

LESSONS LEARNED

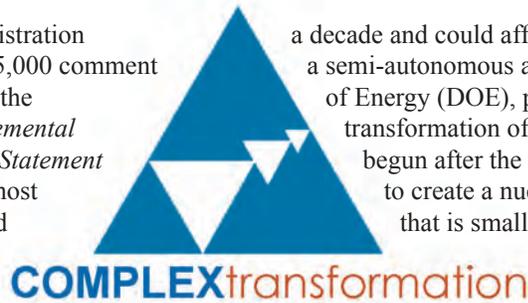
March 3, 2008; Issue No. 54

First Quarter FY 2008

Programmatic EIS on Nuclear Weapons Complex Draws National Interest, Many Comments

The National Nuclear Security Administration (NNSA) has already received about 35,000 comment documents, most via email, regarding the *Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement* (SPEIS; DOE/EIS-0236-S4). With almost half the 90-day public comment period remaining, “We expect comments from thousands more people,” said Ted Wyka, Complex Transformation SPEIS Document Manager. NNSA published a notice of availability for the Draft SPEIS on January 11, 2008 (73 FR 2023), and the public comment period continues through April 10, 2008.

The SPEIS represents the first nationwide review of alternatives for the nuclear weapons complex in more than



a decade and could affect facilities in six states. NNSA, a semi-autonomous agency within the Department of Energy (DOE), proposes to continue the transformation of the nuclear weapons complex begun after the end of the Cold War in order to create a nuclear weapons infrastructure that is smaller, safer, more secure, and less expensive to operate.

“I feel a sense of urgency,” said Thomas P. D’Agostino, NNSA Administrator, in releasing the Draft SPEIS. “We must act now to adapt for the future security needs of the country, and stop pouring money into an old, Cold War-era nuclear weapons complex that is too big, too expensive, and doesn’t offer updated and safer ways of maintaining our nuclear stockpile.”

(continued on page 3)



*Dinah Bear, General Counsel
Council on Environmental Quality*

Two of NEPA’s Best Retire
See pages 16 and 17 for more . . .

*Anne Norton Miller, Director
Office of Federal Activities
Environmental Protection Agency*



Inside **LESSONS LEARNED**

Welcome to the 54th quarterly report on lessons learned in the NEPA process. As noted in articles on recently issued DOE EISs (Complex Transformation, Yucca Mountain Repository and Railroad, and Western Energy Corridors), DOE has received and is responding to extensive public comment. This issue also pays tribute to two women who have made extraordinary contributions to NEPA implementation. As always, we welcome your suggestions for further improvement.

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Carol Songstrom

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, 2008. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2008

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2008 (January 1 through March 31, 2008) 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.

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This icon indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.

Upcoming Conferences

- ▶ **Third Annual Tribal Energy Policy Roundtable** – Denver, CO, March 18–20. The International Institute for Indigenous Resource Management will bring together tribal, industry, and government leaders for dialogues examining the emerging environment in which tribal energy and development policies will be made, including climate change and increased global competition for energy resources. More information is available at www.iiirm.org.
- ▶ **Fifth National Conference on Environmental Conflict Resolution** – Tucson, AZ, May 20–22, www.ecr.gov. For additional information, see related article on page 10.
- ▶ The following conferences were described in the December 2007 issue of LLQR. Additional information has since been posted on the respective conference websites.

National Association of Environmental Professionals – San Diego, CA, March 25–28, www.naep.org under Annual Conferences.

State of Environmental Justice in America 2008 – Washington, DC, May 21–24; note new dates, www.ejconference2008.org.

2008 Federal Environmental Symposia – East: Bethesda, MD, June 2–4 and West: Big Sky, MT, June 17–19, www.fedcenter.gov/calendar/conferences/symposium2008. 

Complex Transformation (continued from page 1)

SPEIS Evaluates Programmatic and Project-Specific Alternatives

The Draft Complex Transformation SPEIS analyzes both programmatic and project-specific alternatives. (See *LLQR*, December 2006, page 1, and March 2007, page 3.) The programmatic alternatives involve restructuring major manufacturing and research and development (R&D) facilities that use plutonium and highly enriched uranium to produce nuclear components for the weapons stockpile. These alternatives include combinations of new and existing facilities at Los Alamos National Laboratory (LANL) in New Mexico, the Nevada Test Site in Nevada, the Pantex Plant in Texas, the Savannah River Site in South Carolina, and the Y-12 National Security Complex in Tennessee. The programmatic alternatives also include consolidating storage of significant quantities of plutonium and highly enriched uranium. Implementation of programmatic decisions related to these alternatives could require future site-specific NEPA review.

The most substantial change from the SPEIS as described in the notice of intent (71 FR 61731; October 19, 2006) is the addition of a “Consolidated Centers of Excellence” programmatic alternative, which includes options to locate all major manufacturing functions at either one or two of the five sites. Another major change is the addition of a qualitative discussion of a smaller nuclear weapons stockpile and lower manufacturing capability. In addition, NNSA added an alternative to produce up to 80 plutonium “pits” per year at LANL, which currently is part of NNSA’s preferred alternative. A pit is the core of a nuclear weapon.

Project-specific alternatives in the Draft Complex Transformation SPEIS include the consolidation of R&D and testing facilities for tritium R&D, high explosives R&D, hydrodynamic testing, major environmental testing, flight test operations, and other weapons support functions. These alternatives could affect operations at the five sites evaluated for programmatic alternatives (identified above) and at Lawrence Livermore National Laboratory in California, Sandia National Laboratories in New Mexico and California, the Tonopah Test Range in Nevada, and the Department of Defense’s White Sands Missile Range in New Mexico. NNSA expects that implementation of decisions related to the project-specific alternatives likely would not require additional NEPA reviews.

Web Enhances Information Access

The web is an important part of NNSA’s strategy for facilitating public involvement in the Draft SPEIS.



The Draft Complex Transformation Supplemental Programmatic EIS consists of three volumes totaling about 1,800 pages.

Upon approval of the Draft in December 2007, NNSA announced its plans for public participation and made the Summary of the Draft Complex Transformation SPEIS, as well as several fact sheets, available on its website (www.nnsa.doe.gov/complextransformation.htm). Also, NNSA has since posted the complete Draft SPEIS (except for a classified appendix), most reference documents, and materials prepared for the public hearings on a separate website (www.ComplexTransformationSPEIS.com). Security concerns prevented some reference documents from being made available on the web. Those have been placed in reading rooms around the country, along with a CD of those reference documents available on the web, or are available upon request.

