA implementation, and (2) draft *Guidance for Complementary Processes of Environmental Management Systems and National Environmental Policy Act*. The guidance is intended to assist Federal agencies in aligning their EMS process with NEPA analysis and the decisionmaking process. The NEPA Office responded to CEQ on January 23, 2006, and recommended that the

guidance better explain certain EMS terms that might not be familiar to NEPA practitioners.

Stakeholder NEPA Training

CEQ asked Federal agencies to identify their policies, procedures, guidance, training materials, and courses supporting their environmental justice activities and coordination and cooperation with state and local governments, tribes, nongovernmental organizations, and permittees/grantees. In addition to coordinating its response with NEPA Compliance Officers, the NEPA Office consulted with DOE contacts for tribal matters, environmental justice, and public affairs before submitting DOE’s response to CEQ on January 27, 2006. The response identified relevant DOE policies and orders, and listed guidance issued by the Office of Environment, Safety and Health. The response also included guidance and strategies on cultural resources, tribal affairs, and environmental justice that has been issued by DOE Program and Field Offices. The Stakeholder Training Work Group will use this information to develop NEPA training (related article, page 12).

NEPA Procedures and Guidance

The NEPA Office on December 21, 2005, provided CEQ a list of DOE NEPA procedures and guidance for a matrix of such information from Federal agencies. The response highlighted DOE’s *NEPA Compliance Guide*, *Lessons Learned Quarterly Reports*, *Directory of Potential Stakeholders for DOE Actions under NEPA*, and the DOE NEPA implementing regulations.

Other CEQ Work Groups continue to develop guidance addressing:

- Aligning or harmonizing NEPA and other laws
- Establishing and using categorical exclusions (two Work Groups)
- Interagency collaboration
- Preparing environmental assessments
- Monitoring agency use of categorical exclusions and environmental assessments.

CEQ plans to complete this guidance development in about 12 to 15 months. For further information about implementation of the NEPA Task Force recommendations, see <http://ceq.eh.doe.gov/ntf/implementation.html>. 

DOE Submits Cooperating Agency Report to CEQ, Proposes “Measurable Goals” to Work Group

Six of the 12 EISs that DOE initiated in fiscal year 2005 are being prepared with cooperating agencies, and only two of the 26 EAs that DOE completed during that year were prepared with cooperating agencies, as indicated in DOE’s cooperating agency report to the Council on Environmental Quality (CEQ). This is the first report in response to CEQ’s December 2004 revision of cooperating agency report procedures, which simplified reporting requirements. The number of EISs and EAs with cooperating agencies – and the number of cooperating agencies involved – do not in themselves measure the success of DOE efforts to involve cooperating agencies. So what do these numbers mean?

- *To evaluate agency efforts to include cooperating agencies in the NEPA process:* early identification and official invitation of potential cooperating agencies, and absence of agency comments about noninclusion or delayed inclusion in a NEPA review.
- *To evaluate cooperating agency contributions to a NEPA document or decisionmaking:* no delay attributable to late identification of issues that could have been identified earlier by cooperating agency involvement, and no public comments on incompleteness or inaccuracy of information that was provided by cooperating agencies.

CEQ Work Group to Consider Metrics

To better interpret agencies’ annual reports, CEQ established in late 2004 a Cooperating Agency Measurable Goals Work Group to develop metrics for using the reports to improve agency NEPA processes and decisionmaking. In late 2005, the Work Group asked agencies to propose qualitative and quantitative approaches for evaluating the cooperating agency process. After coordinating with DOE’s NEPA Compliance Officers, Office of NEPA Policy and Compliance staff on January 3, 2006, proposed measurable goals to the Work Group:

The NEPA Office staff also provided examples of memoranda of agreement and case studies, including *LLQR* articles on the Hanford Comprehensive Land Use Plan EIS (March 2000, page 1), the Moab Uranium Mill Tailings EIS (September 2005, page 10), and cooperating agency discussions at recent DOE NEPA Meetings (September 2004, page 7, and December 2005, page 15). For further information about DOE’s cooperating agency reports to CEQ or the Work Group, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE-wide NEPA Contracts Update

Since DOE issued six NEPA support contracts in late 2002 (two to small businesses and four under full and open competition), the contract administrator has been tracking task assignments and performance. Agustin Archuleta, the recently designated contract administrator (introduced in *LLQR*, December 2005, page 28), reports that of the 33 tasks awarded under this set of DOE-wide NEPA contracts:

- 10 tasks (30%) with a total value of \$12 million (27%) were awarded under the two small business contracts (Ageiss Environmental, Inc., and Potomac-Hudson Engineering, Inc.)
- 23 tasks (70%) with a total value of \$33 million (73%) were awarded to the four contracts awarded under full and open competition (Battelle Memorial Institute, Jason Associates Corporation, Science Applications International Corporation, and Tetra Tech, Inc.)

Mr. Archuleta can be contacted at the NNSA National Service Center at aarchuleta2@doeal.gov or 505-845-4686. NEPA Document Managers should provide him copies of all new task awards and modifications as they are issued and contractor performance evaluations after task completion.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. 

Description	DOE Contact	Date Awarded	Contract Team
Yucca Mountain Rail Alignment EIS	Lee Bishop 702-794-5558 lee_bishop@ymp.gov	9/30/2005	Potomac-Hudson
EIS for Spokane River Development and Post Falls Hydroelectric Projects	Federal Energy Regulatory Commission	10/1/2005	Battelle
West Valley Demonstration Project NEPA Compliance Support	Dan Sullivan 716-942-4016 daniel.w.sullivan@wv.doe.gov	11/18/2005	Battelle

How Can We Better Engage Tribes in the NEPA Process?

How can Federal agencies better engage tribes in the NEPA process? Is it sufficient to conduct government-to-government consultations? These were among the questions addressed in a meeting of Federal NEPA Contacts on “Tribal Involvement in Federal Decision Making and NEPA,” co-sponsored by the Council on Environmental Quality (CEQ) and the Department of the Interior (DOI) on February 22, 2006.

Government-to-government consultation between Federal decisionmakers and the leaders of Federally-recognized tribes should be an ongoing exchange, explained Kathryn Lynn, Native Program Coordinator, DOI Office of Collaborative Action and Dispute Resolution, but engaging tribes in the NEPA process generally occurs at different levels and through different interactions. She invited agencies to make use of the resources that DOI is assembling at www.doi.gov/cadr, including information on the laws regarding government-to-government consultation and on previous related events.

How well we engage tribes in the NEPA process depends on how well we listen, how well we understand each other, and how much we want to be successful.

– Kathryn Lynn
Native Program Coordinator
Department of the Interior

Building Tribal Capacity through Training

Tribes can engage in the NEPA process in several ways, said Horst Greczmiel, CEQ Associate Director for NEPA Oversight:

- Tribal governments may participate in the NEPA process as cooperating agencies with an active role in developing the NEPA analyses and documents.
- Tribal governments, organizations, and nongovernmental organizations can join the Federal agencies preparing the NEPA analyses and documents by mutual agreement to establish a regular exchange of information.
- Native Americans may participate in the NEPA process, like all individuals, as interested stakeholders.

“Reaching out to tribes is not enough, and rarely simple,” he observed, “because Federal decisionmaking is rarely transparent, but training can yield a more productive exchange.”

An overview of the initiative underway by the CEQ Work Group on Stakeholder Training (related article, page 10) was provided by Chair Cheryl Wasserman, Associate Director for Policy Analysis, Office of Federal Activities, Environmental Protection Agency (EPA). The Work Group is assembling existing Federal NEPA training and developing a 14-module training program that then will be specifically tailored for delivery to train senior decisionmakers, nongovernmental organizations, state and local officials, tribes, and Federal permit or grant applicants.

The “Tribes and NEPA” module, and the Tribal NEPA training program generally, are intended to empower tribes to use NEPA to achieve their goals of sustaining cultural heritage and identity. They are also intended to promote more effective tribal involvement in Federal decisionmaking – for example by proposing alternatives for analysis, identifying adverse impacts to cultural resources and vulnerable populations, and developing mitigation measures. This training will complement other efforts, such as the earlier work by the Tulalip Tribes to develop NEPA training and assist tribes in developing tribal environmental policy acts (*LLQR*, June 2004, page 10). Pilots of the training program are being planned for fall of 2006.

For information on the CEQ NEPA Stakeholder Training Work Group, contact Ms. Wasserman at wasserman.cheryl@epa.gov or 202-564-7129. For questions on the consultation dialogue series or working with tribes in the NEPA process, contact Ms. Lynn at kathryn_lynn@ios.doi.gov or 202-327-5315. Additional environmental justice resources are posted by EPA at www.epa.gov/compliance/resources/ej.html; the link to Publications includes two reports on tribal consultation prepared by the National Environmental Justice Advisory Council, a chartered Federal advisory committee.

Also see *LLQR*, September 2004 (page 16) on the establishment of the Tribal Capacity Work Group and March 2005 (page 2) on issuance of the DOE Environment, Safety and Health brief on *Consultation with Native Americans* (<http://homer.ornl.gov/oepa/cultural/>). 

OMB, CEQ Urge Use of Environmental Conflict Resolution

A Memorandum issued jointly by the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) directs agencies to build institutional capacity for collaborative problem solving and increase the effective use of environmental conflict resolution (ECR), defined as third-party assisted conflict resolution and collaborative problem solving regarding environmental, public lands, or natural resources issues.

The *Memorandum on Environmental Conflict Resolution* (November 28, 2005) was prompted in part by responses to a U.S. Institute for Environmental Conflict Resolution (U.S. Institute) survey of selected Federal agencies, including DOE. (See *LLQR*, December 2003, page 12.) ECR applies to all Federal agencies and may be useful in the NEPA process.

Preventing and Reducing Conflict

The Memorandum includes policy direction, mechanisms and strategies, and basic principles that were developed collaboratively with 15 Federal agencies, including DOE.

Agencies are advised to invest early in collaborative processes and conflict resolution, align ECR implementation plans with agency strategic plans and staff performance plans, build partnerships with other agencies, and issue guidance. The Memorandum recommends that agencies use their own staff, the U.S. Institute, the Department of Justice, or other ECR organizations, as appropriate, and also recognizes a broad array of cooperative arrangements and unassisted negotiations. It also encourages agencies to use the U.S. Institute for reviewing agency strategies and techniques and for developing performance and accountability measures.

Agencies are asked to systematically collect relevant information on their ECR activities and outcomes

Working through environmental conflicts can be extremely challenging. While DOE has applied Alternative Dispute Resolution techniques to help resolve existing conflicts, anticipating potential conflicts and addressing them before they escalate is even more promising.

*– Kathy Binder, Director
DOE Office of Dispute Resolution*

and report at least annually to OMB and CEQ on their progress in using ECR and other collaborative approaches to dispute resolution and in tracking cost savings and performance outcomes. OMB and CEQ plan to convene quarterly interagency senior staff forums and periodic meetings with agency leaders to facilitate information exchange.

The Memorandum is available on the U.S. Institute Web site at www.ecr.gov/ombceq.htm. DOE adopted an Alternative Dispute Resolution Policy (www.gc.doe.gov/adr.html) in September 1995 to support and promote the same techniques encompassed by ECR for dispute prevention, early intervention, and litigation resolution. DOE's Office of Dispute Resolution is committed to helping the Department assess and resolve environmental conflicts. For more information on DOE's implementation of the ECR Memorandum, contact Ms. Binder at kathleen.binder@hq.doe.gov or 202-586-6972 or Beverly Stephens, Office of Environment, at beverly.stephens@eh.doe.gov or 202-586-5942. 

DOE Experiences with ECR

DOE has used ECR approaches successfully in unassisted negotiation resulting in the collaborative resolution of litigation at DOE's Hanford site (article, page 1) and agreement on compensatory mitigation measures for the Bonneville Power Administration's Kangley-Echo Lake transmission line project (*LLQR*, September 2003, page 16). Conversely, settlement negotiations under a court's Alternative Dispute Resolution program failed to yield agreement in litigation over DOE's cleanup activities at the Energy Technology Engineering Center (*LLQR*, December 2005, page 36).

In growing recognition of the importance of ECR and in response to the Memorandum, DOE's Office of General Counsel devoted a portion of its annual Joint DOE/Contractor Environmental Attorney's Training Workshop (February 28–March 1, 2006) to ECR issues. In addition, the Office of Dispute Resolution is establishing a working group to assemble complex-wide information on DOE's ECR efforts and develop strategies for implementing the Memorandum.



OMB Proposes Risk Assessment Guidance



The Office of Management and Budget (OMB), in consultation with the White House Office of Science and Technology Policy, has issued for public comment its *Proposed Risk Assessment Bulletin* (71 FR 2600, January 17, 2006), which would provide “new technical guidance on risk assessments produced by the federal government.” By establishing “uniform, minimum standards,” OMB seeks to “enhance the technical quality and objectivity of risk assessments.” The Bulletin may be of interest to DOE NEPA practitioners because NEPA documents and their supporting technical analyses may need to comply with the proposed risk assessment and reporting standards.

[I]t is expected that every risk assessment shall describe the data, methods, and assumptions with a high degree of transparency; shall identify key scientific limitations and uncertainties; and shall place the risk in perspective/context with other risks familiar to the target audience. Similarly, every quantitative risk assessment should provide a range of plausible risk estimates, when there is scientific uncertainty or variability.

**– Proposed Risk Assessment Bulletin
January 2006**

The principles of good risk assessment described in the Bulletin are also principles of good NEPA practice, and many of the principles in NEPA regulations and DOE NEPA guidance, such as the *Green Book*,¹ are reflected in the Bulletin. Examples include common core values, such as objectivity, transparency, and public scrutiny. Other examples of common principles include consistent approaches to ensuring technical adequacy, such as: appropriate treatment of uncertainty, meaningful presentation of potential impacts, and application of a “rule of reason” in determining the level of detail and other aspects of analysis. The Bulletin, therefore, may provide supplemental technical guidance that could improve NEPA implementation.

Applicability

The Bulletin states: “To the extent appropriate, all agency risk assessments available to the public shall comply with the standards of this Bulletin.” *Risk assessment* means “a scientific and/or technical document that assembles and synthesizes scientific information to determine

whether a potential hazard exists and/or the extent of possible risk to human health, safety or the environment.” The Bulletin notes that risk assessment “is a useful tool for estimating the likelihood and severity of risks to human health and the environment and for informing decisions about how to manage those risks.” Although many NEPA documents or their underlying technical analyses arguably meet this definition, the Bulletin does not specifically refer to NEPA documents.

Sliding-Scale Approach

Although the proposed Bulletin does not use the term, the proposed standards appear consistent with the *sliding-scale* approach described in DOE’s *Green Book* – that the level of analysis and scope should depend on the significance of the potential impacts. For example, the Bulletin states that the level of effort “shall be commensurate with the importance of the risk assessment Agencies should take into account the importance of the risk assessment in gauging the resources, including time and money, required to meet the requirements of this Bulletin.” The Bulletin further states that the scope and content of the analyses should be determined based on the objectives and best professional judgment.

Also consistent with the sliding-scale approach, OMB distinguishes between risk assessments termed *influential* and *non-influential*, and provides special standards for *influential risk assessments*. (See text box on next page.) An *influential risk assessment* is defined as one that “the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.” This includes “assessments that determine the level of risk regarding health (such as reference doses, reference concentrations, and minimal risk levels), safety and environment.”

OMB Process

OMB plans to modify the Bulletin as appropriate in response to an ongoing National Academy of Sciences peer review of the proposed standards, and public and Federal agency comments received through June 15, 2006. Comments can be submitted electronically to OMB_RAbulletin@omb.eop.gov.

The *Proposed Risk Assessment Bulletin* is available at www.whitehouse.gov/omb/inforeg under Information Policy, IT & E-Gov then Information Quality Government-wide Initiatives. For further information, contact Dr. Nancy Beck, Office of Information and Regulatory Affairs, OMB, at 202-395-3093. 

¹ *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition* (December 2004), www.eh.doe.gov/nepa under Selected Guidance Tools.

Proposed Standards for All Risk Assessments (Excerpts)

- **Informational Needs and Objectives.** Provide a clear statement of the informational needs of decision makers, including the objectives of the risk assessment.
- **Scope.** Clearly summarize the scope of the assessment, including a description of: a) the agent, technology and/or activity that is the subject of the assessment; b) the hazard of concern; c) the affected entities [populations and ecosystems]; d) the exposure/event scenarios; and e) the type of event-consequence or dose-response relationship for the hazard of concern.
- **Risk Characterization.** Provide a characterization of risk, qualitatively and, whenever possible, quantitatively. When a quantitative characterization of risk is provided, a range of plausible risk estimates shall be provided.
- **Objectivity.** Be scientifically objective: a) as a matter of substance, neither minimizing nor exaggerating the nature and magnitude of risks; b) giving weight to both positive and negative studies in light of each study's technical quality; and c) as a matter of presentation.
- **Critical Assumptions.** For critical assumptions in the assessment, whenever possible include a quantitative evaluation of reasonable alternative assumptions and their implications for the key findings of the assessment.
- **Executive Summary.** Provide an executive summary including: a) key elements; b) key findings; c) key scientific limitations and uncertainties and, whenever possible, their quantitative implications; and d) information that places the risk in context/perspective with other risks.
- **Related to Regulatory Analysis.** For risk assessments that will be used for regulatory analysis, the risk assessment also shall include an evaluation of alternative options and a comparison of the baseline risk against the risk associated with the alternative mitigation measures being considered.

Proposed Standards for Influential Risk Assessments (Excerpts)

In addition to the above, the following requirements would apply to influential agency risk assessments:

- **Reproducibility.** Be “capable of being substantially reproduced.”
- **Comparison to Other Results.** Compare the results of the assessment to other results published on the same topic from qualified scientific organizations.
- **Ranges of Risk.** Highlight central estimates as well as high-end and low-end estimates of risk when such estimates are uncertain.
- **Uncertainty.** Characterize uncertainty with respect to the major findings. Document and disclose the nature and quantitative implications of model uncertainty and include a sensitivity analysis.
- **Results.** Portray results based on different effects observed and/or different studies.
- **Variability.** Characterize variability through a quantitative distribution.
- **Human Health Effects.** Where human health effects are a concern, determinations of which effects are adverse shall be specifically identified and justified based on the best available scientific information generally accepted.
- **Scientific Limitations.** Discuss the nature, difficulty, feasibility, cost and time associated with undertaking research to resolve a report's key scientific limitations and uncertainties.
- **Comment Response.** Consider all significant comments received on a draft risk assessment report and issue a “response-to-comment” document. Provide a rationale for why the agency has not adopted the position suggested by commenters and why the agency position is preferable.

States Could Implement NEPA for Certain DOT Projects

Some states could make categorical exclusion determinations and prepare EAs and EISs for certain Department of Transportation (DOT) projects under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU; Pub. L. 109-59, August 2005). Under any of three programs established by SAFETEA-LU, states may enter into agreements with DOT to accept responsibility for implementing NEPA, as well as the jurisdiction of Federal courts to ensure compliance. States also may request to assume DOT's authority to implement other Federal environmental review requirements related to the projects for which it assumes NEPA responsibility.

- **Recreational Trails and Transportation**

Enhancement Projects: During the first three years following enactment of SAFETEA-LU, up to five states (unspecified) can participate in a pilot program. An agreement between DOT and a state would be limited to three years and subject to renewal for additional three-year periods. (See Section 6003.)

- **Categorical Exclusions:** Any state can apply to assume responsibility for determining whether certain activities are included within categorically-excluded classes of action. (See Section 6004.)

- **Highway Projects:** Five states – Alaska, California, Ohio, Oklahoma, and Texas – can assume the responsibility for NEPA implementation for one or more highway projects within their borders under a six-year pilot program. (See Section 6005.)

Individual states would apply to DOT and, after an opportunity for public comment, enter into a Memorandum of Understanding.

SAFETEA-LU directs DOT to issue regulations by May 2006 regarding information to be included in an application to assume responsibilities for highway projects. DOT is developing guidance for the two other programs.

A copy of SAFETEA-LU and information on DOT's implementation of it are available at www.fhwa.dot.gov/safetealu. Related updates also are published on Federal Highway Administration's *Re: NEPA* Web site (<http://nepa.fhwa.dot.gov>) under SAFETEA-LU. Also see a summary of Section 6002 of SAFETEA-LU in *LLQR*, September 2005, page 18. For additional information, contact Lamar Smith at lamar.smith@fhwa.dot.gov or 202-366-8994. **LL**

Integration with NEPA Addressed in NOAA's Revised Coastal Zone Consistency Regulations

The National Oceanic and Atmospheric Administration (NOAA) recently revised portions of the Coastal Zone Management Act (CZMA) Consistency Regulations (15 CFR Part 930), including a provision related to a Federal agency's use of a NEPA document to support a CZMA consistency determination. The addition to 15 CFR 930.37, *Consistency determinations and National Environmental Policy Act (NEPA) requirements*, states that while a Federal agency may use a NEPA document for that purpose, a state cannot require the agency to do so. The changes were effective February 6, 2006.

Under the CZMA, coastal states have the authority to review proposed Federal actions, within or outside the coastal zone, that have reasonably foreseeable effects on a state's coastal uses or resources. NOAA initiated revisions to address, among other things, determinations of when some Federal actions are subject to consistency review. The final rule also incorporates changes required by the Energy Policy Act of 2005 that relate to CZMA appeals by applicants.

The new regulations are posted at www.ocrm.nos.noaa.gov/czm/federal_consistency.html. For additional information, see the Office of Ocean and Coastal Resource Management (OCRM) Web site at

www.ocrm.nos.noaa.gov or contact David W. Kaiser, Federal Consistency Coordinator, OCRM, NOAA, at david.kaiser@noaa.gov or 301-713-3155, extension 144.

For questions on DOE compliance with CZMA, contact Lois Thompson, Office of Air, Water and Radiation Protection Policy and Guidance, at lois.thompson@eh.doe.gov or 202-586-9581, and see the updated Web site at www.eh.doe.gov/oepa/laws/czma.html. See *LLQR*, March 2001, page 7, for discussion of earlier revisions to the regulations, their relation to NEPA, and recommendations for DOE coastal zone review. **LL**



FAA EIS Guide Promotes Smooth NEPA Process

The DOE NEPA Office is always eager to share other agencies' lessons learned with the DOE NEPA community. When Nicholas Yost, former General Counsel, Council on Environmental Quality, recently testified that an EIS management guide prepared by the Federal Aviation Administration (FAA) is "the single best guidance put out by any Federal agency on expediting the NEPA process," the NEPA staff checked it out.



The *FAA Guide to the Best Practices for Environmental Impact Statement Management* is one of six FAA initiatives to improve and streamline its environmental review process outlined in a report to Congress in 2001. "The Guide compiles some of the most critical aspects of the NEPA process into a concise package that has proven

to be extremely valuable to our program managers and NEPA practitioners," explained Matthew McMillen, FAA Office of Environment and Energy.

Although tailored to airport projects, the Guide contains advice helpful to NEPA practitioners in other agencies. The FAA Guide promotes practical approaches for managing the NEPA process and identifies examples of successful community outreach, document management, and fostering cooperating agency relationships. The Guide and the complete *Report to the U.S. Congress on Environmental Review of Airport Improvement Projects* are available on the FAA Web site at www.faa.gov/ARP under Environmental Issues. (Mr. Yost's testimony before the Congressional Task Force on Updating NEPA, November 17, 2005, is available at <http://resourcescommittee.house.gov/nepataskforce/archives/nicholasyost.pdf>). 

Sample FAA Best Practices for EIS Management

EIS Project Management

- A key part of the FAA project manager's responsibility is EIS quality control. If quality control is unacceptably short-changed, there will be delays when analyses and documentation do not pass muster in program or legal reviews.
- The best measure of successful EIS management is that the environmental process does not produce conceptual, methodological, or informational "surprises" towards the end. [The project manager] needs to look ahead, identify issues and problems as early as possible, and initiate appropriate and timely additional analysis, consultation, or other efforts that will lead to successful resolution and completion of the environmental process.



Community Consultation

- Informal workshops at periodic points during the planning and environmental processes tend to provide better forums for community consultation than formal public hearings. Project and environmental impact information understandable to a non-technical person should be made available at workshops.

Interagency and Intra-Agency Coordination

- Other agencies should be informed of project priorities and time schedules. They should be alerted ahead of time when they will receive critical documents (e.g., scoping information, technical working drafts, Draft EIS) and notified of definitive deadlines for comment, so that the other agencies may plan and adjust their workload and resources to the extent possible.

Combining Federal and State Environmental Processes

- [Although it is the agency's practice to combine reviews to the extent possible,] [i]f Federal and State processes are sufficiently different in requirements and timing, it may be more effective and efficient not to combine documents, but to run the two processes on somewhat parallel tracks within concurrent time frames to the extent possible.
- If Federal and State processes are not combined, care must be exercised to use common data bases for both processes and to avoid end-to-end sequential processes that extend the overall environmental [review] time line for the project.

Online Tools Support Environmental Justice Analyses

Identifying the existence of “environmental justice” (EJ) populations, i.e., minority and low-income groups, potentially affected by proposed Federal actions and then assessing impacts on such populations, including those posed by unique exposure pathways, can be a challenge in NEPA reviews. Several computer-assisted geographic mapping tools and resources are available through government agencies and private organizations to assist NEPA practitioners in performing such EJ analyses. Four interactive tools in user-friendly formats are described below.

EPA’s Environmental Justice Geographic Assessment Tool

The Environmental Protection Agency (EPA) states that its online *Environmental Justice Geographic Assessment Tool* (www.epa.gov/enviro/ej) “provides information relevant to assessing adverse health or environmental impacts, aggregate or cumulative impacts, unique exposure pathways, vulnerable or susceptible populations, or lack of capacity to participate in [a] decision making process,” among other conditions. The tool uses a Geographic Information System (GIS) to generate digitized maps by the user’s choice of state, county, city, zip code, watershed, EPA region, latitude and longitude, or facility. Map overlays can be selectively added to show features such as transportation routes, water bodies, environmental monitoring sites, community demographics, and institutions such as schools, hospitals, and regulated facilities. The system’s data sources include EPA, U.S. Geological Survey, Census Bureau, and Centers for Disease Control and Prevention.

Census Bureau’s LandView® 6

LandView® 6, available for demonstration or purchase on the Census Bureau Web site (www.census.gov under Geography), has its roots in software developed by EPA and the National Oceanic and Atmospheric Administration to facilitate implementation of the Emergency Planning and Community Right-to-Know Act. The two-disk set contains both mapping and database management software to create a simple computer mapping system. Users can map *Census 2000* legal and statistical areas and retrieve

Census 2000 demographic and housing data, as well as all places, features, and areas in the United States with Federally-recognized geographic names.

DOD’s Native American Environmental Tracking System

The *Native American Environmental Tracking System* (www.naets.info), prepared by the Department of Defense (DOD), maintains information on reported environmental impacts on American Indian and Alaska Native lands and resources resulting from DOD activities on formerly used defense sites. The system is searchable by state or tribe and provides a variety of information, including site description and history, points of contact, and health risks.

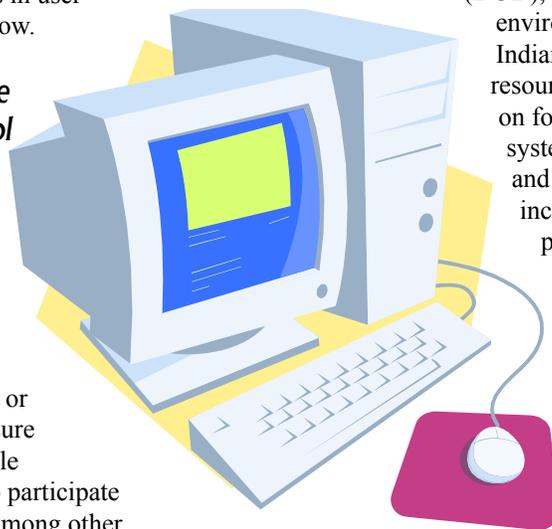
The tool also offers information on tribes, including addresses, Congressional districts, and Bureau of Indian Affairs regions. Additional information is available through an online registration process (currently only approved for members of tribes and the U.S. Army Corps of Engineers), but all

other online features are available to the public without registration.

Scorecard

Owned by a nongovernmental environmental organization, Green Media Toolshed, *Scorecard* (www.scorecard.org) provides environmental justice profiles for U.S. communities. Using bar charts, *Scorecard* illustrates the distribution of Superfund sites, toxic chemical releases, cancer risks from hazardous air pollutants, and facilities emitting air pollutants across seven demographic categories: race/ethnicity, income, poverty, childhood poverty, education, home ownership, and job classification. *Scorecard’s* data sources include EPA, the Census Bureau, and the Department of Agriculture.

The NEPA Office thanks Dr. Christopher Turner, Library Director of the Smithsonian’s National Museum of the American Indian, for his assistance in the preparation of this article. ■■



Transitions

Veteran NEPA Compliance Officer Retires

Paul Dunigan: Richland Operations Office

Paul F.X. Dunigan, one of DOE's original NEPA Compliance Officers (NCOs), retired from the Richland Operations Office on January 3, 2006, concluding a distinguished public service career of more than 33 years with DOE and its predecessors, the Energy Research and Development Administration (ERDA) and the Atomic Energy Commission (AEC). By his count, he contributed to 44 EISs for these agencies – as author, NEPA Document Manager, reviewer, or “advisor.” “My NEPA work has been sometimes frustrating, sometimes scary, sometimes fun, and sometimes deeply satisfying,” Mr. Dunigan noted. His legacy to his successor, he observed, is a large roomful of good environmental documents.

Mr. Dunigan had the right pedigree for his career at Hanford. His parents both participated in the Manhattan Project at Chicago and were part of the first operations group in Richland. Hired to prepare regulatory impact analyses and environmental impact analyses, he still remembers his first assignment, *Waste Management Operations, Hanford Reservation, Richland, Washington* (ERDA-1538, 1975). It was interesting, he observed, to work out what was required for an EIS during the earliest years of NEPA practice, with neither guidance nor past EISs to use as models.

When asked about his “favorite” NEPA review, Mr. Dunigan referred to his role in the 1994 Hanford



Paul Dunigan receives award from Richland Operations Office Manager.

Reach EIS, prepared by the National Park Service in consultation with DOE and with assistance from the Bureau of Land Management and the Fish and Wildlife Service. “Government is often viewed as a monolithic entity,” he observed, “but in this case the multiple agencies had divergent missions and interests – mining, agricultural, and environmental preservation. The agency representatives involved had wildly different views and personal politics. Because of the document team’s good working relationships, we could appreciate the dramatic diversity.”

Mr. Dunigan was designated as the Richland Operations NCO in 1990, when DOE first established the NCO position for Program and Field Offices. In 1998, when Congress directed the establishment of the Office of River Protection to manage Hanford tank waste retrieval, treatment, and disposal, he was also assigned NCO responsibilities for this new organization.

In more than 15 years as NCO, Mr. Dunigan has been an active leader in the DOE NEPA Community. The Office of NEPA Policy and Compliance wishes Paul well in his future endeavors. He can be reached at dunigan@bossig.com.

Tom Ferns, who has been Deputy NCO for several years, now serves as NCO for the Richland Operations Office and the Office of River Protection. He can be reached at thomas_w_ferns@rl.doe.gov or 509-372-0649.

New NEPA Compliance Officers

Electricity Delivery and Energy Reliability: Tony Como

Anthony (Tony) Como has been designated the NCO for the Office of Electricity Delivery and Energy Reliability, a new Program Office created by the Secretary in April 2005. He has over 25 years of experience in permitting electric transmission lines and the attendant NEPA compliance requirements. As NEPA Document Manager, he has led teams for major environmental reviews, including the supplemental EIS for the sale of Naval Petroleum Reserve No. 1 (DOE/EIS-0158-S2, 1997). (See *LLQR*, December 1997, page 1.) He can be reached at anthony.como@hq.doe.gov or 202-586-5935.

Portsmouth/Paducah Project Office: Kristi Wiehle

Kristi Wiehle has been designated NCO for the Portsmouth/Paducah Project Office in Lexington, Kentucky. During her 12 years in environmental remediation and waste management projects at the Portsmouth Gaseous Diffusion Plant, she participated in many NEPA activities, including serving as NEPA Document Manager. She oversees cleanout of the Gas Centrifuge Enrichment Plant and previously managed several New Technology Demonstration Projects. Ms. Wiehle can be reached at kristi.wiehle@lex.doe.gov or 740-897-5020. 



DOE Litigation Updates

Los Alamos County Challenges LANL Security Perimeter Plan

The County of Los Alamos filed a complaint against DOE in the United States District Court for the District of New Mexico on December 27, 2005, alleging that DOE failed to prepare an adequate EA for proposed modifications to the security perimeter at Los Alamos National Laboratory (LANL). Following a January 4, 2006, hearing, the court denied the County's request for a temporary restraining order to immediately halt work on the project. A hearing on the merits of the case has not been scheduled.

Security Changes Would Affect Traffic

DOE proposed physical security enhancements in 2002 that would restrict vehicular traffic to certain areas within LANL and change traffic flow patterns. The proposed action included the installation of several security checkpoints for screening of drivers and vehicles and for further limiting access during periods of heightened security. The proposed action also included construction of bypass roads to facilitate traffic flow through the new security checkpoints and within Technical Area 3, where about one-half of LANL workers are located. DOE would construct bridges to span canyons to minimize the disturbance of areas within LANL that are being protected because of their significance to biological and other resources. DOE evaluated the proposal in the *Environmental Assessment for Proposed Access Control and Traffic Improvements at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EA-1429, August 2002) and issued a finding of no significant impact.

Subsequently, DOE modified its proposal to reduce costs. The modified proposal includes fewer security checkpoints and road improvements, would pave an unpaved road to improve access to nearby recreation areas, and eliminated the bypasses and bridges previously planned.

To assess whether existing NEPA analyses adequately address the potential environmental impacts of the proposed changes, DOE reviewed the 2002 EA and five other relevant EAs completed since 1997. This approach was similar to the supplement analysis process provided for in DOE's NEPA regulations to evaluate whether to prepare a supplemental EIS (10 CFR 1021.314(c)). In March 2004, DOE concluded that the proposed modifications are bounded by the analyses in those EAs and that, therefore, no new EA is required.

Utility modification and other work in preparation for the project began in September 2005. Activities that would affect existing road conditions are planned to begin in March 2006. DOE does not expect to begin operating the first of the new security checkpoints before August 2006.

County Seeks New EA

Los Alamos County asked the court to prohibit DOE from modifying the LANL security perimeter until DOE prepares a new EA. The County alleges that DOE has not analyzed potential impacts associated with the current proposal. Adverse impacts would stem from restrictions on public access to a non-Federal research park and recreational facilities, increased traffic congestion, elimination of an evacuation route for area residents, and restricted access by emergency vehicles, the County states.

The court concluded that the alleged harms are not imminent, if they would occur at all. The court also concluded that, although it is "concerned that the Defendants' NEPA process was flawed, the County has not established that it is substantially likely to succeed on the merits." [Case No.: 05-1343]

Court Allows Clean Air Act Challenge in Border Power Lawsuit

The United States District Court for the Southern District of California will consider whether DOE and the Bureau of Land Management violated the Clean Air Act by not completing a conformity determination before DOE issued Presidential permits for the construction and operation of electric transmission lines that carry electricity into the United States from two new power plants in Mexico. The two utilities that received the Presidential permits (Sempra Energy Resources and Baja California Power), who are interveners in the case, asked the court to dismiss the Clean Air Act charges. The Department did not file briefs

with regard to the interveners' motion. The court denied the request on February 8, 2006, thereby leaving the issues open for litigation on the merits. A date for a hearing on the merits has not been set.

Plaintiffs Allege NEPA and CAA Violations

In this case, *Border Power Plant Working Group v. Department of Energy et al.*, the plaintiffs allege that DOE and the Bureau of Land Management violated NEPA by preparing an inadequate *EIS for the Imperial-Mexicali*

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Litigation Updates (continued from previous page)

230-kV Transmission Lines (DOE/EIS-0365, December 2004), which was completed after the court found the agencies' 2001 EA inadequate. (See *LLQR*, September 2005, page 25, for a summary of the alleged NEPA violations.)

The plaintiffs also allege that the Federal agencies violated the Clean Air Act by failing to prepare a conformity determination. A conformity determination is an analysis by which Federal agencies assess how their actions would conform to applicable state implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. Imperial County, California, an area impacted by the transmission lines and emissions from the power plants and does not meet National Ambient Air Quality Standards (i.e., it is a nonattainment area) for ozone, particulate matter less than 10 microns in diameter.

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

Court Rejects Motion to Dismiss

The intervenor utility companies, whose power plants are within three miles of the California Border (the California portion of the line being approximately six miles long), asked the court to dismiss the Clean Air Act claims.

The interveners argued that a conformity determination is not required for the emissions from the power plants because (1) the emissions "occur" in Mexico and not in a nonattainment area (i.e., Imperial County), (2) issuance of the Presidential permits is a "foreign affairs function" such that any emissions are exempt from the conformity determination requirements, and (3) the emissions are not "indirect emissions" under the Clean Air Act regulations (40 CFR 51.852) because the Federal agencies cannot "practicably control" the emissions and do not "maintain control over [the emissions] due to a continuing program responsibility."

On the first point, the court referenced Environmental Protection Agency regulations that require a conformity analysis where Federal action causes "the total of direct and indirect emissions in a nonattainment or maintenance area" to exceed the emissions criteria (40 CFR 51.853(b)). Indirect emissions may "be farther removed in distance from the action itself," the court noted (quoting 40 CFR 51.852). The court also concluded that it advances the purposes of the Clean Air Act to require a conformity

determination for emissions emanating from outside the United States that are caused by Federal agency action and that impact a state's ability to comply with air quality standards.

On the interveners' second point, the court referred to discussion, in the EIS, of whether a conformity determination is required for the transmission lines. Had DOE believed it was exempt from the requirements because issuance of the permits is a "foreign affairs function," the court wrote, then DOE need not have completed a conformity review in the EIS. The court also referred to a DOE Information Brief,¹ *Compliance with the General Conformity Regulations* (March 2003, available on the Web at www.eh.doe.gov/oepa/guidance/caa/conformbrf.pdf), which gives examples of circumstances where the conformity rule would apply, including "construction of an electric power transmission line between the U.S. and a foreign country pursuant to a Presidential permit issued by DOE . . ." The court found the guidance "sufficiently persuasive to preclude dismissal" of the Clean Air Act claim.

On the interveners' third point, the court referred to conditions in the existing Presidential permits that require that the transmission lines be connected "only to an electric power plant that employs the same cooling technology, water treatment plant, and air pollution control technologies as those analyzed" in the EIS and that require DOE approval of any change in connection to the transmission lines. These "conditions demonstrate that the DOE can 'practicably control' the emissions emanating from the export turbines of the Mexican power plants," the court wrote.

Moreover, the court concluded that the argument that DOE has practicable control over the emissions is supported by the Supreme Court decision in *Department of Transportation v. Public Citizen*. (See *LLQR*, September 2004, page 20.) In that case, the Supreme Court found that the Federal agency did not exercise any control over the action that that would generate air emissions (vehicle exhaust from Mexican trucks). The district court contrasted that with the conditions in the Presidential permits, which demonstrate that "DOE does as a practical matter exert control over the amount of emissions emanating from the Mexican power plants," the court concluded.

The court similarly concluded that the permit conditions indicate that DOE has some "continuing program responsibility" to control the emissions. However, the court wrote that "it is not clear whether the DOE has the authority to monitor the emissions" and that the "ultimate determination of whether DOE has a continuing program

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¹ The court incorrectly attributes the Information Brief to the U.S. Environmental Protection Agency.

Litigation Updates (continued from previous page)

responsibility within the meaning of the [Clean Air Act] implementing regulations will require a detailed examination of the underlying facts.”

(See *LLQR*, December 2005, page 36; June 2004, page 16; December 2003, page 7; and September 2003, page 22,

for history on the litigation. Also see *LLQR Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process*, available on the DOE NEPA Web site, www.eh.doe.gov/nepa, under Selected Guidance Tools.) [Case No.: 02-0513]

Other DOE NEPA Litigation in Brief

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project (WVDP) site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). The plaintiffs also allege that the *West Valley Demonstration Project Waste Management Environmental Impact Statement* (DOE/EIS-0337, December 2003) does not support the Record of Decision’s (70 FR 35073; June 16, 2005) reference to the possible use of a waste-incident-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level waste or mixed low-level waste.

DOE filed an answer to the complaint on December 7, 2005. The court issued a scheduling order on February 15, 2006, that provides for a filing of the administrative record and briefing of the case to be completed by October 31, 2006. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Center for Biological Diversity et al. v. Department of Energy et al. (N.D. Calif.): A hearing is scheduled for March 2, 2006, on the 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 also states that DOE violated NEPA when it promulgated a rule in which it determined, based on application of a categorical exclusion, not to adopt “a regulatory requirement that owners and operators of certain private and local government fleets acquire alternative fueled vehicles” (69 FR 4219; January 29, 2004). The categorical exclusion applied in this instance

is for “Rulemaking (interpreting/amending), no change in environmental effect” (10 CFR Part 1021, Subpart D, Appendix A, Section A5). (See *LLQR*, June 2005, page 23.) [Case Nos.: 02-00027 and 05-01526]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): The court has scheduled a hearing on summary judgment for June 23, 2006. The plaintiffs allege that DOE’s cleanup activities at the Energy Technology Engineering Center (ETEC) are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. The lawsuit challenges the adequacy of DOE’s *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated finding of no significant impact. (See *LLQR*, December 2004, page 16.) [Case No.: 04-04448]

Tri-Valley Communities Against a Radioactive Environment et al. v. Department of Energy (9th Cir.): The plaintiffs requested on February 14, 2006, that the court block DOE from beginning operation of a Biosafety Level 3 (BSL-3) facility at Lawrence Livermore National Laboratory until the appeals process is complete. The plaintiffs asked the court to act on the request before March 15, 2006, because DOE has indicated its intention to begin operations in April 2006. DOE’s opposition brief is due March 3, 2006.

This case is an appeal of the district court’s ruling on September 10, 2004, that DOE’s EA for the BSL-3 facility is sufficient. (See *LLQR*, June 2005, page 23; December 2004, page 18; March 2004, pages 2 and 16; and September 2003, page 23.) [Case No.: 04-17232] 

Training Opportunities

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

- **Environmental Impact Assessment: NEPA and Related Requirements**
San Francisco, CA: May 31-June 2
Fee: \$995

American Law Institute -
American Bar Association
800-253-6397
www.ali-aba.org
- **NEPA: Turning Complexities into Strategies**
San Diego, CA: March 17
Fee: \$495 (GSA contract: \$445)

NEPA: A View from All Sides
Las Vegas, NV: April 6-7
Fee: \$595 (GSA contract: \$495)

Continuing Legal Education (CLE)
800-873-7130
www.cle.com
- **Implementation of the National Environmental Policy Act**
Durham, NC: March 13-17
Fee: \$1,175 (waitlist)

Accounting for Cumulative Effects in the NEPA Process
Durham, NC: April 5-7
Fee: \$750
until March 14

The Law of NEPA
Durham, NC: May 17-19
Fee: \$750
until April 25

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

Nicholas School of the Environment and Earth Sciences
Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuinged/certificates.html
- **Reviewing NEPA Documents**
Las Vegas, NV: March 13-15
Fee: \$885 (GSA contract: \$795)
until March 3
Anchorage, AK: May 17-19
Fee: \$880 (GSA contract: \$795)
until May 7
Denver, CO: June 28-30
Fee: \$880 (GSA contract: \$795)
until June 18

NEPA Writing Workshop
Las Vegas, NV: March 16-17
Fee: \$660 (GSA contract: \$595)
until March 6

How to Manage the NEPA Process and Write Effective NEPA Documents
Salt Lake City, UT: March 27-29
Fee: \$885 (GSA contract: \$795)
San Francisco, CA: May 16-19
Fee: Contact The Shipley Group
Atlanta, GA: June 13-16
Fee: \$1,110 (GSA contract: \$995)
until May 30

NEPA Cumulative Effects Analysis and Documentation
Salt Lake City, UT: March 30-31
Fee: \$660 (GSA contract: \$595)
Las Vegas, NV: May 16-18
Fee: \$880 (GSA contract: \$795)
until May 6
Anchorage, AK: May 22-23
Fee: \$660 (GSA contract: \$595)
until May 12
Baltimore, MD: July 11-13
Fee: \$835 (GSA contract: \$745)
until April 11

Advanced Writing for NEPA Specialists
Salt Lake City, UT: April 3-5
Fee: \$885 (GSA contract: \$795)
Anchorage, AK: May 24-26
Fee: \$880 (GSA contract: \$795)
until May 14
Portland, OR: July 25-27
Fee: \$830 (GSA contract: \$745)
until April 25

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Training Opportunities

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NEPA Process Management

Anchorage, AK: May 15-16
Fee: \$660 (GSA contract: \$595)
until May 5

Adaptive Management and NEPA

Baltimore, MD: June 6-8
Fee: \$835 (GSA contract: \$745)
until March 6

Las Vegas, NV: July 11-13
Fee: \$835 (GSA contract: \$745)
until April 11

Managing NEPA Projects and Teams

Las Vegas, NV: June 6-8
Fee: \$885 (GSA contract: \$795)
until May 27

Overview of the NEPA Process

Denver, CO: June 27
Fee: \$220 (GSA contract: \$195)
until June 17

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 course materials)

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

• **Assessing Cumulative Impacts**

San Francisco, CA: April 5 (half day)
Fee: Contact Tetra Tech

Effective Public Outreach

San Francisco, CA: April 5 (half day)
Fee: Contact Tetra Tech

Endangered Species

San Francisco, CA: April 6 (half day)
Fee: Contact Tetra Tech

Wetlands Workshop

San Francisco, CA: April 6
Fee: Contact Tetra Tech

NEPA Workshop

Orlando, FL: June 8-9
Fee: Contact Tetra Tech

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

- **Preparing for the Environmental, Political, Cultural, Economic, and Other Implications of Energy Development in Indian Country**
Denver, CO: March 22-23

Council of Energy Resource Tribes
303-733-0481
info@CERTRedEarth.com
www.certreearth.com/event.php

- **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 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

EAs and EISs Completed October 1 to December 31, 2005

EAs

**Lawrence Berkeley National Laboratory/
Office of Science**
DOE/EA-1527 (9/30/05)
*Environmental Assessment and Corrective
Measures Study Report for Remediating
Contamination at Lawrence Berkeley National
Laboratory Regulated under the Resource
Conservation and Recovery Act, Berkeley, California*
Cost: \$36,000
Time: 7 months

**Savannah River Operations Office/
Office of Nonproliferation and National Security**
DOE/EA-1538 (12/16/05)
*Safeguards and Security Upgrades for Storage of
Plutonium Materials at the Savannah River Site,
Aiken, South Carolina*
Cost: \$62,000
Time: 5 months

**Strategic Petroleum Reserve Office/
Office of Fossil Energy**
DOE/EA-1523 (11/10/05)
*Proposed Site Modifications at the Strategic
Petroleum Reserve's West Hackberry Raw
Water Intake Structure Site, Louisiana*
Cost: \$31,000
Time: 10 months

Western Area Power Administration
DOE/EA-1508 (11/10/05)
*Beaver Creek-Hoyt-Erie 115 kV Transmission Line
Upgrade, Morgan and Weld Counties, Colorado*
Cost: \$388,000
Time: 15 months

EIS

**Office of Electricity Delivery and Energy
Reliability**
DOE/EIS-0372 (70 FR 71139, 11/25/05)
(EPA Rating: EC-2)
*Bangor Hydro-Electric Northeast Reliability Interconnect,
Maine*
Cost: The cost for this EIS was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 12 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

Adequacy of the EIS

- Category 1 – Adequate
- Category 2 – Insufficient Information
- Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA 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 four EAs for which cost data were applicable was \$49,000; the average was \$129,000.
- Cumulatively, for the 12 months that ended December 31, 2005, the median cost for the preparation of 16 EAs for which cost data were applicable was \$57,000; the average was \$118,000.
- For this quarter, the median and average completion time of 4 EAs was 9 months.
- Cumulatively, for the 12 months that ended December 31, 2005, the median completion time for 22 EAs was 7 months; the average was 13 months.

EIS Costs and Completion Times

- For this quarter, there were no EISs completed for which cost data were applicable.
- Cumulatively, for the 12 months that ended December 31, 2005, the median cost for the preparation of 3 EISs for which cost data were applicable was \$3,300,000; the average was \$2,800,000.
- For this quarter, the completion time for one EIS was 12 months.
- Cumulatively, for the 12 months that ended December 31, 2005, the median completion time for 6 EISs was 33 months; the average was 31 months.

Recent EIS-Related Milestones (December 1, 2005, to February 28, 2006)

Advance Notice of Intent

**Office of Fossil Energy/
National Energy Technology Laboratory**
DOE/EIS-0394
FutureGen Project Environmental Impact Statement
February 2006 (71 FR 8283, 2/16/06)

Notices of Intent

**Office of Environmental Management/
Office of River Protection**
DOE/EIS-0391
*Tank Closure and Waste Management for the
Hanford Site, Richland, Washington*
February 2006 (71 FR 5655, 2/2/06)
(71 FR 8569, 2/17/06, extension of scoping period)

Western Area Power Administration
(with Office of Electricity Delivery
and Energy Reliability)
DOE/EIS-0395
*San Luis Rio Colorado Project, Yuma County,
Arizona*
February 2006 (71 FR 7033, 2/10/06)

Draft EIS

**Office of Fossil Energy/
National Energy Technology Laboratory**
DOE/EIS-0357
*Gilberton Coal-to-Clean Fuels and Power Project,
Gilberton, Pennsylvania*
December 2005 (70 FR 73233, 12/9/05)

Records of Decision

Office of Electricity Delivery and Energy Reliability
DOE/EIS-0372
*Bangor Hydro-Electric Company Northeast Reliability
Interconnect, Maine*
January 2006 (71 FR 587, 1/5/06)

**Office of Environmental Management/
Idaho Operations Office**
DOE/EIS-0287
*Idaho High-Level Waste and Facilities Disposition,
Idaho Falls, Idaho*
December 2005 (70 FR 75165, 12/19/05)

Amended Record of Decision

**Office of Environmental Management/
Savannah River Operations Office**
DOE/EIS-0082-S2
*Savannah River Site Salt Processing Alternatives,
Aiken, South Carolina*
January 2006 (71 FR 3834, 1/24/06)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0246-SA-49*
*Albeni Falls Wildlife Mitigation - Gold Creek
Acquisition, Bonner County, Idaho*
(No further NEPA review required)
November 2005

DOE/EIS-0246-SA-50
*Albeni Falls Wildlife Mitigation - Eaton Lake
Acquisition, Bonner County, Idaho*
(No further NEPA review required)
December 2005

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

DOE/EIS-0265-SA-244*
*Idaho Fish Screening Improvement - Kenny Creek;
LKC-03, Lemhi County, Idaho*
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-245
*Idaho Fish Screening Improvement - Challis Creek
Diversion, Custer County, Idaho*
(No further NEPA review required)
December 2005

DOE/EIS-0265-SA-246
*Pataha Creek Stream and Cropland Restoration -
Garfield County Sediment Reduction and Riparian
Improvement, Garfield County, Washington*
(No further NEPA review required)
December 2005

* Not previously reported in LLQR

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Recent EIS-Related Milestones (December 1, 2005, to February 28, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-247

Implement Trout Creek Watershed Enhancement and Trout Creek Habitat Restoration, Jefferson County, Oregon

(No further NEPA review required)

January 2006

DOE/EIS-0265-SA-248

Idaho Fish Screening Improvement - Squaw Creek SSC-02 Diversion Project, Clayton, Idaho

(No further NEPA review required)

January 2006

DOE/EIS-0265-SA-249

Satus Creek Watershed Restoration Project (Yakama Reservation Watersheds Project - FY2006), Yakama Nation Reservation, Washington State

(No further NEPA review required)

January 2006

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

DOE/EIS-0285-SA-260*

Vegetation Management along the St. Johns - St. Helens 115 kV Transmission Line Corridor, Columbia and Multnomah Counties, Oregon

(No further NEPA review required)

June 2005

DOE/EIS-0285-SA-261*

Vegetation Management along the Bald Mountain Microwave Service Road, Mineral County, Montana

(No further NEPA review required)

August 2005

DOE/EIS-0285-SA-262*

Vegetation Management along the Walla Walla - North Lewiston 115 kV Transmission Line Corridor, Columbia, Garfield, Asotin, and Whitman Counties, Washington; and Lewis County, Idaho

(No further NEPA review required)

August 2005

DOE/EIS-0285-SA-263*

Vegetation Management along the McNary - Ross (345 kV) and McNary - Horse Heaven (230 kV) Transmission Line Corridor, Benton County, Washington

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-264*

Vegetation Management for the Macks Inn - Madison Transmission Line Project, Gallatin, Montana and Fremont County, Idaho

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-265*

Vegetation Management along the Roundup - La Grande 230 kV Transmission Line Corridor, Union County, Oregon

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-266*

Vegetation Management for the Driscoll Substation, Clatsop County, Oregon

(No further NEPA review required)

October 2005

DOE/EIS-0285-SA-267*

Vegetation Management along the 115 kV Reedsport - Fairview No. 1, Tahkenitch - Reedsport No. 1, and Tahkenitch - Gardiner No. 1 Transmission Line Corridors, Coos and Douglas Counties, Oregon

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-268*

Vegetation Management along the 115 kV Dorena Tap No. 1 Transmission Line Corridor, Lane County, Oregon

(No further NEPA review required)

October 2005

DOE/EIS-0285-SA-269*

Vegetation Management along the 115 kV Alvey - Martin Creek No. 1, Martin Creek - Drain No. 1, Martin Creek Tap No. 1, and Latham Tap No. 1 Transmission Line Corridors, Lane and Douglas Counties, Oregon

(No further NEPA review required)

October 2005

DOE/EIS-0285-SA-270*

Vegetation Management along the Right-of-Way (ROW) of the Lapine - Chiloquin and Lapine - Fort Rock Transmission Line Corridor, Klamath and Deschutes Counties, Oregon

(No further NEPA review required)

October 2005

* Not previously reported in LLQR

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Recent EIS-Related Milestones (December 1, 2005, to February 28, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-271*

*Vegetation Management along the Bonneville - Alcoa
Transmission Line Corridor, Clark and Skamania
Counties, Washington*

(No further NEPA review required)

November 2005

DOE/EIS-0285-SA-272*

*Vegetation Management along the Port Angeles -
Sappho No. 1, 115 kV Transmission Line Corridor,
Clallam County, Washington*

(No further NEPA review required)

November 2005

DOE/EIS-0285-SA-273*

*Vegetation Management along the Red Mountain -
White Bluffs 115 kV Transmission Line Corridor,
Benton County, Washington*

(No further NEPA review required)

November 2005

DOE/EIS-0285-SA-274

*Vegetation Management along the Sacajawea - Sun
Harbor 115 kV Transmission Line Corridor, Walla
Walla County, Washington*

(No further NEPA review required)

December 2005

Office of Environmental Management

Savannah River Site Salt Processing Alternatives

Environmental Impact Statement

(DOE/EIS-0082-S2)

DOE/EIS-0082-S2-SA-01

*Salt Processing Alternatives at the Savannah River
Site, Aiken, South Carolina*

(No further NEPA review required)

January 2006 

* Not previously reported in LLQR

What Worked and Didn't Work in the NEPA Process

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

- *Meetings with interested parties.* Individual meetings were held with each landowner to discuss the project. DOE also met with the city to discuss concerns and draft mitigation plans.
- *Lessons learned from similar project.* The scope was similar to a previous EA, enabling us to reduce analysis time.
- *Consolidated scope.* Several related projects were combined in a single EA.
- *Early scoping.* Detailed, early internal scoping was conducted with all parties; responsibilities for the EA were clearly designated through a meeting record.

What Didn't Work

- *Definition of no action alternative.* The state insisted that the No Action alternative for the EA be defined as a cessation of all remediation and monitoring, rather than maintaining the status quo. Thus, DOE implemented most of the preferred alternative while preparing the Corrective Measures Study/EA.

Data Collection/Analysis

What Worked

- *Coordination with special interest groups.* Special interest groups provided essential information on threatened and endangered species and historical impacts.
- *Knowledgeable contractors and specialists.* The EA contractors were familiar with the local area and knew where to obtain information. A contracted hydrogeologist helped with critical analyses.

What Didn't Work

- *Change of scope.* A scope change regarding tree removal during EA preparation required additional wetland and archeological impact assessments.
- *NEPA issues hidden.* A Corrective Measures Study is comprehensive, but it tends to submerge NEPA issues.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Schedule management.* Aggressive schedule management and troubleshooting facilitated timely completion of the EA.
- *Good contractors.* A good contractor with strong subcontractors who were familiar with the area and DOE requirements facilitated timely completion of the EA.
- *Established responsibilities and lines of communication.* Decisions made at a well-attended and well-documented internal scoping meeting, with responsibilities and lines of communication established, were carried all the way through the project and helped to complete the EA on time.
- *Consolidated scopes.* The EA covered four projects with different management chains and funding profiles. Combining the scopes in one EA made each project dependent upon the others and created momentum for staying on schedule.
- *Good strategy.* A well-conceived strategy by the NEPA Compliance Officer and dedicated teamwork facilitated timely completion of the EA.
- *Early completion of draft.* Early completion of the draft EA assisted the DOE NEPA staff's review and ability to provide timely feedback to the preparer.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- *Use of categorical exclusion.* Two smaller projects of insignificant impact within the larger scope were categorically excluded to facilitate the overall project schedule, but their scopes and potential impacts were included in the scope of the EA.
- *Access to electronic files.* Concurrent access by multiple reviewers to electronically-shared files made the resolution of comments and incorporation into the final document highly efficient. Electronic files were re-established remotely during hurricane recovery.

Factors that Inhibited Timely Completion of Documents

- *Design changes.* Changes in project design required additional procurements.
- *Critical path.* The EA did not start on the critical path but circumstances pushed it that way.
- *Calculations made too early.* Health effects calculations for the EA were made very early in the project process, so they were less refined than might usually be the case. The authors generally took a bounding approach.
- *Complicated scope.* A complicated EA scope with three diverse projects, a combined impact assessment, and the classified nature of some information needed to be organized and presented for public review.
- *Natural disasters.* Hurricanes Katrina and Rita interrupted distribution and posting of the document to the Department's Web site.
- *Combination with state-level review.* Combining the EA and state Resource Conservation and Recovery Act assessment into one document left parts of the critical path in the state's hands.

Teamwork

Factors that Facilitated Effective Teamwork

- *Good cooperation.* Teamwork and cooperation cannot be emphasized enough.
- *Good communication.* Close, frequent, and useful communication between the NEPA Compliance Officer, the Document Manager, and the project managers helped keep the process on track.
- *Common goals and responsibilities.* Establishment of common goals and a clear determination of the responsible party for each task facilitated teamwork.

Factors that Inhibited Effective Teamwork

- *Limited involvement.* The private sector project participant was loosely involved in the NEPA review.
- *Inconsistent goals.* The state's goals were not entirely consistent with NEPA.

Process

Successful Aspects of the Public Participation Process

- *Frequent, personal meetings.* DOE project staff visited frequently with individual landowners whenever they wanted to discuss project issues. Every potentially affected landowner was contacted personally. The landowners were very pleased with this response. This took a lot of time on a project of nearly 80 miles, but the rewards were big.
- *Use of Web site.* Posting the draft EA and notice of availability on the Web site facilitated public review.
- *Public briefings.* During briefings to the Citizens Advisory Board, one individual asked why all the projects were included in a single EA. This person was apparently satisfied with the response that each involved some aspects of safeguards and security for materials stored at the site.
- *Well-written document.* There was little public response because the EA was well constructed and written. Public safety would be enhanced by the proposed action.
- *Identification of alternatives and impacts.* Several reasonable alternatives, a sliding-scale impact analysis, and detailed human health risk assessment and dose calculations were identified through the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *NEPA process bypassed.* The public essentially ignored NEPA, submitting their comments on the Corrective Measures Study directly to the state.

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What Worked and Didn't Work

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Usefulness

Agency Planning and Decisionmaking: What Worked

- *Issues identified.* The EA process facilitated informed and sound decisionmaking.
- *Consolidated projects.* By combining several separately-funded but related projects, the NEPA process helped coordinate planning and was useful in showing how the projects fit together. The process required several projects to consolidate pertinent impact information on human health and environmental issues.
- *Early evaluation of impacts and problems.* The EA process was fundamental in promoting early evaluation of potential impacts and problems.
- *Effective review comments.* Comments received and incorporated during the review of the draft EA clarified certain project aspects and facilitated a better understanding of the final project scope.
- *Clarification of concerns.* This EA process clarified environmental concerns across all contractors involved with the project.

What Didn't Work

- *Lateness of study.* The EA/Corrective Measures Study was too late to seriously affect remediation decisions. However, it validated the suitability of interim measures already implemented.

Enhancement/Protection of the Environment

- *Issues identified early.* The incorporation of revegetation on sandy soils and construction staging to accommodate wildlife contributed to protection and enhancement of the environment.
- *Wetland impacts avoided.* The project boundaries were modified to avoid impacts to wetlands and an endangered species. By virtue of internal questions during the concurrence process, waste management requirements were made more explicit in the EA and were clarified for the responsible organization.
- *Wetland impacts mitigated.* The EA process ensured that impacts to wetlands were mitigated as an integral part of the project.

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 7 questionnaire responses were received for 4 EAs, 6 out of 7 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that public input was effective, changes in project design and implementation protected resources and accommodated landowners.
- A respondent who rated the process as “5” stated that the NEPA process facilitated the consolidation of several complicated projects into one integrated scope and ensured mitigation of potential significant impacts on wetlands and sensitive species.
- A respondent who rated the process as “5” stated that the NEPA process resulted in mitigation activities being “built into” the project at the conceptual stage, which will effectively minimize impacts to wetlands.
- A respondent who rated the process as “4” stated that the EA was very effective because it addressed NEPA requirements for several projects.
- A respondent who rated the process as “4” stated that ecological and human health impacts evaluated in the NEPA process received early attention, which aided in project planning.
- A respondent who rated the process as “3” stated that although a management decision had already been made to enhance the safety and security of materials, the NEPA review was an effective tool in consolidating all aspects of the safety and security upgrades. NEPA should be considered an effective tool used during project planning stages.
- A respondent who rated the process as “0” stated that to be useful, the NEPA review would have to come well before the Corrective Measures Study, perhaps as anticipated cumulative impacts analyzed in the first Engineering Evaluation/Cost Analysis for an interim measure. **LL**

EIS Completion Times Need Attention

EIS Costs Remain Stable

By: Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance

The Office of NEPA Policy and Compliance periodically analyzes and reports on NEPA performance metrics to assess DOE's progress toward meeting NEPA performance goals. The NEPA Office examines NEPA process costs, completion times, and measures of quality and recommends ways to foster improvements. Based on an analysis of EIS cost and completion times over the last 10 calendar years (1996 through 2005), DOE is not consistently meeting its 15-month completion time goal. Management attention to EIS schedules is warranted to ensure that the EIS process meets program needs. The cost to prepare an EIS has remained about the same over the past 10 years.

EIS Completion Times

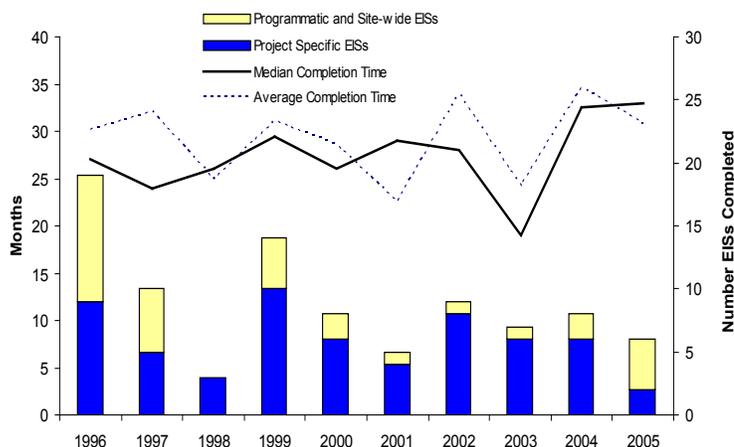
EIS completion time is measured from DOE's Notice of Intent to the Environmental Protection Agency's Notice of Availability of the Final EIS. In 1994, DOE set a median EIS completion time goal of 15 months, and DOE Order 451.1B, National Environmental Policy Act Compliance Program, directs the development of EIS schedules that, absent extraordinary circumstances, will provide for completion within 15 months.

Data for the past 10 years show that DOE is not meeting its 15-month completion time goal. The median completion time was 28 months for 89 EISs completed during this period.

(See Figure 1.)

These time trend data should be interpreted cautiously in view of the relatively small number of EISs completed per year because even one or two documents can significantly influence the statistics for a given year. Nonetheless, the data appear to show a negative trend: after a promising decrease to below 20 months in 2003, the median EIS completion time rose to more than 30 months for two consecutive years.

Figure 1: EIS Completion Times and Number of EISs, 1996-2005



EIS Type	Number of EISs	Average Time (months)	Median Time (months)	Min/Max (months)
Project-Specific EISs	59	26	22	9/76
Programmatic and Site-wide EISs	30	38	33	15/86
Overall	89	30	28	9/86

What's Going On?

A partial explanation for the increase is that during 2004 and 2005 DOE completed more programmatic and site-wide EISs than during 2001–2003. Median completion times for programmatic and site-wide documents typically are longer than for project-specific EISs (33 vs. 22 months, respectively). In 2003, only one of seven completed EISs was programmatic or site-wide. Four of six EISs completed in 2005 were programmatic or site-wide. While this may account for the completion time increase in 2005, it likely is not a complete explanation of the increase from 2003 to 2004, and further examination is warranted.

Figure 2 shows the distribution of EIS completion times during the past 10 years. The most frequent completion time (mode) is 15 months, and DOE completed about 25 percent of its EISs in 15 months or less. A prominent feature of the distribution is that it is skewed, with a long "tail" comprised of EISs with completion times greater than about 40 months. Analysis, however, shows that these EISs do not account for the recent increase in completion times. Further, most of these EISs met program needs and were not of concern: the long completion times were either intentional (e.g., to enable completion of studies or the needs of cooperating agencies) or reflect projects that were placed "on hold" for several years and then reactivated.

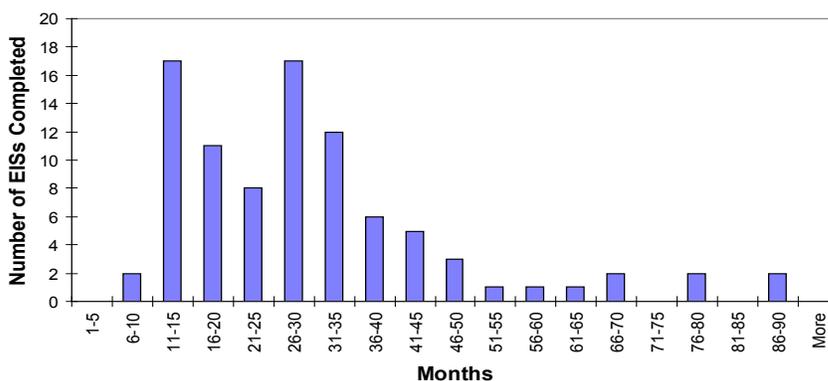
Comparison of Figure 2 with a similar EIS distribution for 10 years of EISs completed through 2003 (*LLQR*, September 2003, Page 6, Figure 4) reveals an increase in the number of EISs completed in 26 to 35 months, and these are the documents that most account for the recent increase in completion times. Several of these documents were

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EIS Completion Times (continued from previous page)

programmatic or site-wide EISs that reasonably required more time to prepare. A few, however, were project-specific EISs that were of concern to programs because the programs wanted to complete them sooner. One of these documents, the EIS for the Moab Uranium Mill Tailings Remedial Action Project (DOE/EIS-0355, August 2005), was completed very quickly after receiving DOE senior management attention. (See *LLQR*, September 2005, page 10.) It appears that management attention to EIS schedules, particularly those with projected completion times of 26 to 35 months, can help DOE meet its EIS completion time goals.

Figure 2: Completion Times for 89 EISs from 1996-2005



Schedules Are Uncertain

In the course of preparing the monthly Schedules of Key Environmental Impact Statements (available at www.eh.doe.gov/nepa/docsta.html), the NEPA Office has observed an increasing number of in-process EISs whose schedules are “uncertain.” In some cases, this may be appropriate (e.g., certain applicant processes where financial uncertainties may result in suspensions of EIS preparation). In other cases, the causes are less clear, and management attention to schedule appears warranted. Also, preliminary review of Annual NEPA Planning Summaries for 2006 reinforces an apparent need for greater attention to schedules (e.g., some schedules are “uncertain” or extend beyond 15 months).

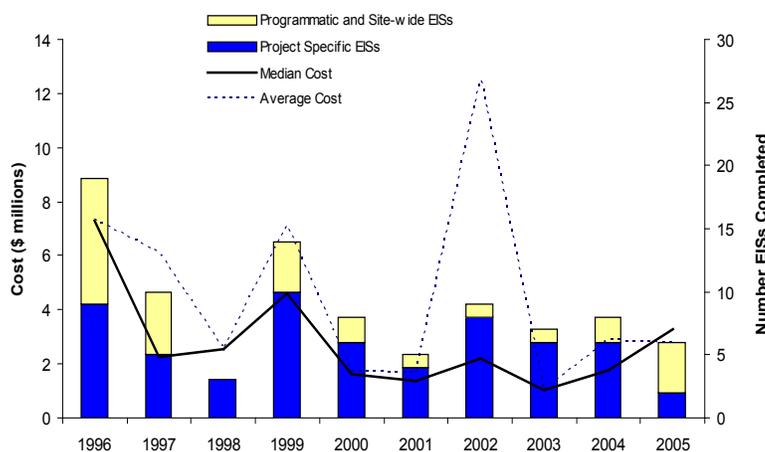
The NEPA Office has analyzed root cause factors associated with long and short EIS completion times. (See *LLQR*, September 2003, Page 6.) Our analysis continues to show that, while many factors affect EIS completion times (e.g., skill and dedication of the document preparation team including reviewers, communications, the involvement of multiple sites and offices, the participation of cooperating agencies, late identification of data needs, and changes in scope), the single most important factor is senior management attention to scope, content, and the schedule itself.

Conclusion: Increased management attention to EIS schedules is warranted to ensure that documents are completed in time to meet program needs. The NEPA Office recommends that NEPA Compliance Officers and NEPA Document Managers involve senior management throughout the EIS process, including during planning (e.g., Annual NEPA Planning Summaries) and document preparation to ensure that the EIS process meets the needs of the decisionmaker.

EIS Costs

The cost to prepare an EIS has remained about the same over the past 10 years. The decrease in overall cost per EIS from the mid-to-late 1990s to present (Figure 3) can be attributed to the completion of fewer relatively more-costly programmatic and site-wide documents. Similarly, the increase in the number of such documents accounts for the slight increase in EIS costs in 2005. 

Figure 3: EIS Cost and Number of EISs, 1996-2005



EIS Type	Number of EISs with Cost Data	Average Cost (\$M)	Median Cost (\$M)	Min/Max (\$M)
Project-Specific EISs	39	\$2.4	\$1.3	\$0.25/\$15
Programmatic and Site-wide EISs	29	\$9.5	\$7.3	\$0.56/\$44
Overall	68	\$5.4	\$2.1	\$0.25/\$44

**LESSONS
LEARNED**

June 1, 2006; Issue No. 47

Second Quarter FY 2006

Quality + Leadership = NEPA Success

Whether writing a statement of work for NEPA document preparation, checking raw data, model selection, and impact calculations, or reviewing a preliminary draft environmental impact statement (EIS) to ensure that references, appendices, main text, tables, and the summary are consistent, quality assurance (QA) makes a significant difference in the outcome of the NEPA process. The importance of QA – from start to finish and bottom to top – was a recurrent theme at the Department of Energy (DOE) NEPA Compliance Officer (NCO) meeting in Washington, DC, on May 9 and 10, 2006.

“NCOs are leaders in helping DOE achieve timely and excellent NEPA compliance in support of program missions,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. She and her staff emphasized quality throughout the meeting on *Leading a Top-Notch NEPA Program*. NCOs representing 28 DOE Program and Site Offices discussed their roles and responsibilities in assuring quality. They shared NEPA lessons learned with each other and with Headquarters NEPA and General Counsel staff.

Quality at Every Step

In the meeting’s opening session on “Building Quality into NEPA Documents,” Jeanie Loving and Ralph Barr, NEPA Office, explained how the broad principles of QA can be applied to EISs and environmental assessments (EAs). Noting Secretary of Energy Samuel W. Bodman’s April 26, 2006, memorandum on QA, they emphasized that QA is essential to continuous improvement in DOE’s NEPA program. They reviewed how the criteria for QA Plans identified in DOE Order 414.1C, *Quality Assurance* (June 17, 2005), apply to NEPA documents.



DOE’s NEPA Compliance Officers discussed quality assurance during the interactive meeting of more than 50 NEPA practitioners. Participating in meetings such as this is an important part of DOE’s NEPA Lessons Learned Program. (See more photos, page 8.)

Federal oversight of NEPA contractors is important when applying QA principles, explained Harold Johnson, NCO, Carlsbad Field Office. “Check what your contractors do,” he said, “even calculations in spreadsheets.” He added, “You don’t have to be a technical expert on everything, but find technical experts to review those portions of NEPA documents that may be outside the scope of your knowledge.”

“Say it once, say it well, don’t say it again,” recommended Jack Depperschmidt, NCO, Idaho Operations Office, as a way to simplify the process of ensuring consistency throughout a NEPA document. This approach also can help keep a NEPA document concise, he added.

(continued on page 4)**NEPA 35 Earns Special Award from NAEP; see page 3**

Inside *LESSONS LEARNED*

Welcome to the 47th quarterly report on lessons learned in the NEPA process. The quality of our NEPA process affects the quality of DOE's decisions. Our appreciation goes out to all the NCOs and NEPA Document Managers who work every day to build quality into NEPA documents. As always, we welcome your suggestions for continuous improvement.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 1, 2006. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2006 (April 1 through June 30, 2006) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@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 website at www.eh.doe.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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Security Reviews Needed for EISs on DOE NEPA Website

Sixty-five EISs were publicly available on the DOE NEPA website prior to September 11, 2001. Today, as a result of security changes implemented in November 2001, all those EISs remain archived on a secure server on the DOE NEPA website and are not accessible to the public. These archived EISs will remain there unless DOE completes security reviews and determines that these EISs can be placed on the publicly-accessible portion of the DOE NEPA website. (See *LLQR*, December 2001, page 1.)

DOE still relies on many of these archived documents for decisions, Eric Cohen, NEPA Office, pointed out at the May 2006 NEPA Compliance Officer (NCO) meeting. The documents include several key programmatic and site-wide EISs, such as the Waste Management Programmatic EIS (DOE/EIS-0200), Waste Isolation Pilot Plant Supplemental EIS (DOE/EIS-0026-S2), and Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS (DOE/EIS-0229). Mr. Cohen provided a list of the archived documents and asked NCOs to work

with their organizations to conduct the necessary security reviews.

The public continues to request copies of these EISs, which often are referenced in new NEPA documents, said Denise Freeman, DOE NEPA Webmaster. She provides a CD of these EISs upon request, but said that some people have expressed disappointment that DOE cannot provide them a password and has not restored public Internet access to the archived documents.

DOE provides a password upon request only to DOE staff, DOE NEPA contractors, and Federal, state, and tribal officials. A recent upgrade of the secure server to meet new requirements resulted in a need to issue new passwords. All users of the secure server, including persons with a "doe.gov" e-mail address (who did not need a password under the old system), must apply for a password by completing an electronic form available at www.eh.doe.gov/nepa under DOE NEPA Documents. **LL**



NAEP Presents Special Achievement Award to DOE and CEQ for *NEPA 35* Conference

In a ceremony at DOE Headquarters on April 13, 2006, the National Association of Environmental Professionals (NAEP) recognized *NEPA 35: Spotlight on Environmental Excellence*, the conference that DOE presented in partnership with the Council on Environmental Quality (CEQ) in November 2005. In presenting the Special Achievement Award, NAEP President Gary Kelman praised DOE's leadership and contributions, particularly during a time when "NEPA was placed in the spotlight, and in some cases, more like heat lamps." He noted that the nomination of *NEPA 35* for an Environmental Excellence Award helped illuminate the importance of celebrating 35 years of NEPA's core values of environmental stewardship, sound decisionmaking, and engaging stakeholders and the public.

The DOE Office of NEPA Policy and Compliance was recognized for developing and presenting the conference, which included more than 260 NEPA practitioners from over 50 agencies and organizations; high-level officials from Federal, state, and tribal organizations; and Members of Congress (via video). For a complete description of the conference, see *LLQR*, December 2005, page 1. 



NAEP President Gary Kelman (far left) and Awards Committee Chairman Jim Melton (far right) presented the Special Achievement Award to Acting Assistant Secretary for Environment, Safety and Health C. Russell H. Shearer (center left) and CEQ Associate Director for NEPA Oversight Horst Greczmiel for their partnership in sponsoring the conference.



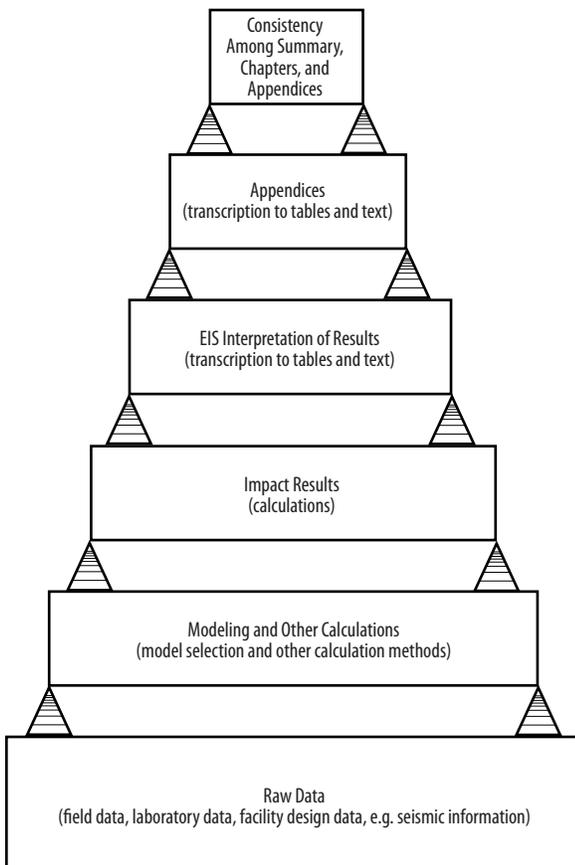
The NEPA Office was recognized for a **Significant Contribution to the Understanding and Implementation of the Principles of NEPA** – as noted in the plaque held by Office Director Carol Borgstrom. Left to right: Brian Costner, Vivian Bowie, Eric Cohen, Jim Sanderson, Deputy Assistant Secretary for Environment Andy Lawrence, Denise Freeman, Gary Kelman (NAEP), Carolyn Osborne, Carol Borgstrom, Russell Shearer, Jim Daniel, Horst Greczmiel (CEQ), Brian Mills, Jim Melton (NAEP), and Ralph Barr. (Not present: Lee Jessee, Jeanie Loving, and Yardena Mansoor.)

NCO Meeting *(continued from page 1)*

Mr. Depperschmidt emphasized an NCO's responsibility for ensuring that source data has been validated and verified. "We need to evaluate the original data and make sure we stand behind it," agreed Hitesh Nigam, NCO, Office of Fissile Materials Disposition.

Echoing that thought, Ms. Loving said that QA starts with the raw data – the foundation for building the NEPA document. Using the diagram reproduced below, she described how the nature of the QA activity will change as the document is prepared. For example, the methods for checking the accuracy of a calculation differ from those for checking the consistency of analysis and conclusions, she explained. "Good documentation of 'QA checks' throughout document preparation will pay off in the end," Ms. Loving said.

Example QA Review Components for an EIS



QA relies on a bottom-to-top approach. Ensuring QA checks at each step in developing a NEPA document allows early identification of mistakes and helps avoid errors in succeeding steps.



Guidance on QA and EIS QA Plans

During discussion aimed at rethinking and revitalizing DOE's approach to QA for NEPA documents, most NCOs said they rely on a QA Plan provided by the NEPA document preparation contractor. Mr. Johnson explained that he nonetheless provides leadership in the QA process. "The contractor doesn't start work until I approve the QA Plan," he said.

Mr. Depperschmidt recommended that the NEPA Document Manager develop EIS-specific QA Plans in coordination with the NCO and organizational QA manager. He offered to share QA procedures, forms, and related materials with NCOs. (To request a copy, contact him at depperjd@id.doe.gov.)

NCOs supported developing QA guidance for NEPA documents and a DOE-wide model NEPA QA Plan. Alice Williams, NCO, National Nuclear Security Administration, said it could be helpful to have such a model QA Plan in place soon for future EISs. Several NCOs suggested that a model QA Plan be provided to contractors through the next DOE-wide NEPA contracts procurement process (related article, page 16).

Teamwork Strengthens EA/EIS Reviews

The focus on QA continued during a lively group discussion on EA and EIS reviews led by Brian Costner, NEPA Office. NCOs described how they assess what will be important to the decisionmaking process, in part, by reviewing documents related to the proposed action, such as existing NEPA documents, regulatory and permitting documents, congressional testimony, and DOE policy statements. When reviewing an EA or EIS, they ask, "Do all the pieces fit together?"

Most NCOs have used the EA and EIS Checklists (available on the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools) issued by the NEPA Office to facilitate document preparation and review. "It's a good way to do a topical review," said Mark Matarrese, NCO, Office of Fossil Energy, adding that the checklists encourage the reviewer to evaluate the factors listed, not just check a box. Marthea Rountree, Office of Federal Activities, Environmental Protection Agency (EPA), explained that in reviewing DOE EISs for EPA, she looks for consistency in data and terminology, and for compliance with regulations.

(continued on next page)

NCO Meeting *(continued from previous page)*



“If you can follow a conclusion backward to the original data, then we can go to court and explain it,” said Richard Ahern, Office of the Assistant General Counsel for Environment. He emphasized, though, that his Office’s first goal is to keep DOE out of court. Reviews by legal counsel focus on whether DOE has met the “hard look” standard commonly used by the courts, he said (related article, page 19).

If a NEPA document is challenged, Mr. Ahern said a court might ask: Do the alternatives make sense vis-à-vis the purpose and need? Has the agency listened to comments and taken them seriously? Has the agency been thorough? Is the EIS coherent and consistent?

Jane Summerson, NCO, Office of Repository Development, shared with the group a technique that was successful in the Yucca Mountain EIS to ensure consistency in terminology and policy. DOE prepared “white papers,” in which all interested organizations agreed on the words to use to address key topics, and then these papers were referred to throughout preparation of the EIS, including responses to comments, she explained.

Several NCOs recounted the benefits of maintaining a team of contractors, subject matter experts, NEPA practitioners, and legal counsel from the beginning of the document preparation process to make sure there were “no surprises” during the review. NCOs also agreed that it is very beneficial to develop and maintain the involvement of senior management throughout the NEPA process.

Senior Management Attention Helps DOE Meet EIS Schedules

A root cause analysis of data on EIS completion times underscores the importance of senior management involvement in NEPA efforts, reported Eric Cohen, NEPA Office. “When senior managers get involved in key issues, resolution is reached, and EISs get done,” he said. Other factors supporting timely EISs are teamwork and having document preparers with strong skill sets. However, he noted a “troubling trend” that, after a promising decrease, the average EIS completion time has run close to 30 months for the past two years. (See *LLQR*, March 2006, page 32.)

Involving multiple cooperating agencies has contributed to the long completion times for several EISs, Mr. Cohen said, adding that experience shows that the time was well spent because the resulting EISs were made stronger by reflecting all agency views. Other causes for long EIS durations include involving multiple sites or programs, changes in the proposed action, delayed identification of data needs, and placing EISs “on hold” to meet changing program needs.

NCO Responsibilities

1. Office NEPA Procedures
2. CX Determinations
3. EA and EIS Lessons Learned
4. NEPA Strategies
5. NEPA Advice
6. EA vs. EIS Recommendations
7. Process and Document Assistance
8. Document Adequacy Recommendations
9. NEPA Meeting Participation, Training, Guidance Dissemination
10. NEPA Office Notifications
11. NEPA Office Copies

Adapted from DOE Order 451.1B, NEPA Compliance Program

Jim Daniel, NEPA Office, reminded NCOs of the submittal requirements for Annual Planning Summaries. He explained that the Summaries are a tool for senior managers that can help NCOs to plan and budget for their EAs and EISs. Use the Summaries to schedule timely and accurate NEPA reviews, including sufficient time for QA, he said. NCOs agreed that senior management involvement is crucial to their NEPA efforts. Jim Hartman, NCO, Western Area Power Administration, Rocky Mountain Region, observed that planning for a year’s worth of sometimes unpredictable NEPA activities can be difficult. In addition, NCOs noted that budget uncertainties can impact NEPA plans.

LLQR: A Lasting NEPA Resource

As part of an effort to track cost and completion time data for NEPA documents, the DOE NEPA Office has published *LLQR* since 1994, recalled Carolyn Osborne, NEPA Office. *LLQR* has grown in size and scope since its first, seven-page issue and now also includes litigation updates, mini-guidance, and other information that NEPA practitioners need to know to do their jobs well. It is the most practical means for sharing lessons learned among the DOE NEPA Community, apart from the annual meetings, she said. NCOs are expected to read each issue from cover to cover and to contribute case studies. *LLQR* has proved to be useful as a readily available record of DOE NEPA activities, noted Ms. Osborne.

(continued on next page)

NCO Meeting *(continued from previous page)*

LLQR, which is available to the public via the DOE NEPA website, has attracted the interest of NEPA practitioners and scholars from outside of DOE, noted Yarden Mansoor, NEPA Office. It was cited frequently at this year's National Association of Environmental Professionals conference, she said (related article, page 12).

CEQ Updates, Perspectives

"The relationship between CEQ and DOE highlights the benefits of collaboration," said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ). "Working with you on our guidance products is critical in maintaining our credibility across the board."

Mr. Greczmiel provided participants at the NCO meeting a brief update on activities by the interagency Work Groups developing guidance to improve NEPA implementation. (See text box on page 7 and *LLQR*, March 2006, page 10.) He encouraged everyone to provide input on the draft guidance documents as they are circulated. He then remained for an extended question and answer session, during which NCOs sought his advice on a broad range of topics. Highlights of the discussion are summarized below.

- **EA Public Involvement Required.** "Public involvement for an EA is required," said Mr. Greczmiel, "but what you do varies because EAs vary in terms of their potential significance." There are few situations when public involvement in an EA is not practicable, he said. He encouraged NCOs to issue a notice to those who typically are interested in the type of proposed action, collect their feedback, and reflect those concerns in the EA. "You owe it to yourself and your organization," he said, "to reach out and provide quality information to the people who care, so that they have an opportunity to participate in a meaningful way."
- **Other Agency Cooperation Encouraged.** Mr. Greczmiel encouraged NCOs to "take every opportunity to bring other agencies into the fold." If the agency declines to be a cooperating agency, work with the agency to identify a way they can participate, such as in the scoping process or on a particular analysis, he said.

- **Benchmarking, Regional CXs**

Supported. Using another Federal agency's categorical exclusion (CX) is not allowed, Mr. Greczmiel said, but an agency can draw on the experience of another agency as a form of "benchmarking." In this way, an agency might establish a class of actions as a CX based, in part, on the experience of other agencies implementing comparable actions.

In addition, Mr. Greczmiel supported the possibility of "regional CXs" in cases where a class of actions has been demonstrated not to have significant environmental impacts in a particular region of the country, even though it may have significant impacts in another region.

"Do It Right the First Time"

"We need systems to ensure quality," said Ms. Borgstrom at the close of the meeting. "I would prefer we do it right the first time. Most of the time, we, the Department of Energy, do excellent work on NEPA," she concluded. "DOE is well served by this cadre of NCOs."

The Secretary's memorandum on QA is available on the Quality Assurance portion of the Office of Environment, Safety and Health's website at www.eh.doe.gov/qa. For information on QA lessons learned at the Hanford Site, see *LLQR*, March 2006, page 1. 



NCOs Complete NEPA Training

Following the NCO meeting, the NEPA Office offered a repeat of three training courses initially presented at the *NEPA 35* Conference in November 2005. (See *LLQR*, December 2005, page 14.) Eight NCOs participated in training on EIS Comment-Response and EIS Distribution, eight in training on Using the *Green Book* to Avoid NEPA Pitfalls, and six in training on the DOE Supplement Analysis Process. Each training session included discussion, and each participant completed a test and will receive a certificate.



Check It Out: FedCenter

FedCenter – the Federal Facilities Environmental Stewardship and Compliance Assistance Center – is a Web-based joint initiative that seeks to provide an “all-services technical and compliance assistance center to help federal environmental officials, especially those in the civilian sector, better address their environmental needs” (from www.FedCenter.gov).

NEPA is one of 11 Program Areas for which the website provides links to regulations, guidance, and policy; supporting information and tools; lessons learned; training, presentations, and briefings; and conferences and events. In the NEPA Program Area, a user can access the Council on Environmental Quality’s regulations and guidance, including the Council’s NEPANet, Federal agency NEPA regulations, websites, and contacts; and environmental justice and environmental conflict resolution resources, among other things.

The other Program Areas on *FedCenter.gov* are Environmental Compliance, Buying Green, Environmental Management Systems (EMSs), Energy, Green Buildings, Pollution Prevention, Chemical Management, Cleanup, Sustainability, and Natural Resources. The website also tracks progress in rulemakings, provides a calendar of upcoming environmental events, and features an overview of activities commonly found at Federal facilities, with applicable regulations and data systems for accessing

site-specific information. Plans for the website include assistance in EMS training and auditing, an “Ask an Expert” hotline service, and subject matter expert discussion lists.

Federal employees as well as contractors currently working with an agency may join FedCenter via the website. Members receive a daily, weekly, or monthly newsletter with notices and events of interest to the Federal environmental community. Members are also able to take advantage of other services offered through the FedCenter site, such as work group hosting and environmental reporting and tracking tools.

FedCenter is operated by the U.S. Army Corps of Engineers Construction Engineering Research Laboratory, under an agreement with the Environmental Protection Agency’s (EPA’s) Office of Enforcement and Compliance Assurance. FedCenter is overseen by a multi-agency Board with initial funding by EPA, Department of Veterans Affairs, Department of Homeland Security, and DOE. DOE serves on the Board, helping to direct the ongoing development of information resources and services offered through FedCenter.

For more information, contact Josh Silverman, Office of Pollution Prevention and Resource Conservation, at josh.silverman@eh.doe.gov or 202-586-6535. 



NEPA Guidance Under Development

As leaders in NEPA implementation, NCOs use and disseminate guidance issued by the Office of Environment, Safety and Health that reflects the collective NEPA experience of the entire Department. In addition, CEQ issues guidance applicable to all Federal agencies. NEPA guidance is available on the DOE NEPA website at www.eh.doe.gov/NEPA. The status of several guidance documents under development was discussed at the NCO meeting.

- **Categorical Exclusions (CXs).** CEQ is preparing guidance on establishing and applying CXs. (CEQ sent a draft to Federal contacts on May 31, 2006, which the NEPA Office will distribute to NCOs, then collect comments for feedback to CEQ.) Separately, any NCO who wants to suggest adding a CX to the DOE NEPA regulations or modifying one of the existing 103 CXs (10 CFR Part 1021 Subpart D, Appendices A and B) should contact Carolyn Osborne, NEPA Office, at carolyn.osborne@eh.doe.gov or 202-586-4596.
- **NEPA and Environmental Management Systems (EMSs).** CEQ plans to issue guidance on EMSs and NEPA later this year. Subsequently, the NEPA Office will update and distribute for NCO comment draft guidance it is preparing on integrating NEPA with EMSs. CEQ also plans to issue an adaptive management handbook.
- **EIS Distribution.** A final draft of guidance on *EIS Distribution* was distributed and discussed at the meeting. The guidance addresses comments from NCOs on a draft distributed in April 2006.
- **EA/EIS Checklists.** The NEPA Office is updating the EA and EIS Checklists to reflect additions to and changes in the organization of the 2nd edition of *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (the *Green Book*, December 2004), as well as other DOE NEPA guidance.

LEADING
A TOP-NOTCH
NEPA
PROGRAM



Congressional Research Service Report Reviews NEPA Streamlining Proposals



A federal project may stop and restart for any number of reasons that are unrelated to NEPA or any other environmental requirement.

– Congressional Research Service Report
February 2006

Given the differences among Federal agencies, one size may not fit all when it comes to streamlining the NEPA process. “Due to the nature of NEPA implementation, determining the time it takes to prepare NEPA documentation, assessing the nature of delays related to NEPA, and finding remedies to those delays may be more appropriately accomplished agency by agency,” concludes the Congressional Research Service (CRS) in a February 2006 report, *The National Environmental Policy Act: Streamlining NEPA*.

The report summarizes efforts to expedite the NEPA process through administrative changes by individual agencies and the work of recent Task Forces, including the Council on Environmental Quality’s (CEQ’s) NEPA Task Force (*LLQR*, December 2003, page 1) and the House Resources Committee’s Task Force on Updating NEPA (*LLQR*, March 2006, page 3).

The report also summarizes legislation enacted between 2003 and 2005 that affected NEPA implementation for certain land management activities, transportation projects, and energy projects. (See *LLQR*, March 2006, page 16, and September 2005, pages 3 and 18, for related articles.) The report identifies six types of NEPA streamlining measures contained in these laws affecting particular agencies:

- **Establishing a coordinated compliance process**, such as specifying the decisionmaking authorities of the lead and participating agencies or methods for concurrent review under NEPA and other environmental requirements.
- **Codifying aspects of existing regulations in law**, including requirements similar to those in CEQ NEPA regulations to initiate the NEPA process early, emphasize interagency cooperation, and set time limits for completing EISs.

- **Delineating lead agency authority** by designating a lead agency for certain categories of projects and authorizing the lead agency to take certain actions in the NEPA process (e.g., set deadlines, implement dispute resolution).
- **Delegating authority to states** to make certain NEPA determinations (e.g., application of categorical exclusions).
- **Specifying categorically excluded or exempt projects** through legislation rather than an agency’s rulemaking process.
- **Establishing limits on judicial review**, such as a statute of limitations on the time to file a challenge to certain final agency actions under NEPA.

CRS notes that only DOE and the Department of Transportation routinely maintain data on the time to complete NEPA documents. This is one factor that makes it “difficult to determine the degree to which the NEPA process itself is the source of delays,” the report says. The report explains that funding issues, changes in agency priorities, community opposition, engineering requirements, and other non-NEPA factors can contribute to delays. In addition, the report says, “The use of NEPA as an umbrella statute blurs the distinction between the time to complete the NEPA process and the time it takes to address other environmental requirements.”

CRS is the public policy research arm of the U.S. Congress. Additional information on CRS is available on the Web at www.loc.gov/crsinfo under About CRS. The report is available through the Open CRS Network, a project of the nonprofit Center for Democracy and Technology, at www.opencrs.com (search for report RL33267). 

EIS to Examine Technologies for Proposed Nuclear Fuel Cycle

As part of President Bush's Advanced Energy Initiative, DOE has launched the Global Nuclear Energy Partnership (GNEP). The broad goals of GNEP are to meet increasing demand for electricity without emitting greenhouse gases, recycle nuclear fuel using new proliferation-resistant technologies to recover more energy and reduce the volume of waste, encourage prosperity and clean development around the world, and utilize the latest technologies to reduce the risk of nuclear proliferation worldwide. (See www.gnep.energy.gov.) To accomplish these goals, GNEP would rely on a significant change in the "nuclear fuel cycle" used in the United States – from a "once through" approach in which reactor fuel is used and then disposed of, to a "closed" cycle in which reactor fuel is used and reprocessed (separated) so that some radioactive material can be reused before disposal.

To determine the feasibility of implementing this new nuclear fuel cycle, DOE proposes to demonstrate three technologies: (1) proliferation-resistant processes that would separate the usable elements in commercial spent nuclear fuel from its waste elements; (2) the conversion of transuranics into shorter-lived radioisotopes; and (3) an advanced fuel fabrication process. Together, DOE refers to these three projects as the GNEP Technology Demonstration Program.

DOE published an Advance Notice of Intent (Advance NOI) to prepare an EIS for the GNEP Technology Demonstration Program on March 22, 2006 (71 FR 14505), and is reviewing comments received during the comment period that ended May 8, 2006. DOE plans to publish an NOI and hold public scoping meetings later this year.

"We look forward to public involvement throughout the NEPA process to help us complete a thorough review of all potential environmental impacts," said Tim Frazier, NEPA Document Manager.

"While DOE has had some success at bench-scale testing of these technologies," the Advance NOI states, "it has not yet proven that these technologies will be feasible in demonstration-scale facilities." The EIS would evaluate all reasonable alternative technologies, as well as the siting, construction (or modification), and operation of related facilities. The EIS would evaluate several DOE sites as potential locations for the demonstration-scale facilities. In addition, DOE plans to award funds for site studies to facilitate consideration of non-DOE sites. The site studies would provide detailed information about the proposed location, existing facilities that could be used in the demonstration projects, regulatory and permitting requirements, cost, and other factors.

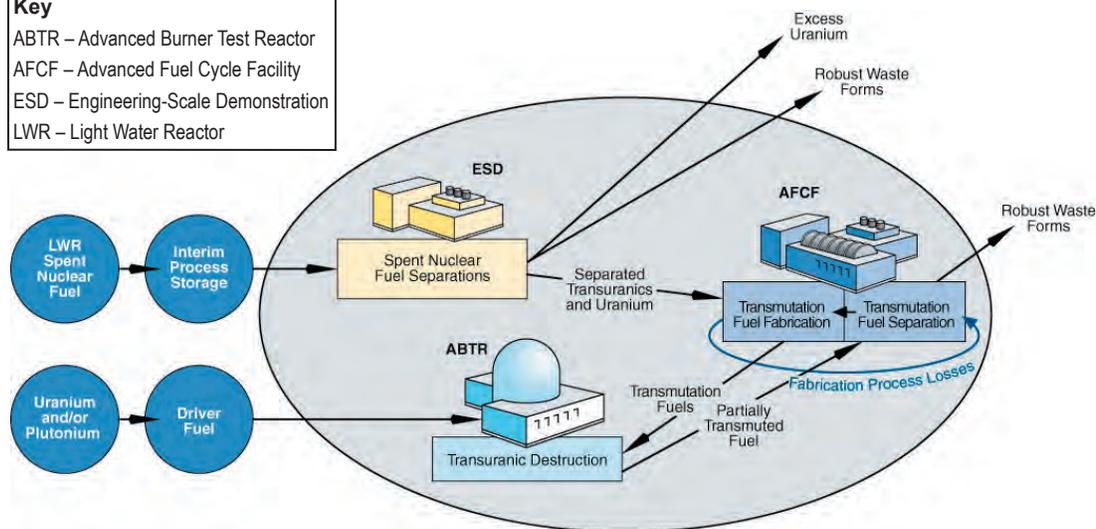
DOE expects to eventually prepare a programmatic EIS on potential future actions to encourage the commercial-scale adoption of these technologies, the Advance NOI states.

Public Responds to Advance NOI

DOE received comments on the Advance NOI from more than 250 individuals and organizations. Comments, for example, questioned whether the technologies are sufficiently developed to undertake the demonstration projects, asked DOE to immediately prepare a programmatic EIS on the overall GNEP program (e.g., the international components in addition to the technologies), identified alternatives for consideration in the EIS, suggested that the EIS address a variety of potential environmental impacts (e.g., associated with wastes generated by reprocessing, decontamination and decommissioning), and requested a nonproliferation impact assessment.

More information on GNEP and the EIS for the GNEP Technology Demonstration Program is available on the Web at www.gnep.energy.gov or by contacting Mr. Frazier, Office of Nuclear Energy, Science and Technology, at GNEPTechDemo@nuclear.energy.gov or 866-645-7803. 

Key
 ABTR – Advanced Burner Test Reactor
 AFCF – Advanced Fuel Cycle Facility
 ESD – Engineering-Scale Demonstration
 LWR – Light Water Reactor



Under GNEP, spent nuclear fuel from commercial reactors would be reprocessed to provide transuranic fuel for a new type of burner reactor that would convert plutonium and some other radioactive material into shorter-lived radioisotopes.

12 Sites Proposed for FutureGen Coal Project

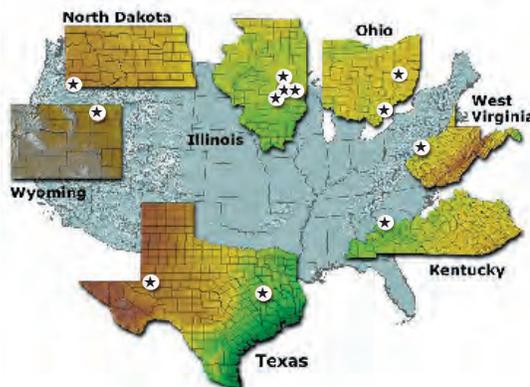
Secretary of Energy Bodman recently announced that 12 sites in seven states are in the running to host the FutureGen Project. “One of these sites ultimately will become known worldwide as the place where a new generation of zero-emission energy plants made its debut,” he remarked at the 5th Annual Conference on Carbon Capture and Sequestration on May 9, 2006.

FutureGen is a proposed prototype facility that would produce hydrogen and generate 275 megawatts of electricity from coal with near-zero emissions. (See *LLQR*, March 2006, page 7.)

Representatives for the candidate sites responded to a request for proposals issued by the FutureGen Industrial Alliance in March 2006. The Alliance, a consortium of some of the world’s largest coal and electric utilities, is managing the site selection process for FutureGen with oversight from DOE under a Cooperative Agreement. As described in the Cooperative Agreement and the Department’s Advance Notice of Intent (71 FR 8283; February 16, 2006), the Alliance is using a set of criteria approved by DOE to evaluate the 12 proposals. The Alliance will report to DOE those sites from among the 12 candidates that the Alliance determines to be reasonable from a technical, environmental, and economic perspective. Based on DOE’s review of the Alliance’s report and other relevant information, DOE will identify a preliminary range of reasonable alternative sites to be

analyzed in an EIS, which DOE will announce in a Notice of Intent expected in July 2006. DOE plans to complete the NEPA process in July 2007.

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



Interest in hosting the approximately \$1 billion FutureGen Project is widespread. The site must have characteristics needed for a large coal power plant, such as transportation infrastructure and access to electricity transmission interconnections, as well as appropriate geologic features to demonstrate safe storage for carbon dioxide.

Public Comments on New Hanford EIS at Scoping Meetings



Todd Martin, Chairman, Hanford Advisory Board, praised the planned quantitative cumulative impact analysis, but questioned the feasibility of completing the EIS in mid-2008.

Washington and Oregon stakeholders expressed differing views on some aspects of the *Hanford Tank Closure and Waste Management EIS* (DOE/EIS-0391), but protecting groundwater and the Columbia River remained a widespread regional concern during four public scoping meetings held in late March 2006. This EIS will implement a January 2006 Settlement Agreement with the Washington State Department of Ecology (Ecology) that resolved litigation on the adequacy of the Hanford Solid Waste EIS (2004). The new EIS will include a site-wide reanalysis of groundwater impacts, and, upon completion, will supersede the Hanford Solid Waste EIS. (See *LLQR*, March 2006, page 1.)

DOE and Ecology, a cooperating agency, held the meetings in Seattle and Pasco, Washington, and in Portland and Hood River, Oregon. Among the approximately 200 participants, some stakeholders agreed with the EIS’s integrated approach to analyzing waste management activities at the Hanford Site, while others expressed concern about the EIS becoming unwieldy – the “mother of all EISs.”

In response to questions about the State’s ability to legally challenge the EIS, the Ecology representatives pointed out that, by its participation as a cooperating agency, the State had not relinquished any option for a subsequent challenge to the EIS, and that its role offers an excellent opportunity to help ensure quality in the EIS. Several speakers commended DOE and Ecology for resolving the litigation and for DOE’s agreement to reanalyze significant portions of the Hanford Solid Waste EIS.

DOE is reviewing the comments received at the meetings, along with all written comments received during the scoping period, which concluded on April 10, 2006. For further information, contact Mary Beth Burandt, NEPA Document Manager, at TC&WMEIS@saic.com or 509-372-7772. 

2006 NAEP Conference: Focus on the Future

By: Yardena Mansoor, Office of NEPA Policy and Compliance



How can environmental professionals apply lessons learned at the local or regional level to global concerns? Focusing on *Global Perspectives on Regional Issues: The Future for Environmental Professionals in the Next 30 Years*, participants at the 31st annual conference of the National Association of Environmental Professionals (NAEP), held in Albuquerque, New Mexico, April 23–26, 2006, addressed this and other questions.

Keynote speaker Dr. Ray Powell combined a philosophical approach to sustainable resource management with hands-on lessons from his recent term as New Mexico State Land Commissioner, the official responsible for managing millions of acres of state lands. Noting that revenue from energy and mineral development, agricultural leasing, and commercial activity on trust lands funds public education in New Mexico, Dr. Powell urged the promotion of children's identification with their environment. He advocated increased use of community-focused environmental initiatives and collaborative public/private partnerships for land use improvements.

NEPA Symposium Addresses Forecasting and Uncertainty

Twenty presentations comprised the conference's "NEPA Symposium," an exploration of many aspects of NEPA theory and practice, including case studies and litigation. The broadest perspective on the conference theme was provided by Richard Burke, Kennedy/Jenks Consultants, who discussed approaches for improved forecasting of long-term environmental problems. He noted that some forecasts made 25 to 35 years ago – for example, of atmospheric carbon dioxide levels and loss of biological diversity through extinction – have proven surprisingly accurate. He asked: what practices can we implement now to identify, address, and avoid future problems that may occur 30 years from now?

To make sound decisions in the face of long-term uncertainties, Mr. Burke advocated multifaceted NEPA strategies that:

- **Are highly adaptive.** For example, he recounted that after issuing an EIS and record of decision in 1994 for a secondary water treatment plant, the International Boundary and Water Commission and co-lead Environmental Protection Agency responded to technological changes and new information by preparing a supplemental EIS in 1996 to operate it as an advanced primary plant, and a 1998 supplemental EIS to address long-term treatment options.

- **Employ near-term milestones.**

Mr. Burke observed that many political calls for reducing dependence on imported oil have not identified the incremental steps that must be made to achieve the long-term goal. He also cautioned that any programmatic EIS that is not based on pilot project experience is likely to misrepresent important aspects of the impact analysis.

- **Make risk-based choices.** For an offshore oil lease, the Minerals Management Service prepared an EA that tiered from an earlier EIS. It focused on changed conditions and mitigation of possible impacts to sensitive species and resources instead of repeating unchanged analysis.
- **Use a diversity of measures and values to judge success.** He reported on an EIS that the Federal Aviation Administration and National Park Service are now preparing for noise reduction in Grand Canyon National Park. Agencies and the public will have an opportunity to propose metrics for noise impacts in addition to average sound level, such as time above a threshold level and metrics that would take into account seasonal variations and noise from natural forces.

NAEP's NEPA Working Group

NAEP announced expanding roles for its NEPA Working Group. Established as a forum for NAEP members to foster broader appreciation of NEPA's value, improvements in the EIS process, and full consideration of the environment in the planning process, the Working Group is now responding to NAEP members' wish for an organizational voice in current NEPA debates and proposals. The NEPA Working Group will operate through committees to address: NAEP's interface with the Council on Environmental Quality (CEQ), analysis of litigation and rulemaking, development of the NEPA presentations and training at the NAEP annual conferences, and improvements to the NAEP website.

In the course of the 2006 conference, activities suggested as priorities for the NEPA Working Group for the coming year include commenting on legislative proposals, preparing an annual NEPA "Year-in-Review" report, reviewing draft guidance prepared by CEQ work groups, and providing suggestions on improving CEQ's NEPA website (www.nepa.gov). For additional information on the NEPA Working Group, contact Michael D. Smith, Humboldt State University, at michael.smith@humboldt.edu or 707-826-4291.

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2006 NAEP Conference *(continued from previous page)*

Environmental Excellence Awards

NAEP conferred eight Environmental Excellence Awards to recognize significant achievements in environmental practice. Awards Chairman Jim Melton and NAEP President Gary Kelman presented the award for excellence in environmental education to DOE's Western Area Power Administration, represented by NEPA Compliance Officer Nick Stas and NEPA Document Manager Dirk Shulund, along with team members Affinity Consultants, Inc., and United States-Asia Environmental Partnership (a program of U.S. Agency for International Development) for their technical education and assistance in developing a polychlorinated biphenyl management plan for Electricity Vietnam, the state-owned utility.

The award for NEPA Excellence was presented to the Utah Department of Transportation, Federal Highway Administration, U.S. Army Corps of Engineers, and Jones & Stokes Associates, Inc., for the supplemental EIS they prepared for the Legacy Parkway, a highway project that includes mitigation designed to provide wildlife habitat and wetland protection.

NEPA 35: Spotlight on Environmental Excellence, the conference sponsored by DOE in partnership with CEQ in observance of the 35th anniversary of NEPA, was recognized with a "Special NEPA Achievement Award." (This award was first announced in a ceremony held on April 13 in Washington, DC; see related article, page 3.)

2007 Conference in Orlando

Environmental Leadership: Science, Education, Alliances is the theme for the 2007 NAEP Conference, which will be held April 22–25 in Orlando, Florida. Conference information is provided on the Association's website (www.naep.org), including instructions for submitting an abstract for a paper or poster session (due September 30, 2006) or a nomination for an Environmental Excellence Award (due February 1, 2007). 



Heard at the NAEP Conference

- *Actions are truth.*
- *Reread the NEPA regulations often.*
- *Aim for public participation, not public pacification.*
- *Excellent doesn't mean exhaustive, or as Thoreau put it: "Not that the story need be long, but it will take a long while to make it short."*
- *"What we call Man's power over Nature turns out to be a power exercised by some men over other men with Nature as its instrument," said C.S. Lewis. This may explain why NEPA is so often a forum for conflict.*

Renewed Emphasis on Environmental Management Systems



The Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB), in a memorandum to Department and Agency Heads, dated April 11, 2006, reaffirmed the importance of implementing environmental management systems (EMSs) at all appropriate Federal facilities. Executive Order 13148, *Greening the Government Through Leadership in Environmental Management* (April 21, 2000), requires agencies to implement EMSs by December 31, 2005. CEQ and OMB noted that only about 15% of Federal facilities have met this deadline. The good news is that more than 90% of DOE facilities have implemented an EMS. CEQ is developing guidance on aligning the EMS and NEPA processes; see related text box on page 7 and *LLQR*, March 2006, page 10. The memorandum can be found on FedCenter at www.fedcenter.gov/programs/EMS under Regulations, Guidance, and Policy. (See related article, page 7.) 

DOE Celebrates Earth Day

At DOE Headquarters . . .



Andy Lawrence, Deputy Assistant Secretary for Environment, addressed DOE Field and Headquarters employees, including P2 Star Award winners, for Earth Day. He emphasized that pollution prevention activities contribute to the safety of our operations, the health of our workers, and environmental protection while enhancing mission operations.



The Federal Energy Management Program within DOE's Office of Energy Efficiency and Renewable Energy asks "Federal employees across the country to join us in celebrating and conserving our energy resources not only on Earth Day April 22nd, but everyday," on its website referenced to the right.

DOE Headquarters celebrated Earth Day 2006 from April 18–28 with displays highlighting DOE's environmental accomplishments and innovations.

Environment, Safety and Health Offices had several displays:

- **Air, Water and Radiation Protection Policy and Guidance** emphasized watershed management and protection of threatened and endangered species.
- **Pollution Prevention and Resource Conservation Policy and Guidance** displayed P2 Star Awards, a nationwide map of DOE sites with Environmental Management Systems, and a poster, "DOE Buys Bio for Energy Security."
- **NEPA Policy and Compliance** featured posters on "DOE NEPA *Lessons Learned Quarterly Report*" and "NEPA and DOE Through the Years," and provided copies of DOE NEPA guidance.

Earth Day is both a CELEBRATION of the world environment and a REMINDER that we all share the Earth equally and we must continue striving to protect the natural gifts our home Earth has given us.

*– Office of Environment, Safety and Health
Earth Day 2006 Brochure*

Energy Efficiency and Renewable Energy's poster, "A Good Deal For Everyone," showed a winning hand of "Aces" representing a portfolio of energy efficient technologies that will help strengthen America's energy security and environmental quality, such as hydrogen and biofuels. More information on materials available from this Office on adopting and using cleaner, more efficient forms of energy is available at www.eere.energy.gov/femp/services/earthday.html.

Fossil Energy highlighted the development of new technologies for traditional fuels, such as the FutureGen Project, fuel cell development, and carbon sequestration.

National Nuclear Security Administration highlighted 23 Pollution Prevention Awards received for the year by NNSA Offices and Sites.

(continued on next page)

Earth Day *(continued from previous page)*

At DOE Field Sites . . .

Kicking the (Trash) Can. Using desktop mini-trash bins the size of a 48-ounce cup instead of their usual, much larger wastebaskets, volunteers at the **Strategic Petroleum Reserve Project Management Office** in New Orleans participated in a month-long pollution prevention project that encouraged diligent recycling and waste avoidance. Participants tracked their recycling behaviors and completed a survey at the end of the project. DOE and DynMcDermott, the management and operations contractor, teamed to provide a week of special Earth Day events at the Project Office and the four petroleum storage sites – including an employee “Gardening Over Lunch” to swap seeds and plants, emissions and tire pressure testing of employee vehicles, and children’s activities. The photos at right show setup and results of emissions “sock test.”



Cleaning Up the Creek. To celebrate Earth Day, the **Naval Petroleum Reserves/Rocky Mountain Oilfield Testing Center** team picked up debris along a creek that runs through Naval Petroleum Reserve No. 3. The approximately 300 pounds of material collected included tin, wood, and wire rope for recycling.

Rolling Up Sleeves. In recognition of Earth Day, volunteers from **Bonneville Power Administration (BPA)** participated in four simultaneous projects at Hoyt Arboretum in Portland, Oregon: spreading gravel on trails, mulching trees, weeding the Visitor Center, and removing invasive ivy. This was the fourth year of BPA’s volunteering for Earth Day projects at the Arboretum. Volunteers at the BPA Ross Complex in Vancouver, Washington, pulled ivy from their buildings and for 3 weeks held a plastic foam recycling drive. 



Good Contracting Practices: Important Element in NEPA Quality

An important contributor to NEPA document quality, and therefore the success of a NEPA process, is the contractor supporting NEPA document preparation. At their May 2006 meeting, the NEPA Compliance Officers (NCOs) reviewed the background and benefits of the DOE-wide NEPA contracts. They explored techniques and tools that NCOs and NEPA Document Managers can use to raise the quality of contractors' work products and achieve desired results.



Contract administrator Agustin Archuleta advised that the task order process under the DOE-wide NEPA contracts can only be started when all required elements are submitted.

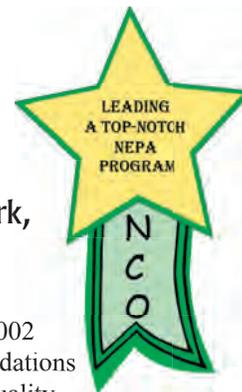
Manage the Contractor

The DOE-wide NEPA contracts provide a choice of qualified contractors available to start work expeditiously, without the delay of conducting a procurement process. Program and Site Office contracting officers can write their own task orders and select contractors, with a NEPA Document Manager serving as the contracting officer's representative for a task, explained Carolyn Osborne, Office of NEPA Policy and Compliance. "It would be hard to manage a NEPA document without managing the contractor who's doing the work," observed Jane Summerson, NEPA Document Manager and NCO for the Office of Repository Development.

Get Results with Statements of Work, Performance Evaluations

Hitesh Nigam, NCO for the Office of Fissile Materials Disposition and a member of the 2002 contracts acquisition team, shared recommendations for managing NEPA contractors to achieve quality NEPA documents in a timely and efficient manner:

- Make the task statement of work as specific as possible to give clear direction, establish roles and responsibilities, and eliminate from scope those activities to be performed by DOE staff (e.g., defining purpose and need, selecting alternatives for analysis, responding to policy issues in comments, and writing the record of decision).
- Evaluate contractor performance with the aim of identifying potential improvements, which may be especially useful if evaluation is done periodically, e.g., after the draft EIS is issued. "Be tougher – it now seems that *all* contractors are well above average."



Use New Task Order Guide

Agustin Archuleta, the administrator of the DOE-wide NEPA contracts, announced that the NNSA Service Center has issued *NEPA Contracting Desk Procedures* (March 22, 2006, available on the DOE NEPA website at www.eh.doe.gov/nepa/contracting.html) to help in the issuance and management of task orders under the contracts. The guide provides instructions for submitting an acquisition plan, purchase requisition, and statement of work – the elements needed to issue a task order.

Work will begin in late summer on acquisition of new DOE-wide NEPA contracts, to be issued in 2007 when the current ones expire. NCOs and NEPA Document Managers interested in assisting in the acquisition process should contact Mr. Archuleta at aarchuleta2@doeal.gov or 505-845-4686. 

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts.

Description	DOE Contact	Date Awarded	Contract Team
Supplement Analysis for Enriched Uranium Global Transport at the NNSA Y-12 Complex	Robert Hamby 865-576-9281 hambyre@yso.doe.gov	12/19/05	SAIC
Global Nuclear Energy Partnership Technology Demonstration Program EIS	Tim Frazier 866-645-7803 GNEPTechDemo@nuclear.energy.gov	5/11/06	Tetra Tech, Inc.



Litigation Updates

Lawsuit Challenges Proposed Detonation at Nevada Test Site

Two Federally-recognized tribes and several individuals filed a complaint in the U.S. District Court for the District of Nevada on April 20, 2006 (amended April 25 and May 22, 2006), alleging that the Defense Threat Reduction Agency (DTRA, an agency of the Department of Defense) and DOE must complete an EIS before conducting a proposed experiment known as Divine Strake. The experiment involves the detonation of 700 tons of ammonium nitrate-fuel oil mixture above an existing tunnel in a central area of the Nevada Test Site. The Divine Strake experiment would “validate and assess the capability of computer codes to predict the ground-shock environment and how the tunnel responds to that shock,” states DTRA on its website (www.dtra.mil/divinestrake).

The plaintiffs allege that the agencies violated NEPA by failing to provide adequate notice and opportunity for comment before issuing a finding of no significant impact (FONSI). The plaintiffs also allege that the environmental assessment (EA), *Large-Scale, Open-Air Explosion Detonation DIVINE STRAKE at Nevada Test Site* (DOE/EA-1550), reflects the failure of the agencies to test the soil at the site of the proposed experiment

for radionuclides, which the plaintiffs allege could be dispersed by the detonation.

DOE distributed a pre-approval draft EA in December 2005 and, after receiving no substantive comments, signed a FONSI on January 30, 2006. DOE subsequently issued a revised EA on May 5, 2006, to incorporate additional data and correct some inconsistencies, then issued a revised FONSI on May 9, 2006. DOE announced its intent to withdraw the FONSI on May 26, 2006, “to clarify and provide further information regarding background levels of radiation from global fallout in the vicinity of the Divine Strake experiment.” The experiment, originally scheduled for June 2, 2006, has been delayed.

DTRA was a cooperating agency in preparing the EA. The revised EA and FONSI are available on the Nevada Site Office website at www.nv.doe.gov/library/publications/environmental.aspx. In addition to the NEPA charges, the plaintiffs allege several violations of the Ruby Valley Treaty of 1863, which relates to the land now occupied by the Nevada Test Site, and violations of the Clean Air Act and Clean Water Act. The case is cited as *Winnemucca Indian Colony v. U.S.* [Case No.: 06-00497]

DOE NEPA Litigation in Brief

Border Power Plant Working Group v. Department of Energy et al. (S.D. Calif.) The plaintiff alleges that DOE and the Bureau of Land Management violated NEPA by preparing an inadequate *EIS for the Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004), which was completed after the court found the agencies’ 2001 EA inadequate. The plaintiff also alleges that the agencies violated the Clean Air Act by failing to prepare a conformity determination. A conformity determination is a process by which Federal agencies assess how their actions would conform to applicable state implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. A hearing is scheduled for October 6, 2006. (See *LLQR* March 2006, page 20; December 2005, page 36; September 2005, page 25; June 2004, page 16; December 2003, page 7; and September 2003, page 22.) [Case No.: 02-0513]

Center for Biological Diversity et al. v. Department of Energy et al. (N.D. Calif.): The court ordered on March 6, 2006, that DOE must undertake a rulemaking to

modify a goal for the use of non-petroleum replacement fuels in light-duty motor vehicles and, based on that goal, to assess whether to require large private and municipal fleets of motor vehicles to acquire alternative fuel vehicles. These actions are required to comply with the Energy Policy Act of 1992, the court concluded. The court ruled that an EIS is not necessary for the rulemaking because Congress mandated the action, leaving DOE no discretion in regard to whether to act. Moreover, the court concluded that the Energy Policy Act of 1992 promotes the purposes of NEPA by requiring that DOE consider the effect on greenhouse gases and provide an opportunity for public comment. (See *LLQR*, June 2005, page 23.) [Case Nos.: 02-00027 and 05-01526]

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project (WVDP) site in New York by analyzing its proposed action in two separate EISs (one on waste management,

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Litigation Updates (continued from previous page)

a second being prepared on decommissioning). The plaintiffs also allege that the *West Valley Demonstration Project Waste Management Environmental Impact Statement* (DOE/EIS-0337, December 2003) does not support the Record of Decision's (70 FR 35073; June 16, 2005) reference to the possible use of a waste-incident-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level waste (LLW) or mixed low-level waste.

DOE responded to the complaint on December 7, 2005, stating that the off-site disposal of wastes analyzed in the WVDP Waste Management EIS has independent utility and will not prejudice the analysis of alternatives in the ongoing *Decommissioning and/or Long-Term Stewardship at the WVDP and the Western New York Nuclear Service Center EIS* (DOE/EIS-0226-R). DOE also states that it has not made any waste-incident-to-reprocessing determination, and so the plaintiffs' related claim is premature. The court issued a scheduling order on February 15, 2006, that allows for filing the administrative record and briefing of the case by October 31, 2006. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

The County of Los Alamos v. Department of Energy et al. (D. NM): DOE and Los Alamos County have agreed to build separate portions of a bypass road to facilitate traffic flow outside a new security perimeter at Los Alamos National Laboratory (LANL). The agreement settles a lawsuit in which the County alleged that DOE failed to prepare an adequate EA for proposed modifications to the LANL security perimeter. DOE proposed physical security enhancements in 2002 that would restrict vehicular traffic to certain areas within LANL and change traffic flow patterns. DOE evaluated the proposal in the *Environmental Assessment for Proposed Access Control and Traffic Improvements at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EA-1429, August 2002) and issued a FONSI. Subsequently, DOE modified its proposal to reduce costs. After completing a review similar to the supplement analysis process (10 CFR 1021.314(c)), DOE concluded in March 2004 that the proposed modifications are bounded by the analyses in the 2002 EA and five other relevant EAs and that, therefore, no new EA is required. (See *LLQR*, March 2006, page 20.) [Case No.: 05-1343]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): The court has scheduled a hearing on summary judgment for June 23, 2006. The plaintiffs allege that DOE's cleanup activities at the Energy Technology Engineering Center are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. The lawsuit challenges the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated FONSI. (See *LLQR*, December 2004, page 16.) In a brief filed on April 12, 2006, DOE states that the EA is adequate and that an EIS is not required. [Case No.: 04-04448]

Natural Resources Defense Council et al. v. Department of Energy (D. Idaho): The district court dismissed this case, which involved DOE's waste-incident-to-reprocessing provisions, on March 6, 2006. This followed instructions from the U.S. Court of Appeals for the Ninth Circuit, which in its November 5, 2004, decision found that the plaintiffs' claims were not ripe for review. In an earlier decision, the district court ruled 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 appeals court vacated the district court's judgment and directed that the district court dismiss the case. The appeals court held that any challenge to DOE's waste-incident-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.) [Case No.: 01-0413]

Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al. (9th Cir.): This case is an appeal of the district court's ruling on September 10, 2004, that DOE's EA for the Biosafety Level 3 facility at Lawrence Livermore National Laboratory is sufficient. (See *LLQR*, June 2005, page 23; December 2004, page 18; March 2004, pages 2 and 16; and September 2003, page 23.) The court has scheduled a hearing for June 13, 2006. [Case No.: 04-17232]

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Litigation Updates (continued from previous page)



Court Orders Navy to Take a “Harder Look”

In the decision summarized below, the U.S. Court of Appeals for the Fourth Circuit applied the “hard look” standard – an approach commonly used by the courts in NEPA cases – to evaluate the adequacy of an EIS prepared by the U.S. Navy. The court’s analysis is instructive to all NEPA practitioners.

The Navy began preparation of a Supplemental EIS in June 2005, following a decision by the U.S. District Court for the Eastern District of North Carolina that the analysis of potential environmental impacts in the Navy’s *Final EIS for the Introduction of the F/A-18E/F (Super Hornet) Aircraft to the East Coast of the United States* is inadequate. The Navy had decided, based on that EIS, to construct and operate an Outlying Landing Field (Field) in Washington and Beaufort Counties, North Carolina. The district court issued an injunction on February 18, 2005, barring the Navy from undertaking any “activity associated with the planning, development, or construction” of the Field until the Navy fully complies with NEPA. The Navy appealed.

On September 7, 2005, the U.S. Court of Appeals for the Fourth Circuit upheld the need for a Supplemental EIS, but allowed the Navy to take certain actions while the Supplemental EIS is being prepared.

What Constitutes a Hard Look?

The appeals court based its ruling on the principle that its role is to determine whether an agency has taken a “hard look” at an action’s environmental impacts. “A ‘hard look’ is necessarily contextual,” the court wrote, and should be based on “a holistic view of what the agency has done to assess environmental impact The hallmarks of a ‘hard look’ are thorough investigation into environmental impacts and forthright acknowledgment of potential environmental harms.” *National Audubon Society et al. v. Department of the Navy et al.*, U.S. Court of Appeals for the Fourth Circuit, September 7, 2005.

Training Flights Could Impact Birds

The principal purpose of the Navy’s proposed Field in North Carolina would be to conduct Field Carrier Landing Practice, where a pilot practices “touch and go” procedures (landing and immediate take off) on a simulated aircraft carrier deck marked out on the Field. The majority of the more than 30,000 planned training procedures each year would be conducted at night. The Navy is evaluating five alternative locations in eastern North Carolina for the proposed Field in the Supplemental EIS, including the site in Washington and Beaufort Counties (Site C).

Site C is located about five miles from the Pocosin Lakes National Wildlife Refuge (www.fws.gov/pocosinlakes), and the flight pattern for training exercises would come within 0.2 mile of the Refuge. More than 200 species of birds can be found at the Refuge, including migratory waterfowl, some 100,000 of which winter there and forage in the fields surrounding Site C. The plaintiffs – environmental groups and the two potentially-impacted counties – challenged the Navy’s evaluation of potential impacts on birds (among other issues).

Appeals Court Reviews EIS Analyses of Selected Site

The appeals court found inadequacies in five elements of the Navy’s evaluation of Site C in the initial EIS. First, in regard to the Navy’s site investigation, the court found that four one-day visits were insufficient to “conduct systematic observations or perform species-specific studies” and that a subsequent month-long radar study was a positive step, but had its own limitations.

Second, the Navy contended that the bird-aircraft strike potential at Site C was similar to that at other flight training facilities. The appeals court found, though, that “this comparative assessment provided only a useful starting point” and that further analysis is necessary, for example, to consider specific species and variation in aircraft features that were not accounted for by the Navy’s model.

Third, the Navy’s literature review identified, among other relevant studies, research indicating that snow geese (who winter at the Refuge) “may be especially sensitive to aircraft activity,” the appeals court wrote. The court added, however, that the EIS needed to go beyond “citing the articles or abstracts that contradict the conclusions reached [by the Navy that impacts would be minor] If anything, the obligation to carefully parse contrary findings is magnified when a congressionally protected National Wildlife Refuge is only miles away.”

Fourth, the Navy relied on an analysis of environmental effects of aircraft overflights at three existing military facilities to draw conclusions about potential impacts at Site C. The appeals court noted differences between circumstances at Site C and the existing facilities and found that the Navy had failed to provide a proper factual basis for a comparative analysis.

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Training Opportunities

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

- **NEPA/309 Review**
(FED 103: NEPA/309 Review)
Washington, DC: June 6-8
Denver, CO: August 1-3
No fee
- **Cumulative Impacts Assessment**
(FED 104: Cumulative Impacts Assessment)
Washington, DC: July 18-20
No fee

Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
- **NEPA: The Utah Experience**
Salt Lake City, UT: June 9
Fee: \$395 (GSA contract: \$345)

Continuing Legal Education (CLE)
800-873-7130
www.cle.com
- **Section 106 and Beyond: An Introductory Workshop on Cultural Resources Management in Indian Country**
Denver, CO: June 13-14
Fee: \$495

International Institute for Indigenous Resource Management
303-733-0481
iirm@iirm.org
www.iirm.org
- **NEPA: What Every Engineer and Project Manager Should Know about NEPA**
Orlando, FL: June 8-9
Denver, CO: September 14-15
Fee: contact Tetra Tech
- **Effective Public Outreach**
Denver, CO: September 12 (half day)
Fee: contact Tetra Tech
- **Wetlands Workshop**
Denver, CO: September 12 (half day)
Fee: contact Tetra Tech
- **Assessing Cumulative Impacts**
Denver, CO: September 13
Fee: contact Tetra Tech
- **Endangered Species**
Denver, CO: September 13 (half day)
Fee: contact Tetra Tech

Tetra Tech, Inc.
877-468-3872
www.tetrattechNEPA.com
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Atlanta, GA: June 13-16
Fee: \$1,110 (GSA contract: \$995)
Salt Lake City, UT: September 20-22
Fee: \$835 (GSA contract: \$745)
until August 1
- **Reviewing NEPA Documents**
Las Vegas, NV: June 27-29
Fee: \$885 (GSA contract: \$795)
- **NEPA Cumulative Effects Analysis and Documentation**
Baltimore, MD: July 11-13
Fee: \$885 (GSA contract: \$795)
Dallas/Ft. Worth, TX: August 22-24
Fee: \$835 (GSA contract: \$745)
until July 10
- **Right Writing for Environmental and Technical Specialists**
San Diego, CA: July 19-20
Fee: \$660 (GSA contract: \$595)
- **Advanced Writing for NEPA Specialists**
Portland, OR: July 25-27
Fee: \$835 (GSA contract: \$745)
until June 24
- **NEPA Process Management**
Las Vegas, NV: August 7-8
Fee: \$660 (GSA contract: \$595)
- **NEPA Writing Workshop**
Las Vegas, NV: August 9-11
Fee: \$885 (GSA contract: \$795)
- **How to Manage the NEPA/CEQA Process and Write Effective NEPA Documents**
San Francisco, CA: August 22-24
Fee: \$835 (GSA contract: \$745)
until July 10

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

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Training Opportunities

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- **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 course materials)

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

- **Preparing and Documenting Environmental Impact Analyses**

Durham, NC: June 12-15

Fee: \$1,100

- **Implementation of the National Environmental Policy Act**

Durham, NC: July 10-14

Fee: \$1,100

- **NEPA Certificate Program**

Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

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

- **Species Protection and the Law: Endangered Species Act, Biodiversity Protection, and Invasive Species Control**

Washington, DC: November 15-17

Fee: \$995

American Law Institute -
American Bar Association
800-253-6397
www.ali-aba.org

- **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 Toolbox™ Training**

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

A free audio file, "Six Keys to Environmental Compliance," is available at www.envirotrain.com/sixkeys.html and a free podcast series, currently with selections on cumulative impacts assessment and the 2006 NAEP Conference, is available at web.mac.com/envirotrain.

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

EAs and EISs* Completed January 1 to March 31, 2006

EAs

Office of Civilian Radioactive Waste Management

DOE/EA-1549 (12/26/05)**

Environmental Assessment for the Proposed Withdrawal of Public Lands Within and Surrounding the Caliente Rail Corridor, Nevada

Cost: \$245,000

Time: 5 months

National Energy Technology Laboratory/ Office of Fossil Energy

DOE/EA-1546 (2/24/06)

Liquefied Natural Gas from Coal Mine Methane for Industrial and Transportation Applications, Monongalia County, West Virginia

Cost: \$27,000

Time: 9 months

Richland Operations Office/ Office of Environmental Management

DOE/EA-1547 (3/31/06)

Sodium Residuals Reaction/Removal and Other Deactivation Work Activities, Fast Flux Test Facility (FFTF) Project, Hanford Site, Richland, Washington

Cost: \$121,000

Time: 9 months

Western Area Power Administration

DOE/EA-1427 (1/27/06)

Headgate Rock - Blythe No. 1, 161 kV Transmission Line Structure Replacement and Black Point Mesa Reroute, Blythe, California

Cost: \$100,000

Time: 46 months

DOE/EA-1487 (12/22/05)**

Parker - Gila 161 kV Transmission Line Relocation, Quartzsite, Arizona

Cost: \$123,000

Time: 25 months

* No EISs completed during this quarter

** Not previously reported in LLQR

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 5 EAs was \$121,000; the average was \$123,000.
- Cumulatively, for the 12 months that ended March 31, 2006, the median cost for the preparation of 17 EAs for which cost data were applicable was \$64,000; the average was \$127,000.
- For this quarter, the median completion time of 5 EAs was 9 months; the average was 19 months.
- Cumulatively, for the 12 months that ended March 31, 2006, the median completion time for 21 EAs was 6 months; the average was 11 months.

EIS Costs and Completion Times

- No EISs were completed during this quarter.
- Cumulatively, for the 12 months that ended March 31, 2006, the median cost for the preparation of 3 EISs for which cost data were applicable was \$3,300,000; the average was \$2,800,000.
- Cumulatively, for the 12 months that ended March 31, 2006, the median completion time for 5 EISs was 32 months; the average was 28 months.

Recent EIS-Related Milestones (March 1 to May 31, 2006)

Advance Notice of Intent

Office of Nuclear Energy, Science and Technology
DOE/EIS-0396
Global Nuclear Energy Partnership Technology Demonstration Program
March 2006 (71 FR 14505, 3/22/06)

Notice of Intent

Western Area Power Administration
DOE/EIS-0323-S1
Construction and Operation of the Sacramento Area Voltage Support Project, Sacramento, Sutter, and Placer Counties, California
May 2006 (71 FR 26961, 5/9/06)

Notice of Floodplain and Wetland Actions

Office of Fossil Energy
DOE/EIS-0385
Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
March 2006 (71 FR 15398, 3/28/06)

Draft EISs

Bonneville Power Administration
DOE/EIS-0374
Klondike III Wind Project Interconnection, Sherman County, Oregon
May 2006 (71 FR 26498, 5/5/06)

Office of Fossil Energy
DOE/EIS-0385
Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
May 2006 (71 FR 30400, 5/26/06)

Western Area Power Administration
DOE/EIS-0377
Big Stone II Power Plant and Transmission Project, Proposed Power Plant, Transmission Alternatives, and Substation Modification, South Dakota and Minnesota
May 2006 (71 FR 29148, 5/19/06)

Record of Decision

Bonneville Power Administration
DOE/EIS-0353
South Fork Flathead Watershed Westslope Cutthroat Trout Conservation Project, Powell and Missoula Counties, Montana
May 2006 (71 FR 27714, 5/12/06)

Supplement Analyses

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

DOE/EIS-0246-SA-51
Preserve and Restore Columbia River Estuary - Crims Island Vegetation Control and Wildlife Monitoring, Columbia County, Oregon
(Decision: No further NEPA review required)
April 2006

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

DOE/EIS-0265-SA-250*
Idaho Fish Screening Improvement - Bohannon Creek Diversions, Lemhi County, Idaho
(Decision: No further NEPA review required)
February 2006

DOE/EIS-0265-SA-251*
Tapteal Bend Riparian Corridor Restoration Project (AMENDMENT), Benton County, Washington
(Decision: No further NEPA review required)
February 2006

DOE/EIS-0265-SA-252*
Umatilla Basin Anadromous Fish Habitat Enhancement Project - B&G Resources Easement, Umatilla County, Oregon
(Decision: No further NEPA review required)
February 2006

DOE/EIS-0265-SA-253
Wind River Watershed Project, Skamania County, Washington
(Decision: No further NEPA review required)
March 2006

* Not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (March 1 to May 31, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-254

Yakima Tributary Access and Habitat Program - Fogarty Ditch Diversion, Kittitas County, Washington
(Decision: No further NEPA review required)
March 2006

DOE/EIS-0265-SA-255

Fulton Diversion Dam Fish Passage Project - Phase 1, Okanogan County, Washington
(Decision: No further NEPA review required)
March 2006

DOE/EIS-0265-SA-256

Grande Ronde Model Watershed - Mahogany Creek Culvert Replacement, Wallowa County, Oregon
(Decision: No further NEPA review required)
March 2006

DOE/EIS-0265-SA-257

Idaho Fish Screening Improvement - Squaw Creek SSC-01 Diversion Project, Clayton, Idaho
(Decision: No further NEPA review required)
April 2006

DOE/EIS-0265-SA-258

Custer Soil and Water Conservation District (SWCD) Habitat Projects for FY 06, S-40 Diversion Modification and Rocky Mountain Ranch Riparian Protection Fence, Custer County, Idaho
(Decision: No further NEPA review required)
April 2006

DOE/EIS-0265-SA-259

Idaho Fish Screening Improvement - SEF-15 Diversion Project, Idaho
(Decision: No further NEPA review required)
April 2006

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

DOE/EIS-0285-SA-275*

Vegetation Management for the Wautoma and Tucannon River Substations, Benton and Columbia Counties, Washington
(Decision: No further NEPA review required)
December 2005

DOE/EIS-0285-SA-276*

Vegetation Management along the Chehalis - Raymond No. 1, 115 kV Transmission Line Corridor from Chehalis Substation Heading West to Raymond Substation, Lewis and Pacific Counties, Washington
(Decision: No further NEPA review required)
January 2006

DOE/EIS-0285-SA-277*

Vegetation Management along the Colville - Republic No. 1, 115 kV Transmission Line Corridor Right of Way, Ferry and Stevens Counties, Washington
(Decision: No further NEPA review required)
January 2006

DOE/EIS-0285-SA-278*

Vegetation Management along the Addy - Cusick No. 1, 230 kV Transmission Line Corridor Right of Way, Stevens and Pend Oreille Counties, Washington
(Decision: No further NEPA review required)
January 2006

DOE/EIS-0285-SA-279*

Vegetation Management along the Keller Tap to Grand Coulee - Okanogan No. 2, 115 kV Transmission Line Corridor Right of Way, Okanogan and Ferry Counties, Washington
(Decision: No further NEPA review required)
January 2006

DOE/EIS-0285-SA-280*

Vegetation Management along the Pearl - Marion No. 1, 115 kV Transmission Line Corridor, Clackamas and Marion Counties, Oregon
(Decision: No further NEPA review required)
January 2006

DOE/EIS-0285-SA-281*

Vegetation Management along the McNary - Ross No. 1, 345 kV Transmission Line Corridor, Skamania and Clark Counties, Washington
(Decision: No further NEPA review required)
February 2006

DOE/EIS-0285-SA-282*

Vegetation Management (Danger Tree Removal) along the Nasselle Tap to Allston Astoria No. 1, 115 kV Transmission Line Corridor, Pacific and Wahkiakum Counties, Washington
(Decision: No further NEPA review required)
February 2006

* Not previously reported in LLQR

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Recent EIS-Related Milestones (March 1 to May 31, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-283*

Vegetation Management along the Schultz - Raver Transmission Line Corridor Right of Way, Kittitas County, Washington

(Decision: No further NEPA review required)
February 2006

DOE/EIS-0285-SA-284*

Vegetation Management along the Santiam - Albany No. 1 Line, Linn County, Oregon

(Decision: No further NEPA review required)
February 2006

DOE/EIS-0285-SA-286

Vegetation Management along the Holcomb - Naselle No. 1, Pacific County, Washington

(Decision: No further NEPA review required)
March 2006

DOE/EIS-0285-SA-287

Vegetation Management along the Rattlesnake - Garrison No. 1, 230 kV Transmission Line Corridor Right of Way, Missoula, Granite, and Powell Counties, Montana

(Decision: No further NEPA review required)
March 2006

DOE/EIS-0285-SA-288

Vegetation Management along the Garrison - Anaconda No. 1, 230 kV Transmission Line Corridor Right of Way, Powell and Deer Lodge Counties, Montana

(Decision: No further NEPA review required)
March 2006

DOE/EIS-0285-SA-289

Vegetation Management along the Libby - Conkelley No. 1, 230 kV Transmission Line Corridor Right of Way, Lincoln and Flathead Counties, Montana

(Decision: No further NEPA review required)
March 2006

DOE/EIS-0285-SA-290

Vegetation Management along the Fairmount - Port Angeles No. 1, 230 kV Transmission Line Corridor from Fairmount Substation Heading West to Port Angeles Substation, Jefferson and Clallam Counties, Washington

(Decision: No further NEPA review required)
April 2006

DOE/EIS-0285-SA-291

Vegetation Management along the Libby - Bonners Ferry No. 1, 115 kV Transmission Line Corridor Right of Way, Lincoln County, Montana, and Boundary County, Idaho

(Decision: No further NEPA review required)
April 2006

DOE/EIS-0285-SA-292

Vegetation Management along the Raymond - Cosmopolis No. 1, Pacific and Grays Harbor Counties, Washington

(Decision: No further NEPA review required)
April 2006

DOE/EIS-0285-SA-293

Vegetation Management Activities along the Right of Way of the Pilot Butte - Lapine Transmission Line Corridor, Deschutes County, Oregon

(Decision: No further NEPA review required)
April 2006

DOE/EIS-0285-SA-294

Vegetation Management along the Wendson - Tahkenitch No. 1 and No. 2 Transmission Line Corridor, Lane and Douglas Counties, Oregon

(Decision: No further NEPA review required)
April 2006

DOE/EIS-0285-SA-295

Vegetation Management along the Taft - Hot Springs No. 1, 500 kV Transmission Line Corridor Right of Way, Mineral and Sanders Counties, Montana

(Decision: No further NEPA review required)
April 2006

**Northeast Oregon Hatchery (NEOH) Program
Grande Ronde - Imnaha Spring Chinook
Hatchery Project
Environmental Impact Statement
(DOE/EIS-0340)**

DOE/EIS-0340-SA-01

Supplement Analysis for NEOH Grande Ronde - Imnaha Spring Chinook Hatchery Project, Wallowa County, Oregon

(Decision: No further NEPA review required)
March 2006

* Not previously reported in LLQR

(continued on next page)

Recent EIS-Related Milestones (March 1 to May 31, 2006)

(Supplement Analyses, continued from previous page)

Idaho Operations Office/ Office of Environmental Management

Advanced Mixed Waste Treatment Project Environmental Impact Statement (DOE/EIS-0290)

DOE/EIS-0290-SA-01*

Regarding Remote-Handled Transuranic Waste Identified in the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement and the Advanced Mixed Waste Treatment Project Final Environmental Impact Statement

(Decision: No further NEPA review required)
January 2006

* Not previously reported in LLQR

Lawrence Livermore National Laboratory/ National Nuclear Security Administration

Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic Environmental Impact Statement

(DOE/EIS-0348)

DOE/EIS-0348-SA-01*

The Proposed Construction and Operation of Evidence Receiving and Temporary Storage Facilities in Support of the Nuclear and Radiological Attribution Program and Forensic Science Center's Analyses Programs at the Livermore Site and Site 300, Lawrence Livermore National Laboratory, Livermore, California

(Decision: No further NEPA review required)
February 2006 

Litigation Updates *(continued from page 19)*

Fifth, the appeals court found that the Navy had not adequately evaluated the potential cumulative impacts of the proposed action and other current and reasonably foreseeable proposals that would affect airspace near the Refuge.

“Considered together,” the appeals court concluded, these elements of the EIS “reveal neither a complete investigation into environmental impacts nor a frank admission of environmental harms. The end result of this study was the far from self-evident conclusion that repetitive take-offs and landings of advanced fighter aircraft near mass gatherings of waterfowl will have only the most minor of impacts upon them. Maybe so, but this needs to be explained.”

Appeals Court Allows Interim Actions

The appeals court directed the district court to modify its injunction to allow the Navy to undertake certain activities before the Supplemental EIS is complete. The allowed activities include site-specific impact assessments, land purchases and certain related activities, architectural and engineering work for planning and design, and permit applications. “Rather than treat ‘development of the [Field]’ as a single indivisible activity, the district court



An F/A-18F Super Hornet launches from the flight deck of an aircraft carrier. (U.S. Navy photo by Photographer's Mate 3rd Class Jonathan Chandler.)

should have subdivided it to determine which of its component steps (either in isolation or in combination)” would cause environmental harm or limit the choice of reasonable alternatives, the appeals court wrote.