Public Comments by Email and at Hearings

The web also is being used by organizations outside NNSA to encourage public participation in the Draft SPEIS. National and local organizations have generated thousands of email messages from individuals across the country. “We started receiving public comments by email during the first week of the comment period,” said Mr. Wyka. Comments received to date via email primarily express opposition to nuclear weapons.

During February, NNSA held public hearings in South Carolina, Tennessee, and Texas. Total participation ranged from less than 20 people to almost 400, and the number of people providing comments from a dozen to approximately 80. “We begin each hearing with an open house session. Subject matter experts are available near poster displays to answer questions,” said Mr. Wyka. “This allows for productive interaction with the public, thanks to the great support from the local site offices and contractors.”

(continued on page 11)

DOE Announces a Restructured Approach to FutureGen

Following issuance of the FutureGen Final EIS in late 2007, DOE announced a revised (“restructured”) approach to the FutureGen project that aims to demonstrate carbon capture and sequestration (CCS) technology at multiple commercial-scale integrated gasification combined cycle (IGCC) clean coal power plants.

The fundamental goals of the FutureGen project remain the same – to ensure a clean, reliable, and affordable energy future by demonstrating advanced clean coal power plants that capture and sequester carbon dioxide. However, the revised approach, announced in a DOE press release on January 30, 2008, differs from the original FutureGen concept in several ways:

- The original FutureGen project, a \$1 billion Presidential initiative announced in 2003, envisioned a single 275-megawatt (MW) IGCC power plant that would produce electricity and hydrogen, and feature a demonstration of CCS technology.

Under the revised approach, DOE envisions multiple commercial-scale (i.e., at least 300-MW) IGCC plants integrated with CCS technology without hydrogen production.

- The original FutureGen facility was structured as a research and development project.

The revised approach eliminates the “living laboratory” aspects of the project and emphasizes instead early commercial demonstrations of IGCC-CCS technology.

- Under the original approach, DOE would have provided cost shared funding of 74 percent of total project costs.

Under the revised approach, DOE would fund only the incremental cost of CCS technology for a single power train per facility of at least 300 MW.

Cost Concerns

In announcing the revised approach, Secretary of Energy Samuel W. Bodman noted that the total estimated cost of the original FutureGen project had nearly doubled to about \$1.8 billion. “We are eager to demonstrate CCS technology on commercial scale plants that, when operational, will be the cleanest coal-fired plants in the world. Each of these plants will sequester at least one million metric tons of carbon dioxide annually and help

This restructured FutureGen approach is an all-around better investment for Americans.

***– Samuel W. Bodman, Secretary of Energy
January 30, 2008***

meet our nation’s rapidly growing energy demand,” Secretary Bodman said.

Status of the Original FutureGen EIS

DOE issued the Final EIS for the original FutureGen project (DOE/EIS-0394) in November 2007 (*LLQR*, December 2007, page 10). Completed in 16 months at a cost of \$5.2 million, the EIS evaluated four alternative sites to host the FutureGen project. DOE has not issued a Record of Decision to announce its decision on whether to fund the original FutureGen project and, if so, which of the alternative sites, if any, would be acceptable to DOE. However, the FutureGen Industrial Alliance, DOE’s industrial partner for the original FutureGen project, announced in December 2007 that the Alliance had selected the site in Mattoon, Illinois.



*Artist's conception of the original FutureGen project.
(Source: DOE Office of Fossil Energy)*

Next Steps

DOE also issued on January 30, 2008, a Request for Information (RFI) regarding DOE’s plans to restructure the FutureGen project. The RFI summarized key project technical goals (the emissions targets are essentially the same as the original FutureGen project); stated that DOE anticipates that up to \$1.3 billion will be available to fund multiple CCS demonstration projects; and solicited expressions of interest from power producers who would consider participating in the revised FutureGen project. The comment period on the RFI ends March 3, 2008.

According to the RFI, three months after the comment period closes, DOE would issue a competitive Funding Opportunity Announcement and complete evaluation of proposals submitted in response to that Announcement by the end of December 2008. The RFI also states that DOE expects commercial operations could begin in 2015, after completion of the NEPA process.

Further information about the FutureGen project, including a copy of the RFI and DOE’s press release, can be found at www.fossil.energy.gov/programs/powersystems/futuregen. 

Yucca Mountain Final EISs on Track; Rail EIS Adds Cooperating Agencies

After an extraordinary effort enabling the issuance in October 2007 of draft NEPA documents regarding the proposed Yucca Mountain repository in Nevada (*LLQR*, December 2007, page 8), the EIS preparation and review team had little time to catch its breath before tackling the next steps in preparing the final documents.

The first step was to plan and conduct integrated public hearings on the Draft Repository Supplemental EIS (SEIS)¹ and Draft Nevada Rail Corridor SEIS/Rail Alignment EIS.² Dr. Jane Summerson, Office of Civilian Radioactive Waste Management, led the DOE team in conducting eight public hearings in California, Nevada, and Washington, DC. Approximately 520 people attended the hearings and 125 people provided oral comments.

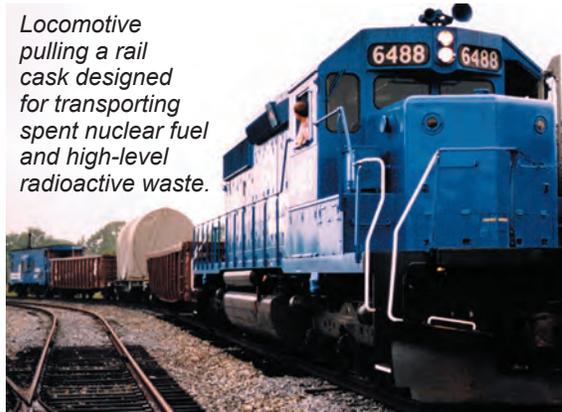
The 90-day comment period ended January 10, 2008, and the team is now responding to public comments and preparing the Final EISs. In addition to oral comments provided at the hearings, DOE received nearly 1,100 comment letters. All together, DOE received a total of about 4,000 comments. The Office of Civilian Radioactive Waste Management has posted these comments on its website at www.ocrwm.doe.gov/ym_repository/seis/index_comments.shtml.

Efficient Comment-Response Process

The team is preparing three sets of comment-responses, one each for the Repository SEIS, Nevada Rail Corridor SEIS, and the Rail Alignment EIS. A key step is sorting the comments into the appropriate comment-response set. Because the distribution and public hearing processes for the documents were integrated, some comment documents contained comments that may apply to more than one EIS. To ensure an adequate consideration of comments for each EIS, some comments may be responded to in more than one set of comment-responses (e.g., in cases where a comment may apply to or have been intended for more than one EIS).