During the past year, the Navy has conducted fieldwork in support of the Supplemental EIS. More information on the Supplemental EIS is available at www.faircraft.ene.com. 

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 January 1 and March 31, 2006, and one not previously reported.

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 (EH).

Scoping

What Worked

- *Early public scoping meeting.* A public meeting held before the EA was underway helped identify stakeholders' concerns, which were addressed in the EA.
- *Status meetings.* Numerous meetings among document preparers and project managers were held to communicate progress.

What Didn't Work

- *Combined EISs.* Including a Supplemental Programmatic EIS within a site-wide EIS was confusing to involved DOE organizations and delayed document approval.

Data Collection/Analysis

What Worked

- *Management control procedure.* The management control procedure established for the project was effective in ensuring that the proper Federal and contractor personnel were available for the EIS.
- *Updated schedule.* A regularly updated EIS schedule ensured that all personnel were aware of the deliverables and due dates.
- *Teamwork.* The EA preparers worked well together, discussing key impact analyses for noise and traffic.

What Didn't Work

- *Unclear data requests.* The initial data call was not specific, but was a generic list of required documents. As a result, material received did not meet the needs of the EIS.

- *Inconsistency between accident and safety analyses.* Differences in accident analysis for NEPA and safety documents should have been reconciled. The same information should be in both document types.
- *Difficulty setting deadline.* Establishing a cutoff date for data initially proved difficult.
- *Incomplete data.* Having the contractor try to analyze incomplete data generated unexpected costs.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Established points of contact.* Developing points of contact (POCs) for all involved organizations locally and at Headquarters improved coordination of reviews and assured that POCs were always aware of major issues and changes to the EIS.
- *Management involvement.* Significant management involvement from both Field and Headquarters Offices facilitated timely completion of the EA.
- *Effective scheduling and updates.* Thorough scheduling and updating of activities and time frames for each phase of the EA contributed to timely completion of the document.
- *Document preparation by DOE.* The NEPA Document Manager, NEPA Compliance Officer, and DOE legal counsel took over completion of the EA from the contractor to enable timely completion.
- *Headquarters support.* Strong support from EH facilitated timely EA completion.
- *Communication.* Close and constant communication between management, DOE project staff, and contractor staff contributed to timely completion of the EA.

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What Worked and Didn't Work

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Factors that Inhibited Timely Completion of Documents

- *Unclear comment-response process.* The process for responding to public comments on the draft and final EISs was not clear. As a result, there was considerable delay in the review of the comment-response sections.
- *Difference in lead agency's procedures.* DOE was a cooperating agency and had very different NEPA procedures and standards than the lead agency for the EA.
- *Expiration of contract.* The EA preparation contract expired and a new contract had to be awarded.
- *Coordination with cooperating agencies.* Coordinating EA review processes and comment resolution with a cooperating agency was challenging.
- *Change in scope.* A change in scope to include additional project components delayed EA completion.
- *Unanticipated changes.* Several changes and external needs, such as tribal requests for more information, were encountered that could not have been anticipated.
- *Tribal coordination.* The EA team was not aware that tribal views could change.
- *Project and procurement obstacles.* Issues arising from the project procurement and the project itself changed the scope of the EA and hindered timely completion.
- *Administrative support unavailable.* No experienced DOE administrative support was available to support preparation and publication of the draft and final EA. The NEPA Document Manager had to do this work.

Teamwork

Factors that Facilitated Effective Teamwork

- *Coordination between Program Offices.* Coordination with Headquarters Program Offices and EH improved understanding of program needs and shortened the EIS completion time.
- *Management involvement.* Continued management focus on the development and evolution of the EA facilitated a common understanding of the schedule for the review cycles and final production of the EA.

- *Contractor resources.* Sufficient on-site contractor resources during the development of the draft site-wide EIS and comment-response document proved essential.
- *Good contractor.* The EA contractor was easy to work with and eager to please.

Factors that Inhibited Effective Teamwork

- *Limited participation by NEPA Compliance Officer.* The NEPA Compliance Officer had limited participation on the EIS for the first two years of the project.
- *Conflicting objectives.* Balancing project objectives and minimizing EA legal vulnerabilities sometimes created conflict overcome by working as a team.
- *Conflicting schedules for project and NEPA contractors.* There was a lack of apparent support by the EA preparation contractor to complete the EA to meet the project schedule.
- *Contractor change-control management.* The draft EIS was prepared using a team of contractors from different organizations that spent several weeks on-site and then left to develop the respective sections. Unfortunately, the contractor project manager was the only individual responsible for coordinating the different sections. When changes were made in one section, the manager needed to ensure they were reflected in the other sections. It would have been better to have several contractors remain at the site until draft EIS completion.

Process

Successful Aspects of the Public Participation Process

- *Newsletters.* Sending out newsletters to thousands of individuals and organizations ensured that everyone interested in the EIS was aware of meetings and opportunities to provide input.
- *Meetings with interested stakeholders.* Meetings with local governmental officials, press, other local organizations, and individuals helped them understand the EIS.
- *Sufficient comment opportunity.* The public had ample opportunity for input on the EA.
- *Public meetings.* Two informational public meetings, conducted before issuing the draft EA, were effective vehicles for listening to stakeholders.

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What Worked and Didn't Work

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- *Public availability of the draft EA.* Making the draft EA available to members of the public seemed to help maintain public acceptance of the project.
- *Willingness to discuss issues.* Public reaction was favorable regarding our willingness to analyze in the EA issues of concern (noise, traffic, and safety).
- *Public poster sessions.* Public poster sessions were helpful in allowing the public to ask questions in an informal setting.
- *Timely public comments.* Public comments on the draft EA, conveyed largely by e-mail, were submitted in a timely manner, which supported efficient drafting of DOE responses and timely EA completion.
- *Procurement-directed agenda.* The project procurement, ongoing during the scoping and planning of the document, drove the agenda for the EA.
- *Configuration management plan not established.* A configuration management plan for the EIS, which included a documents control system, should have been established at the beginning of the project to ensure that changes were incorporated throughout the document.

Unsuccessful Aspects of the Public Participation Process

- *Difficulty focusing on proposed action.* The public did not appear to focus on the proposed action in the EA. Many comments addressed unrelated or non-environmental project issues.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Resolution of issues.* The EIS process was instrumental in ensuring that senior managers met to resolve issues concerning programmatic requirements. Once decisions were made, it was relatively easy to obtain consensus on the appropriate range of alternatives to be analyzed and to select the preferred alternative.
- *Role identification.* The EA process helped DOE understand its role on the project and helped identify critical areas for coordination with the owner and operator of the proposed facility.
- *Discussion of impact analysis.* Impact analysis was discussed at length and resulted in a sound decisionmaking process for the EA.

What Didn't Work

- *Multiple complications.* While the EA process probably allowed informed and sound decisionmaking, the project was complicated. Project Managers were frustrated by issues beyond their control.

Enhancement/Protection of the Environment

- *Wetland protection and native landscaping.* The environment may be protected or enhanced because the EA recognizes wetland protection and native landscaping features that were not required.
- *Noise issues resolved.* The environment was protected by solving issues dealing with noise.
- *Tribal awareness.* Issues with tribes were identified. A Memorandum of Understanding was established to identify the appropriate contacts within the tribes.
- *Environmental protection practices and procedures.* The environment was not protected or enhanced as a result of the NEPA process; however, the document covers practices and procedures to ensure that the environment is protected.

Other Issues

Guidance Needs Identified

- *Independent quality assurance (QA) review.* Guidance should be established for an independent QA review of EIS-level documents prior to the issuance of the final document.
- *Biological hazards.* DOE staff found it difficult to analyze risks related to biological hazards, which differ from more familiar radiological and chemical hazards.
- *Guidance needs for public involvement.* Better guidance on the depth and breadth of public involvement is needed, including step-by-step procedures to meet needs for community relations and public involvement.

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What Worked and Didn't Work

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- *Accident analyses.* Clear procedures for the development of accident analyses would help improve the process and shorten the time required to develop accident analyses that are acceptable to all organizations. DOE guidance on accident analysis, such as the types of aircraft to use, would be helpful. **Editor's Note:** Recommendations for Analyzing Accidents under the National Environmental Policy Act, July 2002, states: "DOE document preparers must apply considerable judgment to determine the appropriate scope and analytical requirements of accident analyses . . ." Guidance specifying the size of aircraft to use in all accident analyses would be inappropriate. The accident guidance discusses relevant "sliding scale" principles and example language regarding aircraft crashes.
- *Comment-response.* Improved guidance on response to comments following the draft and final EIS would be useful. A determination should be made as to whether a full response needs to be provided in the Record of Decision (ROD) or just a summary of the comments. **Editor's Note:** As explained in The EIS Comment-Response Process, October 2004, DOE's approach has been to address comments on a final EIS in the ROD. The guidance states that this need not be an exhaustive treatment. (See also LLQR, September 1995, page 12.)

Effectiveness of the NEPA Process

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

For the past quarter, in which 6 questionnaire responses were received for 5 EAs and one EIS, 6 out of 6 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the EIS process was used to decide on the increased use of radioactive materials at the facility. This decision had been pending for more than 15 years. The NEPA process was instrumental in ensuring that DOE, facility management, and the public were aware of the issues and concerns surrounding this decision; management was better able to make an informed decision.
- A respondent who rated the process as "4" stated that the EA process was a way for DOE to have a dialogue with stakeholders for a potentially controversial action.
- A respondent who rated the process as "4" stated that the EA process worked well as a planning tool.
- A respondent who rated the process as "3" stated that the NEPA process was important in evaluating DOE's decision to pursue a Public Land Order.
- A respondent who rated the process as "3" stated that NEPA triggered the need to address other important issues such as developing better relationships with agencies and tribes.
- A respondent who rated the process as "3" stated that project personnel assumed and planned for a finding of no significant impact prior to completion of the EA. 

LESSONS LEARNED

September 1, 2006; Issue No. 48

Third Quarter FY 2006

Court Rejects Challenges to Yucca EIS, Transportation Plan

The U.S. Court of Appeals for the District of Columbia Circuit recently denied the State of Nevada’s petition for review of the Department of Energy’s (DOE’s) 2002 Yucca Mountain Repository EIS and the associated 2004 Record of Decision (ROD) selecting an overall plan for transporting spent nuclear fuel and high-level radioactive waste to the planned repository. In an August 8, 2006, decision, the court found that five of Nevada’s NEPA claims were without merit and three claims were not ripe for review. Nevada could appeal the decision.

The court confirmed the appropriateness of DOE’s transportation planning process for Yucca Mountain. The *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Repository EIS; DOE/EIS-0250, February 2002), one of DOE’s most highly complex NEPA documents, serves as a programmatic NEPA review, from which the NEPA analysis for future project-specific actions may be tiered. Of particular interest is the court’s discussion of the appropriate level of detail needed in a programmatic document, such as the Repository EIS, and in subsequent tiered documents, such as the *EIS for the Alignment, Construction, and Operation of a Rail Line to*



Most spent nuclear fuel and high-level radioactive waste would travel to Yucca Mountain by rail in shipping casks certified by the Nuclear Regulatory Commission.

a Geologic Repository at Yucca Mountain, Nye County, Nevada (Rail Alignment EIS, in preparation). Other elements of the court order also are of general interest to NEPA practitioners, including those related to the “hard look” standard, expressions of an agency’s preferred alternative, and the need for potential plaintiffs to raise concerns during the NEPA process.

(continued on page 4)



Lynton Caldwell, “Father of NEPA,” 1914–2006

Lynton Keith Caldwell, a principal architect of the National Environmental Policy Act of 1969 and “inventor” of the environmental impact statement, died August 15, 2006, at his home in Bloomington, Indiana, at the age of 92. Combining a long academic career with national and international public service, Indiana University Professor Caldwell was one of the first to define environmental policy studies as a distinct field – the examination of human, including political, interaction with the natural environment – and he was a pioneer in devising public policies to promote environmental stewardship.

Lynton Caldwell
 Professor Emeritus of Public and Environmental Affairs
 (photo: Indiana University)

(continued on page 3)

Inside *LESSONS LEARNED*

Welcome to the 48th quarterly report on lessons learned in the NEPA process. We remember Lynton Caldwell, who promoted a vision of *productive harmony* – a balance of the interests of the environment and human society. The NEPA process remains a useful tool for pursuing that vision by integrating environmental analysis into the decisionmaking process. With this issue, we have completed 12 years of *LLQR*, with an emphasis on continuous improvement. As always, we welcome your suggestions.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2006. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2006 (July 1 through September 30, 2006) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@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 website at www.eh.doe.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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NAEP Invites Abstracts, Award Nominations for 2007 Conference



How has NEPA enhanced environmental quality? How have agencies tailored their NEPA programs to meet environmental goals? Questions like these will be the focus of discussion at the National Association of

Environmental Professionals' (NAEP's)

32nd Annual Conference, *Environmental Leadership: Science, Education, Alliances*, to be held April 22–25, 2007, in Orlando, Florida. The conference includes a “NEPA Symposium” and sessions on 13 other topics.

Abstracts for papers, posters, and other presentations are due September 30, 2006.

At the conference, NAEP will present its 11th National Environmental Excellence Awards in eight categories, including NEPA Excellence, Public Involvement/Partnership, Educational Excellence, Environmental Management, and Environmental Stewardship, to recognize significant environmental achievements from across the country. **The deadline for award nominations is February 1, 2007**; NAEP membership is not required for entry. Winners will be invited to present their program or project at a technical session at the conference. Additional information, including instructions for submitting an abstract and award nomination forms, is provided on the NAEP website (www.naep.org). 

NEPA Office to Join General Counsel

DOE announced on August 30, 2006, the creation of an Office of Health, Safety and Security. Most parts of the Office of Environment, Safety and Health will transition into the new Office. The Office of NEPA Policy and Compliance, however, will be transferred to the Office of the General Counsel.

Caldwell (continued from page 1)

A key to understanding NEPA may be found in the phrase “. . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” This statement has often been interpreted to require a balancing of equities, primarily economic and environmental. But the intent of NEPA would not be achieved by off-setting (but still retaining) an economic “bad” with an environmental “good,” as mitigation measures may attempt. More consistent with the spirit of the Act would be a synthesis in which “productive harmony” is attained and transgenerational equity is protected.

Lynton Caldwell, Testimony at NEPA Hearing,¹ March 18, 1998
House of Representatives Committee on Resources

Father of NEPA and Inventor of the EIS

Professor Caldwell is credited with initiating environmental policy studies with “Environment: A New Focus for Public Policy?,” an article published in *Public Administration Review* in 1963. His landmark contribution, however, came six years later. As a consultant to the then Senate Committee on Interior and Insular Affairs, he prepared *A National Policy for the Environment*, much of which was incorporated into NEPA, the environmental law enacted at the end of the December 1969 legislative session and signed into law by President Nixon on January 1, 1970. NEPA’s groundbreaking provision, devised by Professor Caldwell, was the requirement to assess the potential environmental impacts of a proposed major Federal action.

At a 1995 DOE conference held in observance of the 25th Anniversary of NEPA, Professor Caldwell discussed his efforts to identify an appropriate political strategy and an effective implementation approach for environmental stewardship. His comments reflect his expertise in public administration:

The Congress had no explicit constitutional authority to legislate environmental policy **per se**. But the Congress and the President did have authority to define and direct the policies and actions of the Federal agencies. Because agency missions impinged directly or indirectly upon almost every aspect of the American society, a statutory law could be enacted that would be both effective and constitutional. Moreover, a statutory declaration of national policy could be binding upon both the Legislative and Executive branches.

NEPA was thus conceived as a **national policy**, not merely a Congressional or Presidential Policy.

Implementing NEPA: A Non-Technical Political Task
DOE Conference: NEPA 25 (March 21, 1995)
[emphasis in original]

Evaluating DOE’s NEPA Reforms

Professor Caldwell, a fellow of the National Academy of Public Administration, chaired an Academy team in 1998 that evaluated the changes that DOE made to its NEPA procedures in response to a 1994 policy statement by then Secretary of Energy Hazel O’Leary. That report concluded that DOE had made substantial progress in improving the management of its responsibilities under NEPA (*LLQR*, September 1998, page 4). In its foreword, Professor Caldwell, who oversaw the analysis, was commended by the Academy’s President for his decades-long commitment to the environment and to improving America’s system of governance.

Publications and Awards

Professor Caldwell’s interest in the history and theory of public administration began with his Ph.D. studies at the University of Chicago and continued throughout his life. He authored 12 books, some 250 articles in refereed journals, and numerous reports and reviews for public and international agencies. His most recent book, in 1999, was *The National Environmental Policy Act: An Agenda for the Future* (reviewed in *LLQR*, September 2000, page 11). A collection of essays written between 1963 and 1973, *Environment as a Focus for Public Policy*, was selected for the American Library Association’s choice list of outstanding academic books. In 1991, Professor Caldwell received a United Nations Global 500 Award for his achievements in protecting and enhancing the planet’s environment and natural resources. 

From one perspective NEPA may be seen as the capstone of national environmental policy; more importantly, it should be viewed as the foundation for the future.

– Lynton Caldwell
Congressional Testimony, 1998

¹ <http://resourcescommittee.house.gov/archives/105cong/fullcomm/98mar18/caldwell.htm>.

Yucca Litigation *(continued from page 1)*

Nevada filed its petition for the court to review the Repository EIS in 2004, following DOE's issuance of the ROD (69 FR 18557; April 8, 2004), which selected the "mostly-rail" alternative for transporting spent nuclear fuel and high-level waste to the repository. (See *LLQR*, December 2004, page 17.) Among other issues, DOE reviewed combinations of rail and truck transport in the Repository EIS, including five possible corridors in Nevada for a proposed new branch rail line from existing railroads to the repository. The ROD selected the Caliente Corridor for further study of potential alignments for this new rail line. In the ongoing Rail Alignment EIS, DOE is conducting detailed analyses of the alternative alignments. (See *LLQR*, June 2004, page 12.)

Challenges to EIS Without Merit

The court found five NEPA claims brought by Nevada to be without merit. First, Nevada contended that DOE failed to consult with the Surface Transportation Board (STB) regarding the proposal to construct a branch rail line. STB's jurisdiction includes construction and other rail restructuring transactions for common carrier rail lines. The court concluded that because Nevada failed, in comments on the Repository EIS, to alert DOE of its contention that DOE was obligated to consult with STB, Nevada had "waived the argument by failing to raise it at the administrative level."

Second, Nevada contended that DOE failed to consult with the Nevada State Engineer. The court recounted NEPA regulations issued by the Council on Environmental Quality (CEQ), which distinguish an agency's duty with respect to state and local agencies from Federal agencies. NEPA imposes a duty on an agency to *obtain* comments from appropriate Federal agencies. However, the requirement is to *request* the comments of appropriate state and local agencies. The court determined that DOE had met this requirement by distributing the Draft Repository EIS to the State Engineer with a cover letter inviting comments. Moreover, the court noted that, though the State Engineer did not individually submit comments, Nevada's comments did indicate the contribution of the Nevada Division of Water, which is headed by the State Engineer.

Third, Nevada claimed that DOE violated NEPA by not identifying the Caliente Corridor as its preferred alternative in the Final Repository EIS. DOE had explained in the EIS its plan for identifying "... a preference among the five potential rail corridors in Nevada. If the Yucca Mountain site was approved (designated), DOE would issue at some future date a Record of Decision to select a mode of transportation. If, for example, mostly rail was selected . . . DOE would then identify a preference for one of the rail corridors

in consultation with affected stakeholders . . . In this example, DOE would announce a preferred corridor in the *Federal Register* . . . No sooner than 30 days after the announcement of a preference, DOE would publish its selection of a rail corridor in a Record of Decision."

Consistent with this explanation, DOE identified the Caliente Corridor as its preferred alternative in a *Federal Register* notice on December 29, 2003 (68 FR 74951). The court concluded that even if DOE violated the CEQ regulations (which require at 40 CFR 1502.14(e) that an agency identify its preferred alternative in the Final EIS, unless another law prohibits doing so), "the violation was harmless error." The court added that, "NEPA's goal of ensuring that relevant information is available to those participating in agency decision-making was not frustrated by the absence of language designating the Caliente Corridor as the DOE's preferred alternative."

Fourth, corridor selection and rail alignment are "closely related" actions, Nevada argued, and DOE should have evaluated them in a single EIS. DOE argued that it was not necessary to analyze all five corridors at the high-level of detail needed for making specific alignment decisions. The 0.25-mile-wide corridors are hundreds of miles long (e.g., Caliente is 319 miles) and conducting highly detailed field surveys of all five corridors was unreasonable, DOE argued. The court agreed with DOE's NEPA strategy that it was appropriate to consider the Repository EIS a programmatic EIS to be followed by subsequent narrower (i.e., tiered) EISs on particular sub-projects.

The DOE has acted well within its discretion in following the tiered approach regarding rail corridor selection and alignment and, accordingly, has not violated NEPA.

***– U.S. Court of Appeals
for the District of Columbia Circuit***

Fifth, Nevada claimed that DOE had not taken a "hard look" at the potential environmental impacts of rail corridor selection in the Repository EIS. The court pointed out that DOE had analyzed more than 12 environmental factors for each of the five alternative rail corridors and that Nevada had alleged a "handful" of inadequacies related to the analysis of cultural resources, floodplains, and archaeological and historic resources. "It is well settled that the court will not 'fleyspeck' an agency's environmental analysis, looking for any deficiency no matter how minor," the court wrote. Moreover, the court added, DOE is preparing a tiered EIS on the Caliente Corridor. While use of tiering does not relieve DOE

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Yucca Litigation *(continued from previous page)*

Yucca Mountain Key EIS and Program Milestones

- **February 14, 2002** – The Secretary of Energy recommended the Yucca Mountain site to the President; the Repository EIS was included as part of the basis for the recommendation pursuant to the Nuclear Waste Policy Act.
- **July 23, 2002** – President signed into law (Pub. L. 107-200) a congressional resolution designating the Yucca Mountain site for development as a repository for spent nuclear fuel and high-level radioactive waste.
- **October 25, 2002** – The Environmental Protection Agency published a Notice of Availability of the Final Repository EIS after DOE completed distribution to the public.
- **December 29, 2003** – DOE published a Notice of Preferred Nevada Rail Corridor (68 FR 74951), announcing the Caliente Corridor as DOE's preferred corridor in which to study alternative alignments for constructing a rail line to Yucca Mountain.
- **March 2004** – DOE issued a Supplement Analysis (DOE/EIS-0250-SA1) and concluded that a supplement to the Repository EIS was not required for a transportation scenario not explicitly analyzed in the EIS (i.e., the interim transportation plan of shipping spent nuclear fuel in legal-weight truck casks on rail cars to a rail-to-truck transfer station in Nevada, thence to the repository by truck).
- **April 8, 2004** – DOE issued its transportation ROD (69 FR 18557) selecting: (1) the mostly-rail scenario and leaving open the possibility of rail-to-truck transfer, as analyzed in the Supplement Analysis, in the event the repository opens before a rail line to Yucca Mountain is constructed; and (2) the Caliente Corridor in which to study alternative rail alignments.
- **April 8, 2004** – DOE issued a Notice of Intent (69 FR 18565) to prepare the Rail Alignment EIS.
- **December 2005** – DOE submitted a Case File, including an environmental assessment, to the Bureau of Land Management to support DOE's application for withdrawal of public lands within and surrounding the Caliente Corridor.
- **August 8, 2006** – U.S. Court of Appeals denied Nevada's request for review of the Repository EIS and associated transportation ROD.

from taking a hard look at potential environmental impacts in a programmatic EIS, the court concluded that the inadequacies alleged by Nevada do not make the Repository EIS inadequate.

Other Challenges Not Ripe for Review

In the ROD, DOE described an interim transportation plan that it could pursue if the repository were to open before the proposed new branch rail line is operational. In such a case, DOE could build a facility to transfer the casks containing spent nuclear fuel or high-level radioactive waste from rail cars to trucks that would then carry the casks to the repository, the ROD stated. Nevada claimed that this plan had not been evaluated in the Repository EIS and therefore a supplemental EIS is required. The court noted that "DOE's language [in the ROD] is replete with conditional phrases" and concluded that Nevada's claim will not be ripe for review until the Repository EIS "is used to support a concrete decision" regarding the interim transportation plan.

The court similarly drew upon conditional statements in the ROD to address Nevada's claim that the interim transportation plan is an arbitrary and capricious action and therefore a violation of the Administrative Procedure Act. The claim is not ripe, the court concluded, because the conditional language does not represent "final agency action."

Finally, Nevada claimed that DOE violated the Administrative Procedure Act by failing to get approval from the STB before selecting the Caliente Corridor. This claim was based on STB's exclusive jurisdiction over common carrier rail lines. The court found the claim not ripe because DOE has not decided to open operations of the proposed rail line to other carriers, and DOE has committed to obtain all necessary regulatory approvals before beginning construction.

Next Steps

Transportation planning related to Yucca Mountain continues along with other aspects of the repository program. DOE has announced its intention to complete the Rail Alignment EIS and a supplement to the Repository EIS by June 2008, and also to submit a License Application to the Nuclear Regulatory Commission for repository construction authorization at that time. Based on current schedules, the repository could begin receipt of spent nuclear fuel and high-level radioactive waste no sooner than 2017. 

Congressional NEPA Task Force Staff Issues Final Report

The staff of the Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act of the Committee on Resources, U.S. House of Representatives, presented its Final Report, *Recommendations to Improve and Update the National Environmental Policy Act* to Representative Cathy McMorris, Task Force Chair, on July 31, 2006. In addition to presenting 20 recommendations on NEPA implementation, as described below, the Final Report responds to comments on the Initial Report and lists near-term next steps: a Resources Committee hearing on the recommendations, additional dialogue with the Council on Environmental Quality (CEQ) on implementation, and consultations with stakeholders on impacts.

Ultimately, the staff's Final Report concludes, legislation should be introduced to facilitate implementation of the recommendations: "Taking concrete actions are necessary to ensure NEPA continues to be a viable tool for informed federal decisionmaking."

Recommendations are presented in nine groups, as indicated below. Two recommendations proposed in the Initial Report have been deleted: amending NEPA to automatically grant state, tribal, and local stakeholders cooperating agency status and to create a "NEPA Ombudsman" within CEQ.

Addressing Delays in the Process

- Amend NEPA to change "major federal action" to "significant federal action."
- Amend NEPA to express the need for timely completion of NEPA documents and amend CEQ regulations to set mandatory timelines, 18 months for an EIS and nine months for an EA (extensions on a case-by-case basis). NEPA documents not concluded in these times will be considered completed. "Sensible timeframes will make for better federal decisions."
- Issue CEQ regulations to establish clear criteria for the use of categorical exclusions, EAs, and EISs. "Utilizing the regulatory approach will provide flexibility."
- Amend NEPA to address supplemental NEPA documents. The amendment would exclude language now in the CEQ regulations that allows an agency to prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so. "Including this language would run counter to the goal of [reducing] incidents of supplemental NEPA documents."

Enhancing Public Participation

- Amend NEPA to recognize the significance of a Federal undertaking by its impact on the environment. Direct CEQ to prepare regulations to evaluate comments

LLQR Tracks Progress of NEPA Task Force

During the 45-day public comment period that ended February 6, 2006, more than 200 substantive comments were received on the staff-prepared Initial Report. (See *LLQR*, March 2006, page 3.) The Task Force has posted 138 of these comments on its website, <http://resourcescommittee.house.gov/nepataskforce.htm>. Task Force staff has told DOE NEPA Office staff that the remaining comments were not posted to the website because they are identical to posted comments.

The comments present highly diverse reactions to the recommendations presented in the Initial Report and contain many perspectives on NEPA's benefits and burdens. Approximately one-third of the posted comments are from companies and trade organizations and another third from public interest and legal groups. Individuals submitted one-fifth of the posted comments, and state, tribal, and local governments and organizations account for the rest.

For additional information on the Task Force and testimony provided at its nationwide hearings, please see the following past issues of *LLQR*:

- Initiation of Task Force and Spokane Hearing – June 2005, page 3
- Southwestern, Southern, and Intermountain States Hearings – September 2005, page 14
- Mid-Atlantic States hearing; hearings on NEPA litigation and NEPA "Lessons Learned and Next Steps" – December 2005, page 3
- Initial staff report – March 2006, page 3

based on impact. "CEQ should instruct agencies to assess comments according to the impact on the entity submitting them. This will give an agency the true 'effect' of an action on a scale from greatest to least impact. Agencies would be required to create a scoring mechanism consistent with their mission. All comments submitted would be subject to this type of evaluation."

- Amend NEPA to codify EIS page limits as normally less than 150 pages with a maximum of 300 pages.

Better Involvement for State, Local and Tribal Stakeholders

- Amend NEPA to include a policy that Federal agencies should use equivalent state environmental analysis statutes. Direct CEQ to prepare regulations to allow existing state environmental review processes to satisfy NEPA requirements.

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NEPA Task Force *(continued from previous page)*

Addressing Litigation Issues

- Amend NEPA to create a policy declaration on litigating under the statute. Direct CEQ to prepare regulations clarifying legal procedures for bringing suit under NEPA.
- Amend NEPA to require CEQ to provide litigation guidance to agencies.

Clarifying Alternatives Analysis

- Amend NEPA to require analysis of only reasonable alternatives. Amend CEQ regulations to state that reasonable alternatives are those supported by feasibility and engineering studies and capable of being implemented after taking into account cost, existing technologies, and socioeconomic consequences.
- Amend NEPA to clarify that the “no action alternative” must be analyzed.
- Amend NEPA to recognize that mitigation proposals that are utilized as part of the decisionmaking process must be implemented. Direct CEQ to promulgate guidance to make mitigation proposals mandatory.

Better Federal Agency Coordination

- Amend NEPA to clarify the responsibility of lead agencies.
- Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.

Additional Authority for CEQ

- Amend NEPA to direct CEQ to control NEPA-related costs, including recommending to Congress some cost-ceiling policies.

Clarify Meaning of “Cumulative Impacts”

- Amend NEPA to clarify how agencies would evaluate the effect of past actions.
- Amend NEPA to instruct agencies to use practical considerations in assessing a future action’s impact on the environment. Direct CEQ to amend its regulations to clarify what actions are “reasonably foreseeable,” making certain that “speculative actions are not ‘reasonable’ within the context of cumulative impacts.”

Studies

Direct CEQ to study:

- NEPA’s interaction with other Federal environmental laws.
- Current Federal agency NEPA staffing issues.
- NEPA’s interaction with state “mini-NEPAs” and similar laws.

LLQR will continue to monitor and report on further developments regarding the Congressional NEPA Task Force. 

Observations on NEPA from Lynton Caldwell

On the impact of NEPA:

NEPA is potentially a powerful statute, well integrated, internally consistent, and flexible. . . . That it has made a significant difference in the United States and has influenced governments abroad is hardly debatable. NEPA was not a sudden inspiration, nor was it put over on an unsuspecting Congress and the public by an environmental lobby. Its purpose was never the writing of impact statements; but this action-forcing procedure has been a great inducement to ecological rationality in Federal actions which traditionally had largely ignored environmental consequences.

On the rise of a Federal role:

Emergence of environment as a public and national issue followed from profound changes in the population and economy of the United States in the course of the 20th century. . . . Progress of this new industrial society increasingly encountered and created environmental problems [with] which neither local government or the market economy could cope. Quality of life values in health, amenities, and opportunities were being lost or threatened and the causes transcended artificial political jurisdictions. Only the Federal government had the geographic scope and institutional structure able to deal with the growing array of interrelating problems now called “environmental.”

Congressional Testimony, 1998

CEQ Interagency Work Groups Developing NEPA Guidance

To support the Council on Environmental Quality's (CEQ's) implementation of the CEQ NEPA Task Force recommendations, the Office of NEPA Policy and Compliance recently reviewed three draft guidance products – a Citizen's Guide to NEPA, guidance on categorical exclusions, and guidance on Environmental Management Systems (EMSs) and NEPA integration – developed by CEQ-led interagency Work Groups.

Citizen's Guide to NEPA

CEQ distributed the draft *A Citizen's Guide to NEPA: Having Your Voice Heard* for Federal agency comment on July 11, 2006. Recommended by the Task Force based on inconsistencies in agency NEPA public involvement processes, the Guide aims to explain basic NEPA requirements, dispel common misinterpretations, and provide helpful tips about how to participate in the NEPA process.

The purpose of the Guide is to help citizens and organizations participate effectively in environmental impact assessment. The Guide clarifies Federal agencies' basic minimum requirements; distinguishes the roles of the Environmental Protection Agency, the states, and tribes; provides examples of the types of Federal actions usually requiring environmental impact assessment and what constitutes significant environmental impact; and discusses the minimum time periods for public notice, public involvement, and the public's right to appeal decisions. The Guide also urges the public to get involved in agencies' EMSs for post-decision monitoring and mitigation of environmental impacts.

In response to CEQ's request for agency comment, the NEPA Office, in consultation with DOE's NEPA Community, recommended strengthening the Guide by focusing more on the opportunities for public involvement required by the CEQ regulations that are common to all agencies.

Categorical Exclusions

The NEPA Office similarly provided comments regarding CEQ's draft guidance, *Establishing, Revising, and Applying Categorical Exclusions under NEPA*, on June 30, 2006. The Work Group's draft guidance is intended to assist agencies in developing and using categorical exclusions and documenting their use. In particular, it promotes interagency sharing of information ("benchmarking") to identify and support additional categorical exclusions.

The Work Group has considered comments received and expects CEQ to publish draft guidance in Fall 2006 for public review.

EMS and NEPA

CEQ requested public comments on its proposed guidance, *Aligning the Complementary Processes of Environmental Management Systems and the National Environmental Policy Act* (71 FR 40520; July 17, 2006), after receiving Federal agency comments on an earlier draft, including comments from DOE.



In its proposed guidance, CEQ indicates that because agencies generally have not integrated NEPA analyses into the implementation and management of proposed actions, the full value of resources expended in the NEPA process frequently is not realized. The proposed guidance presents a table that shows how elements of EMS and NEPA can be integrated to improve an agency's environmental performance. EMS, for example, typically requires identification of environmental impact information not only for ongoing activities, but also for new proposals. The NEPA process provides such forecasts for proposals at the design and decision phase, including potential mitigation measures.

The guidance states that incorporating an EMS approach into the NEPA process can drive the use of impact prediction and mitigation information beyond the decision stage and into day-to-day implementation. In addition, an EMS approach can improve the NEPA process through use of adaptive management techniques for projects that face uncertain or unforeseen conditions during implementation. Exploiting the complementary elements of NEPA and EMS can help managers make better decisions, reduce environmental impacts, and promote NEPA policy goals and processes.

Further Information

The NEPA Office is an active participant in CEQ's NEPA guidance development process and will continue to monitor the activities of the 12 Work Groups, participate in the review of draft guidance, and report on further developments in future issues of *LLQR*. For more information on the interagency Work Groups' guidance development process and the implementation of the NEPA Task Force recommendations, see *LLQR*, March 2006, page 10, and the CEQ website at www.nepa.gov. For further information on the Citizen's Guide, and EMS and NEPA guidance, contact Jim Daniel at james.daniel@eh.doe.gov or 202-586-9760; for further information on the categorical exclusion guidance, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NEPA Quality Assurance Planning Progresses



As a follow-up to the discussion on “Building Quality into NEPA Documents” at the May 2006 NEPA Compliance Officer (NCO) meeting (*LLQR*, June 2006, page 1), the Office of NEPA Policy and Compliance convened several volunteers to formulate a strategy for reinvigorating quality assurance (QA) practices for NEPA documents. NCOs Jack Depperschmidt (Idaho), Harold Johnson (Carlsbad), Raj Sharma (Nuclear Energy), Hitesh Nigam (Fissile Materials Disposition), and Rich Bush (Legacy Management), and QA expert Randy Kay (Idaho), have joined NEPA Office staff on a QA guidance development team.

In an initial discussion held in July, the QA team endorsed suggestions made at the May NCO meeting that the NEPA Office should develop a model QA plan, with a companion guidance document. An overarching goal is to provide guidance regarding DOE-specific NEPA QA plans and implementation, while preserving Program and Field Office flexibility to tailor QA programs to their needs.

In support of the NEPA QA team’s recommended approach, Carol Borgstrom, Director, Office of NEPA

Policy and Compliance, requested NCOs to forward QA plans for their organization or specific NEPA documents to the NEPA Office. So far, over a dozen Offices have provided their plans and NEPA procedures. The team envisions that the model QA plan would be based on applicable requirements, such as DOE Order 414.1C, *Quality Assurance*; be consistent with DOE-wide QA practices; and incorporate the best elements of existing DOE NEPA QA plans.

Efforts to revitalize DOE’s approach to NEPA QA, initiated in January 2006 (*LLQR*, March 2006, page 5), have been well received by the DOE NEPA Community, and the team welcomes additional input. The team is considering such topics as how to structure an interface between contractor and DOE QA plans; roles and responsibilities for NCOs, NEPA Document Managers, and contractors; and processes for NEPA QA plan implementation. Comments or suggestions on these and other aspects of NEPA QA planning should be forwarded to Jeanie Loving at jeanie.loving@eh.doe.gov or 202-586-0125. 

e-NEPA: Electronic Access to DOE NEPA Documents

Noting the Department’s excellent record in meeting NEPA’s public involvement objectives, C. Russell H. Shearer, Acting Assistant Secretary for Environment, Safety and Health, on July 13, 2006, requested that Secretarial Officers and Heads of Field Organizations conduct security reviews of certain EISs archived on the DOE NEPA website (www.eh.doe.gov/nepa under DOE NEPA Documents) to determine whether electronic access limitations should be retained.

Among documents to be reviewed were 65 final EISs that were publicly available on the DOE NEPA website before September 11, 2001, but as a result of security changes implemented in November 2001, were archived on a secure, password-protected server. The documents will remain electronically inaccessible to the public unless DOE completes security reviews in accordance with DOE M 470.4-4, *Information Security*, Section B, part 2.g, and determines they can be placed, in whole or in part, on the publicly-accessible portion of the DOE NEPA website. (See *LLQR*, June 2006, page 2.)

In recognition of the staff resources that completing the security reviews will require, Mr. Shearer identified high priority documents that should be reviewed first, including



frequently-requested programmatic and site-wide EISs. The NEPA Office expects that transferring such EISs to the publicly-accessible server will result in NEPA process efficiencies because DOE still relies on many of these documents for decisions and references them in new NEPA documents.

So far, DOE has determined that electronic access limitations may be removed from four high priority documents: *Waste*

Isolation Pilot Plant Disposal Phase Supplemental EIS (DOE/EIS-0026-S2); *Tank Waste Remediation System EIS, Hanford Site, Richland, Washington* (DOE/EIS-0189); *DOE Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS* (DOE/EIS-0203); and *Hanford Comprehensive Land Use Plan EIS* (DOE/EIS-0222).

However, Field Office reviews of some other EISs resulted in a recommendation that not only should electronic access limitations be retained, but also that limitations on paper distribution are warranted because some of these documents contain “Official Use Only” information.

Responses to the security review request are due by September 15, 2006, to DOE NEPA Webmaster, Denise Freeman, at denise.freeman@eh.doe.gov. 

Successful EA Results from Good Coordination with Project Sponsors and Environmental Experts

By: C. Barry Shedrow and Gregory L. Burbage, *Washington Savannah River Company* with Stephen Danker, *NEPA Document Manager, Savannah River Operations Office*

After assessing potential terrorist threats in accordance with security guidelines, the Savannah River Operations Office proposed five projects to consolidate plutonium-bearing materials at a single location and increase the physical safeguards and security of these materials. The projects would be located in diverse settings (i.e., greenfield as well as industrial areas), involve multiple organizations within DOE and the management and operating (M&O) contractor, and have differing programmatic priorities for funding and scheduling. In spite of this diversity, the NEPA Compliance Officer (NCO) proposed a strategy to address the five projects in a single EA, an approach that proved cost-effective and timely.

Document Preparation Benefited from Expert Resource Team

Environmental impacts of the proposed projects were analyzed in the *Environmental Assessment for Safeguards and Security Upgrades for Storage of Plutonium Materials at the Savannah River Site* (DOE/EA-1538, December 2005). The EA was prepared by a core team comprised of DOE and M&O contractor personnel, with involvement as needed from other DOE and contractor offices and outside organizations.

DOE members of the team were the NCO and the NEPA Document Manager, who provided direction and guidance; and staff from the Offices of Nuclear Material Stabilization Project and of Safeguards, Security, and Emergency Services. M&O staff from the Washington Savannah River Company's Nuclear Materials Disposition and Environmental Services Sections served as designated EA team leader, technical liaison, and specialists in environmental compliance and public involvement.

The key to a successful NEPA process proved to be the designation of one person as the team's technical liaison, who provided project information and detail for the EA across all five of the proposed project activities and who coordinated closely with the EA team leader. The EA team leader prepared the document and coordinated the involvement of outside organizations with special expertise: Savannah River National Laboratory for floodplain and wetlands delineation and impacts analysis, and human health effects analysis; U.S. Forest Service for

Geographically and Technically Diverse Projects

The five proposed projects addressed safeguards and security at the 310-square-mile Savannah River Site near Aiken, South Carolina:

- Consolidating plutonium-bearing materials from two storage facilities to a single upgraded facility.
- Constructing and operating facility modifications for container surveillance and stabilization.
- Conducting interim surveillance of stored materials until the facility modifications (above) are operational.
- Installing physical security upgrades: clearing adjacent land, constructing fences and barriers, and installing monitoring and detection systems.
- Expanding and upgrading the firing range in the protective forces' tactical training area.



The EA process resulted in preservation of this wetland by changing the boundary of the tactical training area.

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Successful Coordination (continued from previous page)

assessment of potential impacts to threatened and endangered species and information regarding timber management and harvest; University of South Carolina's Savannah River Archaeological Research Program for archaeological review; and Washington Safety Management Solutions for accident analysis and hazards analysis.

Effective Strategies Addressed EA Challenges

The EA team found that effective management of the EA process depended on proactively addressing challenges as soon as possible.

- To initiate the EA process, the team undertook comprehensive internal scoping with representatives of the component projects to characterize data needs and establish a schedule. At these planning sessions, the project representatives made commitments to the team's technical liaison regarding timely provision of required data. Plans were made for frequent communication between component project leads, the technical liaison, and the EA team leader.
- To increase the efficiency of administering the NEPA process, a single funding source to support the EA was identified. The Office of the Assistant Manager for Nuclear Material Stabilization Project – the sponsoring organization for three of the five projects, including the ones with the highest urgency – recognized that funding the entire EA would reduce overhead costs and lead to more productive use of time.

- After EA preparation was underway, a proposed expansion of a component project was determined to require more tree removal than was initially envisioned. The EA team leader and technical liaison coordinated with the Forest Service to obtain additional floodplain and wetlands assessment information and with the Savannah River Archaeological Research Program to expand the archaeological reviews.

The scope change occurred near the end of the scheduled time for preparation of the EA. The early coordination with all involved organizations, including recognition of the importance of completing the EA on schedule, allowed management to mobilize the appropriate resources to acquire the field data necessary to revise the EA. The fact that the initial assessment information had been shared with the preparation team further facilitated quick revision of the EA and prevented impact to the EA schedule.

- To facilitate public involvement, the team used the *Environmental Bulletin from the Savannah River Site* to announce the initiation of the EA and later the availability of the EA for public preapproval review.

For more information, contact the DOE NEPA Document Manager, Steve Danker, at stephen.danker@srs.gov or 803-952-8603. 

Site's Environmental Bulletin Facilitates Public Involvement

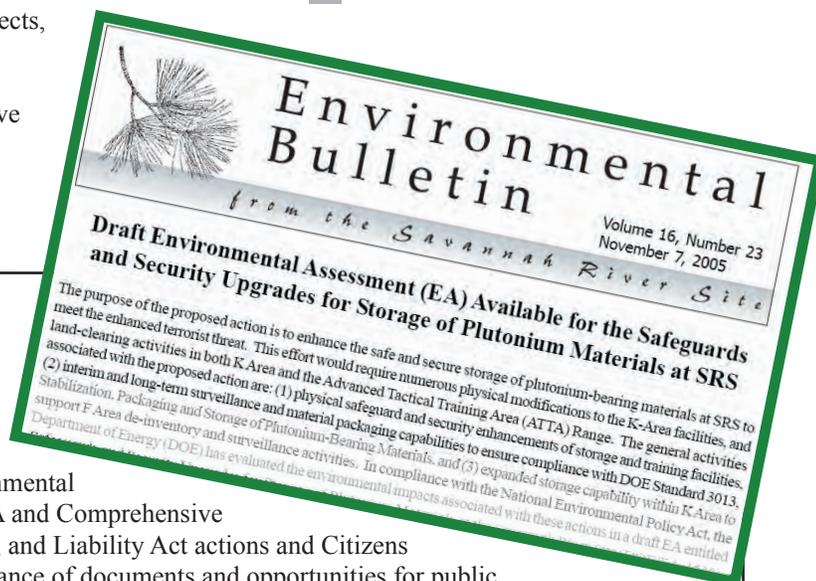
What: Postcard or up to 4-page newsletter, as appropriate for the content.

Why: To keep stakeholders informed of environmental aspects of site activities, especially NEPA and Comprehensive Environmental Response, Compensation, and Liability Act actions and Citizens Advisory Board activities, including issuance of documents and opportunities for public involvement.

How: Distributed by mail and posted at www.srs.gov/general/pubs/envbul/ebindex.htm.

When: Published as developments warrant, generally one to four times per month, with an issue covering NEPA updates at least once per quarter.

Who: Prepared by the M&O contractor with involvement of the Offices of Environment, Safety and Health and External Affairs at the Savannah River Operations Office.



Tips for Reviewing an EIS

When a new EIS lands on your desk for review, where do you begin? “I start with the table of contents to confirm that all the parts of an EIS are included and to get an overview of the EIS structure and alternatives,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. Others among the NEPA Office staff and DOE’s NEPA Compliance Officers (NCOs) also start with the table of contents. A discussion at this year’s NCO meeting, led by Brian Costner, NEPA Office, highlighted other useful approaches and techniques for reviewing an EIS. (See *LLQR*, June 2006, page 1.)

“Regardless of the approach,” Ms. Borgstrom emphasized, “the key to a quality EIS review is: **Read the entire EIS.**”

Develop an Overall Approach

Many reviewers first try to understand the “story” being told through the EIS: What is DOE proposing? Are all reasonable alternatives assessed? Does the range of reasonable alternatives meet the purpose and need for agency action? How do the potential environmental impacts compare among alternatives? Do the parts hold together to make a cohesive whole?

Some reviewers start with the Summary – the part of the EIS that most people read. They proceed to the individual chapters ensuring that the information covered in the Summary is consistent with the body of the EIS.

Others use the *EIS Checklist*, prepared by the DOE Office of Environment, Safety and Health, as a guide for their review. The checklist simplifies the process of evaluating the EIS for completeness while also prompting reviewers to evaluate the quality of the EIS’s content. (The checklist is available on the DOE NEPA website at www.oh.doe.gov/nepa under Selected Guidance Tools.)

Still others focus on critical elements of the EIS, such as controversial environmental impacts, public comments, or topics within their areas of expertise. “Because an EIS is essentially built from the bottom up, I start with the appendices and work forward during the concurrence process, having reviewed important features such as the proposed action and range of reasonable alternatives earlier in EIS preparation,” explained Jeanie Loving, NEPA Office. “I look for sound technical methodology in the appendices, an accurate reflection of the impact estimates in the main body of the EIS, and end with the Summary.”

Participants at the NCO meeting discussed techniques that are helpful in implementing any approach to an EIS review. Four of these techniques are briefly described below.

Understand the Context and Identify Key Issues

Review documents prepared for, or about, the EIS. A quick re-read of the notice of intent, public comments and comment summaries, recent news articles, and other documents can refresh the reviewer’s memory about the major issues to be addressed in the EIS. Can the resolution of each issue be tracked to a conclusion, including, as appropriate, an explanation why more detailed discussion is not needed?

Further prepare for an EIS review by keeping up with developments related to the proposed action. Budget documents, congressional testimony by senior DOE officials, statements by interested individuals and organizations, permits and other regulatory documents, and news accounts are all sources of information that can help an EIS reviewer interpret the content of an EIS. Are

descriptions in the EIS consistent with DOE planning documents and agreements with external parties, including regulatory agencies? Is there important information from any of these sources that is missing from the EIS?

One purpose in reviewing information about the proposed action is to identify the key technical and policy issues related to the analyzed alternatives. These are the issues most critical to decisionmakers or most visible to the public. Does the EIS describe each issue, including differences among perspectives, in a fair and balanced manner?

(continued on next page)

DOE ENVIRONMENTAL IMPACT STATEMENT CHECKLIST					
LIST 1: GENERAL	YES	NO	N/A	EIS PAGE	ADEQUACY EVALUATION AND COMMENTS
1.3.0 PURPOSE AND NEED FOR ACTION					
1.3.1 Does the EIS specify the underlying purpose and need to which DOE is responding in proposing the alternatives including the proposed action? [40 CFR 1502.13]					
1.3.2 Does the statement of purpose and need relate to the broad requirement or desire for DOE action, and not to the need for one specific proposal or the need for the EIS?					
1.3.3 Does the statement of purpose and need adequately explain the problem or opportunity to which DOE is responding?					
1.3.4 Is the statement of purpose and need written so that it (a) does not inappropriately narrow the range of reasonable alternatives, or (b) is not too broadly defined as to make the number of alternatives virtually limitless?					

The DOE EIS Checklist helps EIS preparers and reviewers avoid overlooking required and recommended elements of an EIS, and it provides a record of internal reviews. (Adapted from the DOE EIS Checklist.)

Reviewing an EIS (continued from previous page)

Review NEPA Regulations, Guidance

Throughout an EIS review, refer as needed to regulations and guidance from DOE and the Council on Environmental Quality (CEQ). In addition to the *EIS Checklist*, several of the commonly referenced guidance documents include CEQ's "40 Questions" and DOE's *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (the "Green Book," December 2004), *Recommendations for Analyzing Accidents under the National Environmental Policy Act* (July 2002), *Environmental Impact Statement Summary* (September 1998), and, for a final EIS, *The EIS Comment-Response Process* (October 2004). These and other guidance documents, as well as CEQ and DOE NEPA regulations, are included in the *DOE NEPA Compliance Guide*, which is available on the DOE NEPA website at www.eh.doe.gov/nepa.

Evaluate Integrated Reviews

An EIS usually provides the mechanism for demonstrating how a proposed action would comply with environmental review requirements in addition to NEPA. Floodplain and wetland reviews, historic and cultural resource reviews, air conformity analysis, and reviews of potential impacts on threatened and endangered species are among the topics

that should be included in an EIS. Evaluate these reviews in terms of applicable requirements and the significance of potential impacts. Confirm that the analysis in the reviews is fully integrated, and consistently addressed, in the EIS.

Coordinate with Other EIS Reviewers

Several offices within DOE review each EIS before issuance, as do cooperating agencies for some EISs. It can be helpful for a reviewer to know which office's or agency's comments have been incorporated into an EIS (and whether any comments have not been addressed). This information may identify whether the comments of reviewers with particular interests or areas of expertise are reflected in the current draft. This information also can be used to identify reviewers who should coordinate comments, as well as any offices not involved in the EIS that should be.

"The outcome of the review process is not a better document for its own sake," explained Jim Daniel, Science/Nuclear Unit Leader, NEPA Office. "Rather, the objectives of the review are to ensure that the EIS fully and fairly lays out all the potential environmental impacts so that the public and decisionmakers can consider them and the Department can seek ways to mitigate any adverse impacts." ■■

Questions for an EIS Reviewer

- Using the *EIS Checklist* as a guide, are any elements missing from the EIS?
- Are the introductory chapters clear? Are the "story" and logic easy to follow? Is the text consistent with related documents (e.g., other NEPA documents, congressional testimony, budget documents, project management documents) and NEPA regulations and guidance?
- Is the purpose and need for agency action appropriately framed, clear, and objective?
- Are all reasonable alternatives covered in the range of alternatives? Is each analyzed alternative clearly described (e.g., complete process description) and given comparable attention throughout the EIS? Is there adequate discussion of alternatives considered but dismissed? Are all alternatives suggested in the scoping process included in the discussion? Is a preferred alternative identified?
- Do the affected environment and impact sections follow the sliding-scale principle (i.e., provide a level of detail appropriate to the significance of potential environmental impacts on the resource area)? Are the technical data, analyses, and conclusions consistent? Does the analysis of potential impacts acknowledge uncertainty, responsible opposing views, and controversial issues?
- Has a quality assurance plan been implemented for the EIS? For example, is there evidence that raw data such as radionuclide inventories have been verified or that calculations have been checked? Have numerical data been transcribed correctly from the appendices to the impact chapter and comparison of alternatives? Are the discussion and conclusions in the text supported by the data presented?
- Are referenced documents readily available and consistent with their use in the EIS?

New Guidance on EIS Distribution Emphasizes Stakeholder Preferences, Delivery Options

Some people would prefer to use a CD to browse through a large EIS, focusing only on the sections of particular interest. Others would prefer to read a paper copy, but would find it too costly or time-consuming to download and print an EIS from their home computer. Given DOE's responsibility to "encourage and facilitate public involvement" (40 CFR 1500.2), it is appropriate to honor individual preferences – print version, CD, or notification that an EIS is available on a DOE website. Even with the best efforts, however, an EIS distribution list is likely to include some people and organizations who have not expressed a preference. How can DOE best meet its responsibilities for EIS distribution to these stakeholders?

New DOE NEPA guidance, *EIS Distribution* (June 2006), addresses this and other questions, recognizing the importance of getting an EIS, in a timely manner and a useful format, to those who are interested in or potentially affected by a proposed action. "We expect implementation of this guidance to improve the efficiency and effectiveness of distribution of an [EIS], thereby allowing DOE to complete the NEPA process and implement its actions on schedule," C. Russell H. Shearer, Acting Assistant Secretary for Environment, Safety and Health, wrote on June 15, 2006, to Secretarial Officers and Heads of Field Organizations. "The guidance recognizes DOE's responsibility to provide an EIS in a format useful to recipients and describes the use of electronic tools (e.g., compact disks and Web sites)."

Soliciting Preferences

The guidance recommends that the NEPA Document Manager begin building an EIS distribution list – names and preferences – at the outset of the EIS process, even before publishing a notice of intent, by using existing sources, such as site stakeholder lists, as well as consulting with the Office of Congressional and Intergovernmental Affairs. Good practice also is to collect additional names and preferences throughout the NEPA process (e.g., at public scoping meetings, at hearings on the draft EIS, and through any EIS-specific website).

In each opportunity to add stakeholders to the distribution list or to update their contact information, providing a menu of choices for volume and format preferences allows DOE to fulfill stakeholder needs and may save DOE printing costs. To aid this process, the *Directory of Potential Stakeholders for DOE Actions under NEPA* (updated annually) indicates whether national and regional stakeholders prefer to receive notification of the website availability of a draft or final EIS, or a printed copy or CD. (The 2006 *Stakeholders Directory* was issued in July, related article on next page.)

Three Options If Preference Unknown

When DOE does not know stakeholder preferences, the guidance presents three options. One option is to follow DOE's common practice of sending a printed copy of the entire EIS to those on the distribution list who have not expressed a preference. This approach avoids later requests for a complete printed copy of the EIS.

A second option is to send a postcard or e-mail message shortly before EIS distribution that, in addition to requesting the recipient to identify or verify a preference, clearly states what DOE will send if the stakeholder does not reply. This provides notice that those who do not specify a preference may receive, for example, the entire printed EIS, or only the printed EIS Summary and a CD of the entire EIS, or only a letter telling where the EIS is available in reading rooms and on the Web.

A third option is to distribute the printed EIS Summary and a CD with the entire EIS to those stakeholders who have not expressed a preference without first sending the notification described for option two. This may be appropriate, for example, when many stakeholders have commented by submitting an e-mail or postcard prepared by a third party. It also may be appropriate for a very large EIS, as was the case for distribution of the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250, February 2002). (See *LLQR*, March 2003, page 9.)

Anytime DOE chooses not to distribute the entire printed EIS to those on the distribution list who have not expressed a format preference, the guidance advises to make it simple for stakeholders to later request a printed copy of the entire EIS. The guidance refers to the Council on Environmental Quality's NEPA regulations (40 CFR 1502.19) whereby it may be necessary to extend the comment period by 15 days for those recipients who make a timely request for a printed copy.

(continued on next page)

Useful Elements of a Distribution List Include:

- Contact information
(name, organization, mailing and e-mail address)
- Requested EIS volumes
(entire EIS, summary only)
- Preferred format
(printed copy, CD, access from a DOE website)
- Other information appropriate for a particular EIS
(source for each name on the list)

EIS Distribution Guidance (continued from previous page)

Guidance Provides Process Recommendations, Templates

The guidance emphasizes coordination among offices within DOE and the use of an EIS Communication Plan to facilitate this coordination. The guidance includes a postcard template to solicit stakeholders' preferences and updated contact information before EIS distribution. Other templates included in the guidance provide sample text for letters distributing an EIS and filing an EIS with the Environmental Protection Agency.

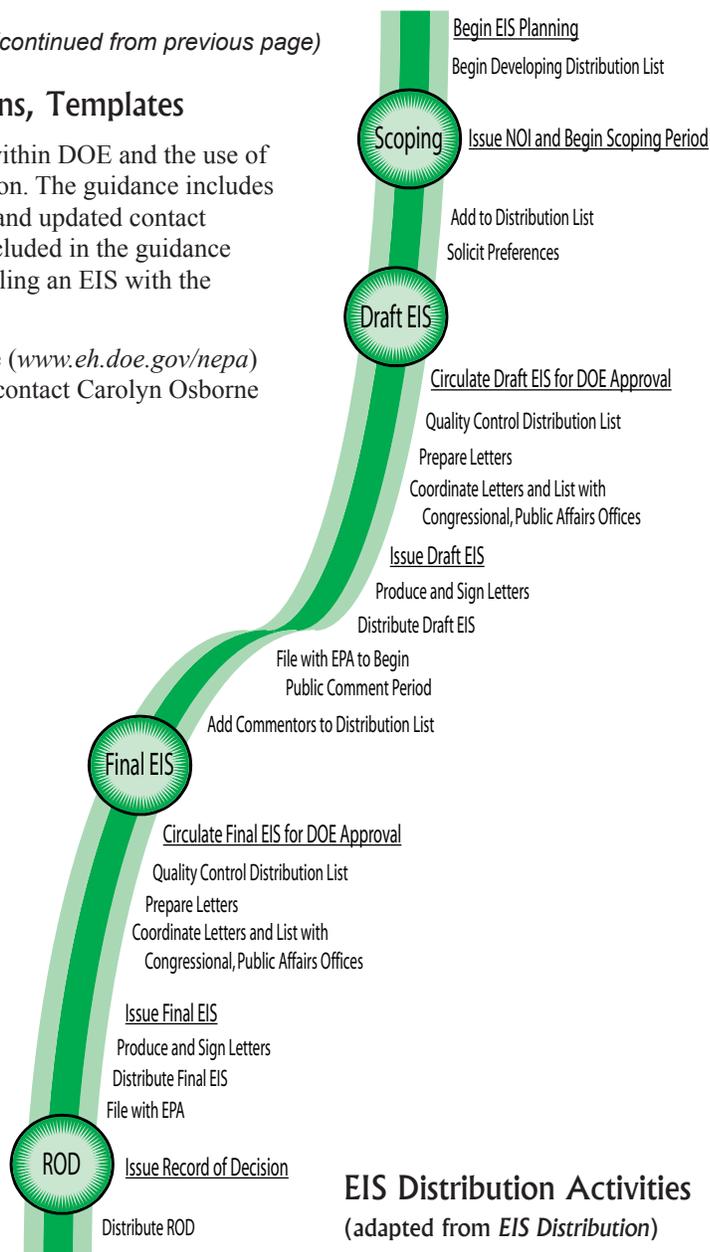
EIS Distribution is available on the DOE NEPA website (www.eh.doe.gov/nepa) under Selected Guidance Tools. For more information, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

EIS Communication Plan

The purpose of an EIS Communication Plan, which is prepared by the NEPA Document Manager, is to identify the messages to be communicated and the audiences to be addressed, and to coordinate the schedule, timing, and individuals responsible for distributing EIS documents and providing notifications to stakeholders.

An EIS Communication Plan addresses five key questions:

- **What** is being announced?
- **Who** makes the announcement **to whom**?
- **Where** will the announcement be made?
- **When** will the announcement be made?
- **How** will the announcement be made?



EIS Distribution Activities
(adapted from *EIS Distribution*)

Updated Stakeholders Directory Supports EIS Distribution

The *Directory of Potential Stakeholders for DOE Actions under NEPA* (23rd Edition, July 2006) has been distributed to the DOE NEPA Community. The information in the *Directory*, updated annually, is meant to supplement lists of affected or interested parties that DOE Offices compile for particular projects or facilities. The *Directory* identifies potential NEPA document recipients in Federal agencies, states, and nongovernmental organizations. The appendices present listings for DOE contacts: NEPA Compliance Officers, Departmental and National Laboratory Public Affairs Directors, and points of contact for tribal issues.

The *Directory* has been distributed on compact disk as a pdf file and database application that allows users to copy selected contact information onto a clipboard, and then into other applications – such as word processing – to produce mailing lists, letters, or labels. Paper copies of the *Directory* also were distributed, and it is posted on the DOE NEPA website (www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf). For further information, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE-wide NEPA Contracts Expire Fall 2007 – Help Wanted!

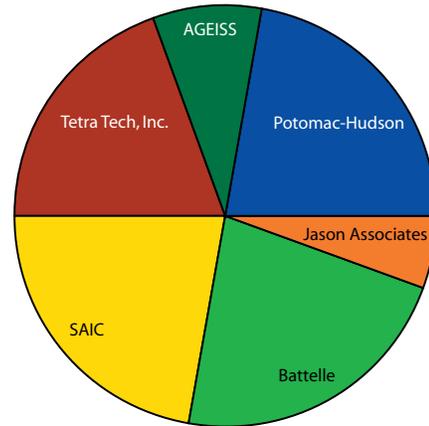
As the Department nears the end of the five-year term for the second set of DOE-wide NEPA Contracts, the Office of NEPA Policy and Compliance is pleased that the contracts have served us so well, particularly in minimizing time needed to start the NEPA process.

The Contract Administrator, David Nienow, reports that a total of 36 tasks have been awarded under the existing DOE-wide NEPA contracts, and of the 36 tasks, data for the time it took from the request for proposal to an award is available for 26 tasks. For these 26 tasks, the average time from request for proposal to award was 23 days. Two of the 26 tasks had one day turn-arounds. The charts to the right illustrate the distribution of the 36 task orders among DOE Programs and among the DOE-wide NEPA contractors. These charts do not, however, reflect the dollar value distribution of task orders issued.

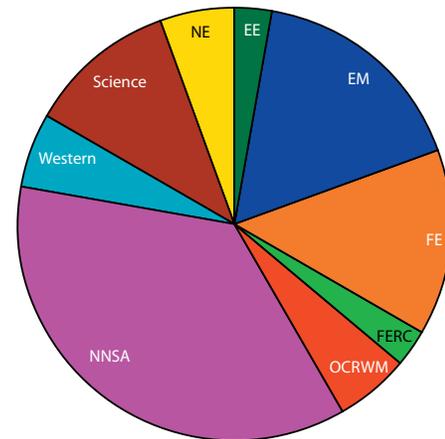
However, work must start soon to have a new set of contracts in place when the current ones expire. The contracts obtained under full and open competition – Battelle Memorial Institute, Jason Associates Corporation, Science Applications International Corporation, and Tetra Tech, Inc. – expire at the end of September 2007. The small business contracts (AGEISS Environmental, Inc. and Potomac-Hudson Engineering, Inc.) expire in early November 2007.

Informal discussions are underway on how to proceed. The NNSA Service Center has agreed to handle the follow-on procurement solicitation leading to the award of new contracts for both NNSA and DOE Program and Field Offices. NCOs are needed, however, to serve on the Source Evaluation Team that helps select the contracts. Interested? Contact Carolyn Osborne, NEPA Office, at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Relative Distribution of Task Orders by Contractor



Relative Distribution of Task Orders by Program Office



EE: Office of Energy Efficiency and Renewable Energy
 EM: Office of Environmental Management
 FE: Office of Fossil Energy
 FERC: Federal Energy Regulatory Commission
 OCRWM: Office of Civilian Radioactive Waste Management
 NNSA: National Nuclear Security Administration
 Western: Western Area Power Administration
 Science: Office of Science
 NE: Office of Nuclear Energy

Tasks Recently Awarded Under the Existing DOE-wide NEPA Contracts

Description	DOE Contact	Date Awarded	Contract Team
FutureGen Project EIS	Mark McKoy 304-285-4426 mmckoy@netl.doe.gov	6/12/2006	Potomac-Hudson
Preparation and Review of a Supplemental EIS and Other Environmental Documents for the Yucca Mountain Repository	Jane Summerson 702-794-1493 jane_summerson@ymp.gov	7/6/2006	Jason Associates
Supplement to Stockpile Stewardship and Management PEIS – Complex 2030	Ted Wyka 202-586-3519 theodore.wyka@hq.doe.gov	8/16/2006	Tetra Tech, Inc.

Transitions

New Contract Administrator: David Nienow

David Nienow has assumed the administration duties for the DOE-wide NEPA contracts from Agustin Archuleta, who has taken another position in the National Nuclear Security Administration (NNSA) Service Center. Mr. Nienow is a Level III certified acquisition professional with over 30 years of experience in both Federal and commercial contracting. He can be reached at dnienow@doeal.gov or 505-845-6072.

Program and Field Office “Ordering Contracting Officers” who wish to issue tasks under these contracts are encouraged to consult with Mr. Nienow for advice on completing the Request for Task Proposal/Task Order Form (available under “Tools for Contract Use” on the DOE-wide NEPA Contracts page, www.eh.doe.gov/nepa/contracting.html, of the DOE NEPA website). For tracking and reporting purposes, the Ordering Contracting Officer must include the DOE-wide NEPA Contract Administrator on distribution for all task orders and task order modifications issued.

NEPA Compliance Officers

Hanford Site: Woody Russell

Woody Russell now serves as the NCO for the Richland Operations Office and Office of River Protection at the Hanford Site following the retirement of Paul Dunigan. He has been supporting the Office of River Protection in the areas of environmental permitting, compliance, Tri-Party Agreement implementation, and NEPA activities since he joined the Office in 2001. Previously, he worked for the DOE Idaho Operations Office, where he served as the air quality subject matter expert for the Idaho National Laboratory, air quality lead for several Idaho EISs, and Federal coordinator for the Citizens Advisory Board. Mr. Russell can be reached at woody_russell@orp.doe.gov or 509-373-5227.

Under a Memorandum of Agreement, the Managers of the Richland Operations Office and the Office of River Protection jointly appoint a single NCO to coordinate NEPA activities for both Offices.

NNSA Service Center: Elizabeth Withers

Elizabeth Withers, who has been the NCO for the Los Alamos Site Office for several years, has now been designated an NCO for the NNSA Service Center in Albuquerque, New Mexico. Ms. Withers can be reached at ewithers@doeal.gov or 505-845-4984. Jeffrey Robbins (jfrobbins@doeal.gov or 505-845-4426) continues to serve as an NCO for the NNSA Service Center. 



Litigation Updates

DOE NEPA Litigation in Brief

A summary of the August 8, 2006, U.S. Court of Appeals decision regarding the Yucca Mountain Repository EIS begins on page 1 of this issue of LLQR. The status of the legal proceedings in other DOE NEPA cases is summarized below. No decisions have been announced in these cases.

Border Power Plant Working Group v. Department of Energy et al. (S.D. Calif.): A hearing is scheduled for October 6, 2006, in this case where the plaintiff alleges that DOE and the Bureau of Land Management violated NEPA by preparing an inadequate *EIS for the Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004), which was completed after the court found the agencies' 2001 EA inadequate. The plaintiff also alleges that the agencies violated the Clean Air Act by failing to prepare a conformity determination. A conformity determination is a process by which Federal agencies assess how their actions would conform to applicable state implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. (See *LLQR*, March 2006, page 20; December 2005, page 36; September 2005, page 25; June 2004, page 16; December 2003, page 7; and September 2003, page 22.) [Case No.: 02-0513]

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The court issued an amended scheduling order on July 17, 2006, that allows for filing the administrative record and briefing of the case by November 11, 2006. The plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). The plaintiffs also allege that the *West Valley Demonstration Project Waste Management Environmental Impact Statement* (DOE/EIS-0337, December 2003) does not support the Record of Decision's (70 FR 35073; June 16, 2005) reference to the possible use of a waste-incident-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level waste or mixed low-level waste. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): In this case involving a challenge to the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated Finding of No Significant Impact (FONSI), the court on June 20, 2006, cancelled a previously scheduled hearing on summary judgment and, instead, determined to review the matter based on briefs submitted to the court. The plaintiffs allege that DOE's cleanup activities at the Energy Technology Engineering Center are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. In a brief filed on April 12, 2006, DOE states that the EA is adequate and that an EIS is not required. (See *LLQR*, December 2004, page 16.) [Case No.: 04-04448]

Tri-Valley Communities Against a Radioactive Environment et al. v. Department of Energy et al. (9th Cir.): This case is an appeal of the district court's ruling on September 10, 2004, that DOE's EA for the Biosafety Level 3 facility at Lawrence Livermore National Laboratory is sufficient. The court held a hearing on June 13, 2006. (See *LLQR*, June 2005, page 23; December 2004, page 18; March 2004, pages 2 and 16; and September 2003, page 23.) [Case No.: 04-17232]

Winnemucca Indian Colony et al. v. U.S. et al. (D. Nev.): The plaintiffs allege, among other things, that DOE and the Defense Threat Reduction Agency (DTRA, an agency of the Department of Defense) must complete an EIS before conducting a proposed experiment known as Divine Strake, which would involve a detonation of 700 tons of ammonium nitrate and fuel oil at the Nevada Test Site. DOE has withdrawn its FONSI "to clarify and provide further information regarding background levels of radiation from global fallout in the vicinity" of the proposed experiment, as announced in May. (See *LLQR*, June 2006, page 17.) In response, the court ordered a stay of the litigation. Litigation proceedings could resume if DOE makes a final agency decision to conduct the experiment. DTRA has announced that the experiment would not occur before several months into 2007. [Case No.: 06-00497]

(continued on next page)

Other Agency NEPA Litigation

Environmental Impact of Terrorist Attack Required in NEPA Review, Court Rules

The Nuclear Regulatory Commission (NRC) erred in its determination that NEPA does not require an analysis of potential impacts resulting from a terrorist attack, concluded the U.S. Court of Appeals for the Ninth Circuit on June 2, 2006. The court did not direct how NRC is to evaluate terrorism-related impacts, instead leaving that to agency discretion consistent with NRC's statutory and regulatory requirements. (The decision is available on the court's website, www.ca9.uscourts.gov, under Opinions, then June 2, 2006, *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*.)

The plaintiffs petitioned the court to review NRC's approval of a dry cask spent nuclear fuel storage facility proposed for the Pacific Gas and Electric Company's Diablo Canyon Power Plant near San Luis Obispo, along California's coast. The plaintiffs' NEPA claims challenged a 2003 decision by the NRC not to evaluate terrorism-related impacts in an EA completed for the proposed storage facility.

Court Rejects NRC Reasoning

The NRC based its conclusion that NEPA does not require analysis of impacts from terrorist acts on four grounds, which it had outlined initially in separate regulatory proceedings in December 2002. (See *LLQR*, March 2003, page 10.) The court concluded that the four grounds, "either individually or collectively, do not support the NRC's categorical refusal to consider the environmental effects of a terrorist attack."

First, the NRC argued that the possibility of a terrorist attack is "too far removed from the natural or expected consequences of agency action to require a study under NEPA." The court concluded "that it was unreasonable for the NRC to categorically dismiss the possibility of terrorist attack" without addressing factual contentions that the presence of the storage facility would increase the probability of a terrorist attack on the Diablo Canyon facility or that the storage facility would itself be a primary target for attack. The court also concluded that the NRC's position is "inconsistent with the government's efforts and expenditures to combat this type of terrorist attack against nuclear facilities."

Second, the NRC argued that because the risk of a terrorist attack cannot be quantified, the analysis is likely

to be meaningless. "If the risk of a terrorist attack is not insignificant, then NEPA obligates the NRC to take a 'hard look' at the environmental consequences of that risk," the court concluded. "The NRC's actions in other contexts [e.g., a top-to-bottom terrorism review] reveal that the agency does not view the risk of terrorist attacks to be insignificant. Precise quantification is therefore beside the point."

Third, an evaluation of terrorism-related impacts is a form of "worst-case" analysis, which is not required by NEPA, the NRC argued. The court concluded that "the NRC's argument wrongly labels a terrorist attack the worst-case scenario because of the low or indeterminate probability of such an attack." The court stated that what was sought was "an analysis of the range of environmental impacts likely to result in the event of a terrorist attack" on the storage facility – not an analysis of "the most extreme (i.e., the 'worst') possible environmental impacts of a terrorist attack."

Fourth, NEPA's public process is not an appropriate forum for sensitive security issues, the NRC argued. The court acknowledged that security considerations may require some accommodation in NEPA implementation, such as limiting public access to certain information. The court concluded, though, that this "does not explain the NRC's determination to prevent the public from contributing information to the decisionmaking process." A willingness to hear and consider such information, the court added, "would fulfill both the information-gathering and the public participation functions of NEPA."

The court determined that the NRC's EA is inadequate and remanded the matter to the agency to "fulfill its responsibilities under NEPA." In doing so, the court stated that it was not prejudging any action the agency might pursue to comply with NEPA. "We hold only that the NRC's stated reasons for categorically refusing to consider the possibility of terrorist attacks cannot withstand appellate review based on the record before us," the court wrote.

The NRC has until October 2, 2006, to determine whether to seek Supreme Court review of the Ninth Circuit Court's decision. [Case No.: 03-74628]

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Litigation Updates *(continued from previous page)*

Appeals Court Upholds BLM's Tiered NEPA Strategy for Alaska Oil and Gas Leases

The Bureau of Land Management (BLM) completed an EIS in 2003 on its plan for oil and gas leasing on up to 8.8 million acres of Federal land in northern Alaska known as the Northwest Planning Area. The EIS included five alternatives, including No Action. The four action alternatives entailed making from 47 to 100 percent of the BLM-administered lands available for leasing and assumed different types of management actions and mitigation measures (e.g., designation of special areas for wildlife, limits on surface disturbance).

In regard to potential environmental impacts associated with drilling, BLM did not analyze specific parcels because, the agency contended, it had no way of knowing which, if any, areas subsequent exploration would find suitable for drilling. Instead, the EIS analyzed two hypothetical scenarios: one assuming exploration of half the available parcels but no actual development and the second assuming development of the total available resources.

Plaintiffs in *Northern Alaska Environmental Center et al. v. U.S. Bureau of Land Management et al.* challenged the adequacy of the EIS for its failure to include an analysis of site-specific environmental impacts. The U.S. Court of Appeals for the Ninth Circuit on July 26, 2006, upheld a lower court decision when it agreed with BLM that “no such drilling site analysis is possible until it is known where the drilling is likely to take place, and that can be known only after leasing and exploration.” Moreover, the court concluded, the environmental consequences at specific sites can be assessed in connection with later applications for permits for drilling at those sites.

The plaintiffs also alleged that the EIS had not considered an adequate range of reasonable alternatives, in particular, a “middle ground” alternative and an alternative recommended by the Audubon Society (“Audubon Alternative”) in public comments on the draft EIS. The court concluded that, given BLM’s policy objectives, consideration of the five alternatives was sufficient. In addition, the court concluded that BLM had incorporated protections similar to those in the Audubon Alternative into its Preferred Alternative (which provided for development while protecting certain areas), rather than adopting the entire Audubon Alternative, and thereby, “BLM adequately examined a range of viable alternatives in preparing the [Final EIS].”

Next, the plaintiffs argued that BLM’s analysis of mitigation in the EIS was insufficient. The court disagreed, noting that the alternatives did include steps to avoid or minimize harm and that “additional protective measures may be developed as part of NEPA evaluations of subsequent permit authorizations, including exploration and development plans. Because particular areas for development are not yet identified, the court concluded, “BLM development of more specific mitigating measures cannot be required at this stage.”

The final NEPA claim alleged by the plaintiffs is that the EIS should consider cumulative impacts associated with BLM’s proposal to amend the oil and gas leasing plan for adjacent Federal land (for which BLM completed an EIS in 2005). The court agreed that cumulative impacts must be addressed, but “at a later stage.” [Case No.: 05-35085]

Failure to Consider New Information Invalidates BLM's Utah Oil and Gas Leases

The U.S. District Court for the District of Utah on August 1, 2006, reversed a November 2003 BLM decision to sell oil and gas leases for 16 parcels of land in southern Utah. BLM violated NEPA, the court concluded, “after arbitrarily determining that it did not need to supplement existing NEPA analyses” in light of new information about wilderness characteristics of the land (e.g., naturalness, outstanding opportunities for solitude or primitive and unconfined recreation) and, for four of the leases, by not first preparing an adequate pre-leasing NEPA document.

Prior to selling the leases, BLM determined that none of the parcels in question were within wilderness study areas and so the parcels do not have wilderness characteristics. The court pointed out, though, that BLM had designated the wilderness study areas in 1982 and, in making the current determination, BLM relied on NEPA analyses

completed in the 1970s and 1980s. However, a 1999 BLM study had identified additional lands in Utah that contained wilderness character, and, the court found, 12 of the 16 parcels in question are located within these lands. In addition, the plaintiffs had provided BLM with information regarding the wilderness character of the four other parcels, and, in 2002, BLM concluded that there is a “‘reasonable probability’ that they ‘may contain’ wilderness characteristics,” the court wrote.

“BLM cannot know what the environmental effects of leasing and development will be to the specific wilderness values, in these specific places, if it declines to undertake the necessary supplemental analysis to evaluate whether its current leasing categories adequately protect these newly defined resources,” the court concluded in *Southern Utah Wilderness Alliance et al. v. Department of Interior et al.* [Case No.: 04-00574]

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Court Finds Transboundary Impacts “Too Speculative” to Require Supplemental EIS

The U.S. District Court for the District of Nevada ruled that a supplemental EIS is not needed for a proposal where it found the potential environmental impacts to be “too speculative” and beyond U.S. control. The court also determined that supplemental information prepared by defendant Bureau of Reclamation after the lawsuit was filed demonstrated that a supplemental EIS is not needed.

These conclusions stem from a challenge filed in 2005 to the Bureau of Reclamation’s final authorization of the All-American Canal Lining Project. The 80-mile All-American Canal, completed in 1942, carries water from the Colorado River in Arizona to the Imperial and Coachella Valleys in southern California. Seepage from the unlined canal reduces the amount of water available to users in California but contributes to recharge of the Mexicali Aquifer, which underlies the Imperial Valley and, in Mexico, the Mexicali Valley. The Bureau of Reclamation completed an EIS in 1994 and decided to line the canal, thereby reducing seepage and providing more irrigation water to California users. A decade later, however, work had not begun. In January 2006, the Bureau of Reclamation issued a Supplemental Information Report concluding that no substantial change, or significant new information or circumstances, existed that would require preparation of a supplemental EIS.

In *Consejo de Desarrollo Economico de Mexicali, AC, et al. v. U.S. et al.*, the plaintiffs alleged, among other things, that the Bureau of Reclamation violated NEPA by not preparing a supplemental EIS to address alleged

significant new information regarding a wetland in Mexico and its value as habitat for an endangered species; socioeconomic impacts in Mexicali, Mexico, and across the border in the U.S.; potential impacts to the Salton Sea, a 376-square-mile lake located in a southern California desert ecosystem; and other potential environmental and health impacts in the Imperial Valley region.

The court’s analysis divided the plaintiffs’ allegations into ones dealing with impacts in Mexico and in the U.S. In regard to transboundary impacts, the court concluded that “because the impacts in Mexico are beyond agency control and their impacts within the United States are too speculative, NEPA’s ‘rule of reason’ does not require” the Bureau of Reclamation to prepare a supplemental EIS.

The court’s review of allegations related to domestic impacts centered on the Bureau of Reclamation’s 2006 Supplemental Information Report. The plaintiffs alleged that the Report did not adequately address changes in information or circumstances since 1994, when the existing EIS was completed. The court determined that precedent in the Ninth Circuit Court of Appeals allows an agency “to use even an untimely” Supplemental Information Report because if an agency determines through such a Report that there is not significant new information compelling preparation of a supplemental EIS, it would serve no useful purpose to direct the agency to re-study the matter. In this case, the court found the analysis in the Report sufficient and concluded that a supplemental EIS was not required. [Case No.: 05-0870] 

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.

- **Cumulative Impacts Assessment (FED 104)**

New York, NY: September 12-14

No fee

- **NEPA and Air Impacts (FED 111)**

Kansas City, KS: September 19-21

Washington, DC: October 31-November 2

Philadelphia, PA: November 14-16

No fee

- **NEPA and Adaptive Management (FED 110)**

Chicago, IL: September 26-28

Washington, DC: October 10-12

San Francisco, CA: October 24-26

No fee

Environmental Protection Agency

Office of Federal Activities

202-564-7164

totten.arthur@epa.gov

www.netionline.com

- **Tribal Consultation**

Durham, NC: October 25-27

Fee: \$800

- **Current and Emerging Issues in NEPA**

Durham, NC: November 15-17

Fee: \$750

- **NEPA Certificate Program**

Requires one core and three elective Duke University NEPA short courses and a paper.

Previously completed courses may be applied.

Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

Nicholas School of the Environment
and Earth Sciences – Duke University
919-613-8082

del@nicholas.duke.edu

www.env.duke.edu/del/continuing/certificates.html

- **Cultural and Natural Resource Management Endangered Species Act Overview**

Las Vegas, NV: September 19-22

Fee: \$1,110 (GSA contract: \$995)

Anchorage, AK: November 14-17

Fee: \$1,060 (GSA contract: \$945) until 10/1/06

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Salt Lake City, UT: September 20-22

Fee: \$885 (GSA contract: \$795)

Baltimore, MD: October 31-November 3

Fee: \$1,040 (GSA contract: \$925) until 9/26/06

- **Writing for Technical Specialists**

Portland, OR: October 17-19

Fee: \$835 (GSA contract: \$745) until 9/10/06

- **Managing NEPA Projects and Teams**

Atlanta, GA: October 24-26

Fee: \$885 (GSA contract: \$795)

- **Reviewing NEPA Documents**

Salt Lake City/Park City, UT: October 24-26

Fee: \$885 (GSA contract: \$795)

- **NEPA Cumulative Effects Analysis and Documentation**

Atlanta, GA: November 14-16

Fee: \$835 (GSA contract: \$745) until 10/15/06

- **NEPA Process Management – Emphasis on Native American Issues**

Albuquerque, NM: November 14-16

Fee: \$835 (GSA contract: \$745) until 10/6/06

- **Advanced Writing for NEPA Specialists**

Las Vegas, NV: November 28-30

Fee: \$835 (GSA contract: \$745) until 10/5/06

The Shipley Group

888-270-2157 or 801-298-7800

shipley@shipleygroup.com

www.shipleygroup.com

(continued on next page)

Training Opportunities

(continued from previous page)

- **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 course materials)

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

- **Comprehensive NEPA**

Salt Lake City, UT: October 31-November 3
Fee: \$895 (discounts available)

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

- **NEPA: What Every Engineer and Project Manager Should Know about NEPA**

Denver, CO: September 14-15
Las Vegas, NV: February 15-16
Fee: Contact vendor

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

Customized NEPA Training

- **Environmental Impact Training**

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

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

- **NEPA Toolbox™ Training**

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

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

- **Jones & Stokes Environmental Education**

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

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

- **Attaining Environmental Justice through NEPA**

Denver, CO: Contact vendor to schedule a course
Fee: Contact vendor

- **NEPA in Indian Country**

Denver, CO: Contact vendor to schedule a course
Fee: Contact vendor

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

EAs and EISs* Completed April 1 to June 30, 2006

EAs

Y-12 Site Office/

National Nuclear Security Administration

DOE/EA-1529 (7/6/05)**

Transportation of Unirradiated Uranium in Research Reactor Fuel from Argentina, Belgium, Japan, and the Republic of Korea to the Y-12 National Security Complex, Anderson County, Tennessee

Cost: \$77,000

Time: 6 months

DOE/EA-1548 (3/29/06)**

Potable Water System Upgrades Project, Anderson County, Tennessee

Cost: \$100,000

Time: 9 months

* No EAs or EISs completed during this quarter

** Not previously reported in LLQR

What Worked and Didn't Work

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. However, because only two EAs were reported in this quarter, input from the EA questionnaires will be incorporated in the *What Worked and Didn't Work* section of the December 2006 LLQR.

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- The median and average cost for the preparation of 2 EAs reported in this quarter was \$89,000.
- Cumulatively, for the 12 months that ended June 30, 2006, the median cost for the preparation of 13 EAs for which cost data were applicable was \$100,000; the average was \$141,000.
- The median and average completion time of 2 EAs reported in this quarter was 8 months.
- Cumulatively, for the 12 months that ended June 30, 2006, the median completion time for 16 EAs was 8 months; the average was 14 months.

EIS Costs and Completion Times

- No EISs were completed during this quarter.
- Cumulatively, for the 12 months that ended June 30, 2006, the median and average cost for the preparation of 2 EISs for which cost data were applicable was \$1,670,000.
- Cumulatively, for the 12 months that ended June 30, 2006, the median completion time for 3 EISs was 27 months; the average was 24 months.

Recent EIS-Related Milestones (June 1 to August 31, 2006)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0397

Lyle Falls Fish Passage Project, Klickitat County, Washington

June 2006 (71 FR 36329, 6/26/06)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0394

The FutureGen Project

July 2006 (71 FR 42840, 7/28/06)

Western Area Power Administration

DOE/EIS-0389

Construction and Operation of the Trinity Public Utility District Direct Interconnection Project, Trinity County, California

June 2006 (71 FR 35266, 6/19/06)

DOE/EIS-0390

Eastern Plains Transmission Project, Colorado and Kansas

August 2006 (71 FR 43733, 8/2/06)

Draft EISs

Office of Fossil Energy

DOE/EIS-0383

Orlando Gasification Project, Orlando, Florida

August 2006 (71 FR 50411, 8/25/06)

National Nuclear Security Administration/

Los Alamos National Laboratory

DOE/EIS-0380

Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico

July 2006 (71 FR 38641, 7/7/06)

Record of Decision

Bonneville Power Administration

DOE/EIS-0183

Supplement to Administrator's Record of Decision on Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007–2011

June 2006 (71 FR 35266, 6/19/06)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program

Environmental Impact Statement

(DOE/EIS-0246)

DOE/EIS-0246-SA-52*

Hellsgate Big Game Winter Range - Wildlife Mitigation Project, Okanogan and Ferry Counties, Washington

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0246-SA-53*

Continuation for the Wanaket Wildlife Area Operation and Maintenance, and Monitoring and Evaluation for FY06–07, Umatilla County, Oregon

(Decision: No further NEPA review required)

April 2006

Watershed Management Program

Environmental Impact Statement

(DOE/EIS-0265)

DOE/EIS-0265-SA-260*

Pine Hollow Watershed Projects, Sherman County, Oregon

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0265-SA-261*

Hood River Habitat - West Fork Large Woody Debris 2006, Hood River County, Oregon

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0265-SA-262*

Continuation of the Iskuulpa Watershed Project Operation and Maintenance, and Monitoring and Evaluation for FY06–07, Umatilla County, Oregon

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0265-SA-263

Rehabilitate Lapwai Creek and Protect and Restore the Big Canyon Creek Watershed, Nez Perce Reservation and Nez Perce County, Idaho

(Decision: No further NEPA review required)

June 2006

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-264

Satus Creek Watershed Restoration Project - Lincoln Meadow Road Removal and Relocation (Yakama Reservation Watersheds Project - FY2006), Yakama Nation Reservation and Washington State
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-265

Meadow Creek Habitat Restoration, Union County, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-266

End Creek Habitat Restoration, Union County, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-267

Lemhi SWCD Habitat Projects for FY 06, L-13 Diversion Modification, L-63 Diversion Modification and L-8A Side Channel Riparian Protection Fence, Lemhi County, Idaho
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-268

John Day Watershed Restoration Program, Wheeler and Grant Counties, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-269

Coeur d'Alene Tribe Fisheries Habitat Improvement Project, Coeur d'Alene Indian Reservation and Benewah County, Idaho
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-270

Hood River Habitat - Tony Creek Diversion 2006, Hood River County, Oregon
(Decision: No further NEPA review required)
July 2006

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

DOE/EIS-0285-SA-296*

Vegetation Management along the Keeler - Allston No. 1 [500 kV Transmission Line Corridor], Multnomah, Washington, and Columbia Counties, Oregon
(Decision: No further NEPA review required)
May 2006

DOE/EIS-0285-SA-297*

Vegetation Management along the Chehalis - Mayfield No. 1, 230 kV and Mossy Rock - Chehalis No. 1, 230 kV Transmission Line Corridors from Chehalis Substation Heading East to Silver Creek and Mossy Rock Substations, Lewis County, Washington
(Decision: No further NEPA review required)
May 2006

DOE/EIS-0285-SA-298*

Vegetation Management along the Chehalis - Olympia No. 1, 230 kV and Chehalis - Centralia No. 2, 69 kV Transmission Line Corridors from Chehalis Substation Heading North to Olympia Substation, Lewis and Thurston Counties, Washington
(Decision: No further NEPA review required)
May 2006

DOE/EIS-0285-SA-299*

Vegetation Management along the Paul - Olympia No. 1, 500 kV and Paul - Satsop No. 1, 500 kV Transmission Line Corridors from Paul Substation Heading North to Olympia Substation, Lewis and Thurston Counties, Washington
(Decision: No further NEPA review required)
May 2006

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-300*

Vegetation Management along the Lower Monumental - Little Goose No. 1 and 2, 500 kV and Mossy Rock - Chehalis No. 1, 230 kV Transmission Line Corridor Right of Way and Associated off Right of Way Roads, Whitman County, Washington

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0285-SA-301*

Vegetation Management along the Kalispell - Kerr No. 1, 115 kV Transmission Line Corridor Right of Way, Flathead and Lake Counties, Montana

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0285-SA-302

Vegetation Management along the Dalles - Chenoweth No. 1 from the Dalles Substation to the Chenoweth Substation, Wasco County, Oregon

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-303

Vegetation Management along the Noxon - Hot Springs No. 1, 230 kV Transmission Line Corridor Right of Way, Sanders County, Montana

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-304

Vegetation Management along the Hot Springs - Rattlesnake No. 1, 230 kV Transmission Line Corridor Right of Way, Sanders, Lake, and Missoula Counties, Montana

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-305

Vegetation Management along the Flathead - Hot Springs No. 1, 230 kV Transmission Line Corridor Right of Way, Flathead, Lake, and Sanders Counties, Montana

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-306

Vegetation Management along Three Miles of Coyote Springs - Slatt Line, Morrow County, Oregon

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-307

Vegetation Management along the Seven Mile Big Eddy - Chenoweth, Nos. 1 and 2 Lines, Wasco County, Oregon and Klickitat County, Washington

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-308

Vegetation Management along the Right of Way of the McNary Santiam No. 2 Transmission Line Corridor, Linn and Marion Counties, Oregon

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-309

Vegetation Management along the Trojan - Allston Nos. 1 and 2 Lines, 230 kV Transmission Line Corridor, Columbia County, Oregon

(Decision: No further NEPA review required)

June 2006 LL

* Not previously reported in LLQR

LESSONS LEARNED

December 1, 2006; Issue No. 49

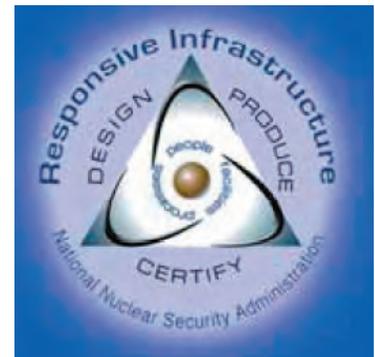
Fourth Quarter FY 2006

NNSA Pursues Complex 2030 Vision Through Supplemental Programmatic EIS

The National Nuclear Security Administration (NNSA) began preparation of a Supplemental Programmatic Environmental Impact Statement (Supplemental PEIS) in October 2006 to support its long-range planning for the U.S. nuclear weapons complex. The Supplemental PEIS will analyze the potential environmental impacts from “implementing NNSA’s vision of the complex as it would exist in 2030, which the Department refers to as Complex 2030, as well as alternatives,” states the Notice of Intent (NOI) (71 FR 61731; October 19, 2006).

“The Supplemental PEIS is an essential part of making quality decisions to transform our nuclear weapons enterprise,” said George Allen, Director, Office of Transformation, which was created within NNSA earlier this year to guide and oversee Complex 2030 planning. “This is particularly true for decisions affecting our physical infrastructure,” he said.

(continued on page 4)



Scoping Process Underway for Two Yucca Mountain EISs

The Department of Energy (DOE) recently initiated public scoping for two EISs related to Yucca Mountain, the Nation’s proposed repository for disposal of commercial and DOE spent nuclear fuel and high-level radioactive waste. The Office of Civilian Radioactive Waste Management has announced plans to complete both EISs by June 2008, with interim milestones for both EISs approximately the same.

NEPA practitioners may be interested in the integration of the public scoping processes for the two EISs and in the evolution of the Rail EIS, which will contain both programmatic and project-specific elements.

The public scoping process for the two EISs began with the issuance of two *Federal Register* notices on October 13, 2006: an Amended Notice of Intent (NOI) to expand the scope of an EIS on the selection of a rail alignment in Nevada, and an NOI to update the Department’s 2002 Repository EIS.

“We recognized early on that close coordination between the EIS preparation teams would be essential to meet the logistical challenges of preparing two major EISs for Yucca Mountain on the same schedule,” said Lee Bishop, Document Manager for the expanded Rail EIS.

Dr. Jane Summerson, Document Manager for the Supplemental Yucca Mountain Repository EIS and for the original Repository EIS, agreed. “Preparing one highly-complex EIS is challenging enough,” she said, “but with the job of preparing two documents, each a supplement to the Repository EIS, we also recognized the importance of explaining our plans to the public so they can be involved effectively in the processes.”

With that objective in mind, DOE decided to integrate the public scoping meetings for the two EISs so that members of the public could provide comments on either EIS at each meeting. Representatives for both EISs were present at all meetings to receive comments.

(continued on page 6)

Inside **LESSONS LEARNED**

Welcome to the 49th quarterly report on lessons learned in the NEPA process. In this issue, we feature the initiation of three significant EISs: the Complex 2030 Supplemental Programmatic EIS, the Supplemental Yucca Mountain Repository EIS, and the expanded Yucca Mountain Rail EIS. As always, we welcome your suggestions for continuous improvement.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2007. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2007 (October 1 through December 31, 2006) should be submitted by February 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

Printed on recycled paper



LLQR is introducing this icon to indicate that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a hyperlink to a referenced web page whose URL is too long to be useful when printed.

NAEP Environmental Excellence Award Nominations Due February 1

Does your organization's work make a significant contribution to environmental practice? The National Association of Environmental Professionals (NAEP) is seeking nominations for its annual National Environmental Excellence Awards. A nomination describes outstanding environmental contributions from a project or program that represents:

- ✓ A major achievement involving national organizations; Federal, state, or local agencies; or companies
- ✓ A national or international contribution to the environment
- ✓ Innovation in compliance methodology or integration of decisionmaking with environmental regulatory processes.

NAEP offers Environmental Excellence Awards in eight categories: NEPA, Education, Environmental Management, Planning Integration, Public Involvement/Partnership, Environmental Stewardship, Conservation, and Best Available Environmental Technology. The nomination form, which must be submitted by February 1, 2007, and additional information are available on the NAEP website at www.naep.org under Environmental Excellence Awards. 



Address Sabotage and Terrorism Threats in EISs and EAs

DOE Interim Guidance Issued in Response to Court Rulings

All DOE EISs and EAs, whether for nuclear or non-nuclear proposals, should include explicit consideration of the potential environmental impacts of sabotage and terrorism, states interim guidance issued on December 1, 2006, to the DOE NEPA Community by Carol Borgstrom, Director, Office of NEPA Policy and Compliance. The interim guidance was prepared by the NEPA Office in consultation with the Assistant General Counsel for Environment and the Deputy General Counsel of the National Nuclear Security Administration.

Court Decisions Prompt Guidance

DOE prepared the interim guidance following two recent decisions by the United States Court of Appeals for the Ninth Circuit. The more recent of these two decisions involved DOE's EA for *Construction and Operation of a Biosafety Level-3 Facility at Lawrence Livermore National Laboratory* (DOE/EA-1442, 2002). In that October 16, 2006, decision, *Tri-Valley CAREs v. Department of Energy*, the court wrote:

Concerning the DOE's conclusion that consideration of the effects of a terrorist attack is not required in its Environmental Assessment, we recently held to the contrary in *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*. In *Mothers for Peace*, we held that an Environmental Assessment that does not consider the possibility of a terrorist attack is inadequate. Similarly here, we remand for the DOE to consider whether the threat of terrorist activity necessitates the preparation of an Environmental Impact Statement. As in *Mothers for Peace*, we caution that there "remain open to the agency a wide variety of actions it may take on remand [and] . . . [w]e do not prejudge those alternatives." (citations omitted)

(For a summary of the court's decision in *Mothers for Peace*, see *LLQR*, September 2006, page 19.)

Consistent with the court's recognition that an agency may take a variety of actions to comply with its ruling, the interim guidance does not prescribe particular methods to analyze the potential environmental impacts associated with sabotage or terrorism. In some circumstances, sabotage and terrorism may involve initiators (e.g., fires, explosions, drops, punctures, aircraft crashes) and potential impacts similar to those for an accident. For such circumstances, *Recommendations for Analyzing Accidents Under NEPA* (July 2002) includes example language and a

discussion of ways to apply an analysis of accidents to an analysis of the potential consequences of acts of sabotage or terrorism.

"This approach may not be adequate for all situations, however," the interim guidance states, "because accident scenarios may not fully encompass potential threats posed by intentional destructive acts. For example, this approach may not adequately reflect the threat assessments for facilities with inventories of special nuclear materials. Each EIS and EA should explicitly consider whether the accident scenarios are truly bounding of intentional destructive acts. Regardless of whether additional analysis is necessary, each EIS and EA should contain a section demonstrating explicit consideration of sabotage and terrorism."

Additional Guidance Being Prepared

The Department is developing additional guidance on considering sabotage and terrorism in NEPA documents, and expects that the guidance will address such topics as:

- Determining the appropriate level of detail for analysis, consistent with the "sliding-scale" principle (e.g., a more detailed threat analysis is appropriate for a special nuclear material management facility, or for a non-nuclear facility with a significant amount of material at risk; a less detailed analysis may be adequate for a proposed office complex).
- Determining when a finding of no significant impact for an EA is appropriate in view of potential large impacts from terrorist acts.
- Determining what information regarding analyses of these threats can be released to the public.
- Considering intentional destructive acts even when some or all of the analyses may be classified; protecting classified security information through the use of classified appendices and unclassified summaries.
- Timing considerations for cases where threat analyses are needed.

The interim terrorism guidance and the 2002 accident analysis guidance are available on the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools. For additional information about the guidance, contact Eric Cohen, NEPA Office, at eric.cohen@hq.doe.gov or 202-586-7684, or the DOE or NNSA Office of the General Counsel, as appropriate. 

Complex 2030 *(continued from page 1)*

Scheduled for completion in 2008, the Supplemental PEIS would support decisions regarding future missions for the complex and the related configuration of facilities and activities. The Supplemental PEIS will address alternatives involving a broad range of operations in the nuclear weapons complex, including manufacturing plutonium parts for nuclear weapons, testing weapon components, and conducting research and development.

These alternatives could affect seven of NNSA's eight primary facilities – Los Alamos National Laboratory in New Mexico, Lawrence Livermore National Laboratory in California, Nevada Test Site in Nevada, Pantex Plant in Texas, Sandia National Laboratories in New Mexico, Savannah River Site in South Carolina, and Y-12 National Security Complex in Tennessee. The Supplemental PEIS also will analyze a proposal affecting NNSA flight test operations conducted at the Tonopah Test Range, which is located on the Air Force's Nevada Test and Training Range. The Supplemental PEIS does not include proposals related to NNSA's Kansas City Plant; NNSA intends to prepare a separate NEPA analysis for proposals related to the non-nuclear activities conducted at that site.

Complex 2030 Vision

The nuclear weapons complex has undergone significant changes since the early 1990s when the Cold War ended and the United States adopted a moratorium on underground nuclear testing. DOE closed several production facilities and created the Stockpile Stewardship and Management Program to provide for certifying the safety and reliability of nuclear weapons without underground nuclear testing. The Supplemental PEIS tiers from the Stockpile Stewardship and Management PEIS (DOE/EIS-0236) completed in 1996.

The Supplemental PEIS also builds upon several other NEPA analyses completed since 1995, including the Tritium Supply and Recycling PEIS and site-wide EISs for the Nevada Test Site, Pantex, and Lawrence Livermore National Laboratory. The Supplemental PEIS will incorporate decisions made pursuant to the ongoing site-wide EISs for the Los Alamos National Laboratory (DOE/EIS-0380) and the Y-12 National Security Complex

Previous Siting Decisions Not in Scope of Complex 2030 Supplemental PEIS

- Weapons assembly/disassembly at Pantex Plant
- Uranium, secondary, and case fabrication at Y-12 National Security Complex
- Tritium extraction, loading and unloading, and support operations at Savannah River Site; and tritium production at Tennessee Valley Authority reactors

(DOE/EIS-0387) into its characterization of the status quo (No Action Alternative).

NNSA envisions Complex 2030 as a continuation of the transformation begun in the 1990s. The proposed changes would support a further reduction in the size of the U.S. nuclear weapons stockpile, as directed by the President, while providing a more responsive infrastructure to meet future needs, the NOI states.

As part of Complex 2030, NNSA proposes to site a new facility (the Consolidated Plutonium Center) to manufacture plutonium parts for nuclear weapons, conduct plutonium-related research and development, undertake surveillance activities, and consolidate plutonium storage. DOE has had limited capacity to produce plutonium parts, commonly referred to as pits, since operations were halted in 1989 at the former Rocky Flats Plant in Colorado. The NOI announces the cancellation of the *Supplemental PEIS on Stockpile Stewardship and Management for a Modern Pit Facility* (DOE/EIS-0236-S2), which was initiated in 2002. (See *LLQR*, March 2004, page 2.) The Modern Pit Facility would have provided for pit production but not consolidation of other plutonium-related activities.

Other aspects of the proposed Complex 2030 vision, or "Transformation Alternative," include consolidating storage of nuclear materials, consolidating duplicative facilities and programs, relocating NNSA flight test operations, and accelerating nuclear weapons dismantlement. The Transformation Alternative and two other alternatives, including No Action, described in the NOI are summarized in the figure on the next page.

The NOI states that NNSA does not intend to analyze a Consolidated Nuclear Production Center (CNPC) as an alternative in the Supplemental PEIS. In 2005, the Secretary of Energy Advisory Board Task Force on the Nuclear Weapons Complex Infrastructure recommended that NNSA pursue a CNPC that, the NOI explains, "would include the plutonium activities of the consolidated plutonium center proposed by NNSA in its Complex 2030 vision, as well as the consolidated activities of the uranium, tritium, and high explosive operations. DOE believes that creation of a CNPC is not a reasonable alternative . . . because of the technical and schedule issues involved in constructing a CNPC, as well as associated costs." NNSA will consider comments on this matter received during the scoping process.

Team Approach Sets Course for Scoping

"We're on an aggressive schedule," acknowledged Ted Wyka, the NEPA Document Manager. "We established an integrated project team of people from NNSA sites and other parts of the Department, as well as our contractors, to prepare the Supplemental PEIS."

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Complex 2030

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Mr. Wyka began assembling the Supplemental PEIS team while drafting the NOI, which he circulated throughout NNSA and to the affected sites for input. NNSA established a 90-day public scoping period, which ends on January 17, 2007, and scheduled scoping meetings in 12 locations. To prepare for these meetings, site officials, including program managers, NEPA Compliance Officers, and public affairs staff, participated in regular video conferences and reviewed materials to be used in the scoping meetings. Technical staff from NNSA headquarters and sites met to discuss the alternatives and identify data needed for the Supplemental PEIS analysis. The Supplemental PEIS team includes many people with experience preparing the Stockpile Stewardship and Management PEIS and subsequent NEPA analyses, as well as current program and project managers.

Scoping meetings were held in November in Oak Ridge, Tennessee; North Augusta, South Carolina; Amarillo, Texas;

and Tonopah and Las Vegas (photo), Nevada. About 50 people participated in each meeting, which included an opportunity for informal discussion with NNSA officials, a presentation by Mr. Wyka on the proposed scope, a brief question-and-answer period, and an opportunity for participants to provide scoping comments for the record. NNSA displayed posters and provided fact sheets describing the alternatives to be evaluated in the Supplemental PEIS. NNSA also provided tables at each meeting for use by outside organizations. Local groups took advantage of this opportunity at some of the meetings to provide information explaining their views. Additional meetings are scheduled in December in Socorro, Albuquerque, Los Alamos, and Santa Fe, New Mexico; and Livermore and Tracy, California. The last meeting will be in Washington, DC, on December 14.

Additional information on the Complex 2030 Supplemental PEIS is available at www.Complex2030PEIS.com or by contacting Ted Wyka at theodore.wyka@nnsa.doe.gov or 202-586-3519. 

 Complex 2030 Supplemental PEIS Alternatives	Proposed Action: Alternative*		
	No Action	Proposed Action: Alternative*	Reduced Operations/ Capability-Based Alternative*
Plutonium Manufacturing, Research and Development	Continue Manufacturing at LANL and R&D at LANL, LLNL	Consolidated Plutonium Center (CPC) at SRS, Y-12, Pantex, NTS, or Los Alamos	Continue Manufacturing at LANL and R&D at LANL, LLNL
Special Nuclear Materials Storage	Continue Storage at Current Sites	Consolidate Plutonium Storage at CPC	Consolidate Plutonium Storage at LANL
Tritium Research and Development	Continue at SRS, LANL, LLNL	Consolidate to One or More Sites or Downsize in Place	
High Explosives Research and Development	Continue at LLNL, LANL, SNL, Pantex	Consolidate to One or More Sites or Downsize in Place	
Major Environmental Testing Facilities	Continue at LLNL, LANL, SNL, NTS	Consolidate to One or More Sites or Downsize in Place	
Large-Scale Hydrodynamic Testing Facilities	Continue at LLNL, LANL, NTS	Consolidate to LANL, NTS or Downsize in Place	
Flight Test Operations	Continue at TTR	Relocate to NTS, White Sands Missile Range; TTR Upgrades	
Nuclear Weapons Dismantlement	Continue at Pantex	Accelerate at Pantex	Continue at Pantex

LANL Los Alamos National Laboratory TTR Tonopah Test Range
 LLNL Lawrence Livermore National Laboratory Y-12 Y-12 National Security Complex
 NTS Nevada Test Site
 SNL Sandia National Laboratories *This alternative also involves reduced production capacities at Pantex, SRS, and Y-12.
 SRS Savannah River Site



Yucca Mountain (continued from page 1)

In the Amended NOI (71 FR 60484), DOE announced plans to expand the scope of the ongoing Rail Alignment EIS (DOE/EIS-0369) to analyze a newly-proposed alternative rail corridor known as “the Mina route.”

The expanded EIS will be entitled *Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS* (Rail EIS; DOE/EIS-0250-S2 and DOE/EIS-0369). In the other Notice (71 FR 60490), DOE announced plans to prepare the *Supplement to the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Supplemental Repository EIS; DOE/EIS-0250-S1).

Integrated Scoping Meetings

The Amended NOI for the expanded Rail EIS announced five public scoping meetings in Nevada (Amargosa Valley, Caliente, Goldfield, Hawthorne, and Fallon). The NOI for the Supplemental Repository EIS announced three public scoping meetings, one in Washington, DC, and two in Nevada (Amargosa Valley and Las Vegas). A meeting in Reno, Nevada, was added later in response to public comments. The two NOIs cross-referenced each other, each listing the meetings announced in the other.

Use of an “open house” format for all of the meetings facilitated the integrated approach. DOE used this format effectively in the original scoping process for the Rail Alignment EIS (*LLQR*, June 1, 2004, page 1). In the open house format, neither DOE nor stakeholders make a formal presentation. Rather, individuals can communicate one-on-one with DOE program officials and technical experts at anytime during meeting hours and ask questions. Such communication provides DOE with valuable information about issues of concern to the public. DOE representatives met after each scoping session to share lessons learned and ensure that information and concerns were captured for the EISs.

Individuals also could provide oral comments for the record to a court reporter in a relatively private setting, which may encourage some members of the public to speak more freely and to provide more detailed comments. A DOE representative was present to listen to the oral comments in order to help ensure the comments were recorded accurately by the court reporter and to ask clarifying questions, if appropriate, to ensure that the meaning of the comments is reflected in the record.

To address any concerns that an attendee could not hear or access the formal comments of others, DOE will post transcripts of the recorded scoping comments on the web after the comment period ends, as it did previously with scoping comments for the Rail Alignment EIS.

Supplementing and Tiering in the Rail EIS

In its Transportation Record of Decision (ROD) (69 FR 18557; April 8, 2004), DOE selected the “mostly rail scenario,” under which most spent nuclear fuel and high-level radioactive waste would be shipped to Yucca Mountain by rail. Implementing this decision ultimately will require the construction of a rail line to connect the repository site to an existing rail line in the State of Nevada.

The Transportation ROD also selected one of the five alternative rail corridors analyzed in the Repository EIS (i.e., the 319-mile Caliente corridor) in which to study in greater detail specific rail alignments. (See *LLQR*, June 2004, page 12.)

On April 8, 2004 (69 FR 18565), DOE issued an NOI for the Rail Alignment EIS. DOE planned that this EIS would “tier” from the Repository EIS and analyze alignments in the Caliente corridor. In rejecting a challenge to DOE’s Transportation ROD by the State of Nevada, the U.S. Court of Appeals for the District of Columbia Circuit upheld DOE’s tiering strategy, concluding that it was appropriate to consider the Repository EIS a “programmatic EIS” to be followed by subsequent narrower (i.e., tiered) documents. (See *LLQR*, September 2006, page 1.)

During scoping for the Rail Alignment EIS, DOE received comments recommending consideration of the Mina route. In the Repository EIS, DOE initially had considered the Mina route but eliminated it from detailed study. The route crosses the Walker River Paiute Reservation, and the Tribe had informed DOE that it would refuse to allow nuclear waste transportation across its reservation.

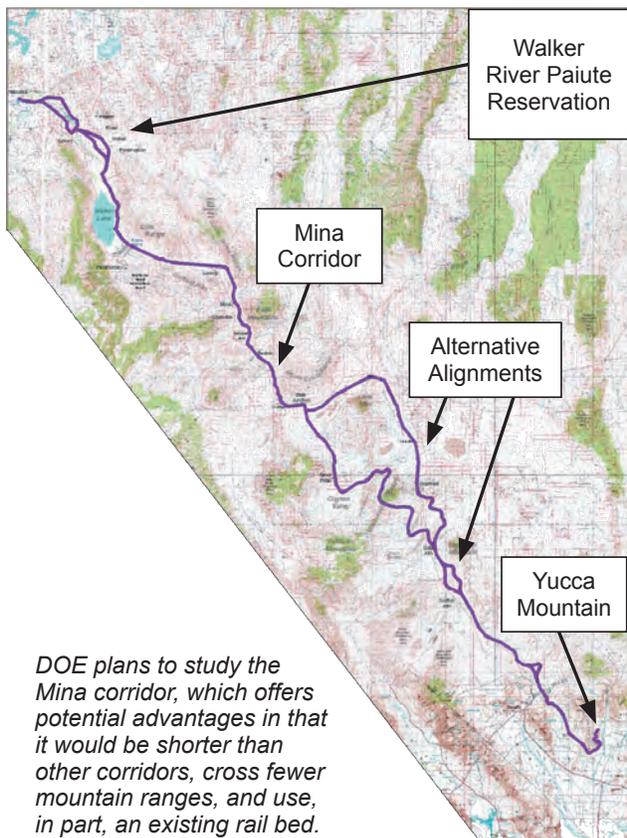
In response to the scoping comments on the Rail Alignment EIS, DOE held discussions with the Walker River Paiute Tribe. The Tribe informed DOE that the Tribal Council had withdrawn its objections to the completion of an EIS studying the transportation of nuclear waste across its reservation. The Tribe also stated that its Council had not decided to allow nuclear waste shipments, but that inclusion of the Mina route in an EIS would allow the Tribe to make a more informed, final decision on the matter.

In view of the Tribal Council’s action, DOE initiated a study to determine the feasibility of the Mina route, and to identify a specific corridor (Mina corridor) and associated preliminary alternative alignments. Based on DOE’s preliminary analysis, in comparison with other corridors, the Mina corridor appears to offer potential advantages that would simplify design and construction of a rail line, which would, therefore, be less costly to construct.

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Yucca Mountain

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DOE plans to study the Mina corridor, which offers potential advantages in that it would be shorter than other corridors, cross fewer mountain ranges, and use, in part, an existing rail bed.

The Mina corridor also appears to have fewer land use conflicts and less land disturbance, which tends to result in lower adverse environmental impacts. For these reasons, DOE concluded that further study of the Mina route is warranted and decided to expand the scope of the Rail Alignment EIS to consider the potential environmental impacts of the Mina corridor both at the corridor level and at the alignment level.

At the corridor level, the Rail EIS will consider the potential impacts of the Mina corridor at the same level of analysis considered in the Repository EIS for the other corridors. The EIS also will review the environmental information and analyses of the other corridors from the Repository EIS and update, as appropriate. (DOE has determined, however, that one of the original five corridors, the Caliente-Chalk Mountain corridor, is not a reasonable alternative due to national security concerns.) The expanded scope also will include a detailed analysis of alternative alignments within both the Caliente and the Mina corridors.

The result will be an EIS containing both programmatic and project-specific analyses. That is, the expanded Rail EIS will supplement the programmatic corridor analyses in the Repository EIS and also contain a tiered project-specific analysis of alternative alignments in Nevada.

DOE's proposed action ultimately is to select a specific Nevada rail alignment in which to construct and operate a rail line for nuclear waste shipments to Yucca Mountain.

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Why Prepare a Supplemental Repository EIS?

The Yucca Mountain Repository EIS (*Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* [DOE/EIS-0250]) analyzed the potential environmental impacts of a repository design for surface and subsurface facilities, a range of waste canister packaging scenarios, and a range of other repository operating conditions. The Repository EIS also analyzed the transportation of nuclear waste from commercial and DOE sites to Yucca Mountain both nationally and in the State of Nevada.

Since completing the Repository EIS in 2002, DOE has continued to develop the repository design and associated plans. For example, as now planned, the proposed surface and subsurface facilities would allow DOE to operate the repository using a primarily "canistered approach" in which all DOE waste would be placed in disposable canisters and most commercial spent nuclear fuel would be packaged at commercial sites in multipurpose transport, aging and disposable canisters (TADs). The TADs would be placed in shipping casks and transported to the repository, where they may be stored on pads or placed directly into waste packages (highly corrosion-resistant and structurally-sound metal containers) for disposal underground. DOE believes that this approach will simplify waste handling operations at the repository. In addition, DOE plans to array waste packages to achieve a "higher-thermal operating mode" in which rock surrounding the waste packages would remain above the boiling point of water for hundreds of years.

DOE will reflect these and other changes and refinements in the design of facilities and infrastructure in the repository license application, which DOE plans to submit to the Nuclear Regulatory Commission (NRC) by June 2008. Although DOE does not believe that any of the developments to the repository design or operational plans would have a significant impact on the environmental impacts considered in the Repository EIS, DOE decided to prepare the Supplemental Repository EIS to assist NRC in satisfying its NEPA responsibilities pursuant to the Nuclear Waste Policy Act (NWPA). Section 114(f)(4) of the NWPA provides that any EIS "prepared in connection with a repository . . . shall, to the extent practicable, be adopted by the Commission [NRC] in connection with the issuance by the Commission of a construction authorization and license for such repository"

DOE Issues Special Environmental Analysis For Emergency Power Plant Actions

Public concern about air quality and health effects from operation of the Mirant coal-fired power plant (Plant) in Alexandria, Virginia, operating under an Emergency Order issued by the Secretary of Energy in December 2005 and extended in September 2006, was the focus of a Special Environmental Analysis (SEA) recently issued by DOE (71 FR 69102; November 29, 2006).

DOE normally is required to prepare an EIS for a proposed major Federal action with potential to significantly affect the quality of the human environment. However, in emergency situations, pursuant to 40 CFR 1506.11, the Council on Environmental Quality's (CEQ's) NEPA regulations provide that agencies consult with CEQ to determine what alternative arrangements the agency will take in lieu of preparing an EIS. As an alternative to an EIS, DOE issued this SEA. Throughout document preparation, DOE continued its consultations with CEQ, begun before the Order was issued.

Public comment on the document, available on the websites identified below, is due by January 8, 2007, for consideration by DOE in any future decisionmaking on whether to allow the Order to expire, extend the Order, or extend the Order with mitigation measures. A temporary extension of the Order expires on February 1, 2007. The SEA considers alternative actions that DOE could take that could mitigate the adverse effects of any additional future extension of the Order. For background on the Emergency Order and the alternative NEPA arrangements with CEQ, see *LLQR*, March 2006, page 1.

EPA Support for Air Impact Analysis

The Environmental Protection Agency (EPA) was a cooperating agency in preparation of the SEA and provided its expertise in modeling and calculating emissions and health effects of sulfur dioxide and particulate matter. The SEA includes descriptions of the DOE Emergency Orders, assessments of impacts resulting from the Orders, and potential future alternative actions DOE may take in this matter. Because operation

at the Plant has changed over time, pursuant to the DOE Emergency Orders and an Administrative Compliance Order with EPA, the SEA assesses impacts resulting from several different operating modes of the Plant. It also describes preliminary data from actual sulfur dioxide monitors Mirant has installed pursuant to the EPA Administrative Compliance Order.

Secretary of Energy Samuel W. Bodman, writing to express appreciation for EPA's work on air quality issues related to the Mirant power plant, said in an August 30, 2006, letter to Administrator Stephen L. Johnson that EPA staff "have demonstrated how two Federal agencies can effectively work side by side to achieve the public good while effectively carrying out the missions of their agencies." The Secretary also noted the "dedication, professionalism and cooperation exhibited by EPA staff in Headquarters and Region III" and recognized the "outstanding efforts" of Adam Kushner and Ed Messina of the Air Enforcement Division in EPA Headquarters and Judy Katz, Rich Killian, Doug Snyder, and Denny Lohman in EPA Region III.

For Further Information

The document, *Special Environmental Analysis for Actions Taken under U.S. Department of Energy Emergency Orders Regarding Operation of the Potomac River Generating Station in Alexandria, Virginia*, DOE/SEA-004, is available on the DOE NEPA website at www.eh.doe.gov/nepa/documentspub.html and also on the Office of Electricity Delivery and Energy Reliability website, with other materials relating to the Emergency Orders, at www.oe.energy.gov/permitting/372.htm.

For further information on the SEA, contact Tony Como, NEPA Document Manager, Office of Electricity Delivery and Energy Reliability, at anthony.como@hq.doe.gov. For further information on the NEPA process, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Yucca Mountain (continued from previous page)

The Bureau of Land Management, Air Force, and Surface Transportation Board are cooperating agencies in the preparation of the expanded Rail EIS. DOE also has invited the Walker River Paiute Tribe, the Bureau of Indian Affairs, and the Army to participate as cooperating agencies because the Tribe and these agencies have special expertise or regulatory authority over lands traversed in the Mina and Caliente corridors.

Next Steps

DOE plans to issue both Draft EISs by Fall 2007. Requests for further information about the Rail EIS may be addressed to Lee Bishop at lee_bishop@ymp.gov or 702-794-5558. Requests for further information about the Supplemental Repository EIS may be addressed to Jane Summerson at jane_summerson@ymp.gov or 702-794-1493. 

CEQ Interagency Work Groups Continue to Develop NEPA Process Guidance



Further progress in providing draft guidance and handbooks for agency or public review has been achieved by the interagency Work Groups established by the Council on Environmental Quality (CEQ) to help implement recommendations from the NEPA Task Force report to CEQ, *Modernizing NEPA Implementation* (September 2003; *LLQR*, December 2003, page 1).

Guidance on Categorical Exclusions

CEQ published the draft guidance on *Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act* for public review (71 FR 54816; September 19, 2006).

This guidance is intended to assist Federal agencies in improving and modernizing their administration of categorical exclusions under NEPA. The draft guidance recommends procedures and approaches for establishing and revising categorical exclusions; involving the public; documenting development, revision, and use of categorical exclusions; and periodically reviewing categorical exclusions. (NEPA Office contact: Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.)

Collaboration Handbook

CEQ distributed a Work Group draft *Collaboration Handbook* on September 22, 2006, to Federal NEPA Liaisons for agency review. The Office of NEPA Policy and Compliance provided DOE comments on October 27, 2006.

The purpose of this draft handbook is to assist Federal agency NEPA practitioners in expanding the effective use of collaboration as part of the NEPA process. The draft handbook outlines general principles, presents useful steps throughout the NEPA process, provides information

on methods of collaboration, and presents case studies. (NEPA Office contact: Yardena Mansoor.)

Handbook on NEPA, Adaptive Management, and Environmental Management Systems

CEQ distributed the draft handbook on *The Relationship of NEPA, Adaptive Management, and Environmental Management Systems* on September 29, 2006, to Federal NEPA Liaisons for agency review. The Office of NEPA Policy and Compliance provided DOE comments on November 7, 2006.

This draft handbook uses case study examples to demonstrate how Adaptive Management and Environmental Management Systems processes can be used in conjunction with the NEPA process to achieve successful resource management outcomes and environmental compliance efficiencies. (NEPA Office contact: Jim Sanderson at jim.sanderson@hq.doe.gov or 202-586-1402.)

Further Information

For more information, see *LLQR*, June 2005, page 2 (Work Group establishment); September 2005, page 2 (DOE participation); and March 2006, pages 10, 11, 12, and September 2006, page 8 (progress). The NEPA Office will continue to participate in Work Groups' activities and the review of draft guidance, and will report on further developments in future issues of *LLQR*. For more information on the interagency Work Groups' guidance development process and the implementation of the NEPA Task Force recommendations, see the CEQ NEPA Task Force implementation website at www.nepa.gov/ntf/implementation.html. 

Study of EISs Emphasizes Need for Quality and Clarity

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

Something must be wrong when people have no better understanding of a project after reading its EIS than before. Although a University of Illinois study of this problem¹ is now a decade old, the continuing focus within the Federal NEPA community (and among NEPA's critics) on making NEPA documents comprehensible and useful suggests that there is still need for improvement. Recently, the Federal Highway Administration joined forces with the American Association of State Highway and Transportation Officials and the American Council of Engineering Companies to promote better EISs. A joint work group surveyed their NEPA practitioners to identify priority issues – document quality, legal sufficiency, and continuous improvement – and then formed teams to develop recommendations.

 In a concise Report, *Improving the Quality of Environmental Documents* (May 2006), the work group summarizes its research, articulates fundamental principles, and recommends tools to address two of the key issues: NEPA document quality and legal sufficiency. Although focused on highway projects, the Report offers useful perspective and broadly applicable advice for EISs for any type of project.

Basic Principles

The Report's three basic principles for preparing readable and effective NEPA documents are interrelated.

✓ **Principle 1:** *Tell the story of the project so that the reader can easily understand the purpose and need . . . , how each alternative would meet [it], and the strengths and weaknesses associated with each alternative.*

The Report endorses combining the discussions of affected environment and environmental consequences in a single chapter to provide an integrated discussion of environmental issues that are important to the proposal and how each alternative affects them. The Report advises practitioners to use care, however, and adequately document existing conditions when using this approach.

 Combining the two discussions is described further in *Blueprint for NEPA Document Content*, developed by the National Cooperative Highway Research Program, Transportation Research Board. This *Blueprint* also

describes in greater detail the work group activities that led to the development of the highway EIS Report.

The Report encourages the use of headings that use a question-and-answer format, which provide context and direct readers to the information that most interests them. For example:

- Instead of using the heading “Land Use Impacts,” try instead “How would the project change the character and land use of the project area?”
- Similarly, as an alternative to “Noise Impacts,” the Report suggests, “How would noise levels change?”

Furthermore, the Report discusses the use of alternative formats to enhance the presentation of information in an EIS. For example, using large paper size, 11" by 17" in landscape orientation instead of 8.5" by 11" in portrait orientation, allows graphics such as tables, charts, and maps to be integrated with related text instead of presenting them on separate pages, and provides room for side-by-side comparisons of alternatives or impacts. (This format would likely cost more than conventional approaches for graphic design and printing; an agency could mitigate this cost by using the approach only for certain sections, such as the summary.)

✓ **Principle 2:** *Keep the document as brief as possible, using clear, concise writing; an easy-to-use format; effective graphics and visual elements; and discussion of issues and impacts in proportion to their significance.*

The top concern identified by the work group was the unwieldy length and complexity of EISs, commonly approaching 1,000 pages. The work group concluded that the very length of an EIS can deter people from reading it, the exact opposite of the desired outcome. To manage document length, the Report advises, observe the Council on Environmental Quality's recommendation in its *Forty Most Asked Questions* (#25) that “if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.”

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¹ *Assessing the Impact of Environmental Impact Statements on Citizens*, Environmental Impact Assessment Review, Vol. 16, No. 3, May 1996, pp. 171–182.

 The icon used here for the first time indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a hyperlink to the referenced web page, whose URL is too long to be useful when printed.

EIS Study *(continued from previous page)*

- ✓ **Principle 3: Ensure that the document meets all legal requirements in a way that is easy to follow for regulators and technical reviewers.**

The Report recommends that an EIS demonstrate compliance with key regulatory requirements by listing these requirements, explaining which are applicable, and describing how these have been met. (Environmental review and consultation requirements that should be conducted concurrently with and integrated with the NEPA process include those in Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act, Section 404 of the Clean Water Act, and air quality conformity requirements under Section 176(c) of the Clean Air Act.)

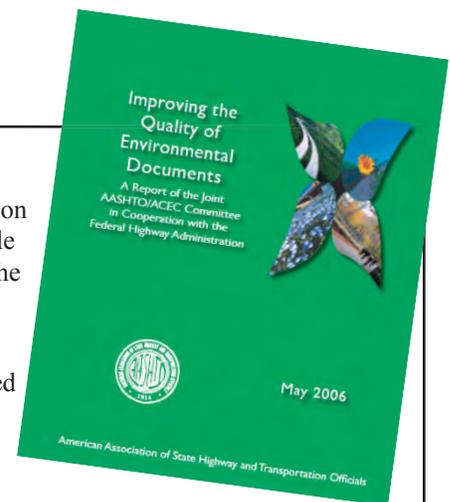
An Example of the Applied Principles

These three principles, and the approaches recommended for addressing them, reflect in part the participation of highway agency officials and contractors who received awards in 2005 for their roles in preparing the *Alaskan Way Viaduct and Seawall Replacement Project EIS*, which examines alternatives for replacing a highway in downtown Seattle (LLQR, June 2005, page 18, and December 2005, page 16). This draft EIS's 27-page summary chapter uses the 11" by 17" landscape format, integrates graphics and text, and is structured using questions and answers. The EIS achieves brevity and controls production cost by putting all technical information in appendices distributed on CD. 

Help the EIS Reader Understand the Model and Data

Improving the Quality of Environmental Documents identifies an EIS's discussion of data analysis as fundamental to making the impact assessment understandable and credible. It recommends several approaches to explain the *significance* of the data. For example:

- **Describe Methods Used to Develop Data.** "The persuasive power of technical data depends heavily on the reader's confidence in the methods used to generate that data," states the Report. Describing the methodologies used to develop the data requires more than naming the model used; it requires explaining in simple terms how that model works, what type of information it provides, and its inherent limitations.
- **Do Not Just Summarize the Data, Analyze It.** "The data rarely speaks for itself; the responsibility for explaining the data rests with the preparer of the NEPA document." Explaining the data involves more than reciting in text the data that appears in an accompanying table; the explanation should "connect the dots" – that is, identify patterns in the data, explain causal relationships, and explain anomalous results.



Transitions

DOE NEPA Office is Now Part of General Counsel Office

Effective October 1, 2006, the Office of NEPA Policy and Compliance, formerly within the Office of Environment, Safety and Health, is now part of the Office of the General Counsel. The organization code for the Office of NEPA Policy and Compliance is now GC-20, and its zip+4 code is now 20585-0103.

Notice Modifies NEPA Order

The Secretary issued a Notice (DOE N 451.1; October 6, 2006) that changes DOE Order 451.1B, *National Environmental Policy Act Compliance Program*, by stating that any reference made in the Order to the Assistant Secretary for Environment, Safety and Health will instead be read as a reference to the General Counsel. The Notice and Order are at www.oh.doe.gov/nepa under NEPA and Related Requirements. A revision of the NEPA Order will be undertaken at a later date.

Technical Amendment Changes Regulations

DOE issued a notice of final rulemaking (71 FR 68727; November 28, 2006, effective immediately) containing technical amendments to bring DOE regulations into conformance with the disestablishment of the Office of Environment, Safety and Health and the establishment of the Office of Health, Safety and Security. These technical amendments substitute officials and offices with transferred functions pursuant to the reorganization. One provision revises the DOE NEPA Regulations (10 CFR Part 1021, *National Environmental Policy Act Implementing Procedures*) to read as follows:

§ 1021.105 Oversight of Agency NEPA activities.

The General Counsel, or his/her designee, is responsible for overall review of DOE NEPA compliance.

NEPA Compliance Officer: Livermore Site Office

Karin King has been designated the NEPA Compliance Officer for the DOE/NNSA Livermore Site Office, replacing Dan Nakahara, who continues to serve in the Site Office as Assistant Manager for Technical Services. Ms. King has been working for DOE as an environmental engineer since 1992 and has more than 19 years of experience in the environmental field, including NEPA. She has successfully completed training as a Certified ISO 14001 Environmental Management System (EMS) Lead Auditor and is the EMS subject matter expert for the Livermore Site Office. Ms. King also has been designated by the U.S. Green Building Council as a Leadership in Energy and Environmental Design (LEED®) 2.0 Accredited Professional and serves as the DOE Green Acquisition Advocate. Karin King can be reached at karin.king@oak.doe.gov or 925-422-0756. 

DOE-wide NEPA Contracts Update

The Office of NEPA Policy and Compliance is working with NNSA's Acquisition Planning Department (NNSA Service Center, Albuquerque) to plan the acquisition of new DOE-wide NEPA contracts to be established when the current ones expire in the fall of 2007. Several NEPA Compliance Officers (NCOs) have expressed interest in serving on the Source Evaluation Team. To assist this Team, all NCOs have been asked to provide projections of their potential NEPA workload during the five years that will be covered by the new contracts and are making suggestions for improving the contracts' statement of work and evaluation criteria. For further information, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Nienow at dnienow@doeal.gov or 505-845-6072. Information and resources for potential users of these contracts are available on the DOE NEPA website. 

Description	DOE Contact	Date Awarded	Contract Team
EA for Decontamination and Demolition of Building 301, Argonne National Laboratory	Kenneth Chiu 630-252-2376 ken.chiu@ch.doe.gov	9/1/2006	Battelle
Site-wide EA for Rocky Mountain Oilfield Testing Center and Naval Petroleum Reserve No. 3	Michael Taylor 307-233-4835 mike.taylor@rmotc.doe.gov	9/28/2006	Battelle

Design Electronic Documents for Accessibility by All



When preparing and distributing a NEPA document, do you consider the needs of interested stakeholders who are blind or have limited motor skills? With current electronic document technology, NEPA Document Managers can meet the needs of all stakeholders with these and other disabilities. Doing so only requires a little extra effort to create accessible documents – that is, documents that provide persons with disabilities access to and use of information and data that is comparable to that provided to individuals without disabilities.

In 1998, Congress amended Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)) to require Federal agencies to make their electronic and information technology accessible to Federal employees and members of the public with disabilities. Meeting these accessibility requirements also furthers a core purpose of NEPA – to ensure that environmental information is available to public officials and citizens.

NEPA Office staff recently tested screen reader software on sample web-posted DOE NEPA documents and found examples of mispronunciation (e.g., DOE pronounced as “doe” and NEPA spelled out as “N-E-P-A”) that make it difficult to understand the document. In some documents, the screen reader software did not follow the document layout (reading across two columns, rather than down a single column), which made the text incomprehensible.

These and other problems can be prevented during the design of a document or when creating the Portable Document Format (PDF) or Hypertext Markup Language (HTML) file. The best approach for a particular circumstance depends on the software being used to create the NEPA document and information being communicated. For example:

- Design a chart or other graphic with the realization that someone who is colorblind may be unable to distinguish certain color-based cues.

- Ensure that links in electronic documents can be activated via keyboard (not only via a mouse) to improve accessibility for stakeholders with limited motor skills or using speech recognition software.
- When creating a PDF or HTML file, embed appropriate instructions (often referred to as “tags”) that tell the stakeholder’s software how to pronounce key words, follow the text flow, and otherwise render the document properly.

Many resources are available to help with making electronic documents accessible to persons with disabilities. The two primary Federal websites providing such resources are:

- *Section508.gov* – a website maintained by the General Services Administration that addresses Federal agency responsibility for ensuring the accessibility of electronic information and related tools, including links to Section 508 and resources such as a *Guide to Creating Accessible PDF Documents*.
- *www.access-board.gov* – provides information on accessible design. The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for sections of the Federal Acquisition Regulations (primarily 48 CFR 39.2) that ensure compliance with Section 508.

Additional information is available at *webaim.org*, the website of WebAIM (Web Accessibility in Mind), a nonprofit organization within the Center for Persons with Disabilities at Utah State University.

DOE NEPA Compliance Officers and NEPA Document Managers are encouraged to work with their webmasters to ensure accessibility when preparing a NEPA document to be posted on the web. 

The State of Environmental Justice in America — 2007 Conference

DOE is teaming with the Department of Agriculture, Howard University School of Law, and the National Small Town Alliance to present a conference, March 29–31, 2007, on “The State of Environmental Justice in America” at Howard University School of Law in Washington, DC.

The aim of the Conference is to review the outcomes of the environmental justice movement, asking such questions as – what is meant by environmental justice in the 21st century? can environmental justice and economic development coexist? what remains to be done? The draft agenda indicates topics of interest to NEPA practitioners, such as community participation in environmental decisionmaking, building community capacity, and facility siting and environmental justice. Melinda Downing, Environmental Justice Program Manager, Office of Legacy Management, and Lois Thompson, Office of Health, Safety and Security, will present a paper on DOE’s activities related to environmental justice. The Conference planners intend to issue a comprehensive report following the Conference.



For further information on the Conference and DOE’s activities related to environmental justice, contact Melinda Downing at melinda.downing@hq.doe.gov or 202-586-7703.





Litigation Updates

A discussion of the October 16, 2006, decision by the U.S. Court of Appeals for the Ninth Circuit regarding DOE's EA for a Biosafety Level-3 facility at Lawrence Livermore National Laboratory (Tri-Valley Communities Against a Radioactive Environment et al. v. Department of Energy et al.; Case No.: 04-17232) is contained in an article summarizing DOE interim guidance on the need to address sabotage and terrorism in NEPA documents on page 3 of this issue of LLQR. The status of other DOE NEPA cases is summarized below.

FOIA Lawsuit Alleges NEPA Implications

Tri-Valley CAREs, a peace and environmental group based in Livermore, California, alleges that DOE exhibits “a pattern and practice of not responding to FOIA [Freedom of Information Act] requests in a timely fashion” in a complaint filed on November 14, 2006. The plaintiff alleges that DOE has failed to provide documents responsive to five FOIA requests filed since October 2003. Moreover, the plaintiff alleges that DOE’s failure to provide documents has “unduly circumscribed Tri-Valley CAREs’ ability to fully comment during the public comment period” for the Lawrence Livermore National Laboratory (LLNL) Site-Wide EIS (DOE/EIS-0348, April 2005) and prevented them from “determining the adequacy of the Final Site-Wide EIS’s conclusions about public health risks from LLNL operations.” The plaintiff further alleges that if “DOE continues to fail to produce documents, Tri-Valley CAREs will be prevented from adequately commenting on critical sections of the upcoming *Complex 2030 Programmatic EIS . . .*” Tri-Valley Communities Against a Radioactive Environment v. Department of Energy was filed in the U.S. District Court for the Northern District of California. The court has assigned the case to its alternative dispute resolution program, and a case management conference is scheduled for February 20, 2007. [Case No.: 06-07065]

Court Decides in Favor of DOE in U.S.-Mexico Transmission Line Case

The U.S. District Court for the Southern District of California on November 30, 2006, decided in favor of DOE and the Bureau of Land Management in a suit brought by the Border Power Plant Working Group. The court found that the EIS for the *Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004) was adequate and that the agencies had not violated the Clean Air Act by failing to prepare a conformity determination. The March 2007 issue of *LLQR* will discuss the court’s findings in more detail. (See *LLQR*, March 2006, page 20; December 2005, page 36; September 2005, page 25; June 2004, page 16; December 2003, page 7; and September 2003, page 22.) [Case No.: 02-0513]

DOE NEPA Litigation in Brief

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): Oral argument is scheduled for December 4, 2006, in this case where the plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Natural Resources Defense Council et al. v. Department of Energy (N.D. Calif.): There are no recent developments in this case in which the plaintiffs allege, among other things, that DOE’s cleanup activities at the Energy Technology Engineering Center are in violation of NEPA. (See *LLQR*, September 2006, page 18; and December 2004, page 16.) [Case No.: 04-04448]

Winnemucca Indian Colony v. U.S. (D. Nev.): There are no recent developments in this case in which the plaintiffs allege, among other things, that DOE and the Defense Threat Reduction Agency (DTRA, an agency of the Department of Defense) must complete an EIS before conducting a proposed experiment known as Divine Strake, which would involve a detonation of 700 tons of ammonium nitrate and fuel oil at the Nevada Test Site. DTRA has announced that the experiment would not occur before several months into 2007. (See *LLQR*, September 2006, page 18; and June 2006, page 17.) [Case No.: 06-00497]

Touret et al. v. NASA et al. (D. R.I.): A hearing is scheduled for December 8, 2006, but a motion to reschedule is before the court. The plaintiffs, individuals living near Brown University, allege that an EA for a proposed life sciences building prepared by NASA, in which DOE was a cooperating agency, is inadequate and that an EIS is required. (See *LLQR*, September 2004, page 19.) [Case No.: 04-00198]

(continued on next page)

Other Agency NEPA Litigation

MMS Agrees to Evaluate Hurricane Damage and Cumulative Impacts for Offshore Leasing

The Department of the Interior, Minerals Management Service (MMS), recently reached a settlement with the State of Louisiana to end litigation over environmental review for oil and gas leases in the Western Gulf of Mexico awarded in August 2006. Louisiana claimed that MMS had violated NEPA by not taking recent hurricane damage and cumulative environmental impacts of Outer Continental Shelf oil and gas activities into account in its EIS.

Under the October 2006 settlement, MMS agreed that, before conducting any future lease sales in the Central or Western Gulf of Mexico, it will prepare an EIS that includes impacts associated with past lease sales and issue a record of decision. For tracts leased in the August sale, each lease holder's exploration plan that MMS provides to Louisiana for review will be accompanied by an EA that analyzes "direct, indirect, and cumulative impacts of the

proposed exploration plan activity, including identifying onshore support services and infrastructure that the applicant intends to utilize for the proposed activity; and identifying any onshore support services and infrastructure that have been affected by Hurricanes Katrina or Rita."

Other issues in the settlement involved the Coastal Zone Management Act. MMS agreed that the Coastal Zone Consistency Determination for the next lease sale in these areas will not tier from a previous Determination unless agreed to by the State, and that any concerns submitted by the Governor would be addressed by the Secretary of the Interior. [Case No.: 06-3813]

As a result of the settlement, MMS cancelled the lease sale scheduled for March 2007 and proposes to include those tracts in future lease sales (71 FR 66343; November 14, 2006). 

NPS Considering DOE Manhattan Project Sites For National Park Designations

The Manhattan Project was the top-secret engineering and industrial venture by the United States to develop nuclear explosives during World War II. The National Park Service (NPS) is now studying four Manhattan Project sites to evaluate their significance and feasibility for designation as units of the National Park System: Hanford Reservation, Washington; Los Alamos National Laboratory and the town of Los Alamos, New Mexico; Oak Ridge Reservation, Tennessee; and locations in Dayton, Ohio. NPS will develop a range of alternatives that examine various means, including those not involving NPS, of ensuring long-term preservation and interpretation of these sites.



The Department of Energy takes great pride in its Manhattan Project heritage, and we hope that in working with you [NPS] we can produce a study that provides preservation and interpretation strategies that appropriately commemorate one of the most significant chapters in modern American history.

*— Clay Sell
Deputy Secretary*

NPS issued a notice of intent to prepare an EIS (71 FR 13158; March 14, 2006) and held public scoping meetings in the four locales. The preliminary alternatives are scheduled to be announced in the spring of 2007 to feed into a draft special resource study/environmental evaluation to be published about a year later. The study will result in recommendations to Congress for appropriate levels of NPS involvement with the sites.

DOE Supporting National Park Service Efforts

In a letter to the NPS's Associate Director for Park Planning, Facilities and Lands, May 26, 2006, Deputy Secretary of Energy Clay Sell stated, "The Department of Energy fully supports this study, which will help ensure that appropriate preservation and interpretation decisions are made regarding these historically significant properties."

Dr. F. G. (Skip) Gosling, the Department's Federal Preservation Officer and Chief Historian, is coordinating the Department's activities in support of the NPS study. 

Perspectives and Observations on EPA Training

By: Jim Sanderson and Denise Freeman, Office of NEPA Policy and Compliance



The Environmental Protection Agency's (EPA's) National Enforcement Training Institute (NETI) sponsored training courses on "NEPA and Adaptive Management" (October 10–12, 2006) and "NEPA and Air Impacts" (October 31–November 2, 2006), which we attended at EPA Headquarters in Washington, DC. Targeted for Federal, state, and local government and Tribal employees, the courses provided information on incorporating adaptive management elements and Clean Air Act (CAA) program requirements into the development and review of NEPA documents. With 20–25 participants in each course, the teaching formats included lecture, question and answer, and group participation. Both courses were taught by Dr. Larry Canter, a well-known professor, author, and expert in the field of environmental impact assessment – and an avid fan of LLQR. For more information on these or other courses, visit the NETI website at www.netionline.com and click on Calendar.

Adaptive Management – Jim Sanderson

Adaptive Management Is Consistent with NEPA and CEQ Regulations

As explained in the course, adaptive management is a process of viewing management actions as experiments rather than solutions, a formal and systematic approach to learning from the outcomes of management action, accommodating change and improving management.

Dr. Canter reminded course participants that NEPA and the Council on Environmental Quality's (CEQ's) NEPA implementing regulations provide for continual monitoring and assessment (which is consistent with the process of adaptive management):

- **NEPA Section 102(2)(C)** – Requires an EIS to include “the relationship between local short-term uses of man’s environment and the *maintenance* and enhancement of long-term productivity” (emphasis added)
- **NEPA Section 204, item 6** – CEQ is to “document and define changes in the natural environment . . . and to *accumulate necessary data* and other information for a *continuing analysis* of these changes or trends and an interpretation of their underlying causes.” (emphasis added)
- **CEQ Regulations Section 1505.2(c)** – “A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.”
- **CEQ Regulations Section 1505.3** – “Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases.”

Adaptive Management Elements Are Context-Specific

Of great interest to me and the other Federal and state agency representatives in attendance was a detailed discussion on the key elements of adaptive management. Dr. Canter noted that there is no consensus

on the components to be used in planning an adaptive management program; each adaptive management effort must be context-specific. However, he explained that six key elements are commonly addressed in traditional adaptive management programs:

- Regularly revisited and revised management objectives
- A model(s) of the system being managed
- A range of management choices
- The monitoring and evaluation of outcomes
- A mechanism(s) for incorporating learning into future decisions
- A collaborative structure for stakeholder participation and learning.

How to Include Adaptive Management in NEPA Documents

Dr. Canter offered the following major recommendations regarding the incorporation of adaptive management elements in NEPA documents:

- As appropriate, an agency may need to include adaptive management in mitigated FONSI, EISs, and RODs;
- In an EIS, adaptive management information should include a discussion of planned monitoring and the decisionmaking process; and
- The initial emphasis should be on adaptive management for the preferred alternative (although adaptive management could be included to some extent for all alternatives).