Other steps underway include categorizing (“binning”) comments by topic, identifying major issues and frequently recurring topics, and developing proposed responses in coordination with document reviewers. Developing “agreed-upon” responses to these comments has been shown to foster consistency and efficiency in the comment-response process. (See *The EIS Comment-Response Process*, October 2004, page 11, available on

Locomotive pulling a rail cask designed for transporting spent nuclear fuel and high-level radioactive waste.



the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools.)

Cooperating Agencies Add Expertise

Nye County is a cooperating agency for the Repository SEIS (*LLQR*, June 2007, page 10), and the U.S. Air Force, Bureau of Land Management, and Surface Transportation Board are cooperating agencies for the Nevada Rail Corridor SEIS and Rail Alignment EIS.

Recently, in response to a request from Lincoln County, DOE invited the County, as well as three other localities in Nevada (Esmeralda County, Nye County, and the City of Caliente), to participate as cooperating agencies in the Nevada Rail Corridor SEIS and Rail Alignment EIS. Portions of DOE’s preferred rail corridor (the Caliente Corridor) pass through lands within these units of local government. In inviting their participation, DOE recognized their special expertise regarding the relationship of DOE’s proposed action to regional and local interests, such as land use plans, policies, and controls, and current and planned infrastructure (e.g., public services, traffic conditions) in the region.

The preparation team is coordinating with DOE program offices preparing other EISs, including the Global Nuclear Energy Partnership Programmatic EIS and the Greater-Than-Class-C EIS. DOE plans to issue the Yucca Mountain Final EISs in June 2008. For further information, contact Dr. Summerson, NEPA Document Manager and NEPA Compliance Officer, at jane_summerson@ymp.gov or 702-794-1493. **LL**

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*). (Note: these two EISs are combined in a single document.)

SA Evaluates Highly Enriched Uranium Disposition Impacts

By: Hitesh Nigam, NCO, NNSA Office of Fissile Materials Disposition,
and Robert Hoffman, Science Applications International Corporation

The National Nuclear Security Administration (NNSA) recently completed a Supplement Analysis that served as an effective mechanism to compare actual performance to impact estimates in an existing EIS, as well as to assess proposed changes to an ongoing program. We began preparing the *Disposition of Surplus Highly Enriched Uranium Supplement Analysis* (HEU SA; DOE/EIS-0240-SA1, October 2007) in late 2006 to evaluate the potential impacts of continued implementation of the HEU disposition program. We soon expanded the scope to address new proposals related to the program that could affect environmental impacts.

Our starting point was the analysis in the 1996 *Disposition of Surplus Highly Enriched Uranium EIS* (DOE/EIS-0240), which analyzed alternatives for the disposition of up to 200 metric tons of HEU declared surplus from the weapons program. Disposition options include down-blending HEU (greater than 20% U-235) to low-enriched uranium suitable for fabrication into fuel for commercial reactors (about 3–5% U-235), or to a lower enrichment level (less than 1% U-235) to enable disposal as low-level radioactive waste. The Record of Decision for the HEU EIS (61 FR 40619; August 5, 1996) identified four sites where down-blending would be conducted: NNSA's Y-12 National Security Complex, Oak Ridge, Tennessee; Savannah River Site, Aiken, South Carolina; Babcock and Wilcox, Lynchburg, Virginia; and Nuclear Fuel Services, Erwin, Tennessee. These remain the only facilities appropriate for down-blending.

Focus on Changed Conditions

In comparing the assumptions relied upon for the HEU EIS to current conditions and program plans, we identified five changes that could affect the analysis of potential environmental impacts.

- Increase in the expected average enrichment level of future HEU
- Additional chemical forms of the uranium for down-blending
- Change in the number of workers at the affected sites
- Increase in surrounding (50-mile radius) population at the affected sites
- Change in the DOE-recommended dose conversion factor used to estimate the risk of latent cancer fatalities from radiation exposure (*LLQR*, March 2003, page 9)

We also evaluated three new proposals related to the disposition program: potential new end users (foreign reactor operators as part of NNSA's Reliable Fuel Supply

What Is an SA?

A Supplement Analysis provides the information and analysis to determine whether a supplement to an EIS is necessary to meet the requirements of 40 CFR 1502.9(c). The DOE regulations at 10 CFR 1021.314(c) provide considerable flexibility in preparing SAs. See *Recommendations for the Supplement Analysis Process* (July 2005) on the DOE NEPA website under Selected Guidance Tools, as well as a related article on DOE guidance on preparing SAs (*LLQR*, September 2005, page 6).

Initiative), new disposal pathways (direct disposal as spent nuclear fuel or low-level waste without down-blending), and down-blending additional quantities of HEU.

Next, we completed an initial screening of all resource areas addressed in the HEU EIS to determine which could be affected by these changes. We worked with each site to understand its experience implementing the HEU disposition program to identify potential concerns relative to facility resource requirements, throughputs, and emissions. Based on this screening, we identified the analyses in the HEU EIS warranting evaluation in greater detail: human health risk, facility accidents, transportation risk, and waste management. Also, we evaluated potential impacts from sabotage or terrorist attack in the SA, consistent with DOE guidance issued since completion of the HEU EIS. (See *Need to Consider Intentional Destructive Acts in NEPA Documents* (December 2006), available on the DOE NEPA website under Selected Guidance Tools.)

Based on analyses in the SA, NNSA determined that continued implementation of ongoing disposition activities and the addition of new disposition initiatives would not substantially change the environmental impacts from those described in the HEU EIS. Although some large percentage increases were identified (e.g., a 50 percent increase in risk to workers and a 20 percent increase in risk to the public), the risks remain small in absolute terms. NNSA decided not to issue an amended record of decision based on the SA because ongoing activities are adequately covered by the original record of decision and the new proposed initiatives are not expected to be implemented for many years.

The SA is available on the DOE NEPA website (www.oh.doe.gov/nepa). For further information, contact Hitesh Nigam at hitesh.nigam@nnsa.doe.gov or 202-586-0750. 

Cooperating Agencies Continue to Play Important Role in DOE NEPA Process

More than two-thirds of the EISs listed in DOE's 2007 Cooperating Agency Report to the Council on Environmental Quality (CEQ) – 21 out of 30 – were or are being prepared with cooperating agencies. The report, submitted to CEQ on December 28, 2007, covers EISs whose notices of intent were issued on or after October 1, 2005, and that were completed during Fiscal Year 2007 or were still ongoing as of September 30, 2007. For three ongoing EISs, DOE added new cooperating agencies since last year's report. Additionally, 4 of the 22 EAs that DOE completed during Fiscal Year 2007 were prepared with cooperating agencies.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating agency status or for terminating an established cooperating agency relationship before completion of a NEPA review. Generally, the DOE EISs without cooperating agencies had no candidates identified with special expertise or jurisdiction by law (40 CFR 1501.6), or the agencies invited as potential cooperating agencies preferred instead to participate informally in the NEPA process, for example, through consulting or commenting. For one DOE EIS, several cooperating agencies ended their formal participation when an alternative that affected their interests was identified as "nonpreferred."