Dr. Canter did not prescribe where or how adaptive management should be incorporated into NEPA documents, specifically EISs, but offered the subject up for discussion among the participants. The consensus was that, in order to do a thorough job, adaptive management should be included generally in most or all chapters of

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EPA Training *(continued from previous page)*

an EIS, and more comprehensively in an appendix. Most participants also believed that adaptive management should be included in RODs where appropriate. (No specifics on this were discussed.)

Apply Adaptive Management as a Stand-Alone Tool

The course also discussed Environmental Management Systems (EMSs) and their integration with NEPA. EMSs typically consist of five key elements: policy; planning; implementation and operation; checking and corrective action; and management review. The last two elements correspond closely to the monitor and adapt aspects of adaptive management. Dr. Canter stressed that a facility may integrate adaptive management with NEPA, EMS with NEPA, or both adaptive management and EMS with NEPA. An EMS can be one method of incorporating adaptive management into NEPA; however, adaptive management, on its own merits, also can be applied to the NEPA process as a stand-alone management tool.

Many positive benefits of adaptive management can be identified; however, concerns also exist relative to short-term and long-term monitoring and implementation costs, and possible triggering of subsequent NEPA reviews.

– Dr. Canter

He concluded that the concepts of adaptive management (and EMS) are logical and that their integration with NEPA is, ideally, a good business practice. Although more effort and resources are required to ensure this integration, adaptive management helps to “close the loop” on continual improvement and expand on the traditional NEPA model in a way that can be potentially beneficial.

Please email me at jim.sanderson@hq.doe.gov or call 202-586-1402 if you’d like to know more about course materials or would like to obtain some of this information.

Air Impacts – Denise Freeman

One of my primary responsibilities in the Office of NEPA Policy and Compliance is to review Clean Coal Technology-related NEPA documents, in which air emissions are often an important issue. As such, I was interested in attending this course.

I was pleasantly surprised to learn that Dr. Canter had selected DOE’s guidance document, *Clean Air Act Conformity Requirements and the National Environmental Policy Act Process* (April 2000; available on the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools), as one of the teaching aids. He also noted that he thinks it is one of the best documents on how to apply CAA Conformity requirements in the NEPA process and highly recommended it as a model for other agencies.

Dr. Canter started the class by reviewing the regulatory framework essential to air impact analyses, including key requirements of NEPA, CEQ Regulations, and CAA Section 309 reviews.

I found the review of the regulations useful and believe it is something that fellow NEPA practitioners should do periodically to keep abreast of regulatory changes as well as to refresh your memories. After laying the regulatory foundation for the course, Dr. Canter provided us with a process for conducting air impact analyses (see text box).

Other topics of discussion included emission factors, emissions modeling, emissions inventories, and cumulative air quality effects assessment. We participated in group workshops that focused on reviewing air quality impacts in NEPA documents using different scenarios,

such as in an energy project, wildfires and prescribed burning, ethanol plants, and a highway project.

The course concluded with the presentation of an outline of a NEPA review comment letter. The outline suggests that a review letter include a summary of the comments up front, comment categorization (major vs. minor), recommendations regarding how to address comments, and a basis for the comments (institutional, technical and scientific, scoping process, professional judgment, and best practice). Although intended for EPA Section 309 reviewers, the outline may be useful to anyone who provides comments on NEPA documents.

I recommend the NEPA and Air Impacts course for NEPA practitioners who would like to learn how to perform a technically sound review of the air impact analysis section of NEPA documents. Please email me at denise.freeman@hq.doe.gov or call 202-586-7879 if you would like more information about the course. 

Six Step Process for Air Impact Analysis

- Step 1: Identify the air pollutants
- Step 2: Describe the existing conditions
- Step 3: Identify the regulatory standards
- Step 4: Predict impacts
- Step 5: Assess the significance
- Step 6: Identify mitigation measures

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.

- **Explanation and Application of NEPA**

Denver, CO: January 4-5
Fee: \$595 (GSA contract: \$495)
Multiple registration discount available

- **NEPA: Premier Experts from Around the Country**

Las Vegas, NV: March 1-2
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available

- **Your Guide to NEPA Compliance and Enforcement**

San Francisco, CA: March 29-30
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available

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

- **Socioeconomic Impact Analysis under NEPA**

Durham, NC: January 24-26
Fee: \$750

- **Accounting for Cumulative Effects in the NEPA Process**

Durham, NC: February 28-March 2
Fee: \$750

- **NEPA Certificate Program**

Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

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

- **Adaptive Management**

Las Vegas, NV: December 12-13
Fee: \$660 (GSA contract: \$595)

- **NEPA Process Management**

Las Vegas, NV: January 22-23
Fee: \$620 (GSA contract: \$555) until 12/15/06

- **NEPA Writing Workshop**

Las Vegas, NV: January 24-26
Fee: \$835 (GSA contract: \$745) until 12/15/06

- **Advanced Writing for NEPA Specialists**

Las Vegas, NV: February 6-8
Fee: \$835 (GSA contract: \$745) until 1/15/07

- **NEPA Cumulative Effects Analysis and Documentation**

Salt Lake City, UT: February 6-8
Fee: \$835 (GSA contract: \$745) until 1/5/07

- **Communicating Environmental Risk**

Atlanta, GA: February 20-22
Fee: \$835 (GSA contract: \$745) until 1/12/07

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Dallas/Ft. Worth, TX: February 27-March 2
Fee: \$1,060 (GSA contract: \$945) until 1/15/07

- **NEPA Cumulative Effects Analysis and Documentation/Adaptive Management**

Missoula, MT: March 6-9
Fee: \$1,060 (GSA contract: \$945) until 2/2/07

- **Cultural and Natural Resource Management/Endangered Species Act Overview**

San Antonio, TX: March 20-23
Fee: \$1,060 (GSA contract: \$945) until 2/15/07

- **NEPA Process Management – Emphasis on Native American Issues**

Portland, OR: March 27-29
Fee: \$835 (GSA contract: \$745) until 2/18/07

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

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Training Opportunities

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- **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 course materials)

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

- **Comprehensive NEPA**

Salt Lake City, UT: March 7-9
Fee: \$795

- **NEPA Project Management**

Salt Lake City, UT: April 18-19
Fee: \$695

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

Pasadena, CA: May 16-17
Fee: \$695

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

Customized NEPA Training

- **Environmental Impact Training**

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

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

- **NEPA Toolbox™ Training**

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

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

- **Jones & Stokes Environmental Education**

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

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

- **Attaining Environmental Justice through NEPA**

Denver, CO

- **NEPA in Indian Country**

Denver, CO

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

EAs and EISs Completed July 1 to September 30, 2006

EAs

Brookhaven Site Office/Office of Science

DOE/EA-1558 (9/27/06)

*National Synchrotron Light Source-II (NSLS-II),
Brookhaven National Laboratory, Upton, New York*

Cost: \$87,000

Time: 7 months

West Valley Demonstration Project/ Office of Environmental Management

DOE/EA-1552 (9/14/06)

*Decontamination, Demolition, and Removal of
Certain Facilities at the West Valley Demonstration
Project, West Valley, New York*

Cost: \$79,000

Time: 9 months

EIS

Bonneville Power Administration

DOE/EIS-0374 (71 FR 55463, 9/22/06)

(EPA Rating: EC-1)

*Klondike III/Biglow Canyon Wind Integration Project,
Sherman County, Oregon*

Cost: \$440,000

Time: 19 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median and average cost for the preparation of 2 EAs was \$83,000.
- Cumulatively, for the 12 months that ended September 30, 2006, the median cost for the preparation of 13 EAs for which cost data were applicable was \$87,000; the average was \$113,000.
- For this quarter, the median and average completion times for 2 EAs were 8 months.
- Cumulatively, for the 12 months that ended September 30, 2006, the median completion time for 13 EAs was 9 months; the average was 12 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS was \$440,000.
- Cumulatively, for the 12 months that ended September 30, 2006, the cost for the preparation of one EIS for which cost data were applicable was \$440,000.
- For this quarter, the completion time for one EIS was 19 months.
- Cumulatively, for the 12 months that ended September 30, 2006, the median and average completion times for 2 EISs were 16 months.

Recent EIS-Related Milestones (September 1 to November 30, 2006)

Notices of Intent

Office of Civilian Radioactive Waste Management DOE/EIS-0250F-S1

Supplement to the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada
October 2006 (71 FR 60490, 10/13/06; 71 FR 65786, 11/9/06, extension of scoping period and additional public meeting)

National Nuclear Security Administration DOE/EIS-0236-S4

Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement - Complex 2030
October 2006 (71 FR 61731, 10/19/06; 71 FR 62351, 10/24/06, correction; 71 FR 67117, 11/20/06, change in scoping meeting schedule)

Amended Notice of Intent

Office of Civilian Radioactive Waste Management DOE/EIS-0250F-S2 and DOE/EIS-0369

Supplemental Yucca Mountain Rail Corridor and Rail Alignment Environmental Impact Statement, Nye County, Nevada
October 2006 (71 FR 60484, 10/13/06; 71 FR 65785, 11/9/06, extension of scoping period and additional public meeting)

Draft EISs

Office of Fossil Energy/ National Energy Technology Laboratory DOE/EIS-0361

Western Greenbrier Co-Production Demonstration Project, Greenbrier County, West Virginia
November 2006 (71 FR 69562, 12/1/06)

Western Area Power Administration DOE/EIS-0376*

White Wind Farm Project, Construct a Large Utility-Scale Wind-Powered Electric Energy-Generating Facility, Brookings County, South Dakota
August 2006 (71 FR 47809, 8/18/06)

DOE/EIS-0395

San Luis Rio Colorado Project, Construct, Operate, Maintain, and Connect a Double-Circuited 500,000-volt Electric Transmission Line, Right-of-Way Grant and Presidential Permit, Yuma County, Arizona
November 2006 (71 FR 65812, 11/9/06)

Extension of Comment Period

National Nuclear Security Administration/ Los Alamos National Laboratory

DOE/EIS-0380*

Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico
August 2006 (71 FR 51810, 8/31/06; 71 FR 52068, 9/1/06, EPA notice of extension of comment period)

Final EIS

Bonneville Power Administration

DOE/EIS-0374

Klondike III/Biglow Canyon Wind Integration Project, Sherman County, Oregon
September 2006 (71 FR 55463, 9/22/06)

Record of Decision

Bonneville Power Administration

DOE/EIS-0374

Klondike III/Biglow Canyon Wind Integration Project, Sherman County, Oregon
November 2006 (71 FR 64689, 11/3/06)

Amended Record of Decision

Office of Environmental Management/ Idaho Operations Office

DOE/EIS-0287

Idaho High-Level Waste and Facilities Disposition, Idaho Falls, Idaho
November 2006 (71 FR 68811, 11/28/06)

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* Not previously reported in LLQR

Recent EIS-Related Milestones (September 1 to November 30, 2006)

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Special Environmental Analysis

Office of Electricity Delivery and Energy Reliability

SEA-004

Special Environmental Analysis for Actions Taken under U.S. Department of Energy Emergency Orders Regarding Operation of the Potomac River Generating Station in Alexandria, Virginia
November 2006 (71 FR 69102, 11/29/06)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0246-SA-54*

Spokane Tribe of Indians Wildlife Mitigation - Operation and Maintenance Activities, Spokane Indian Reservation, Washington
(Decision: No further NEPA review required)
August 2006

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

DOE/EIS-0265-SA-271*

Big Canyon Creek Watershed Restoration, Nez Perce and Lewis Counties, Idaho
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-272*

Custer Soil and Water Conservation District Habitat Projects for FY 2006, Lower Pahsimeroi Riparian Protection Fences (Bowles, Last Chance and Last Stand Ranches), Custer and Lemhi Counties, Idaho
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0265-SA-273*

Protect and Restore Lolo Creek Watershed - Weaver Creek Crossing Upgrades, Lolo Creek Watershed, Idaho
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0265-SA-274*

Lapwai Creek Watershed Restoration, Nez Perce and Lewis Counties, Idaho
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0265-SA-275

Hofer Dam Fish Passage Project, Walla Walla County, Washington
(Decision: No further NEPA review required)
September 2006

DOE/EIS-0265-SA-276

Yakima Tributary Access and Habitat Program - Ludwick Pipeline and Lyle Creek Diversion Project, Kittitas County, Washington
(Decision: No further NEPA review required)
September 2006

DOE/EIS-0265-SA-277

Walla Walla River Basin Fish Habitat Enhancement - Gose Street, Walla Walla County, Washington
(Decision: No further NEPA review required)
September 2006

DOE/EIS-0265-SA-278

Colville Confederated Tribes Repair Work (Thirty Mile Culvert Installation and Streambank Armoring; Bridge Creek Sediment Removal; and South Nanamkin Creek Re-Contouring, Floodplain Reconnection, and Armoring), Colville Reservation, Washington
(Decision: No further NEPA review required)
September 2006

DOE/EIS-0265-SA-279

McPherson Side Channel Restoration Project, Okanogan County, Washington
(Decision: No further NEPA review required)
October 2006

DOE/EIS-0265-SA-280

Yakima Tributary Access and Habitat Program - Parke Creek (Eslinger and Sorenson) Irrigation Diversion and Fish Screen Project, Kittitas County, Washington
(Decision: No further NEPA review required)
October 2006

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* Not previously reported in LLQR

Recent EIS-Related Milestones (September 1 to November 30, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-281
Shaw Creek Passage and Sediment Improvement Project, Union County, Oregon
(Decision: No further NEPA review required)
October 2006

DOE/EIS-0265-SA-282
Butte Creek/Hampton Bridge Crossing, Union County, Oregon
(Decision: No further NEPA review required)
October 2006

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

DOE/EIS-0285-SA-310*
Vegetation Management along the North Bonneville - Midway (and Associated Underwood Tap and Hanford - Ostrander) Transmission Line Corridors, Skamania County, Washington
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0285-SA-311*
Vegetation Management along the Hood River - Dalles Transmission Line Corridor, Hood River and Wasco Counties, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0285-SA-312*
Vegetation Management along the Drummond - Macks Inn Transmission Line Project, Fremont County, Idaho
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0285-SA-313*
Vegetation Management along the Little Goose - Lower Granite No.1 and No. 2 500 kV Transmission Line Corridor Right of Way and Associated Right of Way Roads, Columbia County, Washington
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0285-SA-314*
Approval for the Use of Two New Herbicides: Oxadiazon and Prodiamine, Idaho, Montana, Oregon, Washington, and Wyoming
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0285-SA-315*
Vegetation Management, Danger Tree Cutting along the Chehalis - Raymond No. 1, 115 kV Transmission Line Corridor to Raymond Substation, Raymond, Washington
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0285-SA-316*
Proposal to Cut Trees within the Ostrander Substation Property Adjacent to the Big Eddy - Chemawa 230 kV Transmission Line, Clackamas County, Oregon
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0285-SA-317*
Vegetation Management along the Lower Monumental - Little Goose No. 1 and No. 2, Lower Monumental Powerhouse - Lower Monumental No. 1 and Lower Monumental Powerhouse - Lower Monumental Station Service No. 1 Transmission Line Corridors, Walla Walla County, Washington
(Decision: No further NEPA review required)
August 2006

DOE/EIS-0285-SA-318
Southern Coastal Transmission Line Project, Coos and Curry Counties, Oregon
(Decision: No further NEPA review required)
September 2006

National Nuclear Security Administration/ Y-12 National Security Complex

Final Site-wide Environmental Impact Statement for the Y-12 National Security Complex (DOE/EIS-0309)

DOE/EIS-0309-SA-2*
Supplement Analysis for the Air and Ocean Transport of Enriched Uranium between Foreign Nations and the United States
(Decision: No further NEPA review required)
August 2006 

* 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 July 1 and September 30, 2006.

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

Scoping

What Worked

- *Landowner interaction.* During the first of two scoping meetings, the majority of landowners suggested moving the transmission line route onto property where wind turbines would be located; the landowners agreed that the impacts of the powerline should be incurred by those who would directly benefit from the project.
- *Second scoping meeting.* Holding a second scoping meeting to verify concerns and issues identified at the first scoping meeting proved to be very successful.

Data Collection/Analysis

What Worked

- *Use of consultants familiar with information.* DOE saved considerable costs by using an environmental consulting firm that was familiar with the site.
- *Multiple impacts assessed.* DOE appropriately analyzed the impacts from the transmission line and substation as well as from wind farms.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Regularly-scheduled meetings.* Regularly-scheduled meetings with DOE and the contractor were held, including NEPA and project representatives.
- *Realistic schedule.* Adherence to a realistic schedule helped facilitate timely completion.
- *Well-written draft.* Preparation of a well-written draft led to the receipt of relatively few comments, so preparation of the final EIS went rather smoothly.

Factors that Inhibited Timely Completion of Documents

- *Disagreement on need for EA.* Years of debating whether there should even be an EA inhibited timely completion of the document.
- *Change in project management.* Due to a change in project managers, completion of the document took longer than was previously anticipated.
- *New information.* New information delayed the concurrence process.
- *Insufficient review time.* The EA schedule did not provide sufficient time for Headquarters review.
- *Categorically excluded actions were not implemented.* Categorical exclusions were executed but the actions were not implemented for two years. Had the categorically excluded actions been implemented, the EA could have been downscoped.
- *Funding delays.* Lack of funding caused a delay of more than six months before the NEPA process could be resumed, putting NEPA on a critical path.
- *Evolving specifications.* The technical specifications of the project were evolving.

Teamwork

Factors that Facilitated Effective Teamwork

- *Simultaneous preparation of environmental documents.* Preparation of the EIS was started in parallel with preliminary engineering of the power line and slightly behind the state siting process.
- *Frequent team meetings.* The DOE review team met frequently to consolidate consensus comments before presenting them to the contractor.

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

- *Frequent meetings and prompt action.* Regularly-scheduled meetings and a commitment to prompt reviews and revisions made by both the contractor and DOE facilitated effective teamwork.

Process

Successful Aspects of the Public Participation Process

- *Accommodation of stakeholders' concerns.* Stakeholders' concerns were accommodated to a great degree.
- *Public appreciation.* People appreciated the opportunity to be involved and have their views considered.
- *Meetings with stakeholders.* Early meetings with stakeholders, including community organizations and state and local regulatory agencies, allowed comments to be addressed and incorporated easily into the draft document.
- *Positive public perception.* The public reaction was that NEPA is a useful process and should be done early.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Timely completion.* NEPA was completed prior to a critical decision, which should facilitate the site selection decision.
- *Cooperation with landowners.* DOE worked with landowners in siting the transmission line, designing the tower, and placing the tower in order to minimize the impacts to the agricultural fields in the project vicinity.

Agency Planning and Decisionmaking: What Didn't Work

- *Excessive reliance on contractors.* There was too much reliance on contractors to determine even the most basic facts, which made the public question DOE's judgment.

Enhancement/Protection of the Environment

- *Importance of the process doubted.* Even though the public appeared to doubt the importance of this activity, the environment was protected by the NEPA process.

Other Issue

Guidance Need Identified

- *Updated EA checklist.* Other similar facility EAs and findings of no significant impact were used in drafting this EA. An updated EA checklist would be helpful.

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 4 questionnaire responses were received for 3 EAs and one EIS, 3 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the project design changed significantly during the environmental review as a direct result of input from affected and interested parties during the EIS process.
- A respondent who rated the process as "5" stated that issues identified early on (i.e., the need for archeological surveys) can now be adequately addressed during design and construction.
- A respondent who rated the process as "3" stated that the NEPA process informed the project planning process.
- A respondent who rated the process as "2" stated that nothing seemed to work well during the EA process. 

LESSONS LEARNED

March 1, 2007; Issue No. 50

First Quarter FY 2007

Flexibility of NEPA Process Facilitates Decisions for Strategic Petroleum Reserve Expansion

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

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

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



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

GNEP PEIS to Examine Nuclear Fuel Recycling Proposal

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

“We continue to mark significant progress with GNEP, and we look forward to gaining a broader understanding of the environmental conditions under which we will be operating,” DOE Assistant Secretary for Nuclear Energy Dennis Spurgeon said in announcing publication of the

Notice of Intent (NOI) on January 4, 2007 (72 FR 331). “Our need for nuclear power – a safe, emissions-free and affordable source of energy – has never been greater and GNEP puts us on a path to encourage expansion of domestic and international nuclear energy production while reducing nuclear proliferation risks.”

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

(continued on page 6)

Inside *LESSONS LEARNED*

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

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 1, 2007. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2007 (January 1 through March 31, 2007) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

Printed on recycled paper



DOE Report to CEQ Reflects Continuing Cooperating Agency Involvement

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

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

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

Comments Identify Additional Alternatives for Complex 2030 Supplemental PEIS

32,000-plus Commentors Provide Input for Scoping Process

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

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

New Consolidation Alternatives

In addition, some commentors asked that DOE analyze an alternative that would implement a 2005 recommendation from the Secretary of Energy Advisory Board Task Force on the Nuclear Weapons Complex Infrastructure (contained in the so-called “Overskei Report”). That recommendation was to consolidate most nuclear weapon activities at a single site – a Consolidated Nuclear Production Center (CNPC). After considering these

comments, DOE announced in a recent report to Congress that it is “proposing inclusion of the CNPC concept as an alternative to be evaluated” in the Supplemental PEIS (*Report on the Plan for Transformation of the National Nuclear Security Administration Nuclear Weapons Complex*, January 31, 2007).

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

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

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



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

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

Petroleum Reserve Expansion EIS (continued from page 1)

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

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

Energy Policy Act of 2005 Directed Strategic Petroleum Reserve Expansion

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

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

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

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

EIS Process Accommodates Hurricane and Additional Alternative Site

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

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

Candidate Site Shown Unreasonable Between Draft and Final EIS

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

Conceptual Design for Water Use Changed in Response to Comments

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

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

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

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

Changed Circumstances Affected Preferences

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

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

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

Supplement Analysis Examined Additional Options for Existing Sites

DOE prepared a supplement analysis (under 10 CFR 1021.314(c) of its NEPA implementing regulations) to analyze the potential environmental impacts at Bayou Choctaw from increasing expansion to 33 million barrels compared to the 20-million barrel



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

expansion analyzed in the final EIS. (As noted above, expansion of Bayou Choctaw by 30 million barrels was analyzed in the draft EIS, but removed from consideration when DOE decided not to consider the Clovelly site further.)

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

Mitigation Commitments Made

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

(continued on page 7)

GNEP PEIS

(continued from page 1)

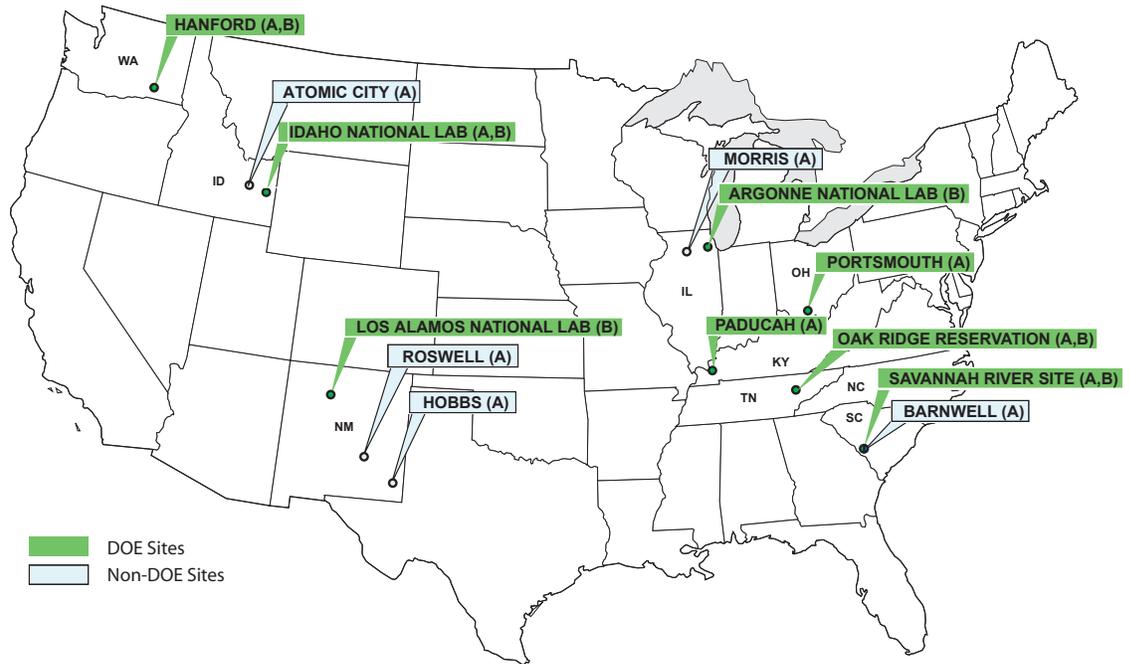
The NOI identifies three facilities that would be used to accomplish spent fuel recycling: an advanced fuel cycle research facility, a nuclear fuel recycling center, and an advanced recycling reactor. The GNEP PEIS will analyze the potential environmental impacts associated with proceeding with each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

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

GNEP Evolved Following Advance NOI

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

The Advance NOI described a proposal to construct and operate demonstration facilities for these spent fuel recycling operations. After publishing the Advance NOI, DOE determined, partly in response to industry input,



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

that it may be possible to proceed directly to commercial-scale facilities. Consequently, in the NOI for the GNEP PEIS, DOE proposes to evaluate a range of sizes (from small, demonstration-scale to large, commercial-scale) and technologies for these facilities.

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

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

Communities Involved in Site Selection

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

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GNEP PEIS *(continued from previous page)*

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

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



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

Public Weighs in at Scoping Meetings

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

recycling processes, transportation, and various potentially affected resources, such as water supplies.

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

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

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

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

For More Information

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

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

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

Supplement to Clean Coal Draft EIS Addresses CO₂ Concern

By: Eric Cohen, Office of NEPA Policy and Compliance

To further the purposes of NEPA in response to public comments regarding how the Department had addressed carbon dioxide (CO₂) emissions, DOE issued a *Supplement to the Draft EIS for the Gilberton Coal-to-Clean Fuels and Power Project* (DOE/EIS-0357D-S1) in early January 2007.

The Supplement corrects the value reported in the original Draft EIS for the annual rate of CO₂ emissions, which was understated by a factor of nearly three; explores the feasibility of CO₂ sequestration for the proposed project; and presents additional information on CO₂-related cumulative impacts. The Supplement is about eight pages (plus references and public comments) that respond to comments on CO₂ and related issues, and states that DOE invites comments only on the Supplement.

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

Sequestration Not Analyzed in Draft

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

Although CO₂ is not regulated as an air pollutant, the Intergovernmental Panel on Climate Change in 2007 (ipcc-wg1.ucar.edu) stated that it is “the most important anthropogenic greenhouse gas” and that “most of the observed increase in globally averaged temperatures since the mid-20th century is *very likely* due to the observed increase in anthropogenic greenhouse gas concentrations.” Coal gasification technology has the capability of producing a concentrated CO₂ stream, which

would facilitate CO₂ capture and sequestration. However, the industrial participant did not propose to capture and sequester CO₂ and the original Draft EIS did not analyze sequestration options.

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

DOE Responds to Public Comments About Global Climate Change

DOE received written comments from the Natural Resources Defense Council (NRDC) and several other organizations and individuals regarding how the Draft EIS addressed CO₂ emissions. DOE also met with NRDC staff to better understand NRDC's comments and concerns.

NRDC questioned the accuracy of the CO₂ emissions rate in the original Draft EIS (832,000 tons per year) and requested information on the reported quantity. In considering this comment, DOE found that the Draft EIS reported only the total quantity of CO₂ that would be emitted directed by facility operations. The Draft overlooked a concentrated CO₂ stream (1,450,000 tons per year) exiting the gas cleanup system because the stream originally was planned to be sold for commercial use. In reality, the potential commercial use of CO₂ probably would not have resulted in its permanent sequestration. Accordingly, the Supplement corrects the estimated total annual rate of CO₂ emissions, which would be about 2,282,000 tons per year. Recently, the industrial participant informed DOE that commercial sale of CO₂ would not occur in the foreseeable future.

NRDC staff and other commentors stated that DOE should explore potential ways to mitigate CO₂ emissions from the proposed Gilberton facilities by geologic sequestration. In response, DOE analyzed sequestration options in Pennsylvania, concluding in the Supplement that sequestration is not feasible during the demonstration period for the Gilberton proposal, but might become feasible during the 50-year lifetime of the facilities.

NRDC staff and other commentors expressed a sense of urgency in addressing global climate change and opposition to deployment of CTL technology. NRDC staff stated that use of fuel from CTL plants would result in substantially more CO₂ emissions than would

(continued on next page)

Clean Coal Project *(continued from previous page)*

result from use of conventional petroleum-derived liquid transportation fuels when considered on a “wells-to-wheels” basis (that is, considering all greenhouse gases emitted over the entire fuel cycle, from production of the raw materials in a coal mine or oil well through use of the fuel in a vehicle). NRDC staff stated that CTL technology should not be considered without sequestration of CO₂.

Among specific concerns expressed about the original Draft EIS, NRDC staff and other commentors objected to a relative comparison of the potential CO₂ emissions rate to global emissions. The Draft EIS stated: “The proposed facilities would increase global CO₂ emissions by 832,000 tons per year, which is about 0.003% of global CO₂ emissions of 26,713 million tons resulting from fossil fuel combustion in the year 2000. Thus increases from the proposed facilities would be large in terms of number of tons per year but small in comparison with global totals.” NRDC stated that this comparison indicates that DOE would always conclude that coal power plant CO₂ emissions would be “small” and that DOE would therefore never mitigate climate impacts by geologic sequestration. The Supplement responds to this concern by stating the emissions in absolute terms, without use of judgmental terms, such as “small.” (For guidance on relative and global comparisons, see page 20 of *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (2004), available at www.eh.doe.gov/nepa under Selected Guidance Tools.)

In addition, NRDC stated that the analysis of cumulative impacts should be enhanced in several ways. The

Supplement responds by providing both annual rates of emissions and total quantities of CO₂ potentially released during 50 years of commercial operation. In addition, the Supplement provides an enhanced analysis of cumulative impacts under several economic scenarios regarding potential wide-scale commercial implementation of CTL technology, which a successful demonstration at Gilberton might encourage. Further, the Supplement provides a “wells-to-wheels” analysis of CTL technology in comparison with the petroleum liquid fuel cycle, with and without CO₂ sequestration. (Based on estimates presented in the Supplement, without sequestration, lifecycle CTL emissions could be 80 percent more than comparable emissions from convention petroleum fuels; CO₂ capture and sequestration could reduce CO₂ emissions to levels ranging from about 8 percent more to perhaps less than those from conventional petroleum-derived fuel production, depending on technology development assumptions.)

Next Steps

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

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

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

The guide is intended to help citizens and organizations who are concerned about the environmental effects of a Federal agency's decisionmaking to effectively participate

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



50 Issues of LLQR...

National Environmental Policy Act

LESSONS LEARNED QUARTERLY REPORT
4TH QUARTER FY1994

Office of NEPA Oversight
U.S. Department of Energy
December 1, 1994

NEPA

Office of NEPA Policy and Assistance Mini-Guidance

The Summary: What Everyone Reads

The Summary is a key feature of an LLQR because it provides the layperson, including the public, with a concise summary of the issues and findings for each quarter. The Summary is also available in Spanish for those who prefer to read in that language.

On August 12, 1994, the Office of NEPA Oversight issued guidance to NEPA contacts in environmental impact statements and assessments July 1 and September 30, 1994. This first quarter report, which is only reports are finalized, responses made clear that effective communication facilities (ECF) NEPA process, and also that more progress in some cases. More important, perhaps, these quarterly reports, over time, may also point the way to other facilities the Office of Oversight is going off to ensure progress under the what additional improvements may be necessary.

Some of the material presented here reflects preliminary responses, which (appropriately) may be withdrawn. Therefore, unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.

The most quarterly report with minor environmental impact statements and environmental assessments completed during the first quarter of fiscal year 1995 (October 1 through December 31, 1994). The Office of NEPA Oversight plans to issue a special quarterly report in January 1995. In the interim, please continue to report on environmental impact statements and environmental assessments as they are completed from the current reporting period as a routine procedure. Quarterly reports for all such documents completed between October 1 and December 31, 1994, are due by February 1, 1995. Completed quarterly reports should be mailed or faxed (202) 853-7033 directly to the Office of NEPA Oversight. The next quarterly report will be issued March 1, 1995.

Legal Updates

NEPA Litigation at Sandia National Laboratory

The Department of Energy (DOE) is currently facing a series of lawsuits filed by environmental groups against the Sandia National Laboratory (SNL) in Albuquerque, New Mexico. The lawsuits challenge the DOE's approval of a new environmental impact statement (EIS) for the construction and operation of a new research facility at SNL. The lawsuits also challenge the DOE's approval of a new environmental assessment (EA) for the construction and operation of a new research facility at SNL. The lawsuits are currently pending in federal court.

Trends Analysis

EIS Total Costs vs. Completion Times

Total Costs Reported for EIS of EISs Completed 1994 to 1995

Third Quarter FY 1996 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To better continue improvements of the Department's NEPA Compliance Program, DOE has issued a request for information (RFI) to the public. The RFI is intended to gather information on the NEPA process, including what worked and what didn't work in the NEPA process. The RFI is available on the DOE website at www.doe.gov.

September 2, 1997, Issue No. 12

NEPA Aids Cultural Resources Protects Native American Remains Receive Final Resting Place at Fernald

By Edward P. Smith, NEPA Document Manager, DOE Fernald Environmental Management Project

The Fernald Environmental Management Project (FEMP) is a large-scale environmental remediation project in Fernald, Ohio. The project involves the cleanup of a uranium mill tailings pile and the construction of a new uranium mill. The project has been subject to extensive NEPA review. The NEPA review has identified several areas where the project could be improved. The NEPA review has also identified several areas where the project could be improved. The NEPA review has also identified several areas where the project could be improved.

Second Quarter FY 1997 Questionnaire Results

EIS Cost and Completion Time Data

Cost Facts

- The total NEPA cost for EISs of \$1.1 billion, or 2.7% of the total budget for DOE-EIS, was reported for the second quarter.
- Completion for the 12 months ended March 31, 1997, the total number of EISs completed was 12. The total cost for these EISs was \$1.1 billion, or 2.7% of the total budget for DOE-EIS.

Completion Time Facts

- Completion for the 12 months ended March 31, 1997, the total number of EISs completed was 12. The total cost for these EISs was \$1.1 billion, or 2.7% of the total budget for DOE-EIS.

Other EIS-Related Documents Completed Between January 1 and March 31, 1997

Records of Decision	DOE/EIS #	Date
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1075	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1076	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1077	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1078	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1079	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1080	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1081	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1082	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1083	10/27/97
Records of Decision for the Construction and Operation of the Fernald Environmental Management Project	1084	10/27/97

Secretary O'Leary and Staff Celebrate Signing of Stockpile Stewardship and Management ROD

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY
QUARTERLY REPORT

June 2, 1997, Issue No. 11

DOE-wide NEPA Contracts Will Be Ready to Use Soon!

Training Offered at June Workshop

by: Dawn Knepper, Contracting Officer, Albuquerque Office

The public will be able to use the new NEPA contracts for environmental impact statements, environmental assessments, and environmental evaluations as of June 1, 1997. The public will be able to use the new NEPA contracts for environmental impact statements, environmental assessments, and environmental evaluations as of June 1, 1997.

Cumulative Impact Index to Quarterly Reports on Lessons Learned in the NEPA Process

FOR MORE LESSONS LEARNED SEE PAGE 2

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY
QUARTERLY REPORT

December 1, 1997, Issue No. 13

NEPA Review Adds Value to Proposed Sale of Naval Petroleum Reserve

DOE recently completed a Supplemental EIS for the proposed sale of the Naval Petroleum Reserve (NPR) in California. The EIS was completed in accordance with the requirements of the National Environmental Policy Act (NEPA). The EIS was completed in accordance with the requirements of the National Environmental Policy Act (NEPA). The EIS was completed in accordance with the requirements of the National Environmental Policy Act (NEPA).

DOE-wide NEPA Contracts Update

The Department awarded three DOE-wide NEPA contracts in June 1997. The contracts are for the construction and operation of a new research facility at SNL. The contracts are for the construction and operation of a new research facility at SNL. The contracts are for the construction and operation of a new research facility at SNL.

Task Description	NEPA Document Manager	Award Date	Price
Construction and Operation of the Fernald Environmental Management Project	John Brown	10/27/97	\$1.1 billion
Construction and Operation of the Fernald Environmental Management Project	John Brown	10/27/97	\$1.1 billion
Construction and Operation of the Fernald Environmental Management Project	John Brown	10/27/97	\$1.1 billion

TRANSITIONS...

Tony Addu Redres

DOE-wide NEPA Contracts Update

Training Opportunities

DOE NEPA Community to Meet in October

On October 14 and 15, 1997, the DOE NEPA Community will meet at North Las Vegas. The meeting will be held at the North Las Vegas Convention Center. The meeting will be held at the North Las Vegas Convention Center. The meeting will be held at the North Las Vegas Convention Center.

Combined Federal- and State Environmental

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

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

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

Public Comments Question Analysis

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

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

Additional Notifications Ordered

The Emergency Order adds the Virginia Attorney General's Office and the City of Alexandria's attorneys to the list of those entities that the Potomac Electric Power Company (PEPCO, which supplies electricity) must notify before planned line outages and in the event of unplanned

The nature of an impact analysis for NEPA purposes is to provide Federal decision makers with an overall understanding of the range of impacts of their actions and to identify appropriate means to mitigate adverse impacts.

*– Secretary Bodman
Emergency Order, January 31, 2007*

line outages. DOE believes this is sufficient mitigation to respond to commentors' requests for better notification of such outages, which require emergency operation of the Virginia power plant.

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

For Further Information

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

New Executive Order Echoes NEPA Section 101



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

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

Sustainable Practices through EMS

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

The E.O. requires Federal agencies to establish environmental management systems (EMSs) to use as the primary approach to manage environmental aspects of agency operations, implement the E.O., and collect,

analyze, and report information on its implementation. DOE has been recognized by the Council on Environmental Quality (CEQ) as a leader within the Federal government in adopting the EMS approach toward achievement of continuous improvement (*LLQR*, December 2005, page 5).

New Responsibilities Established for CEQ, OMB, Federal Executive

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

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

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

Earlier Executive Orders, Memoranda Consolidated

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

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

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

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



International “NEPA”: Nord Stream and the EU

By: Brian Mills, Office of NEPA Policy and Compliance

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

The project called “Nord Stream”¹ is a 1,320-mile natural gas proposal (573 miles in Russia and 747 miles under the Baltic Sea) consisting of two parallel natural gas pipelines with an estimated capacity of around 2 trillion cubic feet (55 billion cubic meters) per year from Russia to Germany. The Nord Stream pipeline project is subject to the EU Environmental Impact Assessment (EIA) Directive² and Baltic Marine Environment Protection Commission³ (HELCOM or Helsinki Commission) recommendations. The members of HELCOM are: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia, and Sweden.

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

EU EIA Process Parallels NEPA

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

The EU EIA process is based on the following phases:

- Screening, i.e., investigation of whether the plan or program falls under the EIA Directive
- Scoping, i.e., defining the boundaries of investigation, assessment, and assumptions required

- Documenting the state of the environment, i.e., a baseline on which to base judgments
- Determining the likely (non-marginal) environmental impacts, usually in terms of direction of change rather than firm figures
- Informing and consulting the public
- Influencing “decision taking” based on the assessment
- Monitoring of the effects of plans and programs after their implementation

These phases of the EIA process certainly sound familiar.

Baltic Sea Impacts Raise Concerns

An environmental concern raised by HELCOM member countries Lithuania, Poland, and Sweden is that construction of the pipeline may disturb the seabed and dislodge toxic materials, including chemical munitions placed in the Baltic Sea during and after World Wars I and II.⁴ Environmental groups also are raising concerns about the impact of the pipeline construction activities on bird and marine life in the Baltic Sea. The World Wildlife Fund⁵ and Greenpeace⁶ have asked contracting parties to HELCOM to safeguard the Baltic marine habitats, which could be altered by the implementation of the project. These organizations successfully petitioned the International Maritime Organization⁷ (IMO) to designate the Baltic Sea as a “Particularly Sensitive Sea Area”⁸ (PSSA) in 2005.

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

Hmm, do you suppose that the Trans-Siberian pipeline⁹ from Russia through China to the Sea of Japan will also have a NEPA-like analysis? 

¹ www.nord-stream.ru/eng/

² ec.europa.eu/environment/eia/eia-legalcontext.htm

³ www.helcom.fi

⁴ www.sweden.se, search “Nord Stream”; see various news articles, e.g., February 20, 2007.

⁵ takeaction.worldwildlife.org/results/baltic.asp

⁶ www.greenpeace.org/international/news/baltic-sea-victory

⁷ www.imo.org/home.asp

⁸ www.imo.org/Environment/mainframe.asp?topic_id=1357

⁹ www.pacificenvironment.org/article.php?id=109



MOU Strengthens Migratory Bird Protection

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

The MOU identifies specific areas in which cooperation between DOE and FWS will contribute substantially to the conservation of migratory birds and their habitats. The MOU states that DOE will, among other actions,

consider migratory bird protection and conservation in NEPA reviews, and integrate migratory bird conservation principles, measures, and practices – such as habitat and population management – into agency activities. FWS will assist DOE by identifying migratory bird habitat “under the stewardship of DOE,” providing the most recent information relating to bird conservation that might affect Departmental activities and policies, and developing informational and educational programs on migratory bird conservation for DOE.

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

[Artwork: FWS] 

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



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

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

Agencies' Approaches Vary

The use of a categorical exclusion must include consideration of “extraordinary circumstances” (40 CFR 1508.4). However, agencies differ in how they apply this concept. The Forest Service *Environmental*

Policy and Procedures Handbook (www.fs.fed.us/emc/nepa/includes/fsh1909links.doc, Chapter 30.3) identifies resource conditions that should be considered in determining whether extraordinary circumstances are present, including the presence of threatened or endangered species, designated critical habitat, floodplains, wetlands, and archeological sites. The *Handbook* states that the “degree of potential effect on these resource conditions” determines the applicability of the categorical exclusion to a proposal.

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

Transitions: New NEPA Compliance Officers

Los Alamos Site Office: George Rael

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

West Valley Demonstration Project: Cathy Bohan

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

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

Western/Sierra Nevada Region: Steve Tuggle

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

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

Y-12 Site Office: Pam Gorman

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

For upcoming environmental conferences, see page 22.





Litigation Updates

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

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

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

Solicitor General Criticized Decision, But Recommended Denying Review

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

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

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

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

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

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

(continued on next page)

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

Legal Challenge Addressed Clean Air Act Conformity and EIS Adequacy

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

Clean Air Act Conformity Issues

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

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

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

On the first point, the court’s opinion referred to the Environmental Protection Agency’s June 2006 Clean Air Act guidance, *Revision to General Conformity Applicability Questions and Answers*, finding that DOE did not have to consider emissions from outside Imperial

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

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

County in a conformity determination. On the second point, the court found that DOE did not need to consider emissions from the power plants in Mexico, sources that are permitted and regulated by a foreign government. The court disagreed, however, with DOE’s claim that it was exempt from the requirements because issuance of the permits for the transmission lines in the United States is a “foreign affairs function.”

Court Found the EIS Adequate

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

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

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

(continued on next page)

Litigation Updates (continued from previous page)

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

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

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

The court found that the “exhaustive” discussion of mitigation measures in the final EIS satisfied the requirement for discussion of mitigation in the ROD. Further, the court stated that the ROD explains

that offsite mitigation measures might not be able to be implemented because of factors beyond the permit applicants’ control and that the measures’ effectiveness could be diminished by existing agreements.

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

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

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

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

The *Programmatic EIS for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility* (DOE/EIS-0310, December 2000) analyzes operation of the Advanced Test Reactor for the production of plutonium-238, continued production of medical and

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

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

(continued on page 21)

Training Opportunities

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

- **NEPA**

San Francisco, CA: March 29-30
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available

Austin, TX: June 7-8
Fee: \$595 (GSA contract: \$495)
Multiple registration discount available

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

- **Scoping, Public Involvement and Environmental Justice**

Durham, NC: March 28-30
Fee: \$750

Implementation of the National Environmental Policy Act

Durham, NC: April 16-20
Fee: \$1,150

NEPA Certificate Program

Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

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

- **NEPA Cumulative Effects Analysis and Documentation/Adaptive Management**

Missoula, MT: March 6-8
Fee: \$885 (GSA contract: \$795)
Baltimore, MD: June 26-28
Fee: \$885 (GSA contract: \$795) until 5/12/07

NEPA Process Management Emphasis on Native American Issues

Portland, OR: March 27-29
Fee: \$885 (GSA contract: \$795)

How to Manage the NEPA Process and Write Effective NEPA Documents

San Francisco, CA: April 24-27
Fee: \$1,060 (GSA contract: \$945) until 3/12/07

NEPA Cumulative Effects Analysis and Documentation

Denver, CO: May 1-3
Fee: \$835 (GSA contract: \$745) until 3/30/07

Advanced Writing for NEPA Specialists

Atlanta, GA: May 15-17
Fee: \$835 (GSA contract: \$745) until 4/2/07

NEPA Process Management

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

NEPA Writing Workshop

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

Overview of the NEPA Process/ Reviewing NEPA Documents

Las Vegas, NV: June 19-22
Fee: \$1,060 (GSA contract: \$945) until 5/1/07

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

- **NEPA Certificate Program**

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

Fee: \$4,955 (includes tuition, course fees, and all course materials)

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

- **NEPA Practice: 2007 Update**

Portland, OR: March 8-9
Fee: \$450 (GSA contract: \$375)

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

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Training Opportunities

(continued from previous page)

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

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

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

SWCA Environmental Consultants
800-828-7991
training@swca.com
www.swca.com/jsp/training/training.htm
- **NEPA in Indian Country**
Denver, CO: March 26-27
Fee: \$495

International Institute for Indigenous
Resource Management
303-733-0481
iirm@iirm.org
www.iirm.org
- **International Environmental Law**
Washington, DC: April 12-13
Fee: \$995

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

American Law Institute -
American Bar Association
800-CLE-NEWS
www.ali-aba.org
- **NEPA: Policies, Procedures, and Practices**
Los Angeles, CA: March 22-23
Fee: \$475

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

Litigation Updates (continued from page 19)

DOE NEPA Litigation in Brief

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

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

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

Conferences Highlight Environmental Laws, Leadership, Orders

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



The Future of Environmental Protection

The George Washington University Law School will host the 17th Annual National Association of Environmental Law Societies (NAELS) Conference, *The Future of Environmental Protection*, March 15–18, 2007, in Washington, DC. The conference will offer presentations and workshops on contemporary topics in environmental law, with a focus on global climate change, states the conference website. Other topics include international environmental

law, water law, and the property rights movement. Former Vice President Al Gore will close the conference on March 18 with a lecture, question-and-answer session, and showing of his Academy Award-winning film, *An Inconvenient Truth*. Additional information is available on the conference website at www.law.gwu.edu/naels.

NAEP: Environmental Leadership

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



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

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

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

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

OFEE: 2007 Federal Environmental Symposium



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

EAs and EISs Completed October 1 to December 31, 2006

EAs

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

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

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

* Not previously reported in LLQR

EIS

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

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

Adequacy of the EIS

- Category 1 – Adequate
- Category 2 – Insufficient Information
- Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

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

EIS Costs and Completion Times

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

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

Notice of Intent

Office of Nuclear Energy

DOE/EIS-0396

Programmatic Environmental Impact Statement for the Global Nuclear Energy Partnership

January 2007 (72 FR 331, 1/4/07)

Notice of Cancellation

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0366

Programmatic Environmental Impact Statement for Implementation of the Carbon Sequestration Program

February 2007 (72 FR 8363, 2/26/07)

Draft EISs

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0357D-S1

Supplement to the Draft Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project, Gilberton, Pennsylvania

January 2007 (72 FR 1513, 1/12/07)

DOE/EIS-0361

Western Greenbrier Co-Production Demonstration Project, Greenbrier County, West Virginia

December 2006 (71 FR 69563, 12/1/06)

Western Area Power Administration

DOE/EIS-0389

Construction and Operation of the Trinity Public Utility District Direct Interconnection Project, Trinity County, California

February 2007 (72 FR 7652, 2/16/07)

Final EIS

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0383

Orlando Gasification Project, Orlando, Florida

January 2007 (72 FR 3846, 1/26/07)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Bonneville Power Administration's Business Plan Final Environmental Impact Statement, Klickitat County, Washington

December 2006 (71 FR 70748, 12/6/06)

DOE/EIS-0312

Fish and Wildlife Implementation Plan Final Environmental Impact Statement

February 2007 (72 FR 7972, 2/22/07)

Office of Fossil Energy/

Strategic Petroleum Reserve Office

DOE/EIS-0385

Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas

February 2007 (72 FR 7964, 2/22/07)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0265-SA-283*

Barnes Road Diversion Site - Manastash Creek Fish Barrier Removal and Screening Project, Kittitas County, Washington

(Decision: No further NEPA review required)

October 2006

DOE/EIS-0265-SA-284*

Fulton Diversion Dam Fish Passage Project - Phase II, Okanogan County, Washington

(Decision: No further NEPA review required)

September 2006

DOE/EIS-0265-SA-285*

Yakima Tributary Access and Habitat Program - Diversion 31 Fish Screen Project, North Fork Ahtanum Creek, Yakima County, Washington

(Decision: No further NEPA review required)

November 2006

* Not previously reported in LLQR

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

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-286

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

DOE/EIS-0265-SA-287

Idaho Fish Screening Improvement - Wimpey Creek Projects, Lemhi County, Idaho
(Decision: No further NEPA review required)
December 2006

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

DOE/EIS-0285-SA-319*

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

DOE/EIS-0285-SA-320*

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

DOE/EIS-0285-SA-321*

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

DOE/EIS-0285-SA-322*

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

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

DOE/EIS-0349-SA-1*

Proposed Revisions to the Proposed BP Cherry Point Cogeneration Project, Whatcom County, Washington
(Decision: No further NEPA review required)
November 2006

**Office of Fossil Energy/
Strategic Petroleum Reserve Office**

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

DOE/EIS-0385-SA-1

Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
(Decision: No further NEPA review required)
February 2007 **LL**

* Not previously reported in LLQR

What Worked and Didn't Work in the NEPA Process

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

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

Scoping

What Worked

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

Schedule

Factors that Facilitated Timely Completion of Documents

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

Factors that Inhibited Timely Completion of Documents

- *Design changes.* Numerous engineering changes to the project caused EA process delays.

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

Teamwork

Factors that Facilitated Effective Teamwork

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

Process

Successful Aspects of the Public Participation Process

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

(continued on next page)

What Worked and Didn't Work

(continued from previous page)

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

Usefulness

Agency Planning and Decisionmaking: What Worked

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

Agency Planning and Decisionmaking: What Didn't Work

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

Enhancement/Protection of the Environment

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

Effectiveness of the NEPA Process

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

For the past quarter, in which 6 questionnaire responses were received for EAs, 5 out of 6 respondents rated the NEPA process as “effective.”

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

LESSONS LEARNED

Collaborating to Cultivate a Shared Vision

We have all been told to “work together” to accomplish a particular goal. Together Everyone Achieves More illustrates the benefits of “teamwork.” Federal agencies, including the Council on Environmental Quality (CEQ) and Department of Energy (DOE), are focusing on tools to enhance teamwork and collaboration in the NEPA process. This supports the November 28, 2005, memorandum from the White House Office of Management and Budget and CEQ that directs agencies to “build institutional capacity for collaborative problem solving.”

The nature of an agency’s interactions with stakeholders can affect its success in achieving agency missions. The concept of cooperating agencies, at all levels of government, working together to address environmental issues has always been an important element of the NEPA process. Government-to-government consultation between Federal decisionmakers and the leaders of Federally-recognized tribes is an established process that contributes to the NEPA process. Required NEPA public participation activities open communication with the public. Many believe, however, that agencies can do more to build consensus with stakeholders before decisionmaking.

Using the NEPA Process to Build Consensus

How can we gain more from such interactions in the NEPA process? This issue of *Lessons Learned Quarterly Report* features several articles related to collaboration: CEQ’s draft handbook on collaboration, dialogues sponsored by the Department of the Interior,



DOE training in environmental conflict resolution, a government-university partnership in “joint fact finding,” an environmental justice conference, a new cooperating agency relationship for DOE, and extensive public involvement by the U.S. Army Corps of Engineers.

Key lessons in these collaborative efforts include:

- Communicate early and often.
- Get training in public participation tools, and meet stakeholder preferences with the tools used.
- Learn to listen, and be flexible and open to new ideas.
- Tell stakeholders what an agency can and cannot do, what an agency can and cannot disclose.
- Earn and reward trust.
- Address conflict, don’t ignore it.
- Use third party assistance to avoid or resolve conflicts.
- Anticipate a longer process, but more generally accepted decisions through broad-based participation.

col • lab • o • ra • tion

“Seeking agreements at one or more stages of the NEPA process
by cultivating shared vision, trust, and communication.”

CEQ, Collaboration in NEPA – A Handbook for NEPA Practitioners, Draft, March 2007

Inside **LESSONS LEARNED**

Welcome to the 51st quarterly report on lessons learned in the NEPA process. This issue features collaboration as a key element of a successful NEPA process. Related articles discuss approaches to and benefits of collaboration and illustrate various applications. As always, we welcome your suggestions for further improvement.

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Carol Borpton

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

Quarterly Questionnaires Due August 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2007 (April 1 through June 30, 2007) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

Printed on recycled paper



This icon indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a hyperlink to a referenced web page whose URL is too long to be useful when printed.

Abstracts and Award Nominations Due September 16 for NAEP 2008 Conference on “Changing Climates”



The National Association of Environmental Professionals (NAEP) announces that its 2008 Conference will explore the theme of *Changing Climates*, both literally and in the broader sense of ongoing change. Planned for March 25–28 in San Diego, the conference promises to be especially diverse and dynamic, advises Program Chair John Irving (john.irving@inl.gov or 208-526-8745), as it will be held jointly with the California Association of Environmental Professionals.

Mr. Irving invites abstracts for a presentation, panel, or poster session. “NAEP membership is not required,” he said, “just passion for your profession and the environment. Come share your research, work, and ideas with fellow professionals.” At the conference, NAEP will present its National Environmental Excellence Awards to recognize outstanding achievements in eight categories, including NEPA Excellence, Public Involvement/Partnership, Environmental Management, and Environmental Stewardship. Nominations may include self-nominations; the nominator need not be a member of NAEP. Conference information is provided on the NAEP website (www.naep.org), including instructions for submitting abstracts and award nominations, both due September 16, 2007. 

See article on page 14 for highlights of the 2007 NAEP Conference.

Focus on Collaboration

Bringing Agencies Together DOI Dialogues Foster Consultation and Collaboration

To promote consultation and collaboration among Federal agencies, the Department of the Interior's (DOI's) Office of Collaborative Action and Dispute Resolution (CADR) is sponsoring two dialogue series in Washington, DC, and via teleconferencing in field locations across the country. CADR "promotes, coordinates and facilitates greater use of alternative dispute resolution and consensus-building processes throughout" DOI (www.doi.gov/cadr) and welcomes participation in both series by all Federal agencies.

Kathy Binder, Director, DOE Office of Dispute Resolution, hopes to bring more DOE Headquarters and Field Offices into these dialogues. "The approaches of the land management agencies that participate in these dialogues can provide valuable lessons learned for DOE's NEPA community," she advised.

Government-to-Government Consultation

A recent meeting in the "Cross-Federal Government-to-Government Consultation" dialogue series focused participants on the question "Do I Have to Listen to Those Stories Again?! Thoughts and Suggestions from the Field." Previously-expressed concerns about consultation included:

- Impatience at sitting through a history ("story") before being able to get down to the matter at hand
- Feelings of injustice because the listeners are not the ones who created problems and generally do not think they can do anything to fix them
- Insecurity from not knowing how to respond to the stories appropriately

The interactive session on May 16, 2007, was led by Marina Avi Pisolish, MAPPING Change, LLC, who stated three goals:

- Come closer to accepting the need for the stories
- Commit to using the information in the stories effectively
- Recognize our inherent capacity to do so

Building on her work in cross-cultural settings (most recently in Hawaii and the broader Pacific) and on participants' shared experiences, she illustrated how to respond to common challenges with simple techniques, including "active listening." Ms. Pisolish advised that when we do not know how to respond appropriately in a meeting with Native peoples, to fall back on our

shared humanity. Differences and conflicts may indicate that we are communicating. "If we can take the heat, we can cook up something good," she said.

Participants emphasized the importance of making clear what constraints Federal agencies have and what Native peoples can expect as a result of government-to-government consultation. Sarah Palmer, Native American and Alaska Native Environmental Program, U.S. Institute for Environmental Conflict Resolution, participated along with representatives from more than 10 Federal agencies, including the Department of Agriculture, DOE, Environmental Protection Agency, Federal Aviation Administration, Department of Homeland Security, National Oceanic and Atmospheric Administration, and Nuclear Regulatory Commission, in addition to DOI offices.

For information on this dialogue series, contact Shayla Simmons at shayla_simmons@ios.doi.gov or 202-208-7950. See *LLQR*, March 2006, page 12, for information on a previous meeting in this series on "Tribal Involvement in Federal Decisionmaking."

Collaborating in NEPA Analyses

"Collaborative Conservation and Cooperative Resolution" is the second dialogue series that CADR is sponsoring for Federal agencies. A March 28, 2007, meeting on "New Ways to Collaborate in NEPA Analyses" was held in conjunction with the DOI Office of Environmental Policy and Compliance.

"Vision, communication, and trust" are the key characteristics of successful collaborative practices identified by the Council on Environmental Quality (CEQ) NEPA Task Force, noted Horst Greczmiel, Associate Director for NEPA Oversight, CEQ. For example, a shared vision for future land use may be particularly hard to achieve when there are competing land use options. In this regard, he underscored the importance of communication. NEPA calls for just that: communicating with the public in plain English, and communicating early and often. Building and keeping trust should be an ongoing process that transcends any single NEPA review, he emphasized, because once trust is lost, it is difficult to restore. Mr. Greczmiel pointed to the draft CEQ Collaboration Handbook, which acknowledges both the challenges and the opportunities that collaboration presents (text box, next page).



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Focus on Collaboration

DOI Dialogues *(continued from previous page)*

Draft CEQ NEPA Handbook Encourages Collaboration

An interagency Work Group sponsored by CEQ is reviewing comments received from the public on the March 2007 draft *Collaboration in NEPA – A Handbook for NEPA Practitioners*. Defining collaboration as “seeking agreements at one or more stages of the NEPA process by cultivating shared vision, trust, and communication,” the draft Handbook provides strategies, case studies, examples of memoranda of understanding and other resources, information on requirements under the Federal Advisory Committee Act, and tips on attitudes and behaviors that foster successful collaboration.

The draft Handbook distinguishes the effort to collaborate from other, lower levels of potential engagement, which are to inform, consult, and involve. It acknowledges that collaboration often requires hard work, commitment, leadership, different kinds of skills and resources, and a new way of approaching environmental review processes. It also acknowledges that there can be times when collaboration may not work well. To encourage NEPA practitioners to collaborate, the draft Handbook outlines opportunities for collaboration at all stages of the NEPA process and discusses how challenges might be turned into opportunities for a more effective process.

The draft Handbook can be found by selecting “Implementing the Recommendations” of the CEQ NEPA Task Force at www.NEPA.gov. The Office of NEPA Policy and Compliance provided DOE comments to CEQ on an earlier draft in October 2006 (*LLQR*, December, page 9). Development of the draft Handbook responds to a recommendation of the NEPA Task Force, which found that collaborative approaches to engaging the public and assessing the impacts of Federal actions under NEPA can improve the quality of decisionmaking and increase public trust and confidence in agency decisions. Information on the CEQ NEPA Task Force can be found at www.NEPA.gov/ntf.

Provide Training in Public Participation

The importance of clarifying public expectations in the NEPA process was underscored by Dave Emmerson, Natural Resource Program Coordinator in the CADR Office and a member of the Work Group that prepared the draft CEQ Collaboration Handbook. He described the training in public participation that is required of all DOI personnel that hold public meetings. Training in collaborative processes includes meeting facilitation, negotiation, and alternative dispute resolution.

DOI interactive training materials that can help support effective collaboration are available online – see www.doi.gov/partnerships/partnership_tools – and in CD format – *The Principles of Effective Public Participation*, which presents text, video, and a slide show. In addition to advice on addressing the public’s expectations, the training addresses such topics as “Why engage in public participation?” and “Who is the public?” For a copy of the CD, contact Mr. Emmerson at david_emmerson@ios.doi.gov or 202-327-5318.

It takes time to build relationships with stakeholders. You have to earn their trust. We must . . . reward individuals who make this long-term commitment.

– Willie Taylor, Department of the Interior

Follow-up on Guidance Implementation

Willie Taylor, Director, Office of Environmental Policy and Compliance, DOI, explained that the public participation training requirements for DOI personnel and other agency requirements for the NEPA process are in a series of guidance memoranda issued by his office (www.doi.gov/oepec/nrm.html under Quick Links: Environmental Memoranda Series). The requirement for training is in *Procedures for Implementing Public Participation and Community-Based Training*. Requirements concerning alternatives to analyze in a NEPA review are in *Procedures for Implementing Consensus-Based Management in Agency Planning and Operations*.¹ If the community proposes an alternative that is feasible and practicable for DOI, it should be analyzed. Further, if there is consensus support in the community for the alternative and it is consistent with law and DOI policy, then it should be identified as the agency’s preferred alternative.

Although these memoranda are viewed as critical to DOI’s NEPA program, Mr. Taylor said that he had begun to ask – what is the agency really getting for all the paper work? He directed

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¹DOI defines community as those who are directly affected by or whose interests are affected by a proposed action and are represented by elected officials as well as locally-established or commonly recognized groups within the proposed action’s reasonable area of impact.

Focus on Collaboration

DOI Dialogues *(continued from previous page)*

students with the MUSIC (Massachusetts Institute of Technology-U.S. Geological Survey Science Impact Collaborative) program to conduct a survey of some DOI NEPA field staff. (See MUSIC, below.)

Mr. Taylor said that the students learned that field staff had little awareness of recent policy changes and guidance, but their public involvement processes have improved; however, strong early efforts often waned. He said NEPA practitioners wanted flexibility, tool kits, and skill-based training, not rules. Mr. Taylor cautioned that it is difficult to walk the line between collaboration and the Federal responsibility to make decisions. It is important to make your intent clear, manage expectations, and tell people what role they are being asked to assume, he said.

Use a Format that Suits the Stakeholders

Although some members of the public still prefer a hearing format for government meetings, it is often the worst way to go when trying to engage the public in agency planning, said Jacob Hoogland, Chief, Environmental Quality Division, National Park Service. He described the various

ways the Park Service tries to meet public preferences, including holding workshops and open houses (perhaps one in an afternoon and the other in the evening) and also making recordings or notes from discussions.

To build trust, it is important to tell the public what we cannot tell them.

**– Jacob Hoogland
National Park Service**

“Use techniques from alternate dispute resolution,” encouraged Mr. Hoogland, such as joint fact finding (related article, below), and integrate processes under the Federal Advisory Committee Act and NEPA. The National Park Service provides a website – parkplanning.nps.gov – for public access to current plans, environmental impact analyses, and related documents on public review, and by which the public can submit comments on documents available for public review.

The contact for this dialogue series is Susan Goodwin at susan_goodwin@ios.doi.gov or 202-327-5346. 

MUSIC Reduces Tension in Environmental Decisionmaking

The Department of the Interior (DOI), U.S. Geological Survey (USGS), has partnered with Massachusetts Institute of Technology (MIT) to develop, evaluate, teach, promote, and practice collaboration in resource management decisions. A look at the partnership's website (scienceimpact.mit.edu) and publications reveals that they are true believers in collaboration for consensus building and avoiding disputes.

MUSIC – the MIT-USGS Science Impact Collaborative – develops and applies collaborative approaches for incorporating science, social science, and local and indigenous knowledge into environmental decisionmaking, including the NEPA process. Leading diverse stakeholders to reach agreement on science enhances their ability to contribute meaningfully to the decisionmaking dialogue. Furthermore, MUSIC believes, the collaborative process helps defuse the adversarial atmosphere in which stakeholders promote their competing preferred outcomes by disputing scientific details of the environmental review.



In a joint fact finding project, MUSIC interns met in Port Clyde, Maine, with fishermen and a fisheries outreach facilitator from the University of Maine Cooperative Extension.

Joint Fact Finding Builds Consensus

MUSIC's projects for DOI typically apply a consensus building technique called “joint fact finding” to decisionmaking in the arena of resource management. “Joint fact-finding is a process by which interested parties commit to build a mutual understanding of disputed scientific or technical information The goal is to avoid adversarial or partisan science where competing experts magnify small differences, rather than focusing on points of agreement and/or creating a strategy

to provide for a joint conclusion” (National Environmental Conflict Resolution Advisory Committee Final Report, April 2005). 

Joint fact finding consists of six steps (described in *A Dialogue, not a Diatribe – Effective Integration of Science and Policy through Joint Fact Finding*, Environment, January/February 2007). These steps are preparing, scoping, selecting analysis methods, completing 

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Focus on Collaboration

MUSIC *(continued from previous page)*

the scientific study, interpreting the results, and communicating the results to stakeholders. Convening a joint fact finding team requires selection of representatives by all key stakeholder groups. The convener (usually a Federal agency) and the stakeholder representatives select a professional neutral facilitator or mediator to manage the process, including helping the scientists advise on the policy implications of their findings without recommending particular policy choices. The convener signs a written agreement to give priority to the consensus findings developed by the joint fact finding team to the extent consistent with its statutory authority and responsibilities.

MUSIC Studies DOI's NEPA Public Involvement

At the request of the DOI Office of Environmental Policy and Compliance and Office of Collaborative Action and Dispute Resolution, MIT graduate students affiliated with MUSIC examined how public involvement was conducted for a sample of 12 EIS processes. The purpose of the 2006 study was to better understand how DOI field offices have applied the Department's public involvement policy, directives, and guidance in NEPA reviews, and to identify additional resources for further improving public participation. The report, *Results from NEPA Public Involvement Study* (June 2006), is available at web.mit.edu/dusp/epp/music/pdf/NEPA06.pdf.

The study examined three randomly selected, large-scale planning or resource management EISs from each of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation, and Bureau of Land Management. The MUSIC researchers interviewed the Regional Director in the area preparing the draft EIS, the District Manager with signatory authority for the draft EIS, and the field staff person responsible for draft EIS coordination, and the researchers categorized responses according to five themes: understanding of, and attitudes toward, collaboration and public involvement in general; awareness of, and attitudes toward, new policies regarding public involvement and collaboration; public involvement strategies and tools used; availability and use of public involvement resources and training; and additional resources and assistance that could improve public involvement processes.

The principal findings were that respondents want flexible guidelines and practical recommendations, not additional policies and regulations, for improving public involvement. Public hearings and one-way flows of

communication are viewed as practices of the past, while topical meetings, open houses, horizontal knowledge exchange, simulations, and hands-on practice are better ways to engage the public.

DOI is getting the public involved at earlier stages in the NEPA process, often during or even before the scoping phase, but as the project progresses, innovations in public involvement drop off. In the key findings, the report states, "Good public involvement takes a considerable amount of time – and time is a resource that many respondents feel they need more of."

In addition to identifying the challenges associated with the time and expertise required for conducting effective public involvement, the report identified best practices, such as "listening stations" for one-to-one interaction with staff on specific topics, public input into scientific models, interactive websites, "Refuge Manager for a Day" simulations, and games. To help participants become familiar with joint fact finding as a tool for resolving science-intensive policy disputes and provide technical information (especially on potential environmental impacts), MUSIC provides free downloadable simulation "games" – on offshore wind farms, owls, fisheries, and natural disasters. 

Current MUSIC projects include addressing disputes over water resources in the Western United States, testing collaborative approaches to ecosystem-based management on private and public lands, and supporting the development of renewable and nonrenewable energy resources. In New England, MUSIC is applying joint fact finding techniques to stakeholder involvement in siting and permitting liquefied natural gas terminals and offshore wind farms. This is a response to Section 388 of the Energy Policy Act of 2005, which requires DOI to coordinate and consult with states or local governments that may be affected by such energy actions.

MUSIC is administered by the Environmental Policy and Planning Group in MIT's Department of Urban Studies and Planning. University faculty are joined by Scholars-in-Residence – distinguished scientists appointed each year from Federal agencies and other institutions – who participate on assignments and serve as research advisors. MUSIC projects are staffed also by MIT graduate student interns. MUSIC's co-directors are Lawrence Susskind, Ford Professor of Urban and Environmental Planning, MIT, and Dr. Herman Karl, Chief Scientist, Western Geographic Science Center, USGS. For additional information, contact Dr. Karl at hkarl@mit.edu or 617-324-0262. 

Focus on Collaboration

Create Solutions Together – Environmental Justice Conference



By many measures, the first annual conference on *The State of Environmental Justice in America – Create Solutions Together* was a success. More than 500 people participated in this academic, legal, and policy forum.

Participants were from all sectors of society – local community activist groups, faith-based organizations, nonprofit organizations, businesses and industries, academic institutions, and Federal, state, tribal and local governments. The DOE Office of Legacy Management organized the conference, along with the National Small Town Alliance, the Department of Agriculture, and the Howard University School of Law, in Washington, DC, March 29–31, 2007.

People from all sectors of society are eager to work collaboratively to find practical solutions to environmental justice problems.

**– Melinda Downing
DOE, Legacy Management**

“What is environmental justice and how do you know when you’ve done enough to provide that justice?” asked Ellen Livingston-Behan, partner with the law firm K&L Gates and a former senior environmental advisor to the Secretary of Energy, in opening the Federal session at the Conference along with Melinda Downing, Environmental Justice Program Manager, DOE. Ms. Livingston-Behan advised participants to think of the reverse, think of injustice, where for example populations suffer significant adverse health impacts disproportionately or cannot participate effectively in community planning that affects their living conditions and environment. “We’re here to explore how to counter such injustice,” she said.

“Environmental justice would be achieving the productive harmony described in NEPA Section 101,” said John Cruden, Deputy Assistant Attorney General, Environment and Natural Resources Division, Department of Justice. Environmental justice is extraordinarily important. Our challenge is to think globally but act locally to learn about and get involved in our communities’ issues, he said.

“Environmental justice considerations are being woven into the fabric of everything DOE does,” said Michael W. Owen, Director, Office of Legacy Management. The Department plans to update its environmental justice strategy with a five-year plan under

which the agency will foster environmental justice and economic development in parallel. Mr. Owen emphasized that his Office will work to heighten sensitivity to environmental justice issues throughout the Department, he added, and is working closely with local stakeholder groups.



Environmental Justice and the NEPA Process

In open discussion, participants emphasized the importance of the NEPA process as a vehicle for environmental justice because it invites people into the decisionmaking process. Participants acknowledged that there is work to be done by all involved – agencies must listen more to the issues that communities raise, and communities need to work to understand the NEPA process and their role in it.

In referring to the 1994 Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, said that the Presidential memorandum accompanying the Order directed that, when a NEPA analysis is required, that analysis should consider effects on minority and low-income communities. NEPA requires consideration of economic, social, and health effects; consequently, the NEPA process is well-suited to consider environmental justice and the tradeoffs between economic growth and the human environment. In response to questions from the audience, he emphasized that the NEPA process provides opportunities for community input, and the communities should raise health concerns along with any other environmental concerns they have.

Todd Aagaard, Appellate Attorney, Environment and Natural Resources Division, Department of Justice, discussed how environmental justice issues may arise in NEPA litigation.¹ Federal agencies include environmental justice analyses, as appropriate, in NEPA documents to comply with the Executive Order. Courts will review an agency’s compliance with NEPA, not the Executive Order, to determine whether the agency’s findings are “arbitrary and capricious,” he said.

Conference Proceedings will be available at www.ejconference2007.org. For further information, contact Ms. Downing, who will coordinate Federal participation for next year’s Conference, at melinda.downing@hq.doe.gov or 202-586-7703. 

¹Communities Against Runway Expansion, Inc. v. FAA, 355 F. 3d 678 (D.C. Cir. 2004).

Mission Possible!

How to Tackle Environmental Issues Collaboratively and Effectively

“Fulfilling most of DOE’s missions has an environmental impact,” noted Steve Miller, Office of the Assistant General Counsel for Environment. Kathy Binder, Director, Office of Dispute Resolution, in setting the framework for DOE training in environmental conflict resolution (ECR) added, “We must learn to be more effective in achieving our missions by involving the right people early on. We need to find out what has worked at DOE and elsewhere.”