Recommendation: Identify Cooperating Agencies in an EA

The CEQ NEPA regulations (at 40 CFR 1502.11(a)) specify that an EIS cover sheet shall identify "the lead agency and any cooperating agencies." While there is no explicit instruction on this matter for an EA, it is appropriate to identify any cooperating agencies on an EA cover or early in the document.

The report was submitted in response to CEQ's ongoing efforts to encourage Federal agencies to involve Federal, state, tribal, and local governmental organizations as cooperating agencies in NEPA reviews, promote early involvement of cooperating agencies, and track such involvement. The CEQ memoranda relating to cooperating agencies may be found in the DOE NEPA Compliance Guide, Volume 1, Section 4-13, at www.eh.doe.gov/nepa under NEPA Compliance Guide. For further information, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326. 

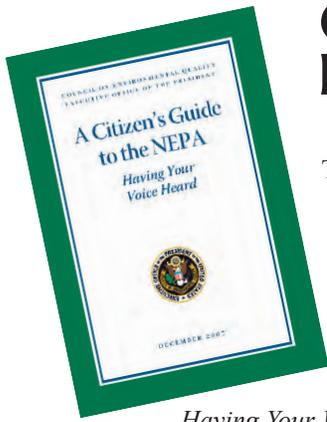
And the winner is . . .

The record-holder for most cooperating agencies in the 2007 DOE Cooperating Agency Report to CEQ is *Designation of Energy Corridors on Federal Land in the 11 Western States*, DOE/EIS-0386, for which DOE is co-lead agency with the Bureau of Land Management. This programmatic EIS has 13 cooperating agencies: 3 Federal agencies, 1 state, 2 state commissions, 3 counties, 3 county conservation districts, and 1 tribe.



NEPA Document Manager Laverne Kyriss (on detail to the Office of Electricity Delivery and Energy Reliability from the Western Area Power Administration) offers advice on coordinating with so many cooperating agencies:

- ✓ Keep cooperating agencies involved in deliberations on policy issues, so they can keep their staffs and decisionmakers informed. This promotes consensus within and among agencies.
- ✓ Address cooperating agency concerns when they are first raised. This is much more efficient than trying to resolve issues just before the draft EIS is completed – or worse, after the draft has been issued for public comment.
- ✓ Build a detailed record of the EIS interagency team's decisions so they do not have to be revisited when a key person retires or moves on to a new job before the EIS is completed.
- ✓ Plan to provide the complete EIS – not just individual EIS sections – to cooperating agencies for internal review before it is issued to the public, so they have an opportunity to evaluate context.



CEQ Issues *Citizen's Guide* To Enhance Public Involvement in NEPA Process

To help individuals and organizations who are concerned about the environmental effects of Federal decisions to participate effectively in the NEPA process, the Council on Environmental Quality (CEQ) has issued *A Citizen's Guide to the NEPA:*

Having Your Voice Heard (December 2007).

Developed by an interagency Work Group, the *Guide* responds to requests from stakeholders.

How Citizen Comments Can Be Effective

The *Citizen's Guide* provides useful suggestions on when and how the public can be involved in the NEPA process. It points out a range of opportunities spanning the entire NEPA process: when an agency promulgates its NEPA procedures, initiates scoping and development of an impact analysis, issues a NEPA document for public review, and monitors decision implementation and mitigation effectiveness.

The *Citizen's Guide* provides advice on making comments that are useful – that is, clear, concise, and relevant – to the agency conducting the NEPA process. Commenting is not a form of “voting,” the *Guide* notes, and “numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively.”

Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project.

– *A Citizen's Guide to the NEPA*

What If Involvement Isn't Going Well?

The *Citizen's Guide* suggests that when public involvement appears insufficient, unconstructive, or contentious, citizens should not wait too long to contact the individual designated by the agency. If further assistance is needed, citizens should consider engaging in collaboration or mediation, such as through the U.S. Institute for Environmental Conflict Resolution, suggests the *Guide* (related article page 10). For citizens seeking information on legal requirements, the *Guide* suggests contacting a lead agency General Counsel, the CEQ Associate Director for NEPA Oversight, a private attorney, or a public interest organization's attorney.

NEPA Orientation Is Provided

Who is responsible for implementing NEPA? To what do the procedural requirements of NEPA apply? When does NEPA apply? Who oversees the NEPA process? For the newcomer to NEPA, the *Guide* opens by answering these questions, summarizing the history and purpose of the Act and its procedures, and orienting the reader to roles and requirements.

In addition, appendices provide information on using the *Federal Register* and CEQ's *NEPanet*, interpreting the Environmental Protection Agency's EIS rating system, obtaining agency NEPA contact information, and understanding the terms used in CEQ's NEPA regulations.

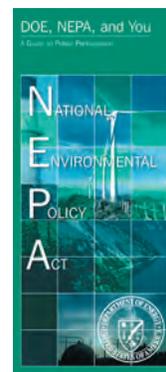
To help readers better navigate through the NEPA process and better understand the roles of the various actors, the *Guide* provides a flowchart that details the steps in the NEPA process (next page).