The DOE Office of the General Counsel and the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) co-sponsored training in ECR during the annual meeting of DOE Field Counsel in April. The aim was two-fold: (1) develop awareness of the range of ECR applications, emphasizing the benefits of “proactive ECR” and early stakeholder involvement, and (2) appreciate the potential for stakeholder contributions in developing environmental protections in fulfilling DOE missions.

Doug Frost, DOE Office of Environmental Management (EM), and Kara Colton, formerly with a National Governors’ Association Task Force and now a private consultant, described the robust infrastructure of collaborative relationships that EM developed over the last decade to try to avoid conflict by involving interested parties early in the development of its policies and programs. The collaborative relationships include cooperative agreements and grants with over half a dozen intergovernmental organizations, such as the National Governors’ Association and the National Association of Attorneys General. In addition, he said that EM encourages citizen participation through citizen advisory boards at seven EM cleanup sites and government-to-government consultation with tribal nations.

The full and frank interaction among the Department, tribal nations, local governments, state regulators, and citizens-at-large creates an atmosphere of trust and candid communication that helps avoid many of the potential conflicts inherent in the mission of cleanup of nuclear waste.

– Doug Frost
DOE, Environmental Management

Environmental Conflict Resolution

- The Council on Environmental Quality (CEQ) and Office of Management and Budget (OMB) define ECR as “third party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters relating to energy, transportation, and land use” in their joint November 2005 memorandum on ECR. See *LLQR*, March 2006, page 13.
- DOE has adopted a broader view of ECR to include all types of collaborative problem solving processes used to prevent or resolve an environmental conflict regardless of whether a third party is used (DOE First Annual Report to CEQ and OMB on ECR, December 2006).

Informal DOE NEPA Collaboration Succeeds

“It is critical to embed collaborative processes throughout the NEPA process,” emphasized Dale Keyes, Senior Program Manager, U.S. Institute, and to begin as early as possible. “Invite stakeholders to scoping meetings, be inclusive rather than exclusive in defining your stakeholder groups,” he advised, “and be innovative in ways to engage them – consider focus groups, interactive websites, and facilitated meetings.”

The *Final Report of the National Environmental Conflict Resolution Advisory Committee (LLQR, December 2005, page 9)* stated that DOE’s requirement to report on NEPA lessons learned supports an effective and efficient NEPA process, which in turn promotes the goals of NEPA Section 101 for productive harmony, related Carolyn Osborne, Office of NEPA Policy and Compliance. She said that DOE has not as yet found it necessary to enter into a formal process to resolve differences encountered in its NEPA process.

Ms. Osborne highlighted several case studies, reported in DOE’s *Lessons Learned Quarterly Report*, in which DOE worked with cooperating agencies to present their responsible opposing views in DOE EISs (e.g., Hanford Comprehensive Land Use Plan, March 2000, page 1, and Remediation of the Moab Uranium Mill Tailings, September 2005, page 10). Collaboration through face-to-face meetings and conference calls among DOE and the

(continued on next page)

Focus on Collaboration

Mission Possible! *(continued from previous page)*

State of Washington representatives helped resolve a legal dispute regarding the Hanford site (March 2006, page 1). She also noted that DOE benefited from stakeholder input, as comments on a draft site-wide EIS led DOE to implement fire protection measures that proved useful when a fire did occur (June 2000, page 1).

Benefits Gained from Third Party Assistance

“A range of collaborative, non-adversarial processes exists for solving environmental problems,” advised Mr. Keyes. He described the U.S. Institute’s involvement in a number of cases, both remedially to resolve well-developed disputes, but also proactively to help stakeholders reach consensus early, such as facilitation in which a neutral party assists individuals or groups to discuss constructively complex, potentially controversial issues. Details of case assessments can be found on the U.S. Institute’s website at www.ecr.gov.

The dispute resolution organization RESOLVE (www.resolve.org) has facilitated the consensus-based National Wind Coordinating Collaborative formed in 1994 (www.nationalwind.org), explained Brian Connor, DOE Wind and Hydropower Technologies Program, Office of



Referring to LLQR case studies, Carolyn Osborne, Office of NEPA Policy and Compliance, related how DOE has collaborated informally in the NEPA process.

Energy Efficiency and Renewable Energy (EE). Through the Collaborative, EE has been able to have productive dialogue among its key stakeholders and advance the development of commercial markets for wind power while addressing environmental issues. Members of the Collaborative include representatives from electric utilities, state utility commissions, consumer groups, environmental groups, and state and Federal agencies. **LL**

From Section 101 of NEPA:

“ . . . it is the continuing policy of the federal government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

DOE Headquarters Mediation Program

A new brochure available from the Office of Dispute Resolution describes mediation as the type of alternative dispute resolution process that is most commonly used at DOE to resolve workplace disputes. Kathy Binder, Director of the Office, emphasizes, however, that the resources of her Office are available to assist the NEPA Community in any environmental disputes it may encounter.

As the brochure describes, in mediation, a professional non-DOE neutral assists the parties in discussing their conflict in a productive manner. The brochure adds that the mediator does not take sides but rather facilitates the discussion and helps the participants express their concerns and identify options that are workable for all involved. The benefits stated in the brochure are that the process is voluntary, informal, confidential, “no risk,” and quick, and it involves self-determination, preserves relationship and is creative.

Interested? See www.gc.doe.gov or contact the Office of Dispute Resolution at 202-586-4002. **LL**

me • di • a • tion

“A win-win process that empowers individuals to collaborate and find solutions.”

*Office of Dispute Resolution Brochure
“Headquarters Mediation Program”*



Focus on Collaboration

Nye County Participation as a Cooperating Agency Brings “Special Expertise” to Yucca Repository SEIS

“Nye County is pleased that its request for participation as a cooperating agency on the Supplemental EIS for the Yucca Mountain repository was accepted,” said Robert Gamble, Nye County representative. “The Nye County Board of Commissioners . . . adopted the position that the repository project should be conducted under conditions that ensure the safety of our citizens, protect our environment, and provide for long-term success. . . . [O]ur participation as a cooperating agency and the special expertise we can provide will result in a better document and facilitate achieving our objectives. We look forward to continued interaction with Office of Civilian Radioactive Waste Management”

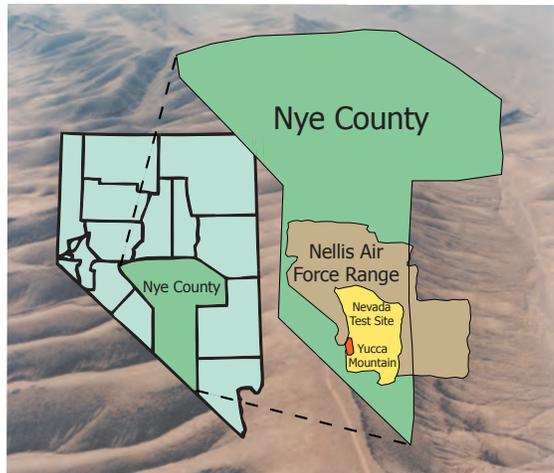
DOE’s Office of Civilian Radioactive Waste Management is in the process of preparing the Supplemental Yucca Mountain Repository Environmental Impact Statement (Repository SEIS) (DOE/EIS-0250-S1). (See *LLQR*, December 2006, page 1.) Under the proposed action for the Repository SEIS, DOE would construct, operate, monitor, and eventually close a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada.

Nye County supports the successful construction and operation of the repository and . . . has a tremendous stake in the process for producing the [Repository] SEIS.



– Gary Hollis
Chairman of the Nye County
Board of Commissioners

In March 2007, DOE invited Nye County to enter into a Memorandum of Understanding (MOU) for participation in the Repository SEIS process as a cooperating agency. In its response, DOE recognized that Nye County has special expertise as defined by the Council on Environmental Quality regulations that implement



NEPA (40 CFR 1508.26), including particular expertise regarding the relationship of DOE’s proposed action to the objectives of regional and local land use plans, policies, and controls; current and planned infrastructure in the county; associated socioeconomic factors (e.g., population, employment); and groundwater quality, flow, and transport.

DOE worked with Nye County to develop the MOU, which both parties signed in

April 2007. In general, Nye County will participate in internal DOE and public meetings in Nevada, provide pertinent information as requested, and review and provide comments on portions of working documents. Nye County’s participation will be directed toward those issues closely related to Nye County’s areas of expertise. As lead agency, DOE will provide timely information (including access to information that DOE considers confidential and/or pre-decisional) and consult with Nye County on relevant issues. DOE will also seek to resolve all issues, concerns, and comments raised by Nye County prior to publication of the Draft and Final SEIS. In the MOU, Nye County agreed to protect from public disclosure all pre-decisional/deliberative process information, including working draft documents.

DOE and Nye County initiated the collaborative effort with a kick-off meeting following the signing of the MOU. Since then, DOE and Nye County have been routinely working together to identify issues, exchange information, and review sections of the preliminary draft Repository SEIS in a timely manner.

Dr. Jane Summerson, NEPA Document Manager for the Repository SEIS, stated, “I’m looking forward to working with Nye County, the location of Yucca Mountain, as a cooperating agency. I believe the county’s expertise and insight will result in a better document, which more fully serves the goals of NEPA, and provides a broader basis of support for the Department’s decisionmaking process.”

DOE plans to issue the Draft SEIS in October 2007. Requests for information about the Repository SEIS should be addressed to Dr. Jane Summerson at jane_summerson@ymp.gov or 702-794-1493.

Extensive Public Involvement for Hurricane Protection Proposals



The U.S. Army Corps of Engineers (the Corps), New Orleans District, is rebuilding southern Louisiana's hurricane protection system, which failed during Hurricane Katrina in 2005 and caused catastrophic damage. The Corps is invoking the emergency provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.11) and undertaking alternative arrangements for NEPA compliance to expeditiously complete environmental analysis of major portions of a proposed hurricane and storm damage reduction effort.

In announcing the implementation of alternative arrangements (72 FR 11337; March 13, 2007), which include preparation of a series of environmental reports in place of an EIS, the Corps states that the arrangements "will allow decisions on smaller groups of proposed actions to move forward sooner than under the traditional NEPA process." CEQ, in finding that the alternative arrangements are appropriate, commended the Corps for its "open and thorough consultation."

Phased Environmental Reports Planned

Under the alternative arrangements, the Corps will prepare 21 Individual Environmental Reports: 17 for proposed actions in the vicinity of Lake Pontchartrain and the west bank of the Mississippi River, two for fill borrow sites, and two will "analyze alternatives to determine [whether] appropriate mitigation is implemented for unavoidable impacts to the human environment."

The proposed actions involve rebuilding earthen levees and other protections, replacing floodwalls and frontgates, and constructing pump stations. Each Report will document the Corps' decisionmaking process; identify the preferred and all other reasonable alternatives; analyze direct and indirect impacts; describe cumulative impacts, an initial mitigation plan, and any interim decisions; and identify incomplete or unavailable data and areas of potential controversy.

In addition, when sufficient information is available from the Reports, the Corps will prepare a Comprehensive Environmental Document, which will describe the project work completed, the work that remains to be done system-wide, and final mitigation plans. It also will discuss how the individual Reports are integrated into a systematic planning effort and will analyze any

cumulative indirect impacts due to altered hydrology or induced development that may result from the Corps' actions.

Outreach Features Frequent Meetings

During their consultation, the Corps and CEQ co-hosted four public meetings in the New Orleans area on the proposed alternative arrangements. Since then, the Corps held nine public scoping meetings in March and April in potentially affected sub-basins in the New Orleans area. The Corps will continue to hold monthly public meetings to advise stakeholders of developments and provide comment opportunities, and intends to make "its best effort to reach the citizens of New Orleans, including . . . persons who have relocated to other areas."

The Corps established a website for documents and other information regarding the alternative arrangements, where Individual Environmental Reports will be posted for a 30-day public comment period. A draft and final Comprehensive Environmental Document will each have a 60-day public comment period. In addition, the Corps states that it plans to "actively involve the Federal and state agencies, local governments, tribes, and the public in mitigation planning for unavoidable impacts at the onset of the planning process."

For additional information, see the Corps' New Orleans District website or contact Gib Owen, U.S. Army Corps of Engineers, at mvnenvironmentalpd@mvn02.usace.army.mil. 

CEQ Guidance on Emergency Actions

CEQ provided guidance soon after Hurricane Katrina to assist Federal agencies in taking emergency actions. The September 8, 2005, memorandum, *Emergency Actions and NEPA*, provided information on how to comply with NEPA during emergencies, reviewed the relevant CEQ NEPA regulatory provision (40 CFR 1506.11), and advised on how to determine whether NEPA is triggered. The advice emphasized that agencies should not delay immediate actions necessary to secure the lives and safety of citizens, but should consult with CEQ about alternative arrangements for NEPA compliance as soon as feasible. The guidance is available in Volume I of the *DOE NEPA Compliance Guide* (www.eh.doe.gov/nepa/guidance.html) and is summarized in *LLQR*, December 2005, page 30.

Public Input Sought on FutureGen Draft EIS

DOE recently issued for public comment the *Draft Environmental Impact Statement for the FutureGen Project* (DOE/EIS-0394). The FutureGen Project, a Presidential initiative, would be the first commercial-scale integration of a suite of advanced clean coal technologies. (See *LLQR*, March 2006, page 7.) The Office of Fossil Energy (FE), through the National Energy Technology Laboratory (NETL), expects the Project to foster similar power plants worldwide and support environmental improvement in the industry.

As a research facility, the Project would produce 275 megawatts of electric power and hydrogen gas using coal gasification technology integrated with combined-cycle electricity generation. The prototype facility also would serve as a large-scale engineering laboratory for testing cutting-edge technologies for clean coal power generation, carbon capture, and hydrogen gas generation.

A major feature of the FutureGen Project would be the capture and geologic sequestration of carbon dioxide (CO₂) emissions. Because geologic sequestration of CO₂ in deep saline aquifers is a relatively new endeavor, a key objective of the Project is to verify the effectiveness, safety, and permanence of geologically sequestered CO₂, and to advance understanding of the risks and safe practices for storing CO₂ in geologic formations. The analysis of cumulative impacts in the EIS concludes that a successful demonstration of carbon sequestration would have long-term benefits in reducing greenhouse gas emissions in the United States and abroad.

DOE's proposed action is to provide financial assistance for the Project to the FutureGen Alliance, Inc., under a full-scope cooperative agreement that DOE and the Alliance signed in March 2007. The Alliance is a non-profit consortium of some of the

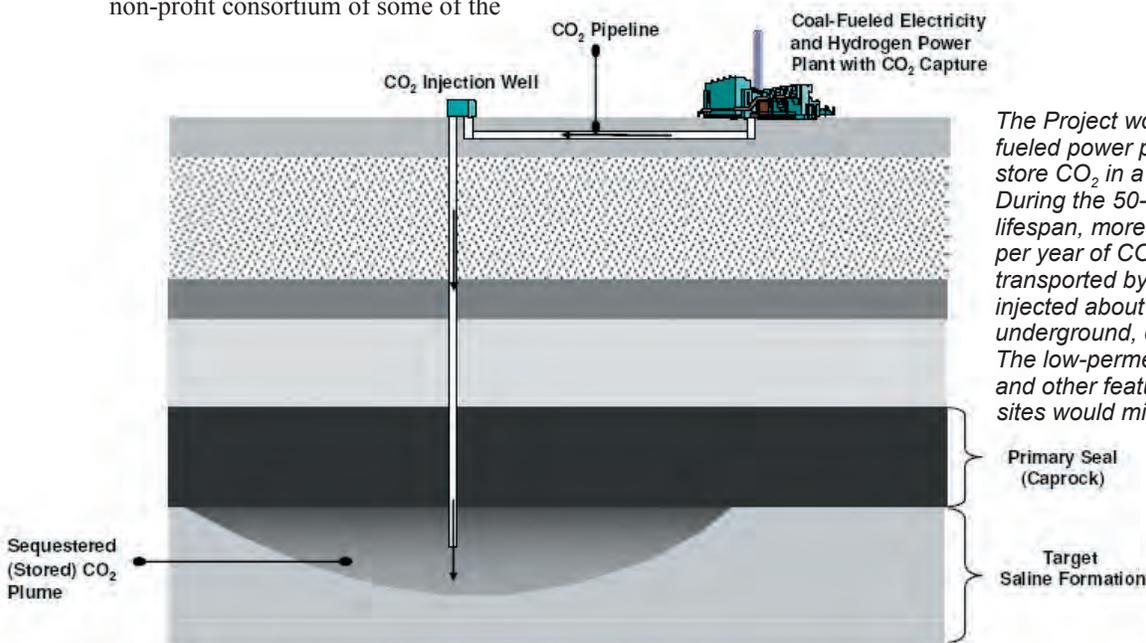
world's largest coal producers and electricity generators. The total net project cost is currently estimated at about \$1.46 billion (higher than previous estimates), of which DOE would provide approximately 74 percent.

DOE identified four reasonable alternative sites from among 12 proposals to the Alliance to host the Project (*LLQR*, June 2006, page 11). The EIS compares potential environmental consequences at each candidate site, including those related to surface and groundwater use, air emissions, aesthetics, noise, and land use. The document also estimates risk from potential releases from the power plant and along the CO₂ pipeline.

Based on the EIS, DOE plans to issue a record of decision (ROD) announcing which site or sites, if any, DOE finds acceptable. If DOE finds more than one site to be acceptable, the Alliance would select a single site and conduct detailed characterization of that site. DOE would then determine whether further NEPA review is required before the Alliance would complete detailed design and construct and operate the proposed facilities.

During the public comment period, which closes July 16, 2007, NETL will conduct a public hearing near each of the four alternative sites: Odessa and Jewett, Texas; and Mattoon and Tuscola, Illinois. FE plans to complete the Final EIS and issue a ROD in Fall 2007.

The Draft EIS is available on the DOE NEPA website (www.eh.doe.gov/nepa). Additional information about the Project is available on FE's website at www.fossil.energy.gov/programs/powersystems/futuregen and on the Alliance website at www.futuregenalliance.org. The NEPA Document Manager, Mark McKoy, can be reached at mmckoy@netl.doe.gov or 304-285-4426. LL



The Project would be the first fossil-fueled power plant to capture and store CO₂ in a deep saline aquifer. During the 50-year power plant lifespan, more than 1.1 million tons per year of CO₂ would be captured, transported by the pipeline, and injected about 0.4 to 1.6 miles underground, depending on the site. The low-permeability of the caprock and other features of the candidate sites would minimize risk of leakage.

Updating an Environmental Information Document Supports NEPA Reviews

By: C. Barry Shedrow and John J. Mayer,
Washington Savannah River Company, Savannah River Site

Reinventing the wheel is more wasteful than keeping a good wheel in shape. The Savannah River Site's NEPA document preparers have found that maintaining a comprehensive site-wide environmental information document significantly improves efficiency.

The Problem

The Savannah River Site frequently needs ecologically-based environmental information to support the preparation of EAs and EISs. The vast majority of its approximately 300 square miles is undeveloped; administrative and industrial landscapes occupy only five percent of this area. The past practice of developing new environmental information documents to support each NEPA review proved to be expensive and time-consuming. For example, *Waste Management Activities for Groundwater Protection, Savannah River Plant* (DOE/EIS-0120, 1987) relied on 16 separate environmental information documents prepared specifically for this EIS.

The Solution

During preparation of an EIS for *Continued Operation of K-, L-, and P-Reactors, Savannah River Site* (DOE/EIS-0147, 1990), Westinghouse Savannah River Company (as then named) decided to prepare a single environmental information document to cover all areas of the Site that could be affected by operation of the subject reactors. After the EIS was completed, the *Reactor Operations Ecology Environmental Information Document* supported the preparation of seven EAs, one project EIS, and two programmatic EISs – and then, in 1993, was updated and expanded to encompass the entire Site, and the name changed to *Savannah River Site Ecology Environmental Information Document*.

The *Savannah River Site Ecology Environmental Information Document* synthesizes ecological research

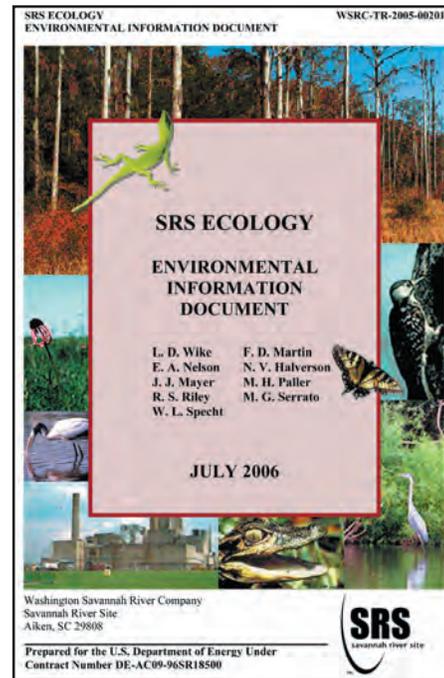
and environmental monitoring data for the Site's three principal ecosystems: terrestrial, wetland, and aquatic. It summarizes available information on flora and fauna, including the seven threatened or endangered species found at the Site.

As elsewhere, the Site's natural environment continuously changes. To document these changes, the Environmental Information Document has been reissued twice: once in 1997 and most recently in 2006. The current version is available as printed copy and CD and on the Site intranet, and will soon be available on the Savannah River Site's public website, www.srs.gov.

The Payoff

By our count, a total of 51 NEPA documents have been prepared with reliance on the 1993, 1997, and 2006 *Savannah River Site Ecology Environmental Information Document*: 32 EAs and 11 EISs for projects at the Site, and 8 DOE programmatic EISs that involve the Site. We believe that periodically updating a single site-wide ecological document is a far more cost-effective way to support the NEPA process than preparing project-specific ecological documents for each EA or EIS.

For more information, contact Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office, at drew.grainger@srs.gov or 803-952-8001, or John Mayer, Washington Savannah River Company, at john.mayer@srs.gov or 803-208-2952. 



The updated Environmental Information Document is a fundamental reference for Savannah River Site information, both for preparing the Site's NEPA documents and providing information to DOE Offices that are considering the Site as an alternative location for facilities or research programs.

– Drew Grainger, NEPA Compliance Officer

2007 NAEP Conference: Focus on Environmental Leadership, Partnerships



By: Yardena Mansoor, Office of NEPA Policy and Compliance

How can environmental professionals contribute effectively to meeting today's most important environmental challenges? Under the banner of *Environmental Leadership: Science, Education, and Alliances*, more than 250 participants at the 32nd annual conference of the National Association of Environmental Professionals (NAEP) explored this question in Orlando, Florida, on April 22–25, 2007.

Presenters were affiliated with diverse Federal, state, county, and city government agencies; American and foreign universities; and private sector entities such as environmental contractors and law firms. In place of a keynote address, on each of three days a speaker made a plenary presentation related to the theme: a Louisiana official leading intergovernmental efforts for hurricane recovery (related article, page 11); the designer of a national network of ecological observatories (page 18); and the developer of an innovative technology for wastewater and industrial effluent treatment.

Highlights of the NEPA Symposium

- *Council on Environmental Quality (CEQ) Updates* – Horst Greczmiel, Associate Director for NEPA Oversight. The CEQ website (www.NEPA.gov) provides a consolidated list of agency NEPA procedures (including, in the “Current Developments” section, those under revision) and postings of all CEQ guidance. Mr. Greczmiel noted that recent major transportation bills for highways and airport projects contain features intended to expedite cooperating agency relationships, including provisions that the cooperating agencies are bound by the lead agency’s statement of purpose and need. He observed that effective interagency collaboration calls for all cooperating agencies, especially those with distinct statutory requirements for permitting or issuing other approvals, to work with the lead agency in crafting the purpose and need as well as the reasonable alternatives. One thing he *hates* to see on page one of an EIS, he confided, is a statement that “this NEPA document is being prepared to comply with NEPA and the CEQ and agency NEPA regulations.” An EIS is prepared to inform the public and decisionmakers of the environmental consequences of proposals, of course.
- *Recent NEPA Cases (2006)* – Lucinda Low Swartz, Battelle Memorial Institute. In 28 substantive decisions involving NEPA, the government prevailed in 16 cases (57 percent). Courts upheld decisions where the agency could demonstrate that it had given potential environmental impacts a “hard look” and invalidated decisions where the agency did not do so. (See for example, *Pit River Tribe v. U.S. Forest Service*, page 23.) Courts also invalidated NEPA documents that were not based on best available science or that used faulty scientific methodologies. Two decisions found that the respective agencies could not demonstrate that they had applied a categorical exclusion or considered extraordinary circumstances at the time the decision was made. Courts invalidated NEPA documents that failed to appropriately consider cumulative impacts, but reiterated that a cumulative impact analysis need not consider future actions that are too speculative.
- *A Survey of Cumulative Effects Analysis in EAs* – Ron Lamb, e²M (engineering - environmental Management, Inc.). Based on an examination of 29 EAs published in 2006 by 10 agencies, he noted that fewer than half were judged to have adequate cumulative effects analysis, about one quarter had inadequate cumulative analysis, and about one quarter had none. The most frequent inadequacies were using an incorrect definition of cumulative effects, providing unsupported conclusory statements, failing to specify the time or geographic scope of the analysis, and overgeneralizing the included actions, such as “past agricultural practices.” Two DOE EAs were among those studied. One was found to have an adequate cumulative effects analysis; the other had none.
- *Twelve Rules to Make the NEPA Process Work* – Nicholas Yost, Sonnenschein Nath & Rosenthal, LLP.  The former General Counsel of CEQ, and lead author of the CEQ NEPA regulations, offered strategic advice for ensuring the best possible (and most legally defensible) NEPA documentation and successful outcome. Using an extended metaphor of a military campaign, Mr. Yost made recommendations directed toward grant or permit applicants, who must coordinate the NEPA process with environmental consultants, environmental counsel, and agency representatives. “Reconnoiter what’s ahead, know the terrain, take the high ground, protect your flanks, and secure the best intelligence,” are five of his rules – all with specific applicability to interactions in the NEPA process. The applicant, the agency, and the public, he reminded listeners, share a common interest in ensuring that requirements are met.
- *Strategies for Improving Legal Sufficiency and NEPA Document Quality* – Bill Malley, Akin Gump Strauss Hauer & Feld, LLP. This presentation was built on initiatives for improving the readability of NEPA documents, such as Washington State Department of

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NAEP Conference *(continued from previous page)*

 Transportation's *Reader-Friendly Tool Kit* and Federal Highway Administration guidance on *Improving the Quality of Environmental Documents (LLQR)*, December 2005, page 16; December 2006, page 11). These initiatives advocate practices such as moving a NEPA document's technical content from the main body to appendices, using a question and answer narrative, and relying less on tables and more on "information rich" figures. Mr. Malley stated that there is nothing intrinsically "risky" about these changes, and many actually enhance legal sufficiency if done well. He provided advice, however, on how to avoid potential pitfalls such as focusing on the main story line and leaving out important "sub-plots," "burying" important issues, or oversimplifying. He advised NEPA document preparers to use the main document as the roadmap to the appendices and the administrative record. "It's not enough to say 'it's in there' – someone unfamiliar with the project actually needs to be able to find it." Translating technical information into concise, readable text is itself a form of expertise; make sure you have that writing expertise on your team, he advised.

NAEP's NEPA Working Group

The Association's NEPA Working Group outlined its plans for the future, in discussions led by Chair Michael D. Smith (Associate Professor, Natural Resources Planning, Humboldt State University, now on detail to the Environmental Protection Agency). Established as a forum for NAEP members, with its mission to improve environmental assessment as performed under NEPA, the Working Group now has about 100 members. Ongoing activities of the Working Group include:

- Preparing the first Annual NEPA Report, to be issued soon, which will summarize significant NEPA news from April 2006 through March 2007.
- Providing a professional organizational voice by commenting on proposals affecting NEPA practice and other proposals of importance to NEPA practitioners.
- Analyzing NEPA litigation to identify trends of strengths and weaknesses in agency NEPA practice.
- Monitoring rulemaking and legislation to identify provisions that weaken NEPA.
- Improving the NAEP website by expanding access to information resources, providing links to agency NEPA documents, and publicizing NEPA "good news" narratives – including developing metrics for speed, efficiency, and environmental benefits.

Environmental Excellence Awards

NAEP conferred seven Environmental Excellence Awards to recognize outstanding achievements in environmental practice. A combined award for excellence in NEPA and Planning Integration was presented to the Cape Cod Water Resources Restoration Project, undertaken by the Department of Agriculture's Natural Resources Conservation Service, in partnership with the Cape Cod Conservation District and the Barnstable County Commissioners. The collaborative partnership – Federal, state, and local agencies and citizens – has inventoried more than 400 storm water discharges, tidal-restricted salt marshes, and fish passages throughout Cape Cod to identify candidates for inclusion in the preferred alternative to improve water quality and protect shellfish beds and other environmental and productive resources.

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New NAEP President Expresses Appreciation for DOE's LLQR

At his installation as NAEP's new President, Jim Melton urged participants to pursue interdisciplinary collaborations to address critical environmental problems.

In addition to his current consulting on land use planning in Montana and the western mountain states, he has served as Resource Area Manager with the Bureau of Land Management and is a former DOE NEPA Compliance Officer and Environmental Program Manager for the Western Area Power Administration (1992–1997). It is not surprising that he is a big fan of *LLQR*; in correspondence with this author following the conference, he observed:

DOE's NEPA Compliance Program has contributed a great deal to the entire NEPA community – by developing guidance we can all use day to day, sharing critical information on NEPA compliance developments, and summarizing litigation findings. As NAEP's President, I especially appreciate the resource that DOE's Lessons Learned Quarterly Report provides for all NEPA practitioners and environmental professionals in general by keeping us informed and providing links to valuable environmental practice information. I look forward to continuing this great relationship.

Mr. Melton can be reached at jmelton@bresnan.net or 406-431-9454.

neon Promises Better Information, Better Predictions

A plenary presentation featured the National Ecological Observatory Network (NEON), a cutting-edge program of research infrastructure being implemented by the National Science Foundation to support the study of ecological systems across North America. James MacMahon (Professor of Biology, Utah State University, and NEON Board of Directors) described NEON as a network of 20 observation stations, whose locations are now being selected to represent distinct ecological settings. Professor MacMahon explained that the stations will collect, store, and disseminate detailed ecological data by integrating instrumentation networks; field and laboratory experiments; natural history archives; and computational, analytical, and modeling capabilities.

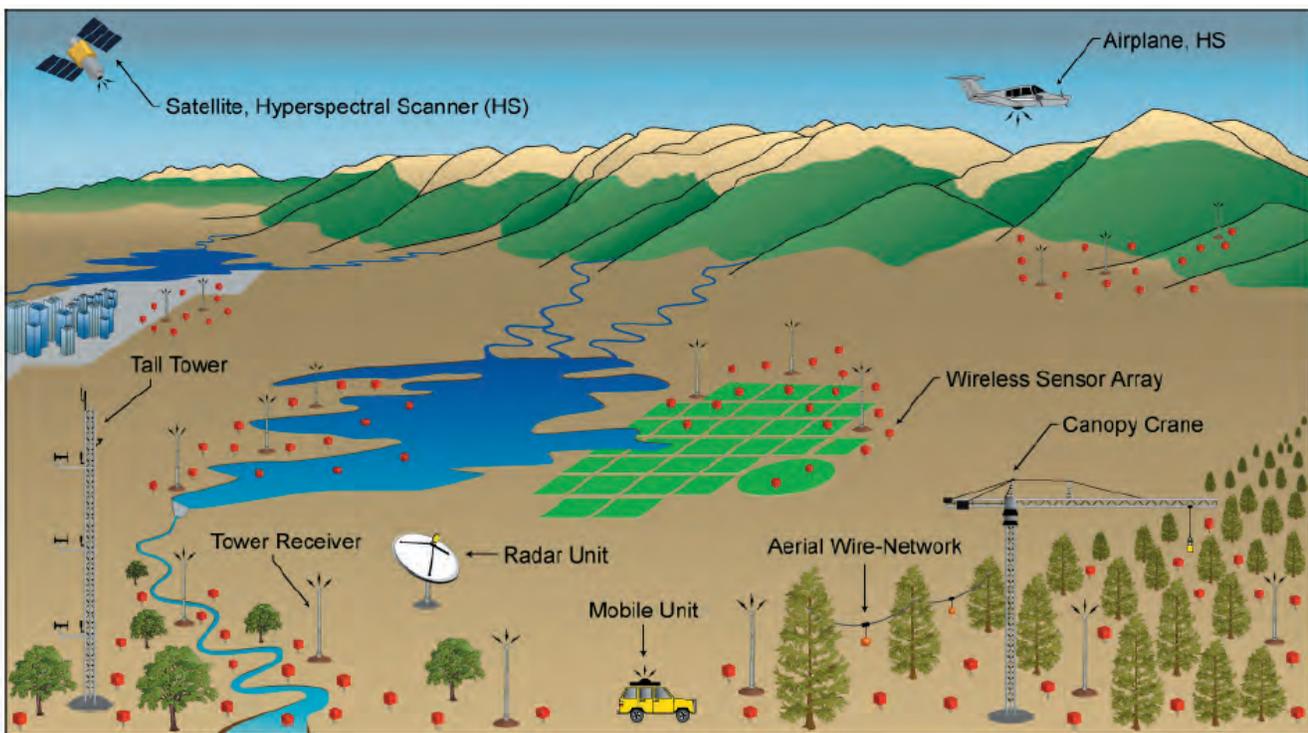
NEON is being designed to address scientific questions about the interactions of ecosystem components as they respond to natural and human-induced changes in, for example, climate, land use, hydroecology, infectious diseases, and invasive species. What is the pace and pattern of changing conditions and responses? NEON will provide the capacity to examine such questions across a greater range of time and space than has previously been possible.

Federal agencies such as the U.S. Geological Survey, Environmental Protection Agency, and DOE are on NEON planning committees. The governments of Canada and Mexico also are coordinating with NEON. Private foundations are participating in NEON design, and NEON will foster partnerships with industries, such as forestry and fisheries.

After commencement of NEON operations in 2013, the National Science Foundation expects to provide ongoing support for NEON research projects and educational activities, and data collected by NEON will become publicly available as it is generated. In addition to providing real-time access to ecological data for analysis of current conditions, NEON is expected to provide unprecedented support for improving the projection of future environmental conditions and impacts.

This presentation stood out as one that best embodied the conference theme on the components of *Environmental Leadership: Science, Education, and Alliances*.

For more information, see www.neoninc.org. 



Each of 20 observatories, to be located across the country, will host a network of fixed and movable instrumentation to measure a wide range of ecological variables. [Graphic courtesy of James MacMahon]

NEPA and EMS: A Winning Combination

CEQ Publishes NEPA-EMS Guide



Combining NEPA's tested framework for assessing the environmental consequences of proposed Federal actions with the practical tool for managing environmental aspects of agency actions through an Environmental Management System (EMS) provides a powerful approach for achieving the goals of NEPA and Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (January 4, 2007).

The Council on Environmental Quality's (CEQ's) recently issued guide, *Aligning National Environmental Policy Act Processes with Environmental Management Systems – A Guide for NEPA and EMS Practitioners* (April 2007), provides the link between NEPA and EMS: "to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans," as stated in the April 20, 2007, distribution memorandum from James L. Connaughton, Chairman, CEQ.

It is important for Federal agencies to understand the relationship of EMS to NEPA.

– CEQ NEPA-EMS Guide

EMS Can Enhance NEPA Compliance

The Guide states that "Federal agencies have been complying with NEPA environmental review requirements for more than 35 years. The issuance of Executive Order 13423 in January 2007 [*LLQR*, March 2007, page 13], which directs Federal agencies to implement EMSs at all appropriate organizational levels, provides a means to enhance NEPA compliance." Additionally, the Guide was developed to help NEPA practitioners make NEPA implementation more effective and efficient. It is meant to help Federal agencies recognize the complementary relationship of NEPA and EMS and show how this relationship can support the policies set forth in Section 101 of NEPA and the NEPA process. A table in the Guide compares the complementary elements and will be a useful tool for the NEPA community.

The Guide was developed by an interagency Work Group following up on recommendations from *The NEPA Task Force Report to the Council on Environmental Quality – Modernizing NEPA Implementation* (September 2003). "EMS is not going away," said Matthew McMillen (Office of Environment and Energy, Federal Aviation Administration), leader of this Work Group, at a meeting of the Federal NEPA Contacts hosted by CEQ on April 27, 2007. Mr. McMillen advised NEPA practitioners to put "NEPA into EMS and work with EMS practitioners." He noted that there are many possibilities for follow-up actions to the guidance, specifically pointing to guidance that another CEQ Work Group is developing on Adaptive Management.

"As Federal agencies strive to make our operations more sustainable, it's important that we break down the stovepipes that tend to exist – organizational or professional – and take advantage of the ways EMS and NEPA can complement each other," notes Steve Woodbury, DOE's Office of Health, Safety and Security. Mr. Woodbury, an EMS advocate, was an active member of the aforementioned interagency Work Group.

Future Guidance on NEPA, EMS, and Adaptive Management

"EMS helps manage the Adaptive Management process," explained Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, adding that future guidance will have case studies of the interplay among NEPA, EMS, and Adaptive Management. Meanwhile, Mr. Greczmiel emphasized, the NEPA-EMS Guide provides agencies many opportunities to further the interdisciplinary focus fostered by NEPA. He said the recent Guide raises the bar for NEPA contacts to search out their EMS contacts, and in this regard, he promised a meeting soon among agencies' NEPA and EMS practitioners.

The NEPA-EMS Guide and information on other interagency Work Group activities can be found on CEQ's website at www.NEPA.gov. (NEPA Office Contact: Jim Sanderson, jim.sanderson@hq.doe.gov, 202-586-9760; Office of Health, Safety and Security Contact: Steve Woodbury, steven.woodbury@hq.doe.gov, 202-586-4371.) 

Publishing NEPA Documents in an e-World

CEQ Federal NEPA Contacts Meeting



The ability to publish NEPA documents on the Internet and in CD format allows agencies to share environmental information widely and economically. DOE routinely publishes its EAs and EISs and related documents on the NEPA website, www.eh.doe.gov/nepa, and distributes many of its EISs in combinations of paper copies and CDs. While the world of e-NEPA offers many benefits for both agencies and the public, it also poses challenges. Agencies need to accommodate persons without Internet access; they also need to restrict electronic access to certain information. A paper-less NEPA compliance world is not a reality.

At a recent meeting of Federal NEPA Contacts, sponsored by the Council on Environmental Quality (CEQ), participants addressed some of the tradeoffs encountered when deciding how to distribute a NEPA document. In one example, it cost \$44 to print and distribute a paper copy of the complete, 5,000-page Yucca Mountain Repository EIS; in contrast, it cost \$7 to create and distribute a CD and paper summary of that EIS.

Meeting the Needs of Stakeholders

Federal agencies have the responsibility to meet the needs and preferences of stakeholders and in particular to avoid diminished access for stakeholders who do not have Internet access, emphasized Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, with reference to the E-Government Act of 2002 (text box). To assist DOE in meeting this responsibility, Carol Borgstrom, Director, Office of NEPA Policy and Compliance, pointed to the *Directory of Potential Stakeholders for DOE Actions under NEPA* that her Office updates annually. The *Directory*, available on the DOE NEPA website at www.eh.doe.gov/nepa, indicates preferences of Federal, state, and non-governmental agencies for receiving DOE NEPA documents (i.e., number of paper copies, number of CDs, or notification of web availability).

The DOE NEPA guidance document, *EIS Distribution*, prepared in 2006, discusses tradeoffs in cost, timing, and risk of schedule extension an agency must consider when deciding what documentation to provide when recipients' format preferences are unknown. In the study on cost savings realized in distributing the large EIS for the Yucca Mountain Repository in CD format, extra time was allowed before filing the EIS with the Environmental Protection Agency (EPA) so that recipients could request a printed copy if desired; less than 2% did so. (The *EIS Distribution* guidance is available on the DOE NEPA website under New Guidance Tools. A discussion of options and tradeoffs, coordinated with CEQ and EPA, is on pages 5–6 and the Yucca Mountain Repository EIS case study is on page 7.)

Ms. Borgstrom asked participants at the April 27 meeting to consider for future discussion issues that DOE faces in determining how to distribute unclassified, security-sensitive information. DOE occasionally has classified appendices to NEPA documents which are not available to the general public in either paper or electronic format. However, some security-sensitive information is made available, on written request, in paper form, but not in electronic form.

DOI Internet NEPA Guidance Available

Vijai Rai, Team Leader in the Department of the Interior's (DOI's) Office of Environmental Policy and Compliance, described distribution and other NEPA guidance available at www.doi.gov/oepc/nrm.html. Guidance for other Federal agencies with respect to the number of copies of environmental documents and the format (paper copy or CD or website) to provide for DOI review (presented in the DOE NEPA *Stakeholders Directory*) is found under Natural Resources Management Team, then Environmental Review Distribution Requirements.

(continued on next page)

Federal Agency Responsibilities under the E-Government Act of 2002 Concerning Internet Publication

Public Law 107-347, E-Government Act of 2002, Section 202(c), Federal Agency Responsibilities. "Avoiding Diminished Access.

When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet, and shall, to the extent practicable —

- (1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and
- (2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet."

Section 202(d) of the Act states that all actions must be in compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) to ensure access by people with disabilities. (For more information on Section 508, see *LLQR*, December 2006, page 13.)



e-World (continued from previous page)

On this website, under Quick Links: Environmental Memoranda Series, is internal DOI guidance that may be of particular interest to DOE's NEPA practitioners. For example, under Environmental Review Memoranda is *Electronic Distribution of Environmental Review Requests* and under Environmental Statement Memoranda are *Standard Checklist for Use in Preparing National Environmental Policy Act (NEPA) Documents and for Complying with NEPA, Council on Environmental Quality, and Departmental Procedures; Other Environmental Review and Consultation Requirements; and Publication and Distribution of Department of the Interior National Environmental Policy Act (NEPA) Compliance Documents via Electronic Methods*.

Paper Copies Still Needed for EPA Filing

EPA remains concerned that future technology changes could render today's CDs or Internet copies of EISs unreadable, explained Anne Norton Miller, Director, Office of Federal Activities, EPA, and therefore EPA still requires five printed copies of an EIS for filing. Ms. Miller emphasized that EPA nonetheless supports e-publication efforts, and reminded NEPA Contacts to include information on web posting or CD availability of an EIS in filing letters so that EPA can announce this in its Notice of Availability for the EIS. EPA has improved its EIS Data website (text box) and by the end of the year will post EPA rating letters, Ms. Miller announced. 



List of EISs Filed with EPA Available Online

EPA is now providing enhanced access to information on filed EISs on its EIS database website, www.epa.gov/compliance/nepa/eisdata.html. The website allows EIS information to be viewed in a number of different formats and also provides search functions.

The website provides updated listings for "Most Recent Weekly Notice of Availability of EISs" and "Most Recent Weekly Notice of Availability of Comments," and a page that lists all "EISs with Open Comment/Wait Period." The website also provides "Search for Specific EISs," to search on a word or phrase in the EIS title or by the preparing agency and/or state where the project was proposed.

EPA's contact for the website is Ken Mittelholtz at mittelholtz.ken@epa.gov or 202-564-7156.



How "Green" Are Your Meetings? EPA Encourages "Green" Meetings through Acquisition Revision

Do you consider the environmental impacts of your NEPA meetings? Environmental Protection Agency (EPA) employees are now required to request information on environmentally-preferable ("green") practices when soliciting offers for meeting and conference space and services, under a revision to EPA's acquisition regulations effective May 1, 2007 (72 FR 18401; April 12, 2007). Environmentally preferable products and services are defined as those "that have a lesser or reduced effect on human health and the environment when compared to competing products or services that serve the same purpose" – such as easy access to public transportation, biobased or biodegradable cafeteriaware, and locally produced food. If a meeting is held in a hotel, paperless check-in and check-out and towel reuse options for guests would be considered environmentally preferable.

Even though this revision does not impose any new requirements on contractors or venues, EPA states that adding this provision to its acquisition regulations will encourage the meeting and conference service industry to adopt more "green" practices in order to do business with the Agency.

The next time you plan a NEPA meeting, check out the following "green" meeting resources by EPA and others:

- *EPA's Green Meeting Initiative* – A "one-stop source for green meetings," this website provides sample contract language and information on environmentally preferable initiatives, programs, products, and services. 
- *It's Easy Being Green! A Guide to Planning and Conducting Environmentally Aware Meetings and Events* – Developed by EPA's Office of Solid Waste and Emergency Response, this Guide promotes integration of waste minimization and meeting planning. 
- *The Green Meeting Tool* – On the Oceans Blue Foundation website and co-funded by EPA, the "Green Meeting Tool" explains how to incorporate "green" principles into every aspect of conference and meeting planning, provides easy tips to "greening" your meeting, and includes an interactive quiz. 
- *The National Recycling Coalition's Green Meeting Policy* – This policy provides information on printed materials, facilities, exhibitors, and food and beverage services useful for planning "green" meetings. 
- *Environment Canada's "Greening Meetings"* – This website offers a series of "green" checklists for meeting preparation, as well as a "Greening Meetings Manual." 



Litigation Updates

Four recent court decisions (summarized below) relate to DOE NEPA documents. In the first, the court found a DOE EA inadequate and ordered preparation of an EIS. The decision contains insight into how the court assesses significance in the context of NEPA. In the second decision, the court upheld the adequacy of a DOE supplemental EIS, highlighting the value of documenting DOE's basis for selecting an analytic approach and maintaining a thorough administrative record. The third decision found that the National Aeronautics and Space Administration's (NASA's) and DOE's financial contribution to, and involvement in, a project was not sufficient to make the proposal a Federal action. In the fourth case, the court invalidated an EIS that DOE had adopted from the U.S. Forest Service and the Bureau of Land Management (BLM). The decision points to the need to take a hard look at the No Action alternative.

Court Orders EIS on Environmental Remediation at ETEC

DOE cannot transfer ownership or possession, or otherwise relinquish control, of any portion of Area IV of the Santa Susana Field Laboratory (SSFL) near Los Angeles, until it completes an EIS and issues a record of decision (ROD) on environmental remediation activities at the site, a court has ruled. The May 2, 2007, decision by the U.S. District Court for the Northern District of California found “overwhelming support” for plaintiffs’ claims in *Natural Resources Defense Council et al. v. DOE et al.* (Case No.: 04-04448; *LLQR*, December 2004, page 16) that DOE’s decision to issue a finding of no significant impact (FONSI) and conduct remediation on the basis of its *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) was in violation of NEPA.

DOE owns the facilities in the Energy Technology Engineering Center (ETEC), which occupies about 90 acres within Area IV of SSFL. The approximately 2,900-acre SSFL is owned by The Boeing Company and NASA. DOE conducted nuclear and non-nuclear research and development activities at ETEC beginning in 1953. All nuclear operations ended in 1988, and, in 1996, DOE decided to close the remaining ETEC operations. ETEC is not on the National Priorities List, and, at the time the lawsuit was filed, remediation was not being undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Rather, remediation was being conducted pursuant to the Atomic Energy Act and the Resource Conservation and Recovery Act. DOE began preparation of the EA in 2000.

In reaching its decision, the court focused on two principal questions: whether cleanup is exempt from the requirement to prepare an EIS, and whether potential impacts could be significant within the meaning of NEPA.

Cleanup Not Exempt from EIS Requirements

First, the court determined that there is a potential impact from remediation on the human environment. Based on

analyses in the EA, the court wrote, “Without question, the remediation of Area IV has the potential to induce changes in the pattern of land use [e.g., a switch from industrial to residential use] and population in the area in a manner which would affect the relationship between people and the natural environment.” The court noted that “the Final EA’s estimates of potential increased cancer rates are partly based on exposure rates for individuals presumed to be ‘residing on the site.’”

“Second, the DOE’s belief that the remediation will have, on the whole, a positive effect on the natural environment does not remove it from scrutiny under NEPA,” the court continued. The “possibility that the remediation could have some positive impacts on the natural environment of the site does not alleviate the responsibility to determine whether it could also adversely effect [sic] other elements of the human environment.”

Remediation Proposal Passes Significance Test

The court considered the EA in light of five of the factors identified by the Council on Environmental Quality for use in determining the significance of potential environmental impacts (40 CFR 1508.27). First, the court concluded that DOE’s remediation decision is highly controversial. Based on both the number of comments on the January 2002 draft EA (16 oral and 63 written, including from government agencies, elected officials, members of the local community, and environmental organizations) and their quality (“lengthy, detailed, particular, and based on well-articulated, firm, scientific basis”), the court concluded that “substantial questions were raised by the EA.” The court then found that evidence contained in the comments, particularly from the Environmental Protection Agency (EPA) and the California Department of Toxic Substance Control, “casts serious doubt upon the reasonableness” of DOE’s conclusions. For example, the court quoted EPA’s comments on the Draft EA regarding a 1995 soil study relied upon for the EA’s analysis:

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[The Draft EA] does not present . . . enough measurements of radioactivity to support remedy evaluations or decision, and many of the existing measurements that did not detect contamination may have used methods that were not sensitive enough to do so. The instruments and methods used . . . were not sensitive enough to detect levels needed to support decisions about the need for cleanup, and not enough measurements were made in enough places to provide a thorough understanding of the location and levels that may be present at the site. Additionally, some of the measurements lack documentation of collection conditions, precision, accuracy, and reproducibility needed to demonstrate its utility and justify its use.

The court also pointed to controversy regarding the appropriate cleanup standard, possible effects of nonradiological contamination in combination with radioactive contamination, and possible radioactive contamination of groundwater. The court found that DOE's responses to these and other comments indicate that "DOE did not take a hard look at the evidence offered by commentators"

Second, the court found that an EIS is required "on the basis of the uncertainty and unknown risks caused by the inadequacy of the data and analyses on which the EA is based." Comments on the EA, and the way the comments

were evaluated, create "high levels of uncertainty regarding what environmental effects the remediation will ultimately have. As a result, it leaves those living, working, and recreating in areas surrounding the site, not to mention the site's potential residential occupants, subject to the possibility of as yet undiscovered, unknown risks," the court wrote.

The court briefly discussed its reasons for concluding that three additional factors for determining significance also support the need for an EIS. The remediation decision has the possibility of negatively affecting "public health or safety" because the site is radiologically contaminated, not far from population centers, and likely to be developed for residential purposes in the future. The "remediation decision regarding radiological contamination potentially will have a 'cumulatively significant impact' in combination with other related actions regarding nonradiological contamination." Finally, citing DOE's statement that the cleanup level chosen for ETEC could set a precedent for other DOE sites, the court concluded that the remediation decision has the potential to "establish a precedent for future actions with significant effects."

Having found DOE in violation of NEPA, the court did not address the plaintiffs' arguments that DOE had also violated CERCLA and the Endangered Species Act. The court left the door open for future claims under these statutes depending upon DOE's future actions.

Court Affirms DOE's NEPA Compliance at WIPP

The U.S. Court of Appeals on May 3, 2007, upheld a decision by the U.S. District Court for the District of New Mexico to dismiss a claim that DOE had not properly complied with NEPA regarding the Waste Isolation Pilot Plant (WIPP), DOE's repository for transuranic (TRU) waste near Carlsbad, New Mexico. The plaintiffs in *Citizens for Alternatives to Radioactive Dumping [CARD] et al. v. Department of Energy et al.* alleged that DOE failed to comply with NEPA in reaching its decision to dispose of its TRU waste in the repository, and sought to enjoin WIPP operations until DOE prepared further NEPA review. (See *LLQR*, September 2004, page 18.)

As part of its NEPA claim before the district court, the plaintiffs sought to use evidence outside the administrative record ("extra-record" evidence) based on research conducted by an expert consultant. The consultant alleged that DOE miscalculated a data point from a test well, thereby underestimating groundwater transmissivity. Based on the consultant's report, the plaintiffs alleged that DOE relied on concealed or false information in arriving at its ROD pursuant to the WIPP Supplemental EIS-II (WIPP SEIS-II) (DOE/EIS-0026-S-2; 1997). The plaintiffs also alleged a number of analytical deficiencies

in the WIPP SEIS-II. The district court dismissed the case based on its conclusion that DOE's ROD was not arbitrary and capricious and that there was no reason to consider the extra-record evidence. The district court acknowledged scientific debate surrounding many of the issues but found that DOE adequately addressed the topics.

In appealing the case, the plaintiffs claimed that (1) the district court should have admitted the extra-record evidence and (2) DOE was arbitrary and capricious in its evaluation of the record by not further investigating allegations raised by the consultant. In upholding the district court's conclusion, the appellate court found that the district court did not abuse its discretion in rejecting the extra-record evidence, and that DOE was not arbitrary and capricious in its environmental review. The appellate court also stated that, contrary to allegations, the SEIS-II did not ignore data regarding hydrologic transmissivity and noted that DOE "provided careful and reasoned explanations" for its technical approach in the SEIS-II. The appellate court also noted the thoroughness of the SEIS-II administrative record and, as stated in its ruling, "The i's were dotted, the t's were crossed, and NEPA requires nothing more." [Case No.: 04-2314]



Litigation Updates

NASA, DOE Prevail in Laboratory Funding Case

The U.S. District Court for the District of Rhode Island found in favor of NASA and DOE on April 26, 2007, in *Touret et al. v. NASA et al.*, a challenge to the *Environmental Assessment for the Partial Funding of a Proposed Life Sciences Building at Brown University, Providence, Rhode Island* (NASA/03-GSFC-02/DOE/EA-1473, July 2003).

Brown University in 2000 announced its intention to construct a new Life Sciences Building to consolidate several existing life sciences departments into one facility with modern, expanded laboratory space. Brown initially planned to finance construction entirely from its own funds, but, when it learned that Federal monies might be available, Brown applied for and received commitments totaling \$10.25 million, about 11% of the project cost, from NASA, the National Institutes of Health, and DOE. NASA prepared an EA with DOE as a cooperating agency. The plaintiffs, citing concerns about possible adverse effects that the laboratory might have on the College Hill Historic District in Providence and the health of nearby residents, filed suit in 2004.

Limited Funding and Involvement Insufficient to “Federalize” Project

The court found that the Federal contributions did not represent a significant portion of the project cost and that none of the funding agencies regulated, exercised any

control over, or had approval authority with respect to construction or operation of the Life Sciences Building. The agencies’ involvement in the project consisted solely of providing limited funding and conditioning payment of approximately half of the funding on a requirement that the building be used as a biomedical facility for at least 20 years. Furthermore, the court found, the University originally planned to build, and would have built, the Life Sciences Building without Federal funds. Under these circumstances, the Federal funding did not make the proposed Life Sciences Building a “federal action,” and therefore, preparation of an EIS could not be required.

The plaintiffs also argued that construction of the Life Sciences Building is a “major federal action” because Federal funds likely would be provided for future research activities. However, the court found that the plaintiffs did not present any evidence that such funding will be provided or that it is linked to construction of the Life Sciences Building.

Despite finding that NEPA does not apply to this project, the court felt “compelled to briefly comment on the plaintiffs’ substantive claims in the hope that its comments might help, in the future, to clarify an agency’s obligations in preparing an EA.” The court suggested that the EA’s analysis of cumulative impacts to air quality and noise may not have been adequate.

Lessons Learned in Litigation

Vicki Prouty, Assistant Chief Counsel, Chicago Office, is eager to share her lessons learned during this litigation with the readers of *Lessons Learned*.

Avoid Implying that a FONSI Is Predetermined

Plaintiffs used emails – in the administrative record and obtained through discovery – as evidence of the Federal agencies’ inappropriate determination to issue a FONSI before completing the environmental analysis. The plaintiffs’ inference was a mischaracterization of the agencies’ early references to the “EA and FONSI” prior to, for example, state review of the pre-approval EA. The agencies would have been prudent to avoid assuming a FONSI early in the project, e.g., by qualifying such phrases with “unless significant impacts are identified.”

Participate Actively as Cooperating Agency

It can be risky for a cooperating agency to be passive. DOE has sophisticated NEPA experience, including extensive guidance and effective control mechanisms through the NEPA Document Manager’s responsibility for direction to contractors. In this case, DOE relied on the lead agency to scrutinize the EA sections on toxic air emissions and regulatory requirements. Later, when this analysis became the subject of litigation, it became clear that as a potential co-defendant, a cooperating agency cannot afford such reliance but must itself review the internal draft NEPA document carefully.

Ms. Prouty can be reached at vicki.prouty@ch.doe.gov or 630-252-2244.



Court Invalidates Geothermal Project Approval for Lack of NEPA Review

A Federal appeals court has set aside leases and the approval process, including an EIS, for a geothermal energy project that would have supplied almost 50 megawatts to DOE's Bonneville Power Administration (BPA) because the court determined that the U.S. Forest Service and BLM failed to comply with NEPA, the National Historic Preservation Act, and their fiduciary responsibility to the Pit River Tribe. BPA was a cooperating agency in preparation of the EIS, which DOE adopted, but was not named in the lawsuit.

At issue was a geothermal power plant proposed in 1995 by the Calpine Corporation at Fourmile Hill near Medicine Lake in Northern California. The plant would be located on Forest Service land and operate under leases originally issued by BLM in 1988. The Forest Service and BLM began preparing an EIS for the proposed plant in 1996. In 1998, BLM extended Calpine's leases by five years before the agencies had completed the *Fourmile Hill Geothermal Development Project Environmental Impact Statement/ Environmental Impact Report* (DOE/EIS-0266). A record of decision (ROD) approving the plant was issued by the Forest Service and BLM in May 2000. BPA issued a ROD on December 5, 2000 (65 FR 75929).

The plaintiffs (Pit River Tribe and two regional organizations) challenged the 1998 lease extensions. The U.S. District Court for the Eastern District of California found for the Federal agencies, and the plaintiffs appealed to the Ninth Circuit (*Pit River Tribe et al. v. U.S. Forest Service et al.*, Case No.: 04-15746). The appeals court reviewed both the timing and adequacy of the agencies' NEPA analyses.

EIS Required Before Lease Extension

The court concluded that "the agencies were required to complete an [EIS] before extending the leases" based on two primary reasons. First, the court concluded that extending the leases required affirmative agency action. Second, the court determined that the initial leases and 1998 extensions amounted to an irreversible and

irretrievable commitment of resources because they did not reserve to the government an absolute right to prevent all surface-disturbing activity.

Existing NEPA Documents Inadequate

The court reviewed relevant NEPA documents completed prior to the 1988 leases. The court concluded that these documents – a programmatic EIS completed by the Department of the Interior in 1973 on geothermal development broadly and two EAs completed in 1981 and 1984 on certain related activities in the Medicine Lake area – did not consider the impacts of actual geothermal development in particular places.

The court also reviewed the EIS issued after the 1998 lease extensions were granted and concluded that it did not adequately address "whether the land in question should be leased at all." The purpose and need described in the EIS was "to develop the geothermal resource on Calpine's Federal geothermal leases in order to economically produce and deliver electrical energy" to BPA and others, the court pointed out.

Only the No Action alternative considered not developing the geothermal energy resource. The court found the analysis of that alternative insufficient. "The sole mention of the no action alternative stated that it 'would not meet the purpose and need for the proposed action.' The 1998 EIS failed to take the requisite 'hard look' at whether the leases should have been extended"

"Because the 1998 EIS was premised on the notion that the leases were valid and granted development rights to Calpine, the 1998 EIS cannot substitute for an EIS evaluating the decision to extend the underlying lease rights as an initial matter," the court concluded. "Accordingly, in spite of the 1998 EIS, we hold that the 1998 lease extensions – and the entire Fourmile Hill Plant approval process for development of the invalid lease rights – violated NEPA."



Litigation Updates

DOE NEPA Litigation in Brief

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): A hearing was held May 22, 2007, in this case where the plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit. Plaintiffs allege that DOE segmented its NEPA analysis for the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Keep Yellowstone Nuclear Free et al. v. Department of Energy et al. (D. Idaho): The plaintiffs allege that DOE is in violation of NEPA for undertaking a Life Extension

Program to extend operation of the Advanced Test Reactor at the Idaho National Laboratory without first having prepared an EIS. The plaintiffs seek an order directing DOE to prepare an EIS, and a permanent injunction prohibiting DOE from operating the Advanced Test Reactor and from shipping reactor fuel and all special nuclear material to the reactor until DOE has completed the EIS, issued a record of decision, and implemented those components of the Life Extension Program “necessary to ensure that the [reactor] can operate safely.” (See *LLQR*, March 2007, page 19.) The court has scheduled briefs to be filed by August 24, 2007. [Case No.: 07-36]

CEQ’s NEPA Litigation Survey

DOE recently responded to the Council on Environmental Quality’s (CEQ’s) annual survey of Federal agency NEPA litigation. In the course of 2006, DOE had 11 active cases that involved NEPA claims.

- Six of the 11 cases were resolved by the end of 2006: in two of these cases, DOE’s EISs were judged to be adequate (*LLQR*, September 2006, page 1; March 2007, page 18); in one case, the matter was remanded to DOE to incorporate terrorism analysis into an EA (*LLQR*, December 2006, page 3); one case was resolved through a settlement agreement that DOE would expand the scope of an EIS (*LLQR*, March 2006, page 1); one case was settled with DOE agreeing to help construct a bypass road (*LLQR*, June 2006, page 18); and one case was dismissed due to mootness.
- Five of the 11 cases were still pending at the end of 2006, although four of these were resolved in the first five months of 2007. In one of these cases, DOE’s EIS was determined to be adequate (page 21), and in another, the court determined that there was no Federal action that required preparation of an EIS (page 22). In another case, DOE was ordered to prepare an EIS (page 20), and in the other, the proposed action was cancelled (*LLQR*, March 2007, page 21). The one ongoing case included in the survey response is *Coalition on West Valley Nuclear Wastes et al. v. Department of Energy*, updated above.

The results of CEQ’s NEPA litigation surveys for 2001–2005 are available on CEQ’s website at www.NEPA.gov under NEPA Litigation. 

Heard at the NAEP Conference . . .

- *The environmental movement has matured. The U.S. is now red, white, blue, and green!*
- *We could call this session “Lessons Not Learned” – we still need to keep working on making NEPA documents informative to decisionmakers and the public.*
- *Review your appendices like they’re part of the main document; the more you put in appendices, the more important they become in litigation.*
- *All the wildflowers have not gone . . . [the singing duo of Dale Crider, retired Florida Game and Fresh Water Fish Commissioner, and John Henry Hankinson, former EPA Regional Administrator] At next year’s conference, NAEP is looking to have an in-house band.*



Transitions

NEPA Policy and Compliance: Melanie Pearson

Melanie Pearson, a colleague from DOE's former Office of Environment, Safety and Health, transferred to the Office of NEPA Policy and Compliance as an Environmental Protection Specialist in April 2007 from the Office of Health, Safety and Security.

Working at DOE since 1991, she has helped Field Offices ensure environmental compliance, was instrumental in developing DOE's strategies to implement Environmental Management Systems, and served as Special Assistant to the Deputy Assistant Secretary for Environment.

Ms. Pearson brings a unique perspective to the NEPA Office as she also has worked in local and state government in water quality programs, hazardous waste disposition and recycling, and emergency response teams. She also worked in the private sector supporting the waste minimization activities of the U.S. Army Environmental Office.

She will bring her experience to bear in providing NEPA assistance to the Office of Electricity Delivery and Energy Reliability, the Office of Environmental Management, and the Loan Guarantee Program, and in developing DOE NEPA guidance and regulations.

Melanie joins the Eastern Energy and Waste Management Unit and can be reached at melanie.pearson@hq.doe.gov or 202-586-0939.



NEPA comes at you fast, Melanie found, as she became acquainted with her first EIS to review.

Electricity Delivery and Energy Reliability: Brian Mills, New NCO



The NEPA Office is happy to have "one of our own" as an NCO, and still close enough to listen to his fish stories.

DOE Power Marketing Administrations; serving on the White House Task Force on Energy Project Streamlining; and writing for LLQR, most recently as a "NEPA nerd" in the March 2007 issue. **LL**

Brian Mills, a veteran of 7 years of service with the Office of NEPA Policy and Compliance and 24 years with the Bureau of Land Management, recently transferred to the Office of Electricity Delivery and Energy Reliability (OE). He has taken over the responsibilities of NEPA Compliance Officer (NCO) from Tony Como, who continues to support that Office's permit process for international transmission lines. Mr. Mills is an expert in Federal agency land management and NEPA issues related to implementation of the Energy Policy Act of 2005 (EPAAct). In his new assignment, Brian will assist OE in coordinating NEPA reviews for proposed energy corridors and Presidential permits for transboundary power lines, and will continue to address EPAAct implementation issues. Mr. Mills can be reached at brian.mills@hq.doe.gov or 202-586-8267.

The NEPA Office appreciates Brian's many contributions: supporting NEPA reviews for OE, the Office of Environmental Management, and

DOE-wide NEPA Contracts Update

The following task has been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Nienow at dnieow@doeal.gov or 505-845-6072. Information and resources for potential users of these contracts are available on the DOE NEPA website. **LL**

Description	DOE Contact	Date Awarded	Contract Team
Evaluation of Site-wide EIS for the Nevada Test Site and Offsite Locations in the State of Nevada	Michael Skougard 702-295-1759 skougard@nv.doe.gov	3/23/2007	SAIC

Training Opportunities

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

- **NEPA and Environmental Law and Regulations (PGM04)**

DOE-Project Management
Career Development Program
Richland, WA: June 19-21

Fee: DOE personnel should contact their training coordinator for registration information.

- **Environmental Litigation**

Boulder, CO: June 27-30

Fee: \$1,095

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

- **NEPA**

Austin, TX: June 7-8

Fee: \$595 (GSA contract: \$495)

Multiple registration discount available

National Wetlands

Las Vegas, NV: June 7-8

Fee: \$595 (GSA contract: \$495)

Multiple registration discount available

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

- **Clear Writing for NEPA Specialists**

Las Vegas, NV: June 12-14

Fee: \$885 (GSA contract: \$795)

**Cultural and Natural Resource Management
Endangered Species Act Overview**

Salt Lake City, UT: June 12-15

Fee: \$1,110 (GSA contract: \$995)

Phoenix, AZ: September 25-27

Fee: \$845 (GSA contract: \$755) until 8/8/07

**Overview of the NEPA Process/
Reviewing NEPA Documents**

Las Vegas, NV: June 19-22

Fee: \$1,110 (GSA contract: \$995)

**NEPA Cumulative Effects Analysis and
Documentation/Adaptive Management**

Baltimore, MD: June 26-28

Fee: \$885 (GSA contract: \$795)

**How to Manage the NEPA Process
and Write Effective NEPA Documents**

Salt Lake City, UT: July 17-20

Fee: \$1,070

Olympia, WA: September 25-28

Fee: \$1,070 (GSA contract: \$955) until 8/6/07

NEPA Writing Workshop

Las Vegas, NV: July 31-Aug 2

Fee: \$845 (GSA contract: \$755) until 6/11/07

NEPA Process Management

Las Vegas, NV: Aug 7-8

Fee: \$645 (GSA contract: \$555) until 7/16/07

Natural Resource Policy and Economics

Salt Lake City, UT: Aug 14-16

Fee: \$845 (GSA contract: \$755) until 7/2/07

**NEPA Cumulative Effects Analysis
and Documentation**

San Francisco, CA: September 18-20

Fee: \$845 (GSA contract: \$755) until 8/1/07

**Integrating Federal Environmental Laws
into NEPA**

Las Vegas, NV: September 25-27

Fee: \$845 (GSA contract: \$755) until 8/8/07

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

- **NEPA Certificate Program**

Conducted through Utah State University.

Requires successful completion of four core and three elective courses offered by The Shipley Group. Also requires completion of course exams and a final project.

Fee: \$4,955 (includes tuition, course fees, and all course materials)

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

(continued on next page)

Training Opportunities

(continued from previous page)

- **NEPA in Indian Country**

Denver, CO: September 25-26

Fee: \$495

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

- **Environmental (NEPA) Boot Camp
for Engineers**

New Orleans, LA: September 13-14

Fee: \$1,255

American Society of Civil Engineers
800-548-2723
www.asce.org/conted/seminars

- **NEPA Certificate Program**

Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

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

Telling a NEPA Story



When asked at cocktail parties, “What do you do?” “Storyteller” is not likely to be the response of most NEPA practitioners. But Dr. Larry Freeman, a senior consultant at The Shipley Group, suggests in his online article, *Telling a NEPA Story*, that NEPA writers would be wise to learn key features of the storyteller’s craft. “Storytellers were originally oral performers,” Freeman notes, and “participating listeners were, and still are, essential to a storyteller’s craft.”

To engage the reader, for example, Dr. Freeman suggests that NEPA writers ask themselves questions during the document preparation process, such as “What are my readers’ main concerns or worries about our proposed project?” and then adjust the content appropriately. To establish credibility, he recommends using a “chain of evidence” to support professional opinions, rather than “retreating to thin or unsupported assertions of professional judgment” where information gaps exist and methodologies are imperfect, and gives examples of effective phrases.

Telling a NEPA Story (January 2007) is available at www.shipleygroup.com/news/0701.html. 

Being a good “storyteller” is not usually among the skill sets required of the engineers and risk assessment scientists who write DOE’s NEPA documents and . . . therein lies the rub.

– Reflections from a Learned Lawyer
Janine M. Sweeney, *LLQR*, March 2002

NEPA Metrics: EIS Completion Times and Cost

By: Vivian Bowie, Office of NEPA Policy and Compliance

To gauge DOE's efficiency in the NEPA process and to develop recommendations for improvement, the Office of NEPA Policy and Compliance periodically examines and reports on NEPA performance metrics. In March 2006, we reported that management attention appeared warranted to ensure that EIS schedules, which appeared to be lengthening, meet program needs; EIS preparation costs over 10 years had remained about the same (*LLQR*, March 2006, page 32). A recent examination of EIS completion time and cost data over the past 10 years (January 1997 through May 2007) suggests improvement has occurred in preparation time, but continued attention is warranted. Costs have remained generally the same, but recent information suggests that costs may increase and that greater attention to costs is warranted.

EIS Completion Times

We measure EIS completion times from DOE's Notice of Intent to the Environmental Protection Agency's Notice of Availability of the Final EIS. In 1994, DOE set a median EIS completion time goal of 15 months. DOE Order 451.1B, *National Environmental Policy Act Compliance Program*, directs the development of EIS schedules that, absent extraordinary circumstances, will provide for completion within 15 months.

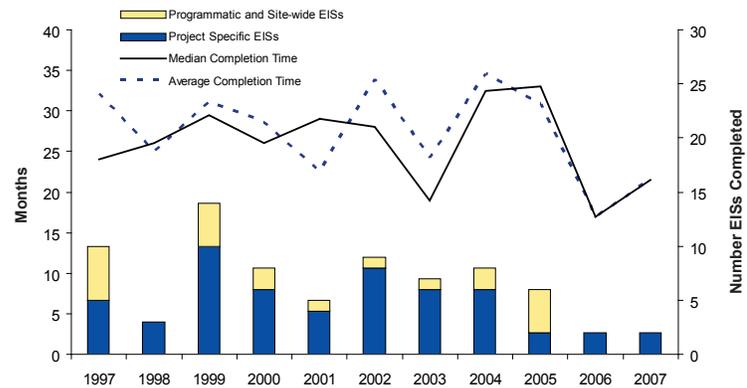
Data for the past 10 years (Figure 1) show that DOE has not met its 15-month median completion time goal. The median completion time was 28 months for the 74 EISs completed during this period. The median completion time was less than 20 months for documents completed in 2003, increased to more than 30 months for documents completed in 2004 and 2005, and dropped to less than 20 months in 2006.

We attribute the decrease in median completion times in 2006 to the absence of programmatic EISs. In 2004 and 2005, several programmatic and site-wide EISs were completed, which typically take longer to complete than project-specific EISs (median of 34 versus 22 months, respectively). As always, we caution that these time trend data must be interpreted with care because, given the relatively few number of EISs and wide range of completion times, even one or two documents can significantly influence the statistics for a given year.

Although the recent decrease in completion time is promising, meeting DOE's 15-month median completion time goal remains a challenge. DOE is now preparing several programmatic and site-wide EISs, which will likely extend the average and median completion times.