Promote the *Citizen's Guide*

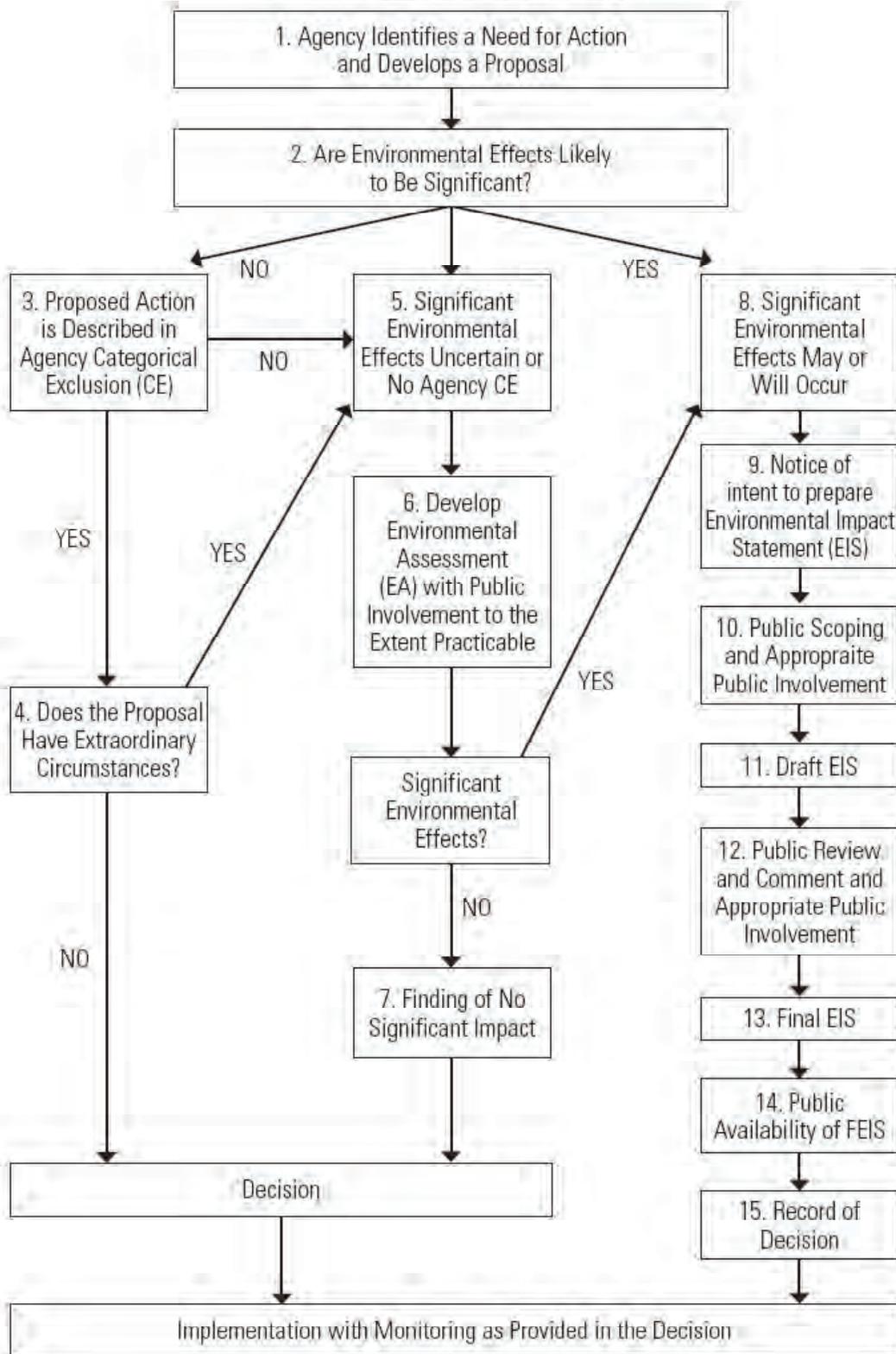
Because the potential benefits to an agency from receiving timely and appropriate information start at scoping, DOE NEPA practitioners should alert stakeholders early to the availability of the *Guide*. Information on how stakeholders can obtain copies could be included in a notice of intent to prepare an EIS and announcements of scoping meetings by directing them to the CEQ and DOE websites (www.nepa.gov and www.eh.doe.gov/nepa under New Guidance Tools, respectively). Copies could also be made available at scoping meetings. Some NEPA Compliance Officers have already printed a supply for their use.

Use the *Guide* as a Complement to “DOE, NEPA, and You” Brochure

DOE NEPA practitioners could also alert stakeholders to DOE's tri-fold brochure *DOE, NEPA, and You: A Guide to Public Participation* at NEPA meetings and hearings to highlight public involvement opportunities in DOE's NEPA process. The brochure is available electronically on the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools. For copies of the brochure, send complete mailing information and number requested to askNEPA@hq.doe.gov. For further information on the DOE brochure, contact Denise Freeman, Office of NEPA Policy and Compliance, at 202-586-7879 or denise.freeman@hq.doe.gov. 



The NEPA Process



The Citizen's Guide contains this user-friendly flowchart of possible pathways through the NEPA process, accompanied by an explanation of each decision point and step in the process. The numbers refer to discussion in the Guide.

Need Help Building More Effective Collaboration into the NEPA Process?

By: Carolyn Osborne, *Unit Leader, Office of NEPA Policy and Compliance*



How can a Federal agency find out which citizens, businesses, governmental agencies, and other groups are interested in a proposed project? How can collaboration help an agency find out about the effects of a proposal on the human environment? How can an agency bring the best science to bear on impacts analysis? What legal or other parameters need to be considered when dealing with various groups? How should an agency plan to resolve differences among various interests?

I joined other agency NEPA liaisons and points of contact for environmental conflict resolution to wrestle with these and other questions at a Council on Environmental Quality (CEQ) Workshop on Collaboration in NEPA on December 5, 2007, in the Washington, DC, area. Divided into small discussion groups, the 60 participants from about 25 agencies shared experiences on the benefits and challenges of collaboration. We then considered the need for and the best way to design collaboration into the NEPA process for two scenarios – a proposal for cell phone tower installation in a park known for sensitive resources, but where some felt the need to report crimes and accidents immediately; and a proposal to replace an historic bridge, revered by local citizens, to accommodate increased tourist traffic. Similar issues were raised among the discussion groups, with particular emphasis on the need for an agency to be transparent, i.e., to be clear on why it wants to collaborate and what possible outcomes it seeks to achieve.

Plan for Collaboration, Conflict Resolution in the NEPA Process¹

 The stage for group discussion was set by review of CEQ's guidance, *Collaboration in NEPA, A Handbook for NEPA Practitioners* (2007),² and the joint Office of  Management and Budget (OMB) and CEQ *Memorandum on Environmental Conflict Resolution* (2005).³ Horst Greczmiel, CEQ Associate Director for NEPA Oversight, emphasized the need to invest resources early in the NEPA process to identify potential information needs and conflicts and then take every opportunity to consult with others to help address them.

The task of dealing with conflicts and hardened positions can be alleviated or avoided by use of a third party, as advocated in the joint OMB and CEQ *Memorandum*, advised Anne Norton Miller, Director of the Office of

Federal Activities, Environmental Protection Agency. U.S. Institute for Environmental Conflict Resolution representatives, Kirk Emerson and Michael Eng, emphasized that use of a third party in collaboration does not mean that an agency cedes its decisionmaking authority.

Manage Expectations in Collaboration

A key lesson for me that came out of workshop discussions is the importance of managing the expectations of those interested in or invited to participate in a NEPA process. Benefits of wide participation in a NEPA process are that an agency may learn all points of view and possibly achieve broad buy-in to the outcome of the NEPA process. It is challenging, however, to both build trust that divergent views are being considered fully and fairly and build acceptance that a lead agency retains decisionmaking authority.

To manage expectations, participants advise an agency to:

- Be transparent, both with other agencies and the public brought into the NEPA process.
- Begin collaboration by defining what the agency can and cannot do when the NEPA process ends.
- Establish ground rules and respective roles for the stakeholders.
- Be clear about who has been “invited to the table” and why.
- Consider separating stakeholder roles relating to process (e.g., how many public meetings to hold) and content (e.g., interpreting analytical results).
- Prioritize requests made of stakeholders, because not all can be involved all the time or on every matter.

Participants acknowledged that interagency Federal collaboration can be as challenging as that with external stakeholders, and the same principles apply. Agencies may differ in basic terminology, internal review and approval practices, and priorities. For example, DOE, the Bureau of Land Management, and the Forest Service dealt with such issues in preparing the Draft Programmatic EIS for designation of energy transport corridors in the Western United States (related article, page 12).

(continued on next page)

¹The June 2007 issue of LLQR focused extensively on collaboration in the NEPA process.

²See LLQR, December 2007, page 14.

³See LLQR, March 2006, page 13.

Collaboration *(continued from previous page)*

Share Experiences, Learn More

CEQ plans to conduct more workshops on collaboration in the NEPA process. In addition, CEQ aims to develop a database of examples – both successes and failures – to help all agencies understand what works and does not work and why, so that more can succeed in collaborative efforts. Part of this database will be based on agencies' annual reports to OMB and CEQ on environmental conflict resolution activities (required by the 2005 *Memorandum* referred to above) (related article, page 7).

A near-term opportunity to learn more about collaboration in the NEPA process is offered by the U.S. Institute for

Environmental Conflict Resolution at its Fifth Annual National Conference, May 20–22, 2008, in Tucson, Arizona. The Institute is an independent, neutral entity chartered by Congress to help citizens and representatives of Federal agencies find common ground in environmental disagreements (*LLQR*, December 2005, page 9). The Institute will sponsor training workshops and breakout sessions related to NEPA and conflict resolution, including “Collaboration in NEPA” and “NEPA Comment Analysis: Formalized War or Opportunity to Increase Capacity.” More information is available at www.ecr.gov under Announcements. 

“Sweet 16” Briefed on DOE’s NEPA Process for the Loan Guarantee Program

The 16 sponsors of innovative clean energy projects invited by DOE to submit a full application for a loan guarantee (*LLQR*, December 2007, page 25) have indicated their intent to do so. Termed the “Sweet 16,” these project sponsors recently met individually with representatives of DOE’s Loan Guarantee Program Office and the Office of NEPA Policy and Compliance to provide updates on their proposed projects since pre-applications were submitted to DOE in the fall of 2006. In turn, sponsors learned details of DOE’s loan guarantee process, including the NEPA review that DOE would conduct before deciding whether to provide a loan guarantee.

In applicant processes, where DOE’s proposed action is to provide financial assistance, the costs for contractor preparation of EAs and EISs is normally paid for by the

applicant, but the contractor is selected and its work is directed by DOE. Such contracting is referred to as “third party contracting,” and discussion is provided under Question 16 in the Council on Environmental Quality’s “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (available at www.eh.doe.gov/nepa under NEPA Compliance Guide). DOE anticipates working with applicants and potential contractors to establish memoranda of understanding for NEPA document preparation.

DOE is planning new solicitations in the near term for additional loan guarantees. Information on DOE’s Loan Guarantee Program is available at www.lgprogram.energy.gov. 

Complex Transformation *(continued from page 3)*

“We follow the open house with a formal presentation on the draft SPEIS and then provide an opportunity for everyone to offer oral comments on the record.” Many commentors have stated their opposition to nuclear weapons production, while others have supported NNSA’s proposals. Public hearings continue through March in Nevada, New Mexico, California, and Washington, DC.

NNSA anticipated a large number of comment documents, after having received more than 33,000 during the scoping period last year. Mr. Wyka explained that he prepared by working with computer support staff to ensure that a large volume of email could be received efficiently and

by establishing a team early to review public comments. The team includes a core group to coordinate and integrate the review, as well as headquarters and site staff with expertise in technical and policy questions. “We systematically log receipt of each comment document and have begun sorting them for review,” said Mr. Wyka. “We will consider each comment individually and collectively and take the appropriate action, such as improving the analyses or making factual corrections.”

For additional information, contact Ted Wyka at theodore.wyka@nnsa.doe.gov or 202-586-3519. 

EPAct 2005 §368 Corridors vs. §1221 Corridors: What's the Difference?

DOE has engaged in two different processes for designation of energy corridors under the Energy Policy Act of 2005 (EPAct 2005) that involve different NEPA compliance requirements and strategies. One process, under Section 368 of the Act, is to establish energy transport corridors on Federal land in 11 western states for oil, natural gas, and hydrogen pipelines, and electricity transmission and distribution facilities, in which right-of-way grants may be expedited. The other process, under Section 1221, involved a nationwide study of electric transmission congestion, followed by designation of National Interest Electric Transmission Corridors. National Corridors are geographic areas encompassing private and public land, in which under certain circumstances the Federal Energy Regulatory Commission (FERC) may authorize the construction or modification of electric transmission facilities.

Section 368 Update – Public Comments Received on Draft Programmatic EIS

The 90-day public comment period recently ended on the *Draft Programmatic EIS Designation of Energy Corridors on Federal Lands in the 11 Western States* (DOE/EIS-0386), jointly prepared by DOE and the Bureau of Land Management (BLM) as co-lead agencies, with input from 13 cooperating agencies (related article, page 7, and *LLQR*, December 2007, page 12). The Programmatic EIS identifies approximately 6,000 miles of proposed energy transport corridors, the largest percentage of which is on BLM land, with a smaller percentage on Forest Service and other Federal agency land.

DOE's Office of Electricity Delivery and Energy Reliability (OE) and BLM conducted 15 public hearings in 11 states and Washington, DC. Approximately 625 persons attended the hearings and 125 submitted oral comments; in addition, about 600 organizations and individuals submitted written comments. Comments ask for clarification of the purpose and need for agency action, analysis of additional alternatives, rerouting of certain corridor segments, and consideration of impacts on non-Federal lands adjacent to the proposed corridors and overlap with corridors designated under Section 1221. Webcasts and transcripts of the hearings and written comments are posted on the Programmatic EIS website, www.corridoreis.anl.gov.

The Final Programmatic EIS is scheduled to be issued mid-2008. Section 368 requires a second round of corridor designations on Federal lands in the remaining 39 states. For additional information on the ongoing Programmatic EIS or the second Section 368 corridor designation process, contact Brian Mills, NEPA Compliance Officer for OE, at brian.mills@hq.doe.gov or 202-586-8267.