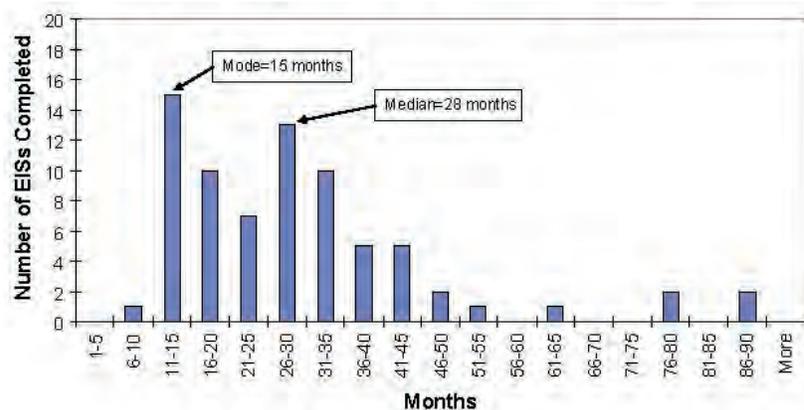
Figure 2 shows the distribution of all EIS completion times for documents completed during the past 10 years. The data show that about 21 percent of the EISs were completed in 15 months or less, and that the most frequent completion time (mode) was 15 months.

Figure 1: EIS Completion Times and Number of EISs, 1997–2007



EIS Type	Number of EISs	Average Time (months)	Median Time (months)	Min/Max (months)
Project-Specific EISs	54	26	22	9/76
Programmatic and Site-wide EISs	20	40	34	15/86
Overall	74	30	28	9/86

Figure 2: Completion Times for 74 EISs from 1997–2007



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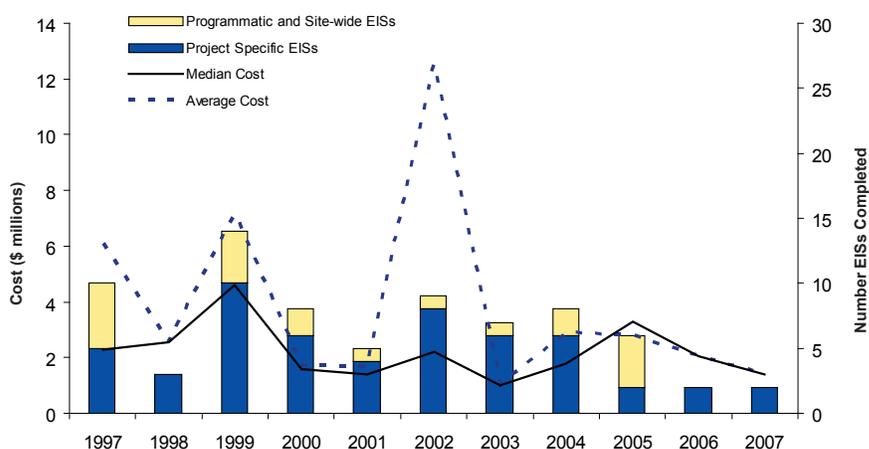
NEPA Metrics *(continued from previous page)*

EIS Costs

EIS costs decreased substantially in the mid-to-late 1990s, after DOE completed a relatively large number of programmatic and site-wide EISs. Data for 1994–1996 (not shown) indicate that the cost per document has decreased for all types of EISs (programmatic/site-wide and project specific) from mid-to-late 1990 levels. The cost to prepare an EIS has remained about the same over the past 10 years.

Looking forward, however, the Office of NEPA Policy and Compliance is aware of several in-process EISs (including project-specific and programmatic/site-wide documents) that apparently will be quite costly (significantly above average) to complete. The Office of NEPA Policy and Compliance plans to study these documents and report on factors that may be contributing to higher costs. We conclude that greater attention to EIS preparation costs is warranted. 

Figure 3: EIS Cost and Number of EISs, 1997–2007



EIS Type	Number of EISs with Cost Data	Average Cost (\$M)	Median Cost (\$M)	Min/Max (\$M)
Project-Specific EISs	34	\$2.5	\$1.4	\$0.44/\$15
Programmatic and Site-wide EISs	19	\$8.5	\$4.0	\$0.056/\$44
Overall	53	\$4.6	\$1.8	\$0.056/\$44

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$75,000; the average cost was \$127,000.
- Cumulatively, for the 12 months that ended March 31, 2007, the median cost for the preparation of 11 EAs for which cost data were applicable was \$79,000; the average was \$128,000.
- For this quarter, the median completion time for 7 EAs was 11 months; the average was 18 months.
- Cumulatively, for the 12 months that ended March 31, 2007, the median completion time for 12 EAs was 9 months; the average was 17 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS was \$1,378,000.
- Cumulatively, for the 12 months that ended March 31, 2007, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1,378,000; the average was \$1,819,000.
- For this quarter, the completion time for one EIS was 17 months.
- Cumulatively, for the 12 months that ended March 31, 2007, the median and average completion times for 3 EISs were 17 months.

Recent EIS-Related Milestones (March 1 to May 31, 2007)

Notice of Intent

**Office of Environmental Management/
Savannah River Operations Office**
DOE/EIS-0283-S2
*Supplemental Environmental Impact Statement for
Surplus Plutonium Disposition at the Savannah River
Site, Aiken, South Carolina*
March 2007 (72 FR 14543, 3/28/07)

Extension of Scoping Period

Office of Nuclear Energy
DOE/EIS-0396
*Programmatic Environmental Impact Statement
for the Global Nuclear Energy Partnership*
April 2007 (72 FR 15871, 4/3/07)

Draft EISs

Bonneville Power Administration
DOE/EIS-0384
*Chief Joseph Hatchery Program, Okanogan County,
Washington*
May 2007 (72 FR 25302, 5/4/07)

**Bonneville Power Administration/
Office of Electricity Delivery and Energy Reliability**
DOE/EIS-0378
*Port Angeles - Juan de Fuca Transmission Project,
Clallam County, Washington*
March 2007 (72 FR 10749, 3/9/07)

Final EIS

Western Area Power Administration
DOE/EIS-0376
*White Wind Farm Project, Construct a Large
Utility-Scale Wind-Powered Electric Energy
Generating Facility, Brookings County, South Dakota*
April 2007 (72 FR 18644, 4/13/07)

Record of Decision

**Office of Fossil Energy/
National Energy Technology Laboratory**
DOE/EIS-0383
Orlando Gasification Project, Orlando, Florida
April 2007 (72 FR 17143, 4/6/07)

Draft Supplement Analysis

**Office of Environmental Management/
Portsmouth/Paducah Project Office**
DOE/EIS-0359-SA-01 and DOE/EIS-0360-SA-01
*Disposal of Depleted Uranium Oxide Conversion
Product Generated from DOE's Inventory of
Depleted Uranium Hexafluoride*
April 2007 (72 FR 15869, 4/3/07)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0285-SA-323*
*Lower Columbia River Transmission Line Project,
Columbia and Clatsop Counties, Oregon, and
Wahkiakum County, Washington*
(Decision: No further NEPA review required)
December 2006

DOE/EIS-0285-SA-324*
*Danger Tree Management along the Port Angeles -
Sappho No. 1, 115 kV Transmission Line Corridor
from Port Angeles Substation Heading West
to Sappho Substation, Clallam County, Washington*
(Decision: No further NEPA review required)
December 2006

DOE/EIS-0285-SA-325*
*Vegetation Management along the Naselle - Tarlet
No. 1 and No. 2 Transmission Line Corridors,
Pacific County, Washington*
(Decision: No further NEPA review required)
January 2007

DOE/EIS-0285-SA-326*
*Vegetation Management along the Benton - Franklin
No. 1 and No. 2, 115 kV Transmission Line Corridor,
Franklin County, Washington*
(Decision: No further NEPA review required)
January 2007

DOE/EIS-0285-SA-327*
*Malin - Hilltop and Hilltop - Warner Transmission
Line Project, Klamath County, Oregon, and Modoc
County, California*
(Decision: No further NEPA review required)
January 2007

* Not previously reported in LLQR

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Recent EIS-Related Milestones (March 1 to May 31, 2007)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-328*

Vegetation Management along the Olympia - Satsop No. 3 Transmission Line Corridor, Thurston County, Washington

(Decision: No further NEPA review required)
January 2007

DOE/EIS-0285-SA-329*

Vegetation Management along the McNary - Coyote Springs No. 1, 500 kV Transmission Line Corridor, and along the Coyote Springs - Slatt No. 1, 500 kV Transmission Line Corridor, Morrow County, Oregon

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-330*

Vegetation Management along the Sandcreek - Bonners Ferry #1 and #2 115 and 230 kV Transmission Lines from Structures 1/1 to 27/6, Bonner and Boundary Counties, Idaho

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-331*

Vegetation Management along the Box Canyon Tap to Colville - Boundary No. 1, 115 kV Transmission Line Corridor Right of Way, Pend Oreille County, Washington

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-332*

Vegetation Management along the Salem - Grande Ronde No. 1 and Grande Ronde - Boyer #1 Transmission Lines, Polk County, Oregon

(Decision: No further NEPA review required)
February 2007

DOE/EIS-0285-SA-333

Marion - Alvey No. 1 and Marion - Lane No. 1 Transmission Line Vegetation Management Project, Marion, Linn, and Lane Counties, Oregon

(Decision: No further NEPA review required)
March 2007

DOE/EIS-0285-SA-334

Covington - Creston No. 1 and Covington - Duwamish No. 1 Transmission Line Vegetation Management Project, King County, Washington

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-335

Vegetation Management along the Grizzly - Captain Jack Transmission Line Corridor from Grizzly Substation to Captain Jack Substation, Jefferson, Crook, Deschutes, Lake, and Klamath Counties, Oregon

(Decision: No further NEPA review required)
March 2007

DOE/EIS-0285-SA-336

Palisades - Goshen Transmission Line Project, Bonneville and Bingham Counties, Idaho

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-337

Vegetation Management along the Echo Lake - Monroe No. 1, 500 kV Transmission Line Corridor; the Echo Lake - Maple Valley No. 1 and No. 2, 500 kV Transmission Line Corridor; and the Covington - Maple Valley No. 2, 230 kV Transmission Line Corridor, King and Snohomish Counties, Washington

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-338

Vegetation Management along the Priest River Tap to Albeni Falls - Sand Creek No. 1, 115 kV Transmission Line Corridor Right of Way, Bonner County, Idaho

(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-339

Vegetation Management along the Chehalis - Covington No. 1 Transmission Line Corridor, Lewis and Thurston Counties, Washington

(Decision: No further NEPA review required)
April 2007

* Not previously reported in LLQR

EAs and EISs Completed January 1 to March 31, 2007

EAs

Chicago Office/Office of Science

DOE/EA-1585 (3/27/07)

Proposed Decontamination and Demolition of Building 301 at Argonne National Laboratory, Chicago, Illinois

Cost: \$38,000

Time: 2 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

DOE/EA-1571 (12/28/06)*

Ohio State University 4-H Center with Green Building Technologies, Franklin County, Ohio

Cost: \$48,000

Time: 6 months

Idaho Operations Office/Office of Nuclear Energy

DOE/EA-1555 (3/13/07)

Consolidation and Expansion of Idaho National Laboratory Research and Development at a Science and Technology Campus, Idaho Falls, Idaho

Cost: \$80,000

Time: 14 months

Oak Ridge Operations Office/ Office of Environmental Management

DOE/EA-1574 (3/9/07)

Uranium-233 Stabilization and Building 3019 Complex Shutdown at the Oak Ridge National Laboratory, Oak Ridge, Tennessee

Cost: \$41,000

Time: 6 months

Oak Ridge Operations Office/Office of Science

DOE/EA-1415 (3/26/07)

Proposed Conveyance of the American Museum of Science and Energy, Parcel G, and Parcel 279.01 to the City of Oak Ridge, Tennessee

Cost: \$75,000

Time: 65 months

Pacific Northwest Site Office/Office of Science

DOE/EA-1562 (1/29/07)

Construction and Operation of a Physical Sciences Facility at the Pacific Northwest National Laboratory, Richland, Washington

Cost: \$507,000

Time: 11 months

Thomas Jefferson National Accelerator Facility Site Office/Office of Science

DOE/EA-1534 (1/30/07)

Proposed Upgrade and Operation of the CEBAF and FEL Accelerators and Construction and Use of Buildings Associated with the 2005 Ten-Year Site Plan at the Thomas Jefferson National Accelerator Facility, Newport News, Virginia

Cost: \$100,000

Time: 21 months

EIS

Office of Fossil Energy/ National Energy Technology Laboratory

DOE/EIS-0383 (72 FR 3846, 1/26/07)

(EPA Rating: EC-1)

Orlando Gasification Project, Orlando, Florida

Cost: \$1,378,000

Time: 17 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

* 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 January 1 and March 31, 2007.

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

Scoping

What Worked

- *Broad bounding assumptions.* In the internal scoping meeting, the EA preparation team decided to make broad bounding assumptions in order to have operational flexibility during the execution of the project.
- *State assists with notification.* The state regulator used its public relations department to help inform the public of EIS scoping meetings.
- *Preparatory work.* After first doing much research up front, the internal scoping process was completed with one meeting and some follow up document reviews.
- *Internal scoping facilitator.* A professional facilitator led the internal EA scoping meeting, which helped the group make decisions and stay on schedule and topic.

What Didn't Work

- *No scoping meeting.* Stakeholders did not understand the EA's scope and objectives because no public scoping meeting was held.

Data Collection/Analysis

What Worked

- *Use of modeling.* A radiation dispersion model was used successfully to calculate potential radiation dose to non-involved workers during open demolition proposed in the EA.
- *Use of existing data.* Current data from a nearby category 2 nuclear facility were used in data collection for the radiological impacts of a category 3 facility.

What Didn't Work

- *Insufficient information.* Information needed on alternatives was either outdated or lacked sufficient detail to adequately assess applicability.

- *Inadequate knowledge.* The public commentators may have been more knowledgeable than the preparers about the viable options for the EA.
- *Accident analyses.* During internal scoping, it was difficult to determine the appropriate types of accident scenarios needed for the EA, which differed from scenarios for the preliminary and final hazard analysis for a nuclear facility.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Management involvement.* The project director helped push the EA to completion.
- *Headquarters support.* Open communications with and timely support from the DOE Headquarters Program Office facilitated timely completion of the EA.
- *Open communication.* The EA preparer, project manager, and reviewers maintained open communication.
- *Document manager communication.* The document manager was in constant communication with all parties to ensure that issues were resolved quickly.
- *Responsiveness.* The industrial proponent and state regulator were responsive to information needs during the EIS review and approval process.
- *Frequent communication.* Weekly conference calls with project participants facilitated timely completion of the EIS.
- *Flexibility.* The NEPA project team maintained flexibility in the EA process to handle various options and scope changes.

(continued on next page)

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

Factors that Inhibited Timely Completion of Documents

- *Resistance and disagreement.* Resistance to revising an old EA and months-long disagreement among EA team members inhibited timely completion of the EA.
- *Late identification of alternatives.* Alternatives to the preferred path forward were identified late in the process, causing delays in finalizing the EA.
- *Inattention to comments.* Not enough attention was paid to ensure that DOE reviewers' comments were addressed in the EA.
- *Pressure to finish EA.* The sense that the document had to be "done yesterday" proved counterproductive.
- *Lack of technical editing.* Technical editing support was deficient.
- *Changing project direction.* Changes to the scope of the project required additional analyses for the EA.
- *Confusion on NEPA initiation.* Confusion as to when the NEPA process can and should begin caused some internal discussion; however, all participants were involved in the decision to begin the EA.
- *Scope uncertainty.* Uncertainty in the scope of the project, which was primarily tied to funding, delayed the EA schedule.
- *EA placed on hold.* The EA was essentially complete in early 2003, placed on hold, and resurrected and updated in 2006.
- *Limited DOE staff.* There was only one DOE staff member helping to prepare the EA, which made it difficult to complete the EA on schedule.

Teamwork

Factors that Facilitated Effective Teamwork

- *Schedule adherence.* The EA manager ensured that internal DOE reviewers followed the established EA preparation schedule.
- *Communication.* Open communication between DOE and the contractor helped resolve issues.
- *Conference calls.* Frequent conference calls were vital because the NEPA Compliance Officer, legal counsel, and the rest of the EA team were in separate locations.

- *Role of Document Manager.* Direction to the EA preparation contractor was only given through the Document Manager.
- *Planning.* A defined EA statement of work, quality assurance plan, and analysis plan were prepared.
- *NEPA understanding.* Good interaction among technical team members, and their understanding of the EIS process assisted them in obtaining information needed from the industrial participant.

Factors that Inhibited Effective Teamwork

- *Over-reliance on one team member.* The EIS preparation team did not have intimate knowledge of all issues during an unexpected absence of a key team member.
- *Team disagreement.* There was internal debate over whether or not a new EA was needed.

Process

Successful Aspects of the Public Participation Process

- *State cooperation.* The state's NEPA contact was cooperative and provided comments on the EA quickly, expressing no objection or issue with the project.
- *Public affairs involvement.* The program's public affairs office was involved early on and did an excellent job of responding to media inquiries. The public was generally appreciative of DOE's efforts to keep them informed and involved in the EIS process.
- *Local rapport.* The host site had already established good relations with the local public.
- *Outreach.* There was very little public response to the EA process, mainly due to the thorough analysis and public outreach from the project office.

Unsuccessful Aspects of the Public Participation Process

- *Public discontent.* Former site workers' concerns were not addressed sufficiently in the EA and their comments were not handled well.
- *Reorganization.* DOE reorganization made interaction with the tribes on the EA more difficult because the tribes were unfamiliar with the new players and communication processes. *(continued on next page)*

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

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Alternatives assessment.* The EA process forced DOE to consider all potential alternatives.
- *Boundaries established.* The EA established bounding assumptions for the proposed actions, which the project manager understands could not be exceeded during project execution unless further NEPA review is done.
- *Construction decisions.* The NEPA process helped in determining potential locations for construction at the site as well as the need for a buffer area.

Enhancement/Protection of the Environment

- *Risk avoidance.* A major security risk was possibly eliminated.
- *Understanding of effects.* The NEPA process enhanced the understanding of the potential environmental effects of each alternative and helped in selecting the preferred option.
- *Permitting coverage.* The NEPA process did not enhance the environment; the mitigation measures identified in the EIS were already covered by the permitting requirements.
- *Environmental considerations.* The environment was carefully considered during the EA process. Issues were identified that would have otherwise been ignored, such as avoiding the site during nesting season.

Other Issues

Cost-Effectiveness

- *DOE-led preparation.* The EA was prepared in-house with very little contractor support.
- *Estimated budget.* Budgeting prior to each phase in the EIS process provided an accurate estimate.

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 7 questionnaire responses were received for EAs and EISs, 6 out of 7 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “4” stated stakeholder comments were instrumental in finalizing the EA and finding of no significant impact.
- A respondent who rated the process as “4” stated that, if the NEPA process is appropriately applied and followed, it will always result in the selection of the most appropriate alternative.
- A respondent who rated the process as “4” stated that incorporation of stakeholder comments contributed to the effectiveness of the NEPA process.
- A respondent who rated the process as “3” stated that, due to the NEPA process, DOE listened to the public.
- A respondent who rated the process as “3” stated that, although the project decision was made beforehand, the EA established environmental protection boundaries and analyzed the environmental impacts.
- A respondent who rated the process as “3” stated that the potential impacts to the human environment were carefully considered in the preliminary design process as a result of the EIS process.
- A respondent who rated the process as “2” stated that the EA process allowed identification of public and tribal concerns and how best to proceed to make all parties amenable to the action. 

LESSONS LEARNED

September 4, 2007; Issue No. 52

Third Quarter FY 2007

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

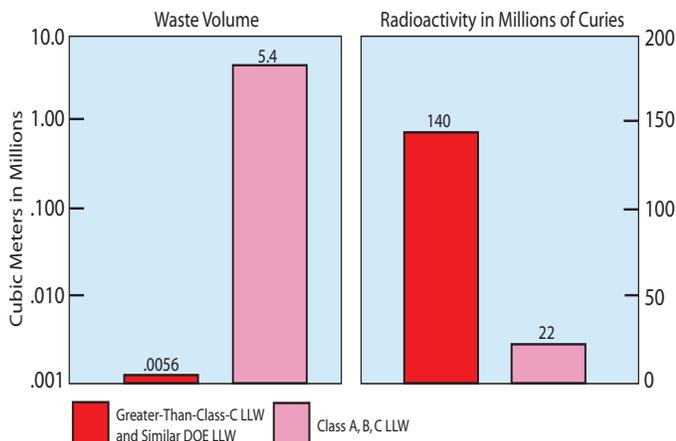
The U.S. Department of Energy (DOE) has announced its plan to evaluate eight DOE sites and two generic locations for the proposed disposal of about 5,600 cubic meters (7,300 cubic yards) of current and projected Greater-Than-Class-C low-level waste (LLW) and similar DOE LLW. Greater-Than-Class-C LLW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

In its Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for this waste (72 FR 40135; July 23, 2007), DOE began a 60-day public scoping period that will end September 21, 2007. The EIS will support national policy and decisionmaking for

What Is Greater-Than-Class-C LLW?

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

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



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

Greater-Than-Class-C LLW disposal. Based on public reactions to DOE’s previous EISs involving radioactive waste management, and public scoping meetings conducted so far for this EIS, DOE anticipates that this EIS may generate substantial interest.

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

(continued on page 4)

Inside **LESSONS LEARNED**

Welcome to the 52nd quarterly report on lessons learned in the NEPA process. This issue highlights the start of two major DOE EISs and features several guest-written articles. As always, we welcome your suggestions for further improvement.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2007. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2007

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2007 (July 1 through September 30, 2007) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.oh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

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DOE-wide NEPA Contracts Extended

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



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

– David Nienow, NNSA Service Center

DOE Seeking Early Stakeholder Input for a Remediation EIS

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

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

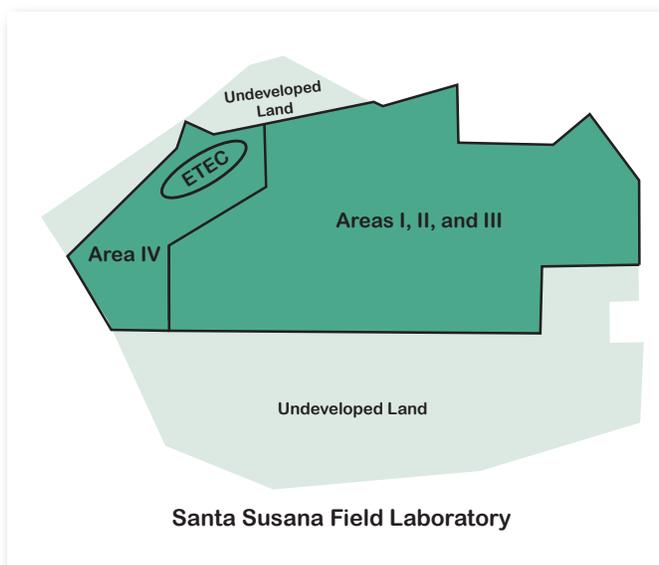
The NEPA Compliance Officer for this project, Pete Yerace, noted that this early interaction is helping DOE define not only the upcoming EIS contractor work but, most importantly, the scope of the EIS to be prepared. “It is my experience that the success of an EIS depends heavily on the emphasis placed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

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

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

DOE to Offer Early Public Meetings

Through the Advance NOI, DOE will offer to continue to meet with stakeholders in a forum that best suits their needs. Since the court decision, DOE has attended meetings of the EPA-sponsored Santa Susana Field



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

Laboratory Work Group, an ad hoc affiliation of Federal, state, and local regulatory agencies and five representatives of the community. The Work Group is not a decisionmaking body nor an advisory committee, but rather a forum to share information regarding environmental issues related to the Field Laboratory.

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

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

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

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

Early Public Involvement

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

Several commentors, for example, underscored the need for DOE to clearly present regulatory issues that may be associated with each proposed disposal location and the extent to which the alternatives analyzed would meet applicable requirements. Comments also indicated concerns about the use of "concentration averaging," in which the radioactivity of one component is averaged

What Is an Advance NOI?

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

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



over the volume or mass of waste to determine applicable waste classifications. This prompted DOE to clarify in the NOI that it would use guidance established by the Nuclear Regulatory Commission (NRC) for concentration averaging to determine when LLW is Greater-Than-Class-C LLW. Other comments on the Advance NOI prompted DOE to modify the EIS period of analysis based on schedules for nuclear power reactor decommissioning and to update the inventory to be analyzed.

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

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

Potential Disposal Methods

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

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

(continued on next page)

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

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

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



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

Public Scoping Meetings

To date, DOE has held seven public scoping meetings at or near the DOE sites identified as potential disposal locations, with remaining meetings scheduled for September 4 in Las Vegas, Nevada, and September 10 in Washington, DC. So far, comments at the meetings have been largely concerned with the location of the disposal facility. While some commentors favor a proposed candidate location, most have expressed concern about locating such a facility near their communities. Mr. Joyce observes that, “It is important to clearly explain during scoping meetings that, in accordance with NEPA, we must consider the range of reasonable alternatives in this

EIS, regardless of whether DOE or stakeholders favor or object to them. We cannot eliminate a reasonable disposal location from the EIS scope based merely on DOE’s or stakeholders’ preferences.”

Next Steps

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

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

For More Information

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

Candidate Disposal Methods and Locations

Deep Geologic Disposal

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

Intermediate Depth Borehole and Enhanced Near-Surface Disposal

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



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

Public Hearings Show Overwhelming Support for Clean Coal Project

By: Carrie Moeller, Dade Moeller & Associates

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

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

“FutureGen Here”

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

Four Sites Compete to Host FutureGen

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

representatives the previous week in Jewett and Odessa, Texas, the two other proposed FutureGen sites.

Stations, Posters, and Models

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

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

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



FutureGen Public Hearings (continued from previous page)

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

– Mark McKoy
National Energy Technology Laboratory

BIMBY!

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

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

Next Steps

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



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

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

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

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

NRC Supplementing EA to Address Terrorist Acts

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

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

In addition, NRC staff compared the assumptions in prior generic security assessments for spent fuel storage facilities “to the relevant features of the Diablo Canyon ISFSI. Based on this comparison, the staff determined

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

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

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



NEPA Compliance and NRC Licensing of New Reactors

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

NRC expects the final rule to improve its “regulatory effectiveness and efficiency in implementing its licensing and approval processes.” Among several changes affecting

the NRC NEPA process are requirements for the submittal of environmental information and the “legal equivalent of a categorical exclusion” for issuance of a standard design certification.

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

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

EPA Issues Memorandum on Fine Particulate Rule and NEPA



A new National Ambient Air Quality Standard for fine particulates (PM_{2.5}) should be reflected in NEPA evaluations, advised Anne Norton Miller, Director, Office of Federal Activities, Environmental Protection Agency (EPA), in a June 25, 2007, memorandum to EPA regional

reviewers of Federal agency NEPA documents. A final rule (71 FR 61144; October 17, 2006), which became effective on December 18, 2006, lowered the 24-hour standard for PM_{2.5} from 65 µg/m³ (micrograms per cubic meter) to 35 µg/m³ to better protect the public from short-term fine particulate exposure.

The EPA memorandum states that the new 24-hour standard should be used in addition to the 15.0 µg/m³ annual standard in modeling air quality, assessing health impacts, determining the significance of impacts, and evaluating potential mitigation measures for all proposed actions for which NEPA decision documents (findings of no significant impact or records of decision) have not yet been issued. The memorandum recommends considering supplementing NEPA reviews that have been completed for proposed actions that have not yet been implemented.

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

For conformity evaluations, the revised PM_{2.5} standard of 35 µg/m³ does not apply until one year after the effective date of nonattainment designations that consider that standard (Clean Air Act Section 176(c)(6) and

What is PM_{2.5}?

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

40 CFR 93.102(d)). However, conformity evaluations must be completed for current nonattainment and maintenance areas designated under the previous standard (Clean Air Act Section 176(c)(5)).

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

DOE Cooperating Agency in Department of State EIS

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

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

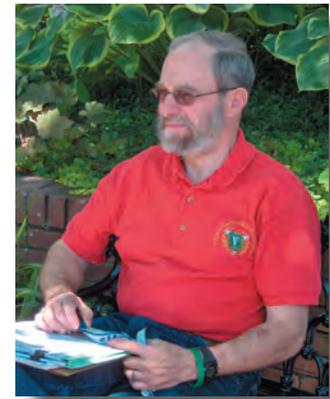


Transitions

Reflections of a Retiring NCO

Steve Frank, Formerly of Environmental Management

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



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

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

 Council on Environmental Quality's *Forty Most Asked Questions*.

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

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

On managing EM's NEPA activities: At any one time, EM has a huge number of ongoing EISs, EAs, and supplement analyses – mostly at the Field Offices. I helped management keep track of EM's NEPA activities through a bimonthly summary updating the status of the

reviews for major proposed actions and the implications of the results of those environmental analyses on aspects of the proposals. I highly recommend this to other NCOs. It provided a focus for my regular discussions with project managers, NEPA Document Managers, and – very importantly – the Field NCOs on whom I relied.

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

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

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

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

Warm regards to you, my friends,

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

(continued on next page)

Transitions *(continued from previous page)*

New NEPA Compliance Officers



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

Environmental Management: Tish O'Connor

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

Environmental Management Consolidated Business Center: Pete Yerace

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



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



Who Are Our NCOs?

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

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

MIETRAU*

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

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

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

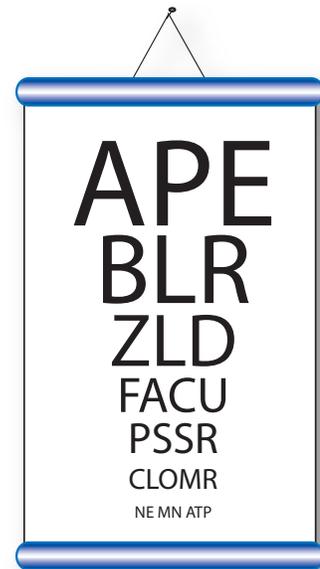
- Start with the principle that *no* abbreviations will be used. Then use only abbreviations that make the text significantly more readable.
- Consider abbreviating phrases and names of agencies and statutes that are mentioned many times, such as *DOE* and *NEPA*. Avoid abbreviating names or phrases that appear infrequently.
- Use part of a name or phrase instead of an abbreviation, such as *Commission* as a short version of *Nuclear Regulatory Commission*.
- For abbreviations used in tables, provide definitions in table footnotes.

* *Make it Easy to Read and Understand.*

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

- Steer clear of abbreviations unique to your project.
- Avoid using an abbreviation as a shortcut for technical phrases. For example, for *secondary maximum contaminant level*, it may be better to repeat this phrase rather than using *SMCL*.
- However, use standard abbreviations for units of measurements if the unit names are cumbersome. For example, *dB(A)* is more workable than repeated use of *decibels as measured on the A-weighted scale*.
- Use abbreviations that are universal, such as *a.m.*, *p.m.*, *AD*, *BC*, and *U.S.*, without identifying them in the abbreviation list. Use judgment.

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



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

Schedule Change: NAEP Award Nominations Due September 30!

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

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

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

Updated Stakeholders Directory Issued; Many Contacts Prefer Compact Disks

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

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



Paper Copies Still Needed

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

from 29%). Few stakeholders wish to rely only on a notice of the posting of a NEPA document online, but several request fewer paper copies or disks if it is also available online.

Directory a Key Planning, Coordination Tool for Document Managers

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

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

For More Information

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

BLM Issues Categorical Exclusion for Exploratory Actions

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

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

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



My Summer Internship at the NEPA Office

By: Kristen Penderghest

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



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

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

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

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

working in public service and in the field of environmental justice is definitely a career path I hope to follow.

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

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

– Kristen Penderghest, Future NCO?



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

Jim Daniel, Office of NEPA Policy and Compliance 



WorldWideScience.org Opens for Public Access

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

Gateway to 19 Portals

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

No More "Door-to-Door" Searching

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

Global Information Sharing

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

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

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

– Walter Warnick, Office of Scientific and Technical Information

Is This Reasonable?

A Review of NEPA Alternatives Analysis Case Law

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

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

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

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

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

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

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

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

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

– A Review of NEPA Alternatives Analysis Case Law

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

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

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

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

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

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



Litigation Updates

Other Agency NEPA Litigation

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

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

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

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

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

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

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



Citizens for Better Forestry v. USDA Forest Service

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

The court said that no record exists of any environmental analysis for the 2005 rule and as a result it had no basis upon which to find an absence of significant effects. The court identified three considerations under the CEQ regulations why the

2005 rule may have significant effects: its effects are controversial, it may establish a precedent for further actions with significant effects, and it may be related to other actions with cumulatively significant impacts.

Because the rule may have significant environmental impacts, the court found, the use of a categorical exclusion was inappropriate.

- **Other Issues:** The court found that the Forest Service had violated the Administrative Procedure Act in not providing for public review of the 2005 rule; the new rule constituted a “paradigm shift” from a 2002 proposal and earlier rules – as the agency noted in its rulemaking notice (70 FR 1024; January 5, 2005) – and substantive changes (such as elimination of resource protection standards and public involvement in monitoring of logging operations) were neither “logical outgrowths” of the 2002 proposed rule nor “natural drafting evolutions.” The court found that the Forest Service had violated the Endangered Species Act; because the agency did not initiate consultation with the U.S. Fish and Wildlife Service and had no documentation to support its determination that there would be “no effect” on listed species and their critical habitats, the failure to consult and prepare a biological analysis was arbitrary and capricious.
- U.S. District Court, Northern District of California. Case No.: 04-04512; March 30, 2007. This case was consolidated with *Defenders of Wildlife v. USDA*.

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

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Environmental Protection Information Center v. USDA Forest Service

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

The court held that the Forest Service improperly defined the goals of its project so narrowly that only its preferred alternative would serve those goals.

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

Navajo Nation v. USDA Forest Service

- **Agency Action:** The USDA Forest Service prepared an EIS in 2005 for a proposal to enhance recreational uses through snowmaking at the Arizona Snowbowl ski area, located in an area of high religious significance to Native Americans. The proposal included producing artificial snow with recycled sewage effluent from the City of Flagstaff.
- **NEPA Issues:** The court reviewed five NEPA issues. On the claim of inadequate impact analysis, the court found for the Navajo Nation: that ***the EIS did not adequately assess the risks posed by possible human ingestion of artificial snow made from treated sewage effluent.*** The court found the EIS to be adequate with respect to the four other NEPA challenges regarding:
 - ✓ The range of reasonable alternatives – Although the Forest Service's argument in the EIS was brief, "logistical and economic considerations and water availability research" and "environmental and political issues" are sufficient for not analyzing fresh water drilling in the Arizona desert as a reasonable alternative.
 - ✓ Response to a responsible opposing scientific viewpoint – The EIS adequately discloses, discusses, and responds to the substance of comments on

endocrine disruptors in treated sewage effluent, even though the Forest Service's responses differ from the commentator's position.

- ✓ Impact of diverting wastewater on the regional aquifer – The EIS stated that this factor was out of scope and would not be considered in selecting an alternative because the city, not the Forest Service, had the authority to designate uses of wastewater; nevertheless, the EIS contained brief discussion to support a finding that the impact would be negligible.
- ✓ Social and cultural impacts – The EIS describes the religious beliefs and practices of the Hopi and Navajo, and the "irretrievable impact" the proposal would likely have, satisfying the NEPA obligation to discuss effects on the human environment.
- **Other Issues:** The court found that the Forest Service proposal violated the Religious Freedom Restoration Act because it "would impose a substantial burden on their [the plaintiffs'] exercise of religion." The court found, however, that the Forest Service meaningfully consulted with the Hopi and therefore did not violate the National Historic Preservation Act.
- U.S. Court of Appeals, 9th Circuit. Case No.: 06-15455; March 12, 2007. 

(continued on next page)



State of California v. USDA Forest Service

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

Training Opportunities

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

- Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
Cumulative Impacts Assessment (FED 104)
San Francisco, CA: September 10-12
Washington, DC: October 9-11
Atlanta, GA: October 23-25
No Fee
NEPA and Adaptive Management (FED 110)
Seattle, WA: September 18-20
Washington, DC: December 11-13
No Fee
NEPA and Air Impacts (FED 111)
San Francisco, CA: September 25-27
Chicago, IL: October 2-4
Washington, DC: November 6-8
No Fee
- American Law Institute - American Bar Association
800-CLE-NEWS
www.ali-aba.org
Environmental Impact Assessment (NEPA)
Washington, DC: December 12-14
(Live and Webcast)
Fee: \$1,095 (\$100 online registration discount available)
- Continuing Legal Education (CLE)
800-873-7130
www.cle.com
NEPA
Phoenix, AZ: October 18-19
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available
Denver, CO: December 13-14
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available
- Environmental Training & Consulting International, Inc.
503-274-1790
www.envirotrain.com
Environmental Impact Assessment
Stillwater, OK: December 17-21
Fee: \$950
- International Institute for Indigenous Resource Management
303-733-0481
www.iiirm.org
NEPA in Indian Country
Denver, CO: September 25-26
Fee: \$495
- Northwest Environmental Training Center
206-762-1976
rsobol@nwetc.org
www.nwetc.org
NEPA Compliance: Writing the Perfect EA/FONSI or EIS
Seattle, WA: September 12-13
Fee: \$495 (\$395 for government employees)
Las Vegas, NV: October 24-25
Fee: \$495 (\$395 for government employees)
- SWCA Environmental Consultants
800-828-7991
training@swca.com
www.swca.com/jsps/training/training.htm
Section 106 Compliance: An Introduction to Professional Practice under Section 106 of the National Historic Preservation Act
Portland, OR: September 11-13
Fee: \$795
Orange County, CA: November 6-8
Fee: \$795
Comprehensive NEPA
Phoenix, AZ: October 2-4
Fee: \$795
Sacramento, CA: November 6-8
Fee: \$795
Reaching and Writing Agreements under Section 106
Sacramento, CA: October 23-25
Fee: \$795
- Tetra Tech, Inc.
877-468-3872
www.tetrattechNEPA.com
NEPA Workshop
Reno, NV: September 20-21
Fee: \$600 (\$500 for government employees) until 9/6/07

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Training Opportunities

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

NEPA Cumulative Effects Analysis and Documentation

San Francisco, CA: September 18-20

Fee: \$885 (GSA contract: \$795)

Atlanta, GA: October 18-19

Fee: \$685 (GSA contract: \$595)

Dallas/Fort Worth, TX: November 27-29

Fee: \$845 (GSA contract: \$755) until 10/3/07

Integrating Federal Environmental Laws into NEPA

Las Vegas, NV: September 25-27

Fee: \$885 (GSA contract: \$795)

How to Manage the NEPA Process and Write Effective NEPA Documents

Olympia, WA: September 25-28

Fee: \$1,110 (GSA contract: \$955)

San Antonio, TX: December 4-7

Fee: \$1,070 (GSA contract: \$955)

until 10/17/07

How to Manage the NEPA Process

Salt Lake City, UT: October 1-3

Fee: \$885 (GSA contract: \$795)

Atlanta, GA: October 15-17

Fee: \$885 (GSA contract: \$795)

Clear Writing for NEPA Specialists

Denver, CO: October 2-4

Fee: \$885 (GSA contract: \$795)

Managing NEPA Projects and Teams

Salt Lake City, UT: October 4-5

Fee: \$685 (GSA contract: \$595)

Reviewing NEPA Documents

Salt Lake City/Park City, UT: October 23-25

Fee: \$845 (GSA contract: \$755) until 9/5/07

Climate Change and Cumulative Effects Analysis

Denver, CO: November 6-8

Fee: \$845 (GSA contract: \$755) until 9/19/07

- Natural Resources and Environmental Policy Program, Utah State University

435-797-0922

judy.kurtzman@usu.edu

www.cnr.usu.edu/policy

NEPA Certificate Program

Conducted through Utah State

University. Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later maybe applied toward the certificate. Also requires completion of course exams and a final project.

Fee: \$4,955 (includes tuition, course fees, and all materials)

- Nicholas School of the Environment and Earth Sciences, Duke University

919-613-8082

del@nicholas.duke.edu

www.env.duke.edu/del/continuinged/courses.html

Implementation of the National Environmental Policy Act

Durham, NC: November 5-9

Fee: \$1,150

Accounting for Cumulative Effects in the NEPA Process

Durham, NC: December 5-7

Fee: \$750

Certificate in the National Environmental Policy Act

Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses.

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Customized NEPA Training

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

Environmental Impact Training

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

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

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

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

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

Conducting Quality Cumulative Impact Analyses under NEPA 2-3 days

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

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

Developing and Implementing Effective NEPA Planning Strategies Length tailored to need

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

NEPA Toolbox™ Training

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

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

Environmental Education

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

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

EAs

Idaho National Laboratory/ Office of Nuclear Energy

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

Livermore Site Office/ National Nuclear Security Administration

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

Oak Ridge Office/Office of Science

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

Pantex Site Office/ National Nuclear Security Administration

DOE/EA-1579 (6/19/07)
*Proposed Perched Groundwater Corrective Measure,
Amarillo, Texas*
Cost: \$353,000
Time: 25 months

Savannah River Operations Office/ Office of Environmental Management

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

Western Area Power Administration

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

* No EISs completed this quarter

** Not previously reported in LLQR

NEPA Document Cost and Time Facts

EA Costs and Completion Times

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

EIS Costs and Completion Times

- No EISs were completed during this quarter.
- Cumulatively, for the 12 months that ended June 30, 2007, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1,378,000; the average was \$1,819,000.
- Cumulatively, for the 12 months that ended June 30, 2007, the median and average completion times for 3 EISs were 17 months.

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

Notices of Intent

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0399

*The Montana Alberta Tie, Ltd. (MATL) 230 kV
Transmission Line, Montana*
June 2007 (72 FR 31569, 6/7/07)

Office of Environmental Management

DOE/EIS-0375

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

Western Area Power Administration

DOE/EIS-0401

*Construction and Operation of the Proposed
NextGen Energy Facility, South Dakota*
July 2007 (72 FR 41307, 7/27/07)

DOE/EIS-0400

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

Notice of Additional Meeting

Western Area Power Administration

DOE/EIS-0390

*Eastern Plains Transmission Project, Colorado
and Kansas*
June 2007 (72 FR 30792, 6/4/07)

Draft EISs

Bonneville Power Administration

DOE/EIS-0379

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

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0394

FutureGen Project
June 2007 (72 FR 30589, 6/1/07)

Western Area Power Administration

DOE/EIS-0323-S1

*Construction and Operation of the Sacramento Area
Voltage Support Project, Sacramento, Sutter,
and Placer Counties, California*
July 2007 (72 FR 38576, 7/13/07)

Final EIS

Western Area Power Administration

DOE/EIS-0395

*San Luis Rio Colorado Project, Yuma County,
Arizona*
August 2007 (72 FR 43271, 8/3/07)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

*Long-Term Dialogue Regional Policy,
Portland, Oregon*
July 2007 (72 FR 41307, 7/27/07)

Western Area Power Administration

DOE/EIS-0376

*White Wind Farm Project, Construct a Large
Utility-Scale Wind-Powered Electric Energy
Generating Facility, Brookings County, South Dakota*
July 2007 (72 FR 37525, 7/10/07)

Supplement Analysis

Bonneville Power Administration

Yakima Fisheries Project

Environmental Impact Statement

(DOE/EIS-0169)

DOE/EIS-0169-SA-13

*Implement Phase II of the Yakima Coho
Reintroduction Feasibility Study, Benton, Yakima,
and Kittitas Counties, Washington*
(Decision: No further NEPA review required)
August 2007

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 2007.

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

Scoping

What Worked

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

Data Collection/Analysis

What Worked

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

Schedule

Factors that Facilitated Timely Completion of Documents

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

Factors that Inhibited Timely Completion of Documents

- *Consultation.* Extended informal consultation with the U.S. Fish and Wildlife Service regarding completion of the Biological Assessment inhibited timely completion of the EA.

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

Teamwork

Factors that Facilitated Effective Teamwork

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

Process

Successful Aspects of the Public Participation Process

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

(continued on next page)

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

Usefulness

Agency Planning and Decisionmaking: What Worked

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

Enhancement/Protection of the Environment

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

Other Issues

Guidance Needs

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

Editor's Note: *The comments presented here concern an EA that was prepared as a companion to a Corrective Measures Study/Feasibility Study that*

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

Effectiveness of the NEPA Process

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

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

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

LESSONS LEARNED

December 3, 2007; Issue No. 53

Fourth Quarter FY 2007

Multiple, Complex EISs Support DOE Missions; What Will the New Year Bring?

Have you been very busy lately? You're not alone. The Department of Energy (DOE) NEPA Community – NEPA Compliance Officers, NEPA Document Managers, NEPA support contractors, and the Offices of NEPA Policy and Compliance and the Assistant General Counsel for Environment – as well as Program and Field Office managers, have been exceptionally busy with NEPA-related activities this fall, culminating in the issuance of four major environmental impact statements (EISs) and two environmental assessments (EAs) in October and four EISs and five EAs in November. While the workload has been demanding, these EAs and EISs provide a sound, analytical basis for good decisionmaking, enabling DOE to accomplish its missions. Several of these key EISs are featured in this issue of *LLQR* starting on page 8.

More to Come

The job isn't over. The Draft EISs will lead to Final EISs. The Final EISs will lead to Records of Decision. There will be more Notices of Intent, scoping meetings, EISs, public hearings, and EAs in 2008. For a preview of upcoming DOE NEPA activities, visit the DOE NEPA website at www.eh.doe.gov/nepa, and examine the two tracking charts (updated approximately monthly) under "DOE Document Status and Schedules."



(continued on page 11)

Consideration of Greenhouse Gas Emissions in DOE NEPA Documents Is Evolving

By: Eric Cohen, Office of NEPA Policy and Compliance

Over the past 20 years, the analysis of greenhouse gas emissions and global climate change issues in DOE NEPA documents has evolved. Further evolution is anticipated. Drivers for change include advances in the science of climate change; heightened public awareness and concern; advances in technologies relevant to mitigation; and, especially recently, litigation, proposed legislation, and potential regulation of greenhouse gases such as carbon dioxide (CO₂), which has long been recognized as the most important anthropogenic greenhouse gas.

This review of past and current DOE practices is intended to help NEPA practitioners think about the dynamic area of climate change as it relates to their NEPA documents.

Early DOE NEPA Documents

Long before terms such as "carbon footprint" became part of the nation's everyday vocabulary, DOE addressed greenhouse gas emissions and global climate change (e.g., "global warming") in its NEPA documents. In the late 1980s, for example, DOE's *Clean Coal Technology Program Final Programmatic Environmental Impact Statement* (DOE/EIS-0146) projected the incremental and cumulative emissions of CO₂ expected to result from commercialization of various clean coal technologies. This programmatic EIS also contained substantial discussions of associated global warming issues based on scientific understanding at that time.

(continued on page 4)

Inside **LESSONS LEARNED**

Welcome to the 53rd quarterly report on lessons learned in the NEPA process. Many in the Department's NEPA Community were called on to give extraordinary time and resources to the preparation of key EISs issued recently and highlighted in this LLQR. We anticipate a busy 2008 as well. As always, we welcome your suggestions for further improvement.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2008. Contact Yarden Mansoor at yarden.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2008

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2008 (October 1 through December 31, 2007) should be submitted by February 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

Printed on recycled paper



This icon indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a hyperlink to a referenced web page whose URL is too long to be useful when printed.

Pondering Irreversible Consequences to Rare Natural Phenomena

Although Yosemite National Park had been established in 1890, it was President Theodore Roosevelt's 1903 camping trip with naturalist John Muir that led to the addition of the Yosemite Valley and the Mariposa Grove of sequoias to the Park. Roosevelt's decision to preserve environmental values and recreation opportunities, instead of damming or developing the valley, was based on his recognition of the uniqueness of the Yosemite environment.

Almost 65 years later, just before NEPA was enacted, a short paper by the late resource economist Dr. John Krutilla laid out a theoretical framework for thinking systematically about such decisions.

A member of the DOE Office of NEPA Policy and Compliance attended a recent seminar commemorating the work of Dr. Krutilla on the 40th anniversary of his article, and was struck by its resonance with NEPA. See article on page 20.



When President Theodore Roosevelt (left) visited Yosemite National Park with John Muir, the Park consisted only of the highlands. (Photo: Library of Congress)



OMB and OSTP Issue Risk Analysis Principles



The Office of Management and Budget (OMB) and the Office of Science and Technology Policy (OSTP) have issued a joint Memorandum on *Updated Principles for Risk Analysis* (September 19, 2007; www.whitehouse.gov/omb/memoranda under 2007) that “reinforces generally-accepted principles for risk analysis related to environmental, health, and safety risks.” After considering comments on the *Proposed Risk Assessment Bulletin* (LLQR, March 2006, page 14), including those from a National Academy of Sciences (NAS) peer review committee (which found the proposed Bulletin to be “fundamentally flawed” and recommended it be withdrawn), OMB and OSTP decided not to issue the Bulletin and issued this Memorandum instead.



The 13-page Memorandum is based on principles developed by an interagency working group co-chaired by OMB and OSTP in 1995. Noting that the “1995 Principles” remain valid today, the Memorandum reinforces and updates those principles. The Memorandum is consistent with DOE guidance in *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (“Green Book”) (December 2004) and may be of interest to DOE NEPA practitioners seeking to ensure that their risk analyses are consistent with the updated principles.



Apply “Sliding-Scale” Approach

Although OMB and OSTP do not use the term “sliding-scale” in the Memorandum, they reaffirm the principle that the scope of a risk analysis should correspond to the nature and significance of the decision to be made. The Memorandum cites a 1997 Presidential Commission on Risk report, which states that the level of detail in a risk assessment “should be commensurate with the problem’s importance, expected health or environmental impact, expected economic or social impact, urgency, and level of controversy, as well as with the expected impact and cost of protective measures.” The Memorandum also cites NAS comments that “[r]isk assessment is not a monolithic process or a single method” and that “. . . risk assessments share some common principles, but their application varies widely among domains.”

Use Best Available Data and Methodologies

OMB and OSTP state that “Agencies should employ the best reasonably obtainable scientific information to assess risks to health, safety, and the environment . . .” and “. . . analyses should be based upon the best available scientific methodologies . . .” In addition, “. . . characterizations of risks . . . should be both qualitative and quantitative, consistent with available data.”

Build Credibility Through Transparency

Expanding upon one of the original 1995 principles – that risk assessments be communicated in a meaningful manner – OMB and OSTP refer to an NAS comment that including a concise summary or introductory section can improve the clarity of the analysis and help ensure that readers interpret it appropriately. This summary could disclose the objectives and scope of the risk assessment, the key findings of the analysis, and the key scientific limitations and uncertainties. The Memorandum notes that “Judgments used in developing a risk assessment, such as assumptions, defaults and uncertainties, should be stated explicitly. The rationale for these judgments and their influence on the risk assessment should be articulated.”

The Memorandum emphasizes the importance of acknowledging and consistently communicating the uncertainties of risk assessments, and quotes from NAS’ February 2007 *Analysis of Global Climate Change: Lessons Learned*: “The manner in which uncertainties are acknowledged and characterized will affect both the salience and credibility of the assessment.” The Memorandum further emphasizes that “a high degree of transparency with respect to data, assumptions, and methods will increase the credibility of the risk analysis, and will allow interested individuals . . . to understand better the technical basis of the analysis.”

The Memorandum cautions against presenting single estimates of risk because they can be misleading and may provide a false sense of precision. Instead, OMB and OSTP suggest that a range of plausible risk estimates be given and that, when possible, quantitative uncertainty analysis, sensitivity analysis, and a discussion of model uncertainty be included. These recommendations are consistent with guidance in the *Green Book* (page 19), which suggests using sensitivity analyses to identify the factors that most affect the impact estimates and to explain how uncertainty affects the analysis.

Consider Responsible Opposing Views

The Memorandum also notes the importance of addressing “. . . the range of scientific and/or technical opinions” in developing risk assessments. “Results based on different effects and/or different studies should be presented,” the Memorandum states, “to convey how the choice of effect and/or study influences the analysis . . .” It further states: “When relying on data from one study over others, the agency should provide a clear rationale and/or scientific basis for its choice.” This guidance is consistent with recommendations in the *Green Book* to “[i]dentify any responsible opposing views regarding how to conduct impacts analysis or interpret conclusions.”



Greenhouse Gases *(continued from page 1)*

DOE NEPA documents issued over the next decade, particularly those related to uses of fossil energy resources or involving proposals that would potentially produce or consume large quantities of energy, usually included estimates of greenhouse gas emissions when the emissions would be large. The estimates usually focused on CO₂ because anthropogenic sources rarely produced large amounts of other greenhouse gases such as methane, nitrous oxide, or halocarbons (a group of gases containing fluorine, chlorine, or bromine).

Estimating the potential impact of greenhouse gas emissions on climate change has been more difficult than estimating emissions. General DOE NEPA guidance (*Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (“*Green Book*”) (December 2004, page 20)) recommends: “In addition to identifying pollutants that would be released . . . , identify potential effects from these substances A quantified release rate should not be the endpoint in impact analysis.” However, there has been no generally recognized scientific basis to enable analysts to make definitive conclusions about the impacts of greenhouse gas emissions from specific proposals on global climate change (e.g., “X tons per year of CO₂ would result in an increase in global averaged temperature of Y degrees”).

Comparisons to Global Emissions

To comply with the *Green Book* recommendation, DOE NEPA documents have compared greenhouse gas emissions from proposed actions to global emissions. For example, some documents contain statements such as: “. . . although CO₂ emissions from the project would be large, the quantities would be very small in comparison with global emissions.” Other documents avoid such qualitative judgments but contain relative comparisons, such as: “The proposed facilities would emit X tons of CO₂ per year, which is 0.003% of global emissions” Commentors have questioned DOE’s use of such global comparisons because they believe such comparisons trivialize greenhouse gas emissions and indicate that DOE would always conclude that greenhouse emissions are “small,” thus not warranting mitigation (*LLQR*, March 2007, page 9).

DOE NEPA documents for projects that would not generate large quantities of greenhouse gases have

addressed global climate change indirectly, as a matter of good environmental stewardship. Several EAs and EISs explored alternatives, mitigation measures, and best management practices that would conserve energy and reduce greenhouse gas emissions. Typically, these documents did not quantify potential emissions reductions or explicitly address global climate change. (A few documents, such as EAs for energy efficiency rulemakings, quantified and focused primarily on emissions reductions.)

Intergovernmental Panel on Climate Change

Over time, the scientific community has expressed increasing certainty that humans are affecting the climate as more data and more reliable climate models have contributed to a better understanding of the earth’s climate system (e.g., assessments of the Intergovernmental Panel on Climate Change (IPCC), a United Nations science panel; see next page). With the growing recognition of the significance of this issue, public awareness and concern increased commensurately. In response to this shift along the “sliding-scale” of significance (*Green Book*, page 1)¹ DOE’s consideration of global climate change in its NEPA documents has increased.

After the IPCC issued an assessment report in 1995, the Council on Environmental Quality (CEQ), in October 1997, circulated draft guidance on consideration of global climate change in NEPA documents to Federal agencies for comment. The draft guidance, which was never finalized, proposed that Federal agencies consider in their NEPA documents two aspects of climate change: (1) potential impacts of Federal actions on climate change, and (2) potential impacts of climate change on Federal actions (e.g., feasibility of coastal projects in light of projected sea level rise).

In its comments on the draft guidance, DOE staff agreed with CEQ’s main premise, based on the IPCC’s conclusions, that global climate change was a “reasonably foreseeable” impact of greenhouse gas emissions in the context of NEPA. DOE staff also noted that “the NEPA process can be used to explore options to reduce net emissions of greenhouse gases through analyses of alternatives and mitigation measures.” (See *LLQR*, December 1997, page 12.)

(continued on next page)

¹ *The Green Book states: “The [sliding-scale approach] recognizes that agency proposals can be characterized as falling somewhere on a continuum with respect to environmental impacts. This approach implements CEQ’s instruction that in EISs agencies ‘focus on significant environmental issues and alternatives (40 CFR 1502.1) and discuss impacts ‘in proportion to their significance’ (40 CFR 1502.2(b)). (Note that under CEQ’s regulations and judicial rulings the degree to which environmental effects are likely to be controversial with respect to technical issues is a factor in determining significance)”*

Intergovernmental Panel on Climate Change

The Administration welcomes the [fourth] Intergovernmental Panel on Climate Change report, which was developed through thousands of hours of research by leading U.S. and international scientists and informed by significant hours of research by leading U.S. investments in advancing climate change research. Climate change is a global challenge that requires global solutions.

– Secretary of Energy Samuel Bodman, February 2, 2007

The Intergovernmental Panel on Climate Change (IPCC) (www.ipcc.ch) was established in 1988 by the World Meteorological Organization and the United Nations Environment Programme “in recognition of the issue of global warming.” Through the IPCC, climate experts from around the world synthesize the most recent climate science findings every 5–7 years and present their report to the world’s political leaders. The IPCC issued comprehensive assessments in 1990, 1995, and 2001; its fourth and most recent assessment report, consisting of contributions from three working groups, was issued in 2007. The IPCC reports describe an extensive peer review of their analyses and a high degree of consensus among the international panel of contributing scientists.

The IPCC assessment reports are widely regarded to have been highly influential. The fourth assessment report arguably has been the most influential because the report’s expression of a high level of confidence in several key findings apparently has convinced more people of the need to address climate change. In the United States, many people have since expressed a greater sense of urgency to address global warming. Tangible consequences include an increase in litigation, and calls for legislation, regulation, and mitigation.

Key Findings of the Fourth Assessment Report (from Working Group I)

- Warming of the climate system is unequivocal.
- The probability that global warming has been caused by human activities is greater than 90 percent. This is an increase from the third assessment report, which gave this probability as greater than 66 percent.
- Most of the observed globally averaged temperature increase since the mid-20th century is *very likely* (greater than 90 percent chance of being correct) due to an increase in anthropogenic greenhouse gas (primarily CO₂) concentrations.
- The primary source of the increased concentrations of atmospheric CO₂ since 1750 is fossil fuel use, with land use change providing another significant but smaller contribution.
- Further warming is inevitable. The long-term future climate change effects could be mitigated.

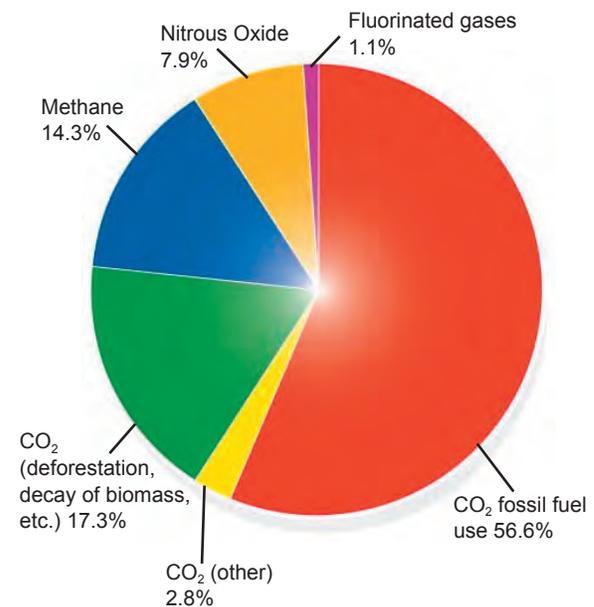
Predicted Consequences of Global Warming (from Working Group II)

North America

- Extended period of high fire risk and large increases in area burned.
- Increased intensity, duration, and number of heat waves.
- Western Mountains – decreased snowpack, winter flooding, reduced summer flows.
- Coastal Areas – increased stress on communities and habitat.

Globally

- More frequent heat waves, droughts, fires, and coastal flooding.
- More severe hurricane activity and increases in frequency and intensity of severe precipitation.
- Spread of infectious diseases to new regions.
- Heart and respiratory ailments from higher concentrations of ground-level ozone.
- Rising sea levels, coastal area flooding.



Global Greenhouse Gas Emissions in 2004

Source: IPCC Working Group III

Greenhouse Gases *(continued from previous page)*

Recent DOE NEPA Practice

DOE is now responding to the most recent information on climate change, including IPCC's fourth assessment report, completed in 2007. Current DOE NEPA documents generally include:

- **Discussion of global climate change.** Where greenhouse gas emissions would be very small, NEPA documents provide only enough discussion to show why further analysis is not warranted. Where potential greenhouse gas emissions could be large, a separate discussion of global climate change may be provided. Such discussions typically cite key findings of relevant studies to address potential consequences of greenhouse gas emissions (e.g., IPCC assessment reports and other IPCC studies; DOE reports (e.g., Energy Information Administration² data); reports of the U.S. Climate Change Science Program; and studies by other authoritative bodies such as the U.S. Environmental Protection Agency (EPA) and National Research Council).
- **Quantification of greenhouse gas emissions.** Emissions are usually presented as annual rates.
- **Consideration of cumulative impacts.** Depending on the nature of the proposal and the amount of potential greenhouse gas emissions, cumulative impact analyses have included consideration of the following conceptual elements:
 - Combination with other emissions (e.g., “The proposed facility would add X tons per year of CO₂ (or “CO₂-equivalent”) to existing (or projected future) emissions of Y tons per year from fossil fuel combustion and Z tons from all other sources.”).
 - Total emissions over the project lifetime (usually expressed as a quantity).
 - Potential to induce other actions. For research and development or other technology demonstrations, DOE EISs have provided estimates of potential greenhouse gas emissions from commercial deployment of the technology.
 - Life-cycle analyses, where appropriate. (See *LLQR*, March 2007, page 9, for a summary of a comparative life-cycle analysis for a coal-to-liquid project, the Gilberton Coal-to-Clean Fuels and Power Project (related article page 10). The “wells-to-wheels” analysis estimated that, without mitigation, use of coal-to-liquid technology would

result in substantially more CO₂ emissions than from production and use of petroleum fuels.)

- **Exploration of reasonable alternatives.** While all NEPA documents must consider the range of reasonable alternatives, DOE is paying closer attention to climate change issues at the project definition stage and in scoping recent documents.
- **Consideration of potential mitigation.** Where certain mitigation (e.g., carbon sequestration) is not currently feasible (several fossil energy proposals), recent NEPA documents have explored the potential for future mitigation.

Examples of analyses employing these concepts can be found in the recently-issued EISs for clean coal proposals (related article page 10), and other recent DOE NEPA documents, such as the EA for *Construction and Operation of a Proposed Cellulosic Ethanol Plant, Range Fuels, Inc., Treutlen County, Georgia* (DOE/EA-1597, October 2007).

Trends/Issues to Be Resolved

The consideration of greenhouse gas emissions in NEPA documents could change significantly if pending legislative proposals (e.g., proposed caps on greenhouse gas emissions) were enacted or if greenhouse gas regulations were promulgated. Advances in climate change science also could affect NEPA analyses (e.g., if there were greater certainty in the ability to forecast specific regional impacts). Further, a number of questions regarding the appropriate scope of NEPA documents may be determined in the courts.

It is clear that public and judicial concern over climate change is heating up, and that DOE must not shrink from addressing the issue in a full and fair manner. We must meet the rising tide of expectations in this area by capturing the best available information and explaining what we do and don't know about the impacts of our proposed actions.

**– Bruce Diamond
Assistant General Counsel for Environment**

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² Energy Information Administration (EIA) greenhouse gas data can be found at www.eia.doe.gov/environment.html. EIA issued its report on the nation's 2006 greenhouse gas emissions in late November 2007.

Greenhouse Gases *(continued from previous page)*

A boom in global climate change litigation – more than two dozen cases currently pending in Federal and state courts – has accompanied the increased scientific evidence of global warming and a growing public perception of the nation’s failure to address the issue. The litigation addresses many issues related to global climate change (e.g., Clean Air Act issues, nuisance claims, standing issues), and there are a number of NEPA cases.

Among the issues in the NEPA cases are questions about (1) the applicability of NEPA to Federal agency actions that support overseas projects that emit greenhouse gases that may impact the domestic, U.S. environment,³ and (2) the degree to which a NEPA document must consider secondary impacts, such as global warming impacts that might result from increased use of coal if a new rail line were approved to transport Powder River Basin coal to the Midwest.⁴

Cumulative Impacts at Issue

In addition, the U.S. Court of Appeals for the Ninth Circuit recently found the National Highway Traffic Administration’s EA for corporate average fuel economy (CAFE) standards for light trucks to be inadequate in several respects, including the analysis of cumulative impacts. The court stated: “Any given rule setting a CAFE standard might have an ‘individually minor’ effect on the environment, but these rules are ‘collectively significant actions taking place over a period of time.’” The court also noted that “. . . the EA does not discuss the *actual* environmental effects resulting from those emissions . . .” and stated: “Petitioners presented evidence that continued increase in greenhouse gas emissions may change the climate in a sudden and non-linear way.” (For further information on this decision see *Litigation Updates*, page 24).

Non-NEPA cases are potentially relevant as well. Prominent among them is *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007), a Clean Air Act case in which petitioners asked EPA to regulate motor vehicle emissions of greenhouse gases, including CO₂. At issue was whether

EPA had the authority and obligation to regulate CO₂ emissions. The Supreme Court held that CO₂ is a pollutant subject to the Clean Air Act and that “EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to do so.”⁵ Also of relevance, the Court determined that Massachusetts had standing to sue because it met the standard that requires a litigant to show that it has suffered a concrete and particularized injury, i.e., that climate change has damaged part of the State’s coastline and the State is vulnerable to further losses this century if climate change is not mitigated.⁶ This finding – that States may have standing based on the potential for harm to the States’ territories – could encourage other potential litigants to file claims relating to greenhouse gases, including NEPA claims.

Judging Significance of Impacts

Other issues to watch for include potential endangered species claims (e.g., threats to northern polar bears that theoretically could result from emissions in the south) and judgments about the significance of even small or moderate emissions of greenhouse gases.

In addition, EPA has addressed greenhouse gas emissions in its comments on a recent Forest Service Draft EIS (*Deer Creek Shaft and E Seam Methane Drainage Well Project, Gunnison County, Colorado*). EPA noted that the proposed action would vent to the atmosphere large quantities of methane, a greenhouse gas that is about 20 times more effective than CO₂ in trapping heat in the atmosphere. EPA recommended that the Final EIS identify the magnitude of the emissions and discuss alternatives to venting methane directly to the atmosphere, including describing the range of alternative technologies available for capturing the methane and the economic and environmental benefits of using a portion of the methane.

LLQR will continue to track and report on relevant litigation and other developments. For more information, contact Eric Cohen at eric.cohen@hq.doe.gov. 

³ See *Friends of Earth v. Mosbacher*, Civ. No. C02-4106, JSW, Plaintiffs’ Cross Motion for Summary Judgment and Opposition to Defendant’s Motion for Summary Judgment (filed N.D. Cal., Feb. 11, 2005).

⁴ See *Mayo Foundation v. STB*, 472 F.3d 545, 555-56 (8th Cir. 2006). In this case, the Eighth Circuit held that the Surface Transportation Board’s (STB’s) EIS adequately analyzed air impacts even though the EIS explained that local impacts from certain air pollutants, such as greenhouse gases, are too speculative to analyze. This case preceded the Supreme Court’s *Massachusetts v. EPA* decision, which is discussed further below.

⁵ *Massachusetts v. EPA*, 127 S. Ct. at 1462.

⁶ *Massachusetts v. EPA*, 127 S. Ct. at 1458.

Good Planning, Management (and a Lot of Hard Work) Enable Timely Issuance of Yucca Mountain Draft EISs

“Whew! We did it again!” said Dr. Jane Summerson, Office of Civilian Radioactive Waste Management. “Our preparation and review teams worked long days, including weekends and some holidays this summer and fall to prepare and review all 4,200 pages of these two documents, not once but multiple times, to ensure timely issuance of quality products.”

“Completing these large, complex documents on schedule took more than hard work,” noted Carol Borgstrom, Director, Office of NEPA Policy and Compliance, “it took careful planning and management.”

The two documents – a Draft Supplemental EIS for the proposed Yucca Mountain repository (Repository SEIS)¹ and a Draft Supplemental EIS and Draft EIS (a combined document) that evaluates construction and operation of a railroad in Nevada for shipments of spent nuclear fuel and high-level radioactive waste to the proposed repository (Nevada Rail Corridor SEIS/Rail Alignment EIS)² – were filed with the Environmental Protection Agency on October 5, 2007.

DOE plans to complete both documents by June 2008; their interim milestones are virtually the same. This poses several challenges: the need to ensure technical consistency, communicate the related scopes of the documents to the public, and coordinate the logistics of their timely preparation, review, and approval.

Scope of the EISs

Since completion in 2002 of the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F) (Repository EIS), DOE has continued to develop the proposed repository design and associated operational plans. DOE’s current approach to managing commercial spent nuclear fuel would rely primarily on a single canister design for three functions: transportation, aging, and disposal (referred to as a “TAD” canister). TAD canisters would be used for storage at commercial sites and for transportation to the repository. Once sealed at the reactor sites, the canisters would not have to be reopened, minimizing the need for handling spent nuclear fuel and simplifying the repository

design, construction, and operation. At the repository, the TAD canisters would be placed into waste packages for geologic disposal. The Repository SEIS analyzes the potential environmental impacts of these design and operational plans.

In the Record of Decision for the Repository EIS (69 FR 18557; April 8, 2004), DOE decided to ship spent nuclear fuel and high-level waste to Yucca Mountain primarily by rail; DOE also selected the Caliente corridor from among several corridors considered in the Repository EIS in which to study possible rail alignments in the Rail Alignment EIS (*LLQR*, December 2006, page 1).

During public scoping for the Rail Alignment EIS, commentors suggested that other corridors be considered, among them the Mina route. DOE had eliminated the Mina route from detailed study in the Repository EIS because the route would cross the Walker River Paiute Reservation, and the Tribe had told DOE that it would not allow nuclear waste to be transported across the reservation. In May 2006, the Tribe informed DOE that it would allow DOE to study the Mina route in an EIS. In October 2006, DOE issued a Notice of Intent (71 FR 60484) to expand the scope of the Rail Alignment EIS to add the Mina corridor (*LLQR*, December 2006, page 1). The Draft Nevada Rail Corridor SEIS/Rail Alignment EIS identifies the Mina corridor as non-preferred because the Tribe has since withdrawn its support for the EIS process.

Relationships among the EISs

The Repository EIS, Repository SEIS, and the Nevada Rail Corridor SEIS/Rail Alignment EIS are related in several respects. The Nevada Rail Corridor SEIS supplements the rail corridor analysis in the Repository EIS by analyzing the Mina corridor at a level of detail commensurate with that of the rail corridor analysis in the Repository EIS. This Draft SEIS concludes that the Mina corridor warrants further study in the Rail Alignment EIS. The Nevada Rail Corridor SEIS also updates relevant information about three other rail corridors analyzed in the Repository EIS, demonstrates that there are no significant new circumstances or information relevant to environmental concerns associated with these corridors, and concludes that further consideration is not warranted.

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¹ *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F-S1D) (Repository SEIS).*

² *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor (DOE/EIS-0250F-S2) (Nevada Rail Corridor SEIS); and Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada (DOE/EIS-0369D) (Rail Alignment EIS).*

Yucca Draft EISs *(continued from previous page)*

The Rail Alignment EIS tiers from the Repository EIS and the Nevada Rail Corridor SEIS, and analyzes specific alignments within the Caliente and Mina corridors.

The Repository SEIS analyzes national transportation impacts, and, to ensure that the full scope of repository impacts are considered, the Repository SEIS also analyzes the potential impacts from construction and operation of a railroad along specific alignments in either the Caliente or Mina corridor, as described in the Rail Alignment EIS. Conversely, the Rail Alignment EIS analyzes the potential impacts of constructing and operating the repository as a reasonably foreseeable future action in its cumulative impacts analysis.

To ensure consistency, the analyses in the Repository SEIS and the Nevada Rail Corridor SEIS/Rail Alignment EIS use the same inventory of nuclear waste and assume the same number of shipments. Consistent analytical approaches were used to evaluate the various resource areas.

Integration to Ensure Consistency

The Office of Civilian Radioactive Waste Management recognized early on that close coordination between the document preparation teams would be essential to meet the challenges of preparing these two major NEPA documents on the same schedule. DOE decided to integrate many of the activities associated with the EISs.

Working together, the document preparation teams identified areas where data needs overlapped and coordinated data exchanges. For example, the Repository SEIS needed to include the cumulative impacts analysis prepared by the Rail team. EIS preparation team members attended the other team's meetings to ensure that the analyses would be consistent. "Style guides" for these documents, although not identical, also helped to ensure the analyses and presentation would be compatible (related article page 17).

Review Team Planning and Coordination

The document preparation teams also coordinated the review and approval processes, staggering them so that DOE staff could participate in the reviews and comment resolution processes for both documents. This required an extraordinary level of effort and collaboration among preparers and reviewers, who remained continuously engaged throughout the summer and fall of 2007.