Section 1221 Designation – Does Not Trigger NEPA

Section 1221(a) of EPAct 2005 requires the Secretary of Energy, in consultation with the states, to conduct a study of electric transmission congestion every three years. After considering alternatives and recommendations from interested parties (including the states), the Secretary is to issue a report that may designate “national interest electric transmission corridors” – geographic areas with electric transmission constraints that adversely affect consumers.

DOE provided wide public involvement activities in conducting the first congestion study and in designating two National Corridors – the Mid-Atlantic Area National Corridor¹ and the Southwest Area National Corridor² – in its Report and Order issued October 5, 2007 (72 FR 56992). Commentors had questioned why DOE did not conduct a NEPA review for the designations. In its Report and Order, DOE explained that “The Department’s designation of National Corridors itself has no environmental impact: It neither permits nor precludes the construction of any transmission projects or any other ground-disturbing activity.” DOE also stated that “the Department does not believe that the designation of National Corridors, in itself, is a major Federal action significantly affecting the quality of the human environment requiring NEPA review.”

In designating the National Corridors, DOE explained that, under certain circumstances, FERC may authorize construction or modification of electric transmission facilities in the corridors, and stated that “Any commitment to groundbreaking activities with environmental impacts is made only after FERC authorizes construction. Before that point, FERC will have conducted a full NEPA review of the proposed project.” See related litigation article, page 19, and further information at www.nietc.anl.gov. 

¹ Includes all or parts of Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

² Includes parts of the states of California and Arizona.



Tiered NEPA Strategy Supports MMS Outer Continental Shelf Program

The Minerals Management Service (MMS), an agency within the Department of the Interior, issued a Record of Decision (ROD) on December 21, 2007,¹ establishing an alternative energy and alternate use program on the Outer Continental Shelf. Under this program, MMS may issue leases, easements, and rights-of-way for activities on the Outer Continental Shelf, pursuant to MMS's authority under Section 388 of the Energy Policy Act of 2005 and codified in the Outer Continental Shelf Lands Act (*LLQR*, December 2005, page 35). DOE NEPA practitioners may be interested in MMS's NEPA strategy for the program, which includes completion of a Programmatic EIS, adoption of interim policies and best management practices, and subsequent tiered NEPA analyses to support a rulemaking and project-specific proposals.

In the ROD, MMS selected the Preferred Alternative identified in its *Final Programmatic EIS for Alternative Energy Development and Production and Alternate Use Facilities on the Outer Continental Shelf* (2007) (Final PEIS). Under its decision, MMS will conduct a separate NEPA analysis to support a rulemaking that would establish a framework for issuing leases, easements, and rights-of-way for program activities on the Outer Continental Shelf. As part of that effort, MMS will publish a proposed rule in the *Federal Register*, seeking public comments on associated processes and procedures. In addition to establishing the alternative energy and alternate use program, MMS's decision provides it the option to authorize, on a case-by-case basis and subject to project-specific NEPA analyses, individual projects that are in the national interest prior to promulgation of the final rule.

ROD Adopts Interim Policies, Best Management Practices

In the ROD, MMS also adopted as "initial mitigation measures" certain interim policies and best management practices (BMPs) that were developed as mitigation measures in the Final PEIS. The ROD states that the interim policies will guide and inform MMS's decisionmaking when considering any proposal for an alternative energy and alternate use project on the Outer

Continental Shelf. In addition, MMS will consider and, on a case-by-case basis, may select one or more of the BMPs as appropriate to be included as a binding stipulation in any lease, easement, or right-of-way for alternative energy and alternate use program activities that MMS issues.

Emphasis on Consultation

In the ROD, MMS adopted 15 interim policies and 52 BMPs. Approximately half of the interim policies entail consultation with Federal, state, and local agencies for siting, construction, operation, and decommissioning projects, or coordination required by Federal regulations (e.g., MMS must consult with the National Marine

Fisheries Service when a marine mammal species may be potentially affected to determine whether protection under the Marine Mammal Protection Act is required). One of the policies requires implementation of adaptive management strategies to ensure that potential adverse impacts of Outer Continental Shelf alternative energy development are avoided, minimized, or mitigated. Another states that MMS will "consider the visual and scenic resource value of the [Outer Continental Shelf] and coastal

waters involved in proposed wind energy development projects" and "work . . . to minimize potential visual impacts."

The BMPs apply to various aspects of proposed projects, including transportation and vessel traffic, and several resource areas, including seafloor and coastal habitats, marine mammals, fish, fisheries, essential fish habitat, sea turtles, and avian resources.

Further Information

For information on this Programmatic EIS go to <http://ocsenergy.anl.gov> or contact Mary Boatman, MMS's Environmental Assessment Branch, at mary.boatman@mms.gov or 703-787-1662. For more information on the Alternate Energy-Related Use Program and Rule, contact Maureen Bornholdt, Chief of MMS Marine Minerals Branch, at maureen.bornholdt@mms.gov or 703-787-1300.

Examples of activities on the Outer Continental Shelf that MMS may authorize:

Alternative Energy Projects

- Wind energy
- Wave energy
- Ocean current energy
- Solar energy
- Hydrogen production

Alternate Uses of Existing Facilities (e.g., Oil and Gas Platforms)

- Offshore aquaculture, research, education, recreation, telecommunications facilities, and other offshore operations

¹ MMS published a notice of availability of the ROD in the Federal Register on January 10, 2008 (73 FR 1894).

Second Wind: MMS Issues Draft EIS for Cape Wind Energy Project

For the second time in the proposed project's NEPA history, a Draft EIS has been issued for the Cape Wind Associates, LLC, Cape Wind Energy Project – this one prepared by the Department of the Interior's Minerals Management Service (MMS), which was given authority over the proposed project and lead agency responsibility for the EIS in 2005.



The proposed turbines would be 258 feet tall from the surface of the water to the center of the blades. (Photo: Cape Wind Associates, LLC)

The project would involve construction and operation of a wind farm almost 5 miles off the shore of Cape Cod, Massachusetts. Connecting to the New England Power Pool grid, the project's 130 wind turbine generators would provide approximately 468 megawatts of electric output per year, enough to satisfy 75 percent of the electricity demands of Cape Cod and the islands of Martha's Vineyard and Nantucket. The Cape Wind Energy Project EIS may be of interest to NEPA practitioners both for its subject matter as the nation's first Federal environmental review for an offshore wind energy project and procedurally as a result of Congressional reassignment of lead agency responsibility.