The teams developed a master schedule to engage cooperating agencies (for the Repository SEIS:

Nye County; for the Nevada Rail Corridor SEIS/Rail Alignment EIS: the Bureau of Land Management, Surface Transportation Board, and Air Force) as well as DOE Program Offices. Under this schedule, the preparation teams provided reviewers a finite time (typically one week) to read specific document sections. Timely comments from reviewers using an electronic commenting format enabled the preparation teams to sort the comments, determine which ones warranted group discussion the following week during a "line-by-line" review, and summarize the comments for the review team.

This process, used for both documents, was effective, but not perfect. Some reviewers wanted to see the comments of others sooner, and in a few cases questioned judgments regarding which comments warranted discussion. In addition, some reviewers had difficulty reproducing electronic comments. The preparation teams are considering how to improve the process for the final documents, such as reducing the number of review cycles by engaging Program Office management sooner.

EIS Distribution and Public Hearings

DOE integrated the distribution and public hearing processes for these EISs. For example, DOE used a single letter and mailing package to distribute both documents to the public. In addition, one press release and one Notice of Availability (72 FR 58071; October 12, 2007) announced the issuance of these documents and eight public hearings in Nevada, California, and Washington, DC.

DOE combined the public hearings so that members of the public could comment on either or both documents at the same hearing. However, unlike the public scoping meetings, which used an "open-house format" (*LLQR*, June 2004, page 1), in response to public comments the public hearings also contained a formal session, at which members of the public could provide oral comments for the record in a group setting.

Six of the eight public hearings have been completed so far. After the public comment period ends January 10, 2008, DOE plans to respond to the comments, revise the documents as appropriate, and issue the Final EISs. Subsequently, in June 2008, DOE plans to submit to the Nuclear Regulatory Commission an application seeking authorization to construct the repository, in accordance with the Nuclear Waste Policy Act.

For further information, contact Dr. Summerson, NEPA Document Manager and NCO, at jane_summerson@ymp.gov or 702-794-1493. 

Four EISs Issued for Clean Coal Projects

Although originally started at different times, four “clean coal” EISs were issued in a similar time frame, keeping the same DOE staff responsible for preparing and reviewing them extremely busy. Moreover, three of the EISs were prepared by the same contractor. Completing these documents was also challenging because they address complex technologies and areas of controversy, such as issues regarding carbon dioxide (CO₂) emissions.

To help manage the process, the Office of Fossil Energy provided reviewers information about the Program’s priorities, which helped to expedite the highest priority documents and ultimately issue all of them.

FutureGen

DOE issued the Final EIS for the FutureGen Project (DOE/EIS-0394) in November, a major milestone for the Fossil Energy program. DOE’s proposed action is to provide financial assistance to the FutureGen Alliance, Inc., DOE’s industrial partner, to plan, design, construct, and operate the FutureGen Project. DOE’s preferred alternative in the Final EIS is to provide financial assistance to implement the FutureGen Project at any of the four alternative sites: Mattoon and Tuscola, Illinois, and Jewett and Odessa, Texas.

Completing this EIS in 15 months was a significant accomplishment. The EIS addressed complex technical issues, including an assessment of the risks of geologic sequestration of CO₂. The document also contained the equivalent of four EISs, one for each of the alternative host sites for the FutureGen Project (*LLQR*, September 2007, page 6).

“DOE issued the EIS in record time. Completing this massive EIS in such a short time is a testament to the teamwork by DOE, its contractors, the states and the Alliance,” said Michael J. Mudd, Chief Executive Officer for the Alliance.

The FutureGen Project, a Presidential initiative, would be the first commercial scale integration of a suite of advanced clean coal technologies. DOE expects that the Project would lay the groundwork for developing similar power plants worldwide, and provide breakthroughs that would greatly reduce long-term greenhouse gas emissions. As a research facility, the Project would produce 275 megawatts of electric power and hydrogen gas using coal gasification technology integrated with combined-cycle electricity generation.

A major feature of the proposed prototype facilities would be the capture and geologic sequestration of CO₂ emissions. In addition, the hydrogen gas may be used to produce electrical energy via advanced power generation systems, or for other purposes, such as an alternative source of transportation fuel. Fuels used in transportation account for one-third of the Nation’s greenhouse gas emissions and use of coal-derived hydrogen fuel could reduce these emissions.

DOE can issue a Record of Decision (ROD) no sooner than December 17, 2007. In its ROD, DOE would explain its decision on whether to fund the FutureGen Project and, if so, which of the alternative sites would be acceptable to host the Project. The Alliance would select a site from among those (if any) identified as acceptable by DOE. The Alliance then would conduct further site-specific site characterization and design work. DOE would use that information in preparing a Supplement Analysis to determine whether a supplemental EIS should be prepared to further examine site-specific impacts.

For further information, contact Mark McKoy, NEPA Document Manager, at mark.mckoy@netl.doe.gov or 304-285-4426.

Western Greenbrier Co-Production Demonstration Project

DOE issued the Final EIS for the Western Greenbrier Co-Production Demonstration Project (DOE/EIS-0361) in November and can issue a ROD no sooner than December 10, 2007. DOE’s proposed action and preferred alternative in the Final EIS is to provide cost-shared funding for this Clean Coal Power Initiative project near Rainelle, West Virginia. The proposed facilities would demonstrate an advanced atmospheric circulating fluidized-bed combustor design that would use locally-abundant waste coal as a fuel source to produce 98 megawatts of electric power and steam. In addition, “waste” ash from the combustion would be used to produce cement.

The EIS concludes that the proposal would have socioeconomic benefits to the local community. The EIS further concludes that capture and sequestration of CO₂ is not feasible for this proposal, in part because the technology to be demonstrated would not generate a concentrated stream of CO₂.

For further information, contact Roy Spears, NEPA Document Manager, at roy.spears@netl.doe.gov or 304-285-5460.

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Clean Coal EISs *(continued from previous page)*

Gilberton Coal-to-Clean Fuels and Power Project

DOE issued the Final EIS for the Gilberton Coal-to-Clean Fuels and Power Project (DOE/EIS-0357) in early November and can issue a ROD in early December 2007. The Final EIS analyzes a proposed Clean Coal Power Initiative project near Gilberton, Pennsylvania, which would demonstrate the integration of coal gasification and coal-to-liquids technologies, using locally abundant coal waste to produce electricity and liquid hydrocarbon fuel. DOE's proposed action and preferred alternative in the Final EIS is to provide cost-shared funding for the project.

The Final EIS identifies potential adverse environmental impacts from the proposed action as well as benefits, including the project's potential to promote economic development in the region, consume coal waste that has degraded the quality of local watersheds, and demonstrate technologies that could reduce U.S. dependence on foreign oil. Environmental organizations expressed opposition to deployment of coal-to-liquid technology due to a relatively high rate of CO₂ emissions. The EIS addresses the incremental and cumulative impacts on global climate change of CO₂ emissions, and considers the programmatic implications on climate change from the use of coal-to-liquid technology. (See *LLQR*, March 2007, page 9, and related article page 1.)

The EIS also considers potential geologic sequestration of the concentrated CO₂ stream that would be produced and concludes that sequestration is not feasible at this time because substantial further characterization work would be needed to establish suitable sequestration sites. The EIS notes that sequestration may become feasible during the project lifetime.

For further information contact Janice Bell, NEPA Document Manager, at janice.bell@netl.doe.gov or 412-386-4512.

Mesaba Energy Project

DOE issued the Draft EIS for the Mesaba Energy Project (DOE/EIS-0382) in November. DOE's proposed action is to provide cost-shared funding for a proposed Clean Coal Power Initiative project on the Iron Range of northern Minnesota. The proposed project involves the construction and operation of integrated gasification combined cycle (IGCC) electric generating facilities. Existing IGCC facilities have achieved lower levels of criteria pollutant emissions than any other coal-fueled power plant technologies. The proposed IGCC facilities for the Mesaba Energy Project could be retrofitted to enable the capture of carbon dioxide; however, the Draft EIS concludes that carbon dioxide capture and sequestration is not feasible in the near-term until extensive field tests are conducted to fully characterize potential storage sites and the long-term storage of sequestered carbon has been demonstrated and verified. Although not part of DOE's proposed action, the EIS states that DOE also may provide a loan guarantee pursuant to the Energy Policy Act of 2005 to secure a portion of private sector financing for the project.

DOE is preparing the EIS in cooperation with the Minnesota Department of Commerce (MDOC). DOE is the lead Federal agency and MDOC is the lead state agency. MDOC plans to use the EIS to satisfy its environmental review obligations under the Minnesota Power Plant Siting Act, which requires preparation of a state-equivalent EIS for the proposed facility. The Army Corps of Engineers and the Department of Agriculture, Forest Service, are also participating as cooperating agencies in view of their jurisdiction and expertise. DOE and MDOC jointly have conducted two public hearings. The public comment period ends January 11, 2008.

For further information, contact Richard A. Hargis, Jr., NEPA Document Manager, at richard.hargis@netl.doe.gov or 412-386-6065. 

What Will the New Year Bring? *(continued from page 1)*



One tracking chart – “U.S. Department of Energy Environmental Impact Statements and Environmental Assessments Status Chart” – lists all the EISs and EAs that the Department is preparing, with comments on past and anticipated activity. The other chart – “Schedules of Key Environmental Impact Statements in the Department of Energy” – shows that most of the 24 EISs considered there have milestones in the next 8 months.

Indeed, we anticipate the DOE NEPA Community will continue to be busy in 2008! 

Federal, State, Tribal Agencies Collaborate in Programmatic EIS for Energy Corridor Designations

Applicants seeking rights-of-way on Federal land in the western United States for long-distance energy transport infrastructure often have faced a complicated administrative task. The complex pattern of Federally-controlled lands is administered by different land management agencies, each with its own set of rules and procedures for processing rights-of-way, and applicants often must satisfy different requirements for the same project.

Congress sought to remedy this situation by directing the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior to consult with each other to designate energy corridors in the 11 western states, incorporate the corridors into relevant land use plans, and establish procedures to expedite applications (Energy Policy Act of 2005, Section 368; *LLQR*, September 2005, page 3). The affected states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Congress further required that these agencies perform any environmental reviews that may be required to complete the designation of such corridors.

The co-lead agencies, DOE and the Bureau of Land Management (BLM) of the Department of the Interior, together with several cooperating and consulting agencies have issued a Draft Programmatic EIS (Draft PEIS), *Designation of Energy Corridors on Federal Land in the 11 Western States* (DOE/EIS-0386) (www.eh.doe.gov/nepa/docs/deis/eis0386/index.html).¹

Interactive Online Maps Display Corridor Locations

Under the proposed action (which is the preferred alternative), agencies would designate corridors on Federal land for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. Each agency would amend its respective land use plans to include the designated corridors. The Draft PEIS also analyzes a no action alternative under which the agencies would continue to process rights-of-way according to existing procedures.

The Draft PEIS identifies a network of approximately 6,055 miles of proposed Federal energy corridors of which 84 percent are on BLM land and 14 percent on

Forest Service land. None of the proposed corridors would cross DOE land. These corridors would be designated for multimodal energy transmission and transportation, which could include oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. The corridors would be 3,500 feet wide in most places to accommodate the collocation of all modes of transmission and transportation. Approximately 160 land use and resource management plans or equivalent plans would be amended if all of the corridors in the network were designated. An atlas of maps (Volume III of the Draft PEIS) is posted on the project website (corridoreis.anl.gov) in a geographic information system database that allows enlarging, merging, and overlaying of map data (software and instructions are provided).

Draft PEIS States that Designation Is an Administrative Action

The Draft PEIS (Section 1.5.3) states that the proposed action, “designation of energy corridors and amendment of land use plans, would not have any direct impacts on the environment. Designation of an energy corridor is an administrative task that occurs when an action agency amends its land use plans” Further, designation does not “establish a precedent or create any legal right that would allow ground-disturbing activities within a designated energy corridor.” The Draft PEIS (Section 1.7) provides a discussion of “*generic* impacts of project construction and operation” and recognizes that “in the event that site-specific projects would be proposed in the future in areas located within designated corridors, such individual projects would be subject to appropriate environmental review and analysis.”

Next Steps

A 90-day public comment period ends on February 14, 2008 (72 FR 64619; November 16, 2007). The agencies have announced a schedule of public hearings in the 11 western states in January, ending with a hearing in Washington, DC, on February 5, 2008 (72 FR 64591, November 16, 2007).

For additional information on this Draft PEIS process, contact LaVerne Kyriss, NEPA Document Manager, at laverne.kyriss@hq.doe.gov or 202-586-1056 or visit the Draft PEIS website provided above. 

¹ Cooperating agencies are Department of Agriculture, Forest Service; Department of Defense; Department of the Interior, Fish and Wildlife Service; Coeur d'Alene Tribe; California Energy Commission; California Public Utilities Commission; the state of Wyoming, and in Wyoming, Lincoln, Sweetwater, and Uinta Counties and Lincoln, Sweetwater, and Uinta Counties Conservation Districts. Consulting agencies are Department of Commerce and the Federal Energy Regulatory Commission.

Preparing an EA? A FONSI Is Not a Foregone Conclusion

For efficiency, when DOE expects that a proposal is likely to have significant environmental impacts, DOE initiates an EIS directly – without first preparing an EA to confirm potential significance. When DOE decides to prepare an EA, therefore, it is usually expected to support a finding of no significant impact (FONSI). This strategy is based on recognizing significance in the same manner that Supreme Court Justice Potter Stewart recognized pornography: “I know it when I see it.”¹

“It ain’t necessarily so,” though. DOE recently determined that two proposed actions with EAs in progress, both involving electric transmission lines, are major Federal actions that may have significant effects on the human environment. In both cases, stakeholder concerns about land use impacts led DOE to stop the EA process and initiate preparation of an EIS.

Western Transmission Rebuild Project

The Western Area Power Administration (Western) began preparation of an EA for a proposal to rebuild and upgrade a 12-mile transmission line, a project that would include replacing an existing 69-kilovolt (kV) single-circuit line with a 138-kV double-circuit line, and constructing a new substation.

At public meetings in 2005 and 2006 on the alternatives of rebuilding in a new right-of-way or expanding the existing right-of-way, the public expressed concerns regarding impacts to the environment, human health and safety, and property values. They asked for wildlife surveys, recreation and visual assessments, and analyses of additional alternatives.

Following the 2006 public meeting, Western undertook additional surveys and analysis (e.g., viewshed analysis using photo simulations). Based on the comments received and subsequent analysis, Western issued a notice of intent to prepare an EIS (72 FR 45040; August 10, 2007) instead of completing the EA. The Forest Service will be a cooperating agency in EIS preparation. The draft EIS is planned for Spring 2008.

For more information on DOE/EIS-0400, *Granby Pumping Plant - Windy Gap Transmission Line Rebuild Project, Grand County, Colorado*, contact Rodney Jones, NEPA Document Manager, at rjones@wapa.gov or 970-461-7371. Additional information is also available on the project website at www.wapa.gov/transmission/infragranby.htm.

¹*Jacobellis v. Ohio*, 378 U.S. 184 (1964).

² See *Question 13: Use of Scoping Before Notice of Intent to Prepare EIS in 40 Most Asked Questions on CEQ’s National Environmental Policy Act Regulations (46 FR 18026; March 23, 1981) (available on the DOE NEPA website at www.eh.doe.gov, under NEPA Compliance Guide, Volume 1).*

Montana Alberta Tie, Ltd., Project

In response to an application from the Montana Alberta Tie, Ltd. (MATL), for a Presidential permit to construct a 230-kV transmission line across the U.S.-Canada border, DOE’s Office of Electricity Delivery and Energy Reliability initially considered a scoped EA to be the appropriate level of review. Because MATL had also applied to the Montana Department of Environmental Quality (MDEQ) for a construction permit for the approximately 126 miles of line in the state, DOE cooperated with the state in preparing a single document, issued in March 2007, that served as both a DOE EA and an EIS under the Montana Environmental Policy Act.

Based on comments on the March 2007 EA that expressed concerns about potential impacts on land use and farming, DOE ultimately determined that an EIS is the proper level of NEPA review and issued a notice of intent to prepare an EIS on June 7, 2007 (72 FR 31569). MDEQ subsequently determined that it should prepare a supplement to its EIS and is a joint lead agency with DOE in EIS preparation. The Department of the Interior’s Bureau of Land Management is a cooperating agency. DOE is working with MDEQ on responses to comments received on the March 2007 document, and all comments and responses will be included in the DOE Draft EIS/MDEQ Draft Supplemental EIS, expected to be issued soon.

For more information on DOE/EIS-0399, *Montana Alberta Tie, Ltd., 230-kV Transmission Line*, contact Ellen Russell, NEPA Document Manager, at ellen.russell@hq.doe.gov or 202-586-9624. Additional information is also available on the project website at www.oe.energy.gov/304.htm, under PP-305.

Recommendation

Preparing an EIS after starting to prepare an EA does not happen frequently, but it can be done efficiently by planning ahead. If DOE is unsure of the significance of a proposal’s environmental impacts, DOE could conduct public scoping for the EA, stating this uncertainty when DOE announces the scoping process.

In this regard, Council on Environmental Quality guidance² cautions that EA scoping “cannot substitute for the normal scoping process after an NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.” DOE’s normal scoping process after a notice of intent to prepare an EIS includes at least one public meeting (10 CFR 1021.311(d)). 

CEQ Issues Collaboration Handbook to Help Manage Controversy in NEPA Processes



Collaboration improves the odds of a successful NEPA experience, according to Horst Greczmiel, Council on Environmental Quality (CEQ) Associate Director for NEPA Oversight, but collaboration – like life – doesn’t provide guarantees. To promote the cultivation of vision, trust, and communication between a lead agency and other governmental organizations (Federal, state, local, and tribal), affected and interested stakeholders, and the public at large, CEQ has issued *Collaboration in NEPA: a Handbook for NEPA Practitioners* (October 2007). (The June 2007 issue of *LLQR* focused extensively on collaboration in the NEPA process.)

This *Handbook* was developed by a CEQ-led Interagency Work Group, one of several NEPA guidance efforts to implement the recommendations of the September 2003 *NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA Implementation*. In a recent presentation of the new *Handbook* to the Federal Agency NEPA contacts, Mr. Greczmiel emphasized that collaboration can help agencies to more fully realize Section 101 of NEPA, which directs Federal agencies to work in collaboration with state and local governments, and the CEQ NEPA regulations (40 CFR 1506.6), which direct agencies to make diligent efforts to involve interested parties.

Collaboration begins with an “attitude.”

– Horst Greczmiel
Meeting of NEPA Contacts, October 2007

Mr. Greczmiel noted that successful collaboration requires the support of senior management to commit the necessary resources, and initial work from all participants to clarify expectations, identify statutory and regulatory tensions, and define desired outcomes. CEQ will explore these topics in a December 5, 2007, workshop on NEPA and Collaboration for agencies’ NEPA and environmental conflict resolution contacts. DOE NEPA Office staff will participate.

Why Try Collaborating?

The *Handbook* notes that when engaged in collaboration with others, a lead agency retains its decisionmaking authority and responsibility throughout the EIS or EA process. “Collaboration does not turn the NEPA process into a process where an agency’s responsibility to make sound decisions is replaced by how many votes are cast for a particular option or alternative.” Rather, collaboration furthers the lead agency’s ability to make informed and timely decisions by enabling decisionmakers

to consider any consensus that may have been reached among interested and affected parties.

The *Handbook* describes the potential benefits of collaboration, including better information from diverse expertise, better interdisciplinary integration, and more durable intangible benefits: “Collaborative processes can build trust between people who will work together on other projects, lead to the formation of partnerships, and increase public confidence in government.”

The cover of the *Collaboration in NEPA: A Handbook for Practitioners*. It features a white background with a red horizontal line. The title is in a serif font. Below the title, the word "Benefits:" is followed by a list of ten items, each preceded by a red square bullet point.

Collaboration in NEPA
A Handbook for Practitioners

Benefits:

- Better Information
- Fairer Process
- Better Integration
- Conflict Prevention
- Improved Fact-Finding
- Increased Social Capital
- Easier Implementation
- Enhanced Environmental Stewardship
- Reduced Litigation

When Is Collaboration Likely to Work Well?

Conditions under which collaborative approaches are likely to be successful are identified in the *Handbook*. “Collaborative approaches often work best when there is sufficient decision space among alternatives – room for parties to mold the solution that meets their needs. Similarly, parties have more incentive to collaborate if the ‘best’ outcome is truly unknown.”

The *Handbook* also states that “Collaboration is often an ideal process for parties that are likely to have a continuing relationship beyond the immediate issue in which they are involved. . . . The respect and trust established in one project often carries forward to other projects, increasing their chances of success.”

Conditions less suited to collaboration also are addressed, including lead agency resistance to collaboration, lack of resources, and limited staff experience. “Parties may also have strongly conflicting views on the meaning and significance of available data and information. If they cannot agree on the underlying factual information, they are much less likely to agree on substantive issues. Collaborative processes are also less likely to be successful when a high level of distrust exists among the parties.”

(continued on next page)

Collaboration (continued from previous page)

How Does Collaboration Go Beyond Other Public Interactions?



The *Handbook* distinguishes collaboration from more basic levels of potential engagement in the NEPA process:

- **Informing:** the lead agency informs interested parties of its NEPA review activities.
- **Consulting:** the agency keeps interested parties informed, solicits their input, and considers their concerns and suggestions during the NEPA process.
- **Involving:** the agency works more closely with interested parties and tries to address their concerns to the extent possible given the agency's legal and policy constraints.
- **Collaborating:** the agency and the other involved parties exchange information and work together toward agreement on issues at one or more steps in the NEPA process.

How Can the *Handbook* Help You?

The *Handbook* identifies opportunities for working collaboratively at every stage of the NEPA process, such as joint fact finding during alternatives development, impact assessment, and mitigation identification. It also describes approaches to addressing challenges, such as the additional time and resources that may be required for collaboration, conflict among the participating parties, agency suspicion of new approaches to doing its NEPA business, and constraints under the Federal Advisory Committee Act. The *Handbook* provides case studies on successful use of collaborative techniques and tips on attitudes and behaviors that foster successful collaboration. Additional useful resources include sample memoranda of understanding and extensive references on general conflict resolution, collaboration and environmental conflict resolution, and public involvement.

The *Handbook* is available on the CEQ website (www.nepa.gov) or send a request with subject "NEPA Modernization (Collaboration-NEPA)" to hgreczmiel@ceq.eop.gov or fax to 202-456-0753. The DOE NEPA Office provided copies to the Department's NEPA Compliance Officers for distribution to their NEPA staffs and contractors.

Interagency Work Groups Make Progress in Developing Additional NEPA Guidance

The DOE Office of NEPA Policy and Compliance continues to participate actively in the development and review of NEPA guidance prepared by the CEQ-led Interagency Work Groups and will report on progress in future issues of *LLQR*. For more information on the efforts of the Interagency Work Groups, see the CEQ website at www.nepa.gov.

Draft Programmatic Analysis Guidance

The NEPA Office recently submitted DOE's comments on draft *NEPA Programmatic Guidance*, which CEQ had distributed for Federal agency review on September 28, 2007. This guidance is intended to assist NEPA practitioners in preparing programmatic documents that address broad, strategic, programmatic-level analyses from which future analyses may be tiered, if needed.

The draft guidance addresses the scope of various types of programmatic analyses and the appropriate level of detail of a programmatic document as compared to future project-specific NEPA documents. The guidance also addresses benefits (e.g., increased overall NEPA process efficiency) and challenges (e.g., public concerns about whether environmental issues deferred to future NEPA documents will be addressed, and agency concerns about their ability to take interim actions while a programmatic review is ongoing).

In its comments, DOE stated that the guidance would be useful to NEPA practitioners and recommended clarification of certain topics and exploration of others, such as mitigation and incorporating adaptive management principles in programmatic documents.

The Interagency Work Group is now considering the comments received, and next will issue draft guidance for public review. For more information on the *NEPA Programmatic Guidance*, contact Eric Cohen at eric.cohen@hq.doe.gov or 202-586-7684.

Coming Soon: Citizen's Guide to NEPA

CEQ plans to issue *A Citizen's Guide to the National Environmental Policy Act – Having Your Voice Heard* soon, having considered public comments on the draft *Guide* (*LLQR*, March 2007, page 9, and September 2006, page 8). The *Guide* is intended to help citizens and organizations to understand and effectively participate in an agency's environmental review process under NEPA.

EPA Revises Its NEPA Procedures



The Environmental Protection Agency (EPA) has amended its procedures for implementing the requirements of NEPA (40 CFR Part 6). In addition to consolidating and standardizing the Agency's general NEPA procedures, the final rulemaking clarifies EPA's categorical exclusion procedures; consolidates and amends existing categorical exclusions and adds new ones; and consolidates, amends, and adds extraordinary circumstances (some of which are similar to the "integral conditions" for the DOE categorical exclusions listed in 10 CFR 1021, Subpart D, Appendix B). In addition, EPA's NEPA procedures now apply generally to EPA programs, in contrast to the previous requirements, which contained provisions applicable to specific programs. The amended rule (72 FR 53652, September 19, 2007) became effective October 19, 2007.

Points of Interest

- **Environmental Assessment:** EPA's NEPA rule (Section 6.205(e)) describes the necessary content of an EA, including the no action alternative. (DOE NEPA regulations also require consideration of the no action alternative (10 CFR 1021.321(c)), but are less specific than EPA in stating other requirements for an EA.)
- **Administrative Record:** EPA has prepared a publicly-available administrative record that includes, among other things, specific reasons for amended or new categorical exclusions and EIS listings and extraordinary circumstances (available in the 40 CFR Part 6 rulemaking docket at www.regulations.gov, by searching under Docket ID No. "EPA-HQ-OECA-2005-0062").
- **Applicant Process:** To allow EPA to meet its NEPA responsibilities for permits and assistance agreements

(for example, wastewater treatment construction grants, National Pollutant Discharge Elimination System permits, and certain research and development projects), Subpart C of the EPA rule requires an applicant to provide an environmental information document that provides sufficient information for EPA to use in preparing an EA or an EIS. EPA also analyzed the costs to applicants and the Federal government of the NEPA process for applicant actions (also available in the rulemaking docket).

EPA's Special NEPA Status

The rulemaking preamble discusses EPA's unique NEPA status among Federal agencies:

- Statutes exempt EPA from applying NEPA procedures to all actions under the Clean Air Act and certain actions under the Clean Water Act.
- Courts have exempted EPA from following NEPA procedures for certain actions under five environmental statutes. The courts reasoned that EPA actions under these statutes are "functionally equivalent" to the analysis required under NEPA because they are undertaken with full consideration of environmental impacts and opportunities for public review.
- Nonetheless, EPA's established policy has been to voluntarily prepare EISs for certain exempt regulatory actions (63 FR 58045, October 29, 1998; *LLQR*, December 1998, page 11). The new EPA NEPA rule does not change that policy, and can "serve as a framework for the preparation of voluntary NEPA documents."

Want to Learn About Environmental Protection? Ask EPA!

"Environmental responsibility is everyone's responsibility," said EPA Administrator Stephen L. Johnson on November 1, 2007, when he kicked off the first session of EPA's initiative to disseminate information to the public – *Ask EPA*. In this weekly online forum, patterned after *Ask the White House* (www.whitehouse.gov/ask), interested individuals have the opportunity to ask the agency's senior officials questions on a range of environmental and human health issues. The live chat sessions last approximately one hour and focus on an announced topic – for example: Change A Light Campaign and America Recycles Day. Questions can be submitted up to two days in advance, as well as during the live discussion. To submit questions, request email alerts on upcoming hosts and topics, and view transcripts of previous sessions, visit the *Ask EPA* website at www.epa.gov/askepa.

NEPA Questions for DOE? askNEPA!

The Office of NEPA Policy and Compliance receives many inquiries about the Department's NEPA program through askNEPA@hq.doe.gov. This mailbox was established 4 years ago to facilitate videoconference participation in a DOE NEPA Community Meeting. It continues to serve as a channel for incoming general NEPA questions, requests for copies of guidance (including *LLQR*), and other requests for which the sender does not know whom to contact. All messages sent to this mailbox are acknowledged as they are received, and then are forwarded to NEPA Office staff for prompt response.



Power of an EIS Style Guide: It's More than Commas and Fonts

Too often the style and format of an EIS seem to be handled as afterthoughts – cosmetic improvements to be made by an editor after the substance of the text has been written. This approach is inefficient and risky. Effective communication of complex technical information is difficult to achieve when a document is not well-prepared from the beginning.

In contrast, establishing a style guide early in document preparation and applying it continuously as text is developed is a better way to prepare a document that is reader-friendly and conveys information accurately. This is the approach of the DOE and contractor teams preparing the Repository Supplemental EIS and the Nevada Rail Corridor Supplemental EIS/Rail Alignment EIS, two related NEPA reviews for a geologic repository at Yucca Mountain. (See article on page 8.)

Under the direction of a DOE NEPA Document Manager, the document preparation contractors for each Yucca Mountain EIS prepared an EIS-specific guide. The stated purpose of the *Format and Style Guide* for the Rail EIS (discussed in the examples that follow) is to “establish uniform document-preparation standards” to ensure a final product that is consistent in writing style and appearance (e.g., format and presentation, including tables and figures). Each *Guide* applies only to its particular EIS, not to other documents prepared to support the EIS, and is considered a “living document” that may evolve during EIS preparation.

Reader-Friendly, Not Writer-Friendly

The Yucca Rail EIS *Format and Style Guide*, as its name suggests, specifies format for EIS text, multiple levels of headings, tables, and figures (for example, font name, size, and alignment), word processing and editing (for example, for capitalization and punctuation), and standard features (such as maps, headers and footers). But it does much more in addressing writing style and referencing.

The contents of the NEPA analyses should flow in an orderly manner from generalities to specifics, from familiar to new, and from premises through logical manipulations to conclusions.

– Yucca Rail EIS Format and Style Guide

Effective scientific or technical writing for an EIS is simple and direct, states the *Guide*. “Unnecessarily long words and complex inverted sentences work against clarity.” The readability goal for the NEPA analysis in the *Guide* is that it be understandable by an informed high-school graduate, and it describes approaches to acronyms and abbreviations; conciseness, consistency, and continuity; and word usage, symbols, and units of measurement.

The *Guide* emphasizes the importance of documenting sources used in the EIS and establishes procedures for consistent referencing. Whenever a reference is used, a copy is added to a Document Input Reference System, which includes a database of citations and identifies the information sources that become the administrative record for the EIS. “References provide traceability and defensibility of information and must be provided for all statements of fact.” If traceability and defensibility are not needed, there is no need for citing a reference, according to the *Guide*.”

Generally only documents with established status may be cited, advises the *Guide*, stating that draft documents cannot be used as references unless the cited draft document will be completed and approved before the EIS is published. The *Guide* also provides instructions for documenting nonprint sources of information, such as websites and telephone conversations, and obtaining permission to use copyrighted information. 

Sage Advice on Writing an EIS

The “write first, edit later” mode can be problematic. In interpreting and rewording technical exposition, for example, an editor risks unintentional changes to meaning. Guidelines for writing clear, comprehensible, well-documented text can help. Consider these examples from the Yucca Rail EIS *Format and Style Guide*:

- ✓ Be concise – say as much as possible with as little as possible.
- ✓ Repetition is safer than changing the nomenclature, which can leave the reader wondering if the subject changed.
- ✓ A table should stand alone: that is, the title and body of a table should present enough information to enable understanding without referring to the text.
- ✓ A NEPA analysis is not a technical or scientific document in the usual sense. Rather, it is an explanation of technical or scientific topics meant for an audience that probably does not have a technical background.

Transitions

Retirement Will Rock for Carlsbad NCO Harold Johnson

After a 30-year NEPA career in the Federal government, Harold Johnson is retiring in early January from the Carlsbad Field Office, where he has served as the NEPA Compliance Officer (NCO) since 1995. He started his public service in 1977 as an attorney in the NEPA unit of the Interstate Commerce Commission and transferred to DOE in 1991.

Harold initially worked at Headquarters in the Department's Office of NEPA Policy and Compliance. He reviewed the Lawrence Livermore National Laboratory Site-wide EIS and several NEPA documents for the Hanford Site. A notable achievement was reviewing the EIS for the construction of five new high-level radioactive waste tanks at Hanford (*LLQR*, March 1996, page 1), which resulted in a decision to construct a new cross-site waste transfer line instead of any new tanks. Harold was engaged in preliminary discussions about the scope of the Waste Isolation Pilot Plant EIS in spring of 1995, when he moved to the Carlsbad Field Office and became the NEPA Document Manager for that EIS as well as the NCO.

To assist his successor (yet to be named) as Carlsbad NCO, Harold has assembled a NEPA training briefing that includes recommendations (next page) based on his years of experience in a small Field Office whose activities are important to many Programs and other Field Offices.



Harold Johnson (front) with fellow NCOs at the NEPA 35 Conference.

In retirement, Harold will return to his roots in Macon, Georgia, where he grew up, attended college, and earned his law degree. He plans to spend time on his favorite hobby – faceting and polishing rocks. His rock collection has grown considerably during his time in New Mexico, which will make his cross-country move challenging. Until January 3, 2008, Harold can be reached at harold.johnson@wipp.ws or 505-234-7349. After that date, friends may keep in touch with him at bubbaji.harold@gmail.com.

In the DOE NEPA Office, Jeanie Loving, who has worked closely with Harold on Waste Isolation Pilot Plant issues, says, "Working with Harold for nearly a decade has been a real joy, and I regret he has resisted my many attempts to talk him out of retiring! Beneath his easy-going manner is a bona fide NEPA expert and a highly competent professional. He has always made a very positive difference in any endeavor, with common sense and wit."

Carol Borgstrom, NEPA Office Director, adds, "Harold Johnson is one of those people who cannot be replaced, and I'm sure all of us who have had the good fortune to work with him will miss him a great deal." On behalf of the DOE NEPA Community, the NEPA Office wishes Harold success and fulfillment in his all his future endeavors.

New NEPA Compliance Officer

Pantex Site Office: Jim Barrows

Jim Barrows has been designated as NCO for the National Nuclear Security Administration (NNSA), Pantex Site Office, where he has served as a Physical Scientist since June 2004. (Jeff Robbins is no longer the Acting NCO for Pantex Site Office, but continues to serve as NCO for the NNSA Service Center in Albuquerque.) Before joining the Pantex Site Office, Mr. Barrows spent 14 years as an Environmental Specialist with the Army Corps of Engineers in the Galveston District, where his responsibilities included oversight of natural resources management at the Addicks and Barker Reservoirs for flood control west of Houston, and acting as an Environmental Lead for NEPA documents for civil works projects involving navigation and flood control. Prior to working for the Corps, Mr. Barrows was employed by the U.S. Fish and Wildlife Service at Buffalo Lake National Wildlife Refuge in the Texas Panhandle. He can be reached at jbarrows@pantex.doe.gov or 806-477-7467. 

The Intangibles in the NEPA Process: Harold Johnson's Advice to a New NCO



Acquire Pertinent Knowledge and Resources

- Experience and knowledge are a must for project management and quality assurance. If you don't have it, get someone on your team who does.
- Know the basics of the analytical methods used in your NEPA reviews.
 - Helpful in managing and reviewing NEPA documents, e.g., spotting places where the approach is not what you expected.
 - Essential to explaining the results to nontechnical reviewers and answering questions about results.

Manage Contractor Support

- Write a good detailed statement of work. This is essential. The contractor must know what is expected.
- Select a contractor based on several criteria – cost estimate, history of completing tasks within original cost and time estimate, approach to analysis and quality assurance, and key staff.
- Be able to answer contractor questions about what analytical approach to use and provide guidance on DOE policy issues that often arise in the NEPA process.
- Be trained as a Contracting Officer's Representative if at all possible.

Cultivate Strong Relationships

- Attend periodic NEPA meetings. This is a good way to meet and cultivate strong working relationships with your document's reviewers and approvers and other NCOs and document managers.
- Strengthen your ability to communicate clearly. This is an asset that will save you time in the NEPA approval process.

Know the Big Picture – How Would Your Actions Affect Other Sites?

- To help avoid headaches, communicate with others who will be affected by what you are doing – such as NCOs at other involved sites, NEPA document managers of documents being prepared concurrently, and Headquarters reviewers.
- Seek good sources of information about what is happening elsewhere – ask Headquarters personnel and read relevant newsletters.

Understand the Politics

- Be able to explain your local politics to other sites and Headquarters, especially when they affect timing of another site's action or decision.
- Expect the unexpected due to politics (timing is often driven by political considerations – delays are common around elections and other important political events).

Cooperate to Obtain Headquarters Approval

- To save everyone time, get agreement on an approach before implementing it, rather than arguing afterwards. Don't hesitate to call and ask for advice or discuss proposed strategy.
- Be cooperative over minor differences in opinion or wording. Save your arguments for important issues and times when reviewers want to make changes that are factually incorrect.
- Be open and honest. Build your trust factor to help speed the approval process.

Reconsidering “Conservation Reconsidered” on the 40th Anniversary of John Krutilla’s Landmark Article

By: Yardena Mansoor, Office of NEPA Policy and Compliance

When I was an undergraduate economics major in the early 1970s, so many assigned readings introduced me to new ideas that I did not recognize which ones were so innovative as to be revolutionary. One such article was “Conservation Reconsidered” by John V. Krutilla (1922–2003), a 10-page paper in *American Economic Review* (September 1967). In contrast to accepted views of the time, Krutilla argued that pristine bodies of water, forests, and other natural resources have **economic** value, even when left wild and undisturbed. This insight became central to the discipline of resource economics and the current practice of impact analysis and public policy regarding environmental protection.

In October 2007, 40 years after this paper was published, Resources for the Future, an independent research organization in Washington, DC, hosted a seminar to explore the paper’s impact on current environmental policymaking. From 1955 to 1988, Dr. Krutilla had been a central figure at Resources for the Future, where he made public service contributions as an advisor to domestic and international organizations, including the National Academy of Sciences, Forest Service, Environmental Protection Agency, and Department of the Interior, as well as United Nations commissions and environmental organizations. The seminar speakers – all mentored or inspired by Dr. Krutilla – included university professors, governmental environmental managers, and senior researchers in nongovernmental organizations. (Krutilla’s 1967 article, audio-video of the seminar presentations, and slides are all available at www.rff.org/rff/Events/ConservationReconsideredFirstWednesdaySeminar.cfm.)

Although none of the speakers mentioned NEPA directly, Krutilla’s article addresses an important concern of the legislation enacted two years later: “On what basis,” he asked, “can we make decisions when we confront a choice entailing an action which will have an **irreversible adverse consequence** for rare phenomena of nature?” (p. 778, emphasis added). Below are quotations from Krutilla’s article juxtapositioned to what the various speakers said about it and my reflections.

[The] central issue seems to be the problem of providing for the present and future the amenities associated with unspoiled natural environments, for which the market fails to make adequate provision. . . .
(p. 778)

Traditional economic theory relates market prices to the value of exhaustible resources (oil and minerals) and renewable resources (forests) used as inputs to the production of goods and services. In the 1960s, when cost-benefit analysis was a popular – and sometimes required – approach to justifying governmental decisions, valuing undeveloped unique, irreplaceable resources posed a major challenge. The Council on Environmental Quality (CEQ) regulations, for example, require an explicit acknowledgement in an EIS’s impacts analysis of “any irreversible or irretrievable commitments of resources . . .” (40 CFR 1502.16). Further, the CEQ regulations make clear (Section 1502.23, Cost-benefit analysis) that unquantified environmental impacts, values, and amenities need not be quantified for a cost-benefit analysis and should not be when there are important qualitative considerations.

When the existence of a grand scenic wonder of a unique and fragile ecosystem is involved, its preservation and continued availability are a significant part of the real income of many individuals
(p. 779)

How, then, did Krutilla’s “Conservation Reconsidered” revolutionize the dialogue about certain types of environmental decisions? First, it expressed that consumers may prefer goods and services that are not represented by market choices. Many people may prefer the recreational and aesthetic amenities of natural environments, for example, but do not have a way of compensating landowners to preserve those environments. Second, it challenged the assumption that “consumption,” the goal of economic activity, necessarily involves “using something up.” Recreational and habitat values may be “consumed” without decreasing the amount remaining for future consumption.

(continued on next page)

Reconsidering (continued from previous page)

There are many persons who obtain satisfaction from mere knowledge that part of wilderness North America remains even though they would be appalled by the prospect of being exposed to it. . . . (p. 781)

Krutilla's insight therefore changed the language of project evaluation; a resource once called "undeveloped" was now "preserved," shifting focus from unrealized potential to the positive value of its current condition. People consider it important to preserve historically significant artifacts ("Old Ironsides") and works of artistic and architectural genius, and many will contribute to such efforts even if they have no expectation of seeing these works. Similarly, he claimed, many people value the option of enjoying wilderness even if they have no specific plans to do so. Apart from organizations like The Nature Conservancy, which allows contributions to be allocated to purchasing relatively small tracts of land to ensure their preservation, there is no systematic market for conservation of large areas.

We are coming to realize that consumption-saving behavior is motivated by a desire to leave one's heirs an estate as well as by the utility to be obtained from consumption (p. 784)

"Conservation Reconsidered" also addresses the implications of technological progress and the decisions between consumption by current and future generations, and links these concepts to irreversibility and uncertainty. If society learns something of value regarding environmental resources but takes action that prevents attaining the benefits of those resources, then a step with potentially significant adverse irreversible consequences has been taken. Because scientific knowledge and its supporting technologies are likely to continue to grow over time, leaving future generations as well off as current generations means preserving the option of future generations benefiting from the amenities and resources of the natural environment.

A policy of [preserving rare environments] would be consistent both with maintaining the greatest biological diversity for scientific research and educational purposes and with providing the widest choice for consumers of outdoor recreation. (p. 786)

Dr. Krutilla was a leading proponent of managing public resources for multiple uses, for example national forest management for both timber and recreation. For the remaining rare or unique natural environments, which he estimated at a small fraction of one percent of the total relevant area, his article argues that the cost of preservation (i.e., foregone production) is likely not high enough to affect supply or costs to the manufacturing or agricultural sectors. Further, provision should be made for supporting esoteric tastes (wilderness camping) and not just popular ones (touring parks by car or snowmobile).

I was inspired by the Resources for the Future seminar honoring the anniversary of this pathbreaking work. It reminded me that although my colleagues in the DOE NEPA Office are largely scientists and engineers by training, economics also contributes to the dialogue about comparing alternatives. More significantly it emphasized that just as environmental *studies* are inherently interdisciplinary (as NEPA acknowledges), effective environmental *policymaking* also requires an interdisciplinary approach – one that incorporates the contributions of physical and social science, institutional behavior, and politics. 



Litigation Updates

DOE Prevails in Two NEPA Cases

Coalition on West Valley Nuclear Wastes et al. v. DOE

The U.S. District Court for the Western District of New York granted DOE's motion for summary judgment, finding that DOE did not violate NEPA or a stipulation that settled a 1987 NEPA lawsuit regarding the West Valley Demonstration Project (WVDP) near Buffalo, New York. WVDP is located at a site that was operated as a commercial nuclear fuel reprocessing plant from 1966 to 1972. DOE and the State of New York, as joint lead agencies, had issued a draft EIS in 1996 for the management, decommissioning, and long-term stewardship of radioactive wastes at WVDP, but because they did not agree on the closure and long-term management of the site, no preferred alternative was identified and a final EIS was not issued.

Based on public comments on the draft EIS and discussions with a citizen's task force, the State, and the Nuclear Regulatory Commission, DOE decided to conduct the NEPA process for the remaining actions in two separate EISs:

- WVDP Waste Management EIS (DOE/EIS-0337, December 2003) and Record of Decision (ROD; 70 FR 35073; June 16, 2005), addressing facility decontamination and waste management.
- 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), currently being prepared under the joint lead of DOE and State of New York.

According to the 2001 Notice of Intent, this approach was developed "to facilitate decisions in a more tractable and timely fashion." In their complaint filed in August 2005, the plaintiffs alleged that DOE had improperly segmented the proposed action by not addressing these matters in a single EIS, and that the WVDP Waste Management EIS does not support its ROD's reference to the possible use of a waste-incident-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level or mixed low-level radioactive waste.

Segmentation Claim

The plaintiffs' primary claim was that DOE had improperly segmented the environmental impact review of the WVDP actions by "rescoping" the EIS into the

waste management phase and the decommissioning/long-term stewardship phase. Quoting the opinion in *Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988), they claimed that "segmentation is to be avoided in order to insure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller less significant actions."

The court evaluated this claim by referring to the Council on Environmental Quality NEPA Implementing Regulations [40 CFR 1508.25(a)]: "Connected actions . . . are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

- (i) Automatically trigger other actions which may require environmental impact statements.
- (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

In considering this claim, the court found that:

- (i) Short-term management and offsite disposal of waste from WVDP do not automatically trigger closure of the site.
- (ii) The Waste Management EIS and ROD cover activities for a 10-year period, while the decommissioning and closure issues involve actions that could last "for many decades"; the waste management phase is of sufficient length to address environmental matters of a broad scope; and its timing and geography are distinct from the timing and geography of the decommissioning/closure phase.
- (iii) The offsite disposal of low-level radioactive waste has utility independent of any later closure activities, as it will result in reduced radiological risk to workers and the public, and would need to be accomplished regardless of decisions on decommissioning and long-term management. The court also found that the waste management actions would not prejudice the range of alternatives to be considered in the Decommissioning and/or Long-Term Stewardship EIS.

The court, therefore, rejected the claim that DOE had violated NEPA.

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Breach of the 1987 Stipulation

The plaintiffs also claimed that DOE's revised strategy for environmental review of waste disposal, decontamination, and decommissioning breached the 1987 stipulation, under which DOE agreed to begin the closure [EIS] process no later than 1988 and continue the process without delay. Because the plaintiffs had not shown that "DOE's two-EIS approach was devised as a means of evading environmental impact review . . . or was otherwise undertaken arbitrarily or capriciously," the court found that it had "no basis to find that DOE's revised strategy has resulted in a breach of the contractual obligation to continue the NEPA process 'without undue delay and in an orderly fashion consistent with applicable law.'"

Waste Incidental to Reprocessing

The WVDP Waste Management ROD states that the decision to ship low-level and mixed low-level radioactive wastes offsite includes wastes that DOE may determine in the future to be such wastes pursuant to a "waste incidental to reprocessing by evaluation process." The plaintiffs claimed that DOE lacks authority to reclassify waste as "incidental to reprocessing," but the court found this claim to be virtually identical to the claim rejected as "unripe" by the Ninth Circuit in *Natural Resources Defense Council v. DOE (LLQR, December 2004, page 16)*. [Case No.: 05-CV-0614-C]

The plaintiffs have filed a notice of appeal.

Keep Yellowstone Nuclear Free et al. v. DOE

The U.S. District Court for the District of Idaho found for DOE in a lawsuit concerning the Advanced Test Reactor at Idaho National Laboratory. The plaintiffs had sued to enjoin operation of the Reactor because, they claimed, DOE failed to conduct NEPA review before deciding in 2004 to implement the "Life Extension Program" to gather information and improve critical safety components. The court found that while DOE originally expected the Reactor to continue operating as late as 2050, various evaluations raised the likelihood of a premature shutdown. The Life Extension Program was designed to avoid that premature shutdown and extend the life of the Reactor out to its originally-expected shutdown around 2040 to 2050. The plaintiffs argued that this action required analysis under NEPA.

NEPA requires a Federal agency to prepare an EIS for any major Federal action "significantly affecting the quality of the human environment." The Advanced Test Reactor was built before NEPA was enacted, so no EIS was required to be done at the time of its original construction. For such facilities, the courts have found that the agency need

not prepare an EIS to evaluate the environmental effects of mere continued operation of the facility. "However, if an ongoing project undergoes changes which themselves amount to 'major Federal actions,' the operating agency must prepare an EIS" (*Upper Snake River Chapter of Trout Unlimited v. Hodel, 921 F.2d 232, 234 (9th Cir. 1990)*). Under this principle, an EIS may be required where a revision or expansion of the original facilities is contemplated. An EIS may also be required if the original life-span of the project is extended.

The court found that DOE's Life Extension Program neither expands the current operation nor extends the originally-expected life span of the Reactor and observed that the plaintiffs had cited no cases holding that NEPA is triggered by repairs and upgrades needed to attain the full life expectancy of a facility, especially in the absence of evidence that the upgrades themselves affect the environment. The court granted DOE's motion for summary judgment. [Case No. CV-07-36-E-BLW]

The plaintiffs have filed with the district court a motion to alter the court's judgment.



Other Agency NEPA Litigation

Court Orders Fuel Economy EIS to Address Greenhouse Gases

The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct. Any given rule setting a CAFE standard might have an ‘individually minor’ effect on the environment, but these rules are ‘collectively significant actions taking place over a period of time.’

– U.S. Court of Appeals for the Ninth Circuit

The National Highway Traffic Safety Administration (NHTSA) is to promulgate revised corporate average fuel economy (CAFE) standards for light trucks and prepare an EIS on the potential environmental impacts of the proposed standards, under a November 15, 2007, opinion by the U.S. Court of Appeals for the Ninth Circuit. The decision arose from lawsuits by 11 states, the District of Columbia, the City of New York, Center for Biological Diversity, and three other public interest organizations (collectively petitioners) challenging NHTSA’s 2006 final rule for “Average Fuel Economy Standards for Light Trucks, Model Years 2008–2011” (71 FR 17566; April 6, 2006).

The court found the 2006 rule arbitrary and capricious and contrary to the Energy Policy and Conservation Act of 1975 (the law providing NHTSA authority to set CAFE standards) and an EA prepared during the rulemaking to be inadequate. This article summarizes the NEPA issues addressed in the court’s opinion. For details regarding the findings related to the Energy Policy and Conservation Act of 1975 see the full opinion, which is available on the court’s website [*Center for Biological Diversity et al. v. NHTSA*; Case No. 06-71891].

EA Is Inadequate

The court found that NHTSA’s EA for the 2006 rule failed to adequately evaluate cumulative impacts of greenhouse gas emissions. The standards for model years 2008–2011 only had the potential to decrease the growth rate of carbon emissions, not result in an actual decrease in total carbon emissions from light trucks, the court wrote. The EA quantifies expected carbon dioxide (CO₂) emissions from light trucks, but the court concluded, the EA “does not evaluate the ‘incremental impact’ that these emissions will have on climate change or on the environment more generally in light of other past, present, and reasonably foreseeable actions such as other light truck and passenger automobile CAFE standards. The EA does not discuss the *actual* environmental effects resulting from those emissions or place those emissions in context of other CAFE rulemakings.”

The court also found that the EA did not evaluate a sufficient range of reasonable alternatives. The opinion stated that “NHTSA considered a very narrow range of alternatives,” all of which were derived from a cost-benefit analysis that the court found flawed for assigning zero value to the benefit of CO₂ emission reduction, among other reasons. NHTSA contended that its range of alternatives was appropriate because alternatives involving more stringent standards “would not satisfy the statutory requirement to establish standards . . . that are both technologically feasible and economically practicable.” The court determined, however, that it is within NHTSA’s discretion to “set higher standards if an EIS contained evidence that so warranted.” The court also determined that public comments on the draft EA had suggested specific alternatives to achieve higher CAFE standards.

EIS Is Required

The court considered evidence that CO₂ emissions *may have* a significant impact on the environment, including reports from the Intergovernmental Panel on Climate Change. (See page 5.) “Petitioners presented evidence that continued increase in greenhouse gas emissions may change the climate in a sudden and non-linear way. Without some analysis, it would be ‘impossible for NHTSA to know . . . whether a change in [greenhouse gas] emissions of 0.2% or 1% or 5% or 10% . . . will be a significant step toward averting the ‘tipping point’ and irreversible adverse climate change.”

“Petitioners have raised a substantial question as to whether the CAFE standards for light trucks . . . *may* cause significant degradation of some human environmental factor, particularly in light of the compelling scientific evidence concerning ‘positive feedback mechanisms’ in the atmosphere,” the court wrote. “NHTSA’s conclusion that a small reduction (0.2% compared to baseline) in the growth of carbon emissions would not have a significant impact on the environment was unaccompanied by any analysis or supporting data, either in the Final Rule or the EA. . . . NHTSA has not explained *why* its rule will not have a significant effect,” the court concluded. 

BLM Discontinues Alaska EIS in Response to Public Concerns

Partly in response to the high level of public concern expressed during scoping, the Bureau of Land Management (BLM), Alaska State Office, has ended its EIS and related planning efforts for oil and gas leasing in the South portion of the National Petroleum Reserve–Alaska. “The BLM places great emphasis on public participation during land use planning and has listened carefully to the concerns of the people of Alaska’s North Slope,” stated Acting State Director Sharon K. Wilson in BLM’s notice announcing the discontinuation of planning activities (72 FR 52907; September 17, 2007).

The planning effort for approximately 9.2 million acres within the Reserve was initiated with a notice of intent to prepare an EIS, June 2005, and a scoping report in November 2005. Further development of a plan and EIS was then suspended to allow the North Slope Borough, a cooperating agency, to develop a “community-based” management alternative. The Borough conducted public meetings and submitted its report to the BLM in January 2007.

In its September 2007 *Federal Register* notice, BLM stated that the Borough’s report and BLM’s scoping efforts identified high levels of concern on the part of North Slope residents regarding the potential impacts of oil and gas activity on subsistence resources, especially the Western Arctic Caribou Herd, whose primary calving area is within the South planning area.

BLM also stated in the notice that its decision to discontinue its planning activities and EIS was also based on the limited resources and impracticality of energy development. BLM’s resource assessments indicate that oil reserves are limited in the South planning area and comprise approximately 2.1 percent of the undiscovered oil of the Reserve. Although the South area contains an estimated 27 percent of the Reserve’s undiscovered gas reserves, there is no transportation system to move the gas to market.

Further information may be obtained from Bob Schneider, BLM Alaska State Office, at 907-474-2216. 



Public involvement in the NEPA process identified impacts to the caribou, a subsistence resource, as a significant environmental concern. (Photo: Forest Service)

Loan Guarantee Rule Issued for Innovative Clean Energy Projects

In support of the President’s Advanced Energy Initiative, DOE has issued final regulations for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 to support investment in clean energy projects that use innovative technologies. The regulations (10 CFR Part 609; 72 FR 60116; October 23, 2007) establish procedures for loan guarantees for projects that “avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies”

Under the regulations, environmental impact information is needed for both a pre-application and an application. In a pre-application, the applicant must include “an outline of the potential environmental impacts of the project and how these impacts will be mitigated.” An application must provide more detailed environmental information, including a “report containing an analysis of the potential environmental impacts of the project that will enable

DOE to assess whether the project will comply with all applicable environmental requirements, and that will enable DOE to undertake and complete any necessary reviews” under NEPA.

Also in October 2007, DOE invited 16 of the project sponsors who had submitted pre-applications in the fall of 2006, under DOE guidelines then in effect for the program, to submit full applications for loan guarantees. These projects include advanced technologies involving the uses of biomass, fossil energy, solar, industrial energy efficiency, electricity delivery and energy reliability, hydrogen, and alternative fuel vehicles.

The Department is preparing guidelines to aid applicants in submitting environmental information needed for DOE’s NEPA reviews. For more information, see the resources posted at www.lgprogram.energy.gov. 

Training Opportunities

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

- Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
NEPA and Adaptive Management (FED 110)
Washington, DC: December 11-13
No Fee
- American Law Institute - American Bar Association
800-CLE-NEWS
www.ali-aba.org
Environmental Impact Assessment (NEPA)
Washington, DC: December 12-14
(Live and Webcast)
Fee: \$1,095 (\$695 for full-time federal, state, and local government employees)
Environmental Law
Bethesda, MD: February 6-8
(Live and Webcast)
Fee: \$1,095 (\$100 on-line registration discount available)
- Colleague Consulting
301-277-0255 (ext. 103)
cmelekian@colleagueconsulting.com
www.colleagueconsulting.com
Environmental Laws and Regulations, and NEPA
Amarillo, TX: February 4-6
- Continuing Legal Education (CLE)
800-873-7130
www.cle.com
NEPA
Denver, CO: December 13-14
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available
NEPA SuperConference
San Francisco, CA: March 6-7
Fee: \$795 (GSA contract: \$695)
Multiple registration discount available
Los Angeles, CA: March 17-18
Fee: \$795 (GSA contract: \$695)
Multiple registration discount available
- International Institute for Indigenous Resource Management
303-733-0481
www.iiirm.org
Workshop on Participating in the National Environmental Policy Act (NEPA) Process: From Scoping to the Record of Decision
Santa Ana Pueblo, NM: January 10-11
Fee: \$450 (until 12/15/07)
- Natural Resources and Environmental Policy Program, Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/policy
NEPA Certificate Program
Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group (next page). Also requires completion of course exams and a final project.
Fee: \$4,955 (includes tuition, course fees, and all materials)
- Nicholas School of the Environment and Earth Sciences, Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuinged/courses.html
Socioeconomic Impact Analysis Under NEPA
Durham, NC: March 12-14
Fee: \$750
The Law of NEPA
Durham, NC: April 30-May 2
Fee: \$750
Certificate in the National Environmental Policy Act
Requires successful completion of one core and three elective Duke University NEPA short courses. Co-sponsored by the Council on Environmental Quality.
Fee: Included in registration for constituent courses.

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Training Opportunities

(continued from previous page)

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

Advanced Topics in NEPA: Project Management

Phoenix, AZ: February 6-8
Fee: \$695

Issues in Section 106: An Advanced Seminar

Sacramento, CA: February 12-13
Fee: \$695

Section 106 Compliance: An Introduction to Professional Practice Under Section 106 of the National Historic Preservation Act

Phoenix, AZ: March 25-27
Fee: \$795

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

NEPA Boot Camp for Engineers

Scottsdale, AZ: February 21-22
Fee: \$1,295 (\$1,085 for American Society of Civil Engineers members)

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

Adaptive Management

Salt Lake City/Park City, UT: December 10-11
Fee: \$685 (GSA contract: \$595)

Clear Writing for NEPA Specialists

Salt Lake City, UT: February 6-8
Fee: \$845 (GSA contract: \$755)
until 12/19/07

Phoenix, AZ: February 27-29
Fee: \$845 (GSA contract: \$755) until 1/9/08

Cultural and Natural Resource Management/Endangered Species Act Overview

Beale AFB, CA: January 17-18
Fee: \$685 (GSA contract: \$595)

How to Manage the NEPA Process and Write Effective NEPA Documents

Los Angeles, CA: January 29–February 1
Fee: \$1,045 (GSA contract: \$955)
until 12/12/07

How to Manage the NEPA Process – Emphasis on Native American Issues

Albuquerque, NM: February 11-13
Fee: \$845 (GSA contract: \$755)
until 12/19/07

NEPA Climate Change Analysis

San Francisco, CA: February 28-29
Fee: \$645 (GSA contract: \$555)
until 12/19/07

NEPA Cumulative Effects Analysis and Documentation

San Francisco, CA: February 26-27
Fee: \$645 (GSA contract: \$555)
until 12/19/07

Writing for Technical Specialists

Salt Lake City/Park City, UT: December 12-14
Fee: \$885 (GSA contract: \$795)

Mark Your Calendars: Upcoming Conferences

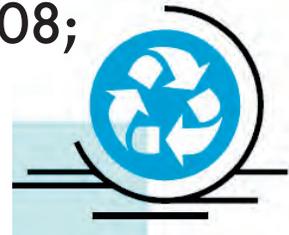
NAEP Conference to Highlight Climate Change



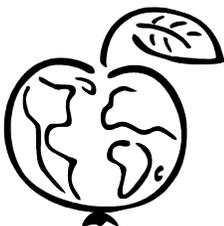
The National Association of Environmental Professionals (NAEP) will hold its 2008 annual conference jointly with the California Association of Environmental Professionals on March 25–28 in San Diego. This year's theme of "Changing Climates" reflects the growing awareness within the environmental professions of the potential for significant disruptions and impacts.

Due to the joint sponsorship of these two large environmental organizations, the scope will be greatly expanded from past NAEP conferences. Participants interested in NEPA, for example, may choose from two concurrent presentations for most sessions, including topics on NEPA and climate change, NEPA review for large-scale energy projects, case law and legislative updates, and improving document quality. Representatives from the Council on Environmental Quality (CEQ) will provide their annual NEPA update, and CEQ's Associate Director for NEPA Oversight will present a "Hot Topic" Luncheon on the "Underappreciated Provisions of the CEQ NEPA Regulations." The preliminary program brochure and registration form will soon be posted on the NAEP website at www.naep.org under Annual Conferences.

State of Environmental Justice in America 2008; Abstracts Due December 15



The U.S. Department of Energy is joining the National Small Town Alliance and the U.S. Department of Agriculture to sponsor the second annual conference on the State of Environmental Justice in America, to be held in Washington, DC, March 26–29, 2008. (See *LLQR*, June 2007, page 7, for more information on the first annual meeting.)



Abstracts for panel or individual presentations related to the current state of environmental justice are due by December 15, 2007. Topics include integration of environmental justice into Federal, State, and local agencies' policies and programs; community participation in environmental decisionmaking; and environmental justice aspects of land use planning, alternative energy production, facility siting, and climate change. DOE's contact for further information about this conference is Melinda Downing, Environmental Justice Program Manager, Office of Legacy Management, melinda.downing@hq.doe.gov or 202-586-7703. Inquiries, including requests for the complete list of abstract topics, also may be sent to ejinamerica@hotmail.com.

2008 Federal Environmental Symposium



The Office of the Federal Environmental Executive has announced its 2008 annual Symposium. In order to reach more of the Federal community, this year's conference has been expanded to include a Symposium East to be held in Bethesda, Maryland, June 2–4, and an inaugural Symposium West to be held in Big Sky, Montana, June 17–19. This year's Symposium will focus on meeting the goals of Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (*LLQR*, March 2007, page 13). Topics of potential interest to the DOE NEPA community include renewable energy, greenhouse gases, environmental management systems, pollution prevention, and green buildings. A formal Call for Papers will be made in early January 2008, and further information will be made available at www.fedcenter.gov. DOE's contact for further information is Beverly Whitehead, Office of Health, Safety and Security, at beverly.whitehead@hq.doe.gov or 202-586-6073.

EAs and EISs Completed July 1 to September 30, 2007

EAs

**Grand Junction Office/
Office of Legacy Management**
DOE/EA-1535 (7/6/07)
Uranium Leasing Program, Colorado
Cost: \$360,000
Time: 26 months

**Y-12 Site Office/
National Nuclear Security Administration**
DOE/EA-1593 (9/6/07)
*Y-12 Steam Plant Life Extension Project - Steam
Plant Replacement Subproject, Oak Ridge,
Tennessee*
Cost: \$163,000
Time: 6 months

EIS

**Western Area Power Administration
and Office of Electricity Delivery
and Energy Reliability**
DOE/EIS-0395 (72 FR 43271; 8/3/07)
(EPA Rating: LO)
*San Luis Rio Colorado Project,
Yuma County, Arizona*
Cost: The cost for this EIS was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 18 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

Adequacy of the EIS

- Category 1 – Adequate
- Category 2 – Insufficient Information
- Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median and average costs for the preparation of 2 EAs for which cost data were applicable was \$261,000.
- Cumulatively, for the 12 months that ended September 30, 2007, the median cost for the preparation of 14 EAs for which cost data were applicable was \$90,000; the average was \$168,000.
- For this quarter, the median and average completion time for 2 EAs was 16 months.
- Cumulatively, for the 12 months that ended September 30, 2007, the median completion time for 17 EAs was 14 months; the average was 22 months.

EIS Costs and Completion Times

- There were no EISs completed during this quarter for which cost data were applicable.
- Cumulatively, for the 12 months that ended September 30, 2007, the median and average costs for the preparation of 2 EISs for which cost data were applicable was \$2,509,000.
- Cumulatively, for the 12 months that ended September 30, 2007, the median and average completion times for 3 EISs were 17 months.

Recent EIS-Related Milestones (September 1 to November 30, 2007)

Advance Notice of Intent

Office of Environmental Management

DOE/EIS-0402

Environmental Impact Statement for Remediation of Area IV of the Santa Susana Field Laboratory, Ventura County, California

October 2007 (72 FR 58834, 10/17/07)

Draft EISs

Office of Civilian Radioactive Waste Management

DOE/EIS-0250-S1

Supplement to the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada
October 2007 (72 FR 58081, 10/12/07)

DOE/EIS-0250-S2 and DOE/EIS-0369

Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada - Nevada Rail Transportation Corridor, Nye County, Nevada and Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada [combined]

October 2007 (72 FR 58081, 10/12/07)

Office of Electricity Delivery

and Energy Reliability (co-lead, Bureau of Land Management, Department of the Interior)

DOE/EIS-0386

Designation of Energy Corridors on Federal Land in 11 Western States

November 2007 (72 FR 64619, 11/16/07)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0382

Mesaba Energy Project, Itasca County, Minnesota

November 2007 (72 FR 63579, 11/9/07)

Western Area Power Administration

DOE/EIS-0377

Supplemental Big Stone II Power Plant and Transmission Project, Grant County, South Dakota and Big Stone County, Minnesota

October 2007 (72 FR 60846, 10/26/07)

Final EISs

Bonneville Power Administration

and Office of Electricity Delivery and Energy Reliability

DOE/EIS-0378

Port Angeles - Juan de Fuca Transmission Project, Clallam County, Washington

October 2007 (72 FR 58081, 10/12/07)

Office of Fossil Energy

DOE/EIS-0357

Gilberton Coal-to-Clean Fuels and Power Project, Gilberton, Pennsylvania

November 2007 (72 FR 62229, 11/2/07)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0361

Western Greenbrier Co-Production Demonstration Project, Greenbrier County, West Virginia

November 2007 (72 FR 63579, 11/9/07)

DOE/EIS-0394

FutureGen Project

November 2007 (72 FR 64619, 11/16/07)

Western Area Power Administration

DOE/EIS-0389

Trinity Public Utilities District Direct Interconnection Project, Trinity County, California

November 2007 (72 FR 67723, 11/30/07)

Record of Decision and Floodplain Statement of Findings

Western Area Power Administration

and Office of Electricity Delivery and Energy Reliability

DOE/EIS-0395

San Luis Rio Colorado Project, Yuma County, Arizona

October 2007 (72 FR 58074, 10/12/07)

Amended Record of Decision

National Nuclear Security Administration/

Office of Fissile Materials Disposition

DOE/EIS-0229

Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement

September 2007 (72 FR 51807, 9/11/07)

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

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0285-SA-340*
Vegetation Management along the Bell - Boundary No. 3, 230 kV Double Circuit Transmission Line Corridor Right of Way from Mile 1 to Mile 98, Spokane, Stevens, and Pend Oreille Counties, Washington
(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-341*
Vegetation Management along the Broadview - Garrison #1 and #2, 500 kV Double Circuit Transmission Line Corridor Right of Way from Mile 134 to Mile 225, Broadwater, Jefferson, and Powell Counties, Montana
(Decision: No further NEPA review required)
April 2007

DOE/EIS-0285-SA-342*
Vegetation Management along the Chief Joseph - Monroe No. 1 Transmission Line Corridor from Structures 64/5 to 80/1, Including a Segment of the Chief Joseph - Snohomish No. 3 and No. 4 from 64/5 to 80/1, Chelan and King Counties, Washington
(Decision: No further NEPA review required)
July 2007

**Not previously reported in LLQR*

DOE/EIS-0285-SA-343*
Fidalgo - Lopez Substation: Danger Tree Removal Project, Skagit and San Juan Counties, Washington
(Decision: No further NEPA review required)
July 2007

DOE/EIS-0285-SA-344
Toledo - Wendson No. 1 Transmission Line Vegetation Management, Lincoln and Lane Counties, Oregon
(Decision: No further NEPA review required)
September 2007

Klondike III/Biglow Canyon Wind Integration Project Environmental Impact Statement (DOE/EIS-0374)

DOE/EIS-0374-SA-01
Klondike III/Biglow Canyon Wind Integration Project, Oregon
(Decision: No further NEPA review required)
September 2007

National Nuclear Security Administration/ Office of Fissile Materials Disposition

Disposition of Surplus Highly Enriched Uranium Environmental Impact Statement (DOE/EIS-0240)

DOE/EIS-0240-SA-01
Disposition of Surplus Highly Enriched Uranium, Washington, DC
(Decision: No further NEPA review required)
October 2007

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports.

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

Scoping

What Worked

- *Multiple alternatives.* The EA's consideration of multiple options for most outfall projects is expected to provide sufficient flexibility to act and still be bounded by analyses in the EA.
- *Previous experience.* Knowledge gained during the NEPA process of an earlier, similar EA was useful in applying to the review process of this EA.
- *Early planning.* The DOE management and operating contractor successfully conducted an intensive, up-front planning effort for the EA, which covered problem definition and development of proposed alternative actions. By the time the NEPA process was formally initiated, the scope had been well defined, and participants and responsibilities had been identified.

Data Collection/Analysis

What Worked

- *Bounding scenarios.* The EA used an unlikely scenario to bound the potential traffic impacts for each alternative; however, because this scenario was highly unlikely, a more "realistic" scenario was also provided.

What Didn't Work

- *Incomplete baseline.* A more complete hydrologic baseline of the project areas would have facilitated the floodplain/wetland assessment for the EA.

Schedule

Factors that Inhibited Timely Completion of Documents

- *Multiple decisionmakers.* Dealing with multiple decisionmakers for the many outfall projects under the scope of the EA slowed the alternative selection process. However, the NEPA process was not adversely impacted, and nothing would have been gained by splitting the scope into several EAs.

- *Identification of alternatives.* Identifying proposed and alternative actions for the EA's outfall projects took longer than originally anticipated.
- *Delayed review process.* Finalizing the EA proved to be problematic due to a protracted DOE review and approval process.
- *Changes to local guidance.* Revisions to the local Official Use Only guidance during EA completion required additional review and changes.
- *Hindering factors.* Extensive interaction with cooperating agencies, the programmatic nature of the document, and numerous public comments that needed to be addressed all contributed to making timely completion difficult.

Teamwork

Factors that Facilitated Effective Teamwork

- *Frequent communication.* Frequent effective communication with the EA preparation contractor proved valuable in producing a quality EA.
- *Close communication.* Close communication among DOE, the NEPA contractor, and relevant project personnel facilitated preparation of the EA through completion of the document.
- *DOE and contractor staff co-located.* DOE and contractor staff worked in the same location, which facilitated communication.

Factors that Inhibited Effective Teamwork

- *Lack of follow through.* A DOE subject matter expert provided substantive comments on the draft EA, but elected not to review or provide comments during the approval process for the finding of no significant impact and final EA.

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

Process

Successful Aspects of the Public Participation Process

- *Public interest.* DOE received several inquiries showing interest in the proposed draft EA; however, no comments were received during the public review process.
- *Uncontroversial topic.* The proposed action was not controversial, so state and public review of the EA could be limited to the minimum time period allowed.

Unsuccessful Aspects of the Public Participation Process

- *Local newsletter overlooked.* A local advisory group complained that the notice of availability for the draft EA was not given enough publicity because it was not published in the local Operations Office monthly newsletter. Although the notice was published in the newspaper, we learned that stakeholders rely more heavily on the local DOE newsletter for their NEPA information.
- *Demand for public meetings.* Some members of the public did not understand why DOE did not hold more meetings on the EA across the region and state.
- *Comment period not extended as long as public wanted.* Some members of the public wanted the EA comment period to be extended from 30 days to 120 days, and expressed disappointment that DOE extended the comment period to only 45 days.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Input from cooperating agency.* One of the cooperating agencies on the programmatic EA submitted over 300 comments on the first internal draft. Every one of the agency's comments was resolved.
- *Identification of mitigation measures.* Implementation of selected proposed and alternative actions for certain outfalls reviewed during the EA process could result in potential wetland losses. In instances where follow-up monitoring indicates the need for additional mitigative action, DOE would identify and implement the appropriate mitigation measures.

- *Combining alternatives.* Evaluating multiple outfalls as part of a single EA allowed for a holistic perspective that would not have otherwise been provided. As a result, the combining of multiple outfall flows for treatment in a common basin or discharge through a single outfall was determined to be environmentally and technically preferable to implementing best management practices on an individual outfall basis.

Enhancement/Protection of the Environment

- *Water quality.* The quality of state waters will be protected and in some instances enhanced.

Other Issues

- *Project delays.* Issues related to outfall ownership acceptance and funding may delay project implementation.

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 3 questionnaire responses were received for EAs, 3 out of 3 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the EA process was useful in identifying DOE commitments.
- A respondent who rated the process as "5" stated that the scope of the EA encompassed multiple projects which allowed for an all-inclusive perspective and resulted in environmentally and technically preferable options.
- A respondent who rated the process as "5" stated that the NEPA process was instrumental in helping DOE to decide whether to extend DOE's leasing program.