Unique "NEPA Path"

Originally, the project was under the U.S. Army Corps of Engineers' authority because of its jurisdiction under Section 10 of the Rivers and Harbors Act, which provides for Federal regulation of any work in or affecting navigable waters of the United States. After issuing its notice of intent in January 2002, the Corps spent almost three years researching and analyzing the Cape Wind proposal and preparing a Draft EIS. In November 2004, the Corps issued its Draft EIS (*LLQR*, December 2004, page 10), and received more than 500 oral and 5,000 written comments. However, lead agency authority to prepare the Cape Wind EIS was transferred to MMS (*LLQR*, December 2005, page 35) when the Energy Policy Act of 2005 amended the Outer Continental Shelf Lands Act, granting the Department of the Interior authority to authorize alternative energy projects on the Outer Continental Shelf. (See related article, previous page.)

In May 2006, MMS initiated its own NEPA process and issued its notice of intent as part of a "renewed scoping process," collecting more than 1,300 public scoping comments. In preparing its Draft EIS, MMS considered these scoping comments, along with all comments on the Corps' 2004 Draft EIS, including the Environmental Protection Agency's rating comments, which found the Corps' Draft EIS to be "inadequate."

Major Issues and EIS Findings

The scope of the MMS Cape Wind Draft EIS (January 2008) differs significantly from the Corps', largely as a result of responding to comments. In contrast to the Corps' Draft EIS, which primarily considered geographic alternatives, the MMS Draft EIS has an expanded scope in that it analyzes three "non-geographic alternatives" at the proposed location.

Areas of controversy identified during the EIS process include potential impacts on aesthetics (i.e., visibility from shore), navigation, fishing and boating, and avifauna.

The new Draft EIS documents a potential for "moderate" impacts on fisheries, coastal and marine birds, benthic communities, and visual resources. It concludes that the majority of the proposed action's potential impacts on other resources would be "negligible" or "minor."

For the construction phase, the Draft EIS states that "moderate long-term (permanent) impacts related to the installation of the pilings that support the wind turbine towers and the [electrical service platform] would be

(continued on next page)

MMS Cape Wind Draft EIS Alternatives

1. No Action

Three geographic alternatives

2. Horseshoe Shoal (proposed action)
3. Monomoy Shoals
4. South of Tuckernuck Island

Three non-geographic alternatives at Horseshoe Shoal

5. Smaller Project (half the megawatt capacity)
6. Condensed Array (same number of wind turbines but closer together)
7. Phased Development (two phases of 65 wind turbines each)

Cape Wind Draft EIS (continued from previous page)

anticipated to affect the soft-bottom benthic communities [such as clams, worms, snails, crustaceans] in the area of the proposed action.” In addition, the Draft EIS states that “although the risk of [avian] collision [with wind turbines] during construction is anticipated to be low,” any collision mortality “would represent a more substantial impact.”

For the operations phase, the Draft EIS documents potential “moderate” impacts on two areas: avifauna (primarily, coastal and marine birds) and visual resources. Responding to concerns raised during scoping, the Draft EIS states that “the proposed action would have moderate visual impacts to recreational resources, with major visual impacts limited to boaters that are transiting near or within Horseshoe Shoal since they would be located close to the structures.” However, the Draft EIS suggests that the potential visual impacts are “unlikely to affect the viability of the recreational areas.”

EMS To Be Used To Track Mitigation

The Draft EIS discusses lessons learned from European offshore wind projects and documents a number of mitigation measures that the applicant has committed to implement to reduce potential impacts. For example, the Draft EIS states that, in order to minimize the potential for injury or mortality to sensitive fish species, the applicant has committed to avoid in-water construction in a local watershed during the colder winter months when fish have a slower avoidance response.

Furthermore, the Draft EIS reflects an MMS requirement that if the proposed action is selected, mitigation measures will be incorporated into an Environmental Management System (EMS) that would remain in effect throughout the life of the project. Any mitigation and monitoring commitments in the record of decision may be incorporated into the EMS, which would serve as a tool to implement, track, and monitor the commitments. Because the EMS would remain in place from construction through decommissioning of the project, it “would allow for an adaptive management approach for dealing with the environmental impacts.” (See *LLQR*, June 2007, page 17.)

Next Steps

Beginning on March 10, 2008, MMS will conduct a series of four public hearings in Massachusetts to receive comments on its Draft EIS. In addition, MMS is soliciting written comments via its online commenting system, *Public Connect*, its preferred method for receiving comments (below). The 60-day public comment period ends March 20, 2008.

Additional information on the Cape Wind Energy Project is available at www.mms.gov/offshore/RenewableEnergy/CapeWind.htm or by contacting James F. Bennett, Environmental Assessment Branch, at 703-787-1656 or Dr. Rodney E. Cluck, Alternative Energy Program, at 703-787-1300 – both at MMS. 



Benefits of Online Public Comment Systems

An online public comment system offers advantages as a supplemental – or even preferred – method for receiving public comments on a NEPA document. Such a system can be designed to also give the public access to regulatory, scientific, planning, and other Departmental information.

The Department of the Interior’s Minerals Management Service (MMS) is using an online public comment system, *Public Connect*, as its preferred method for receiving comments. The system (ocsconnect.mms.gov/pcs-public) allows a user to search, view, and comment on EISs, proposed regulations, lease sales notices, operational plans, environmental reports, and related documents that are open for comment. *Public Connect* accommodates comments of up to 2,000 characters (about as long as this textbox), and attachments may be used for longer comments. The system may be set to allow public users to search and view submitted comments, for example, after a comment period has closed.

Public Connect makes it easy for commentors to access information, explained Barry Obiol, the NEPA Coordinator for MMS. “This results in more substantive comments received from the public.” The system also typically results in fewer “campaign” or form-letter comment documents because, unlike email, comments must be entered on the webpage, not simply forwarded.

Comments submitted through the system are entered into a database, which allows for easy retrieval and collation by document preparers. This is especially beneficial when large numbers of comments are received, said Mr. Obiol. Additionally, preparers can search the database based on specific parameters, such as all comments from a particular region or from state agencies or non-governmental organizations. The system does not collate comments by subject, however. Mr. Obiol can be reached at barry.obiol@mms.gov or 504-736-2786.

Transitions

Dinah Bear Honored upon Her Retirement from the Council on Environmental Quality



Dinah Bear is “practically perfect,” proclaimed James Connaughton, Chairman, Council on Environmental Quality (CEQ). Her approach as General Counsel of CEQ, he explained, was always to ask – how do we solve the problem? Referring to Ms. Bear as a “lawyer’s lawyer,” Mr. Connaughton recounted her work on the Presidential proclamation establishing the Papahānaumokuākea Marine National Monument in Hawaii. When others said it could not be done, she found a solution and made it happen.

Dinah Bear served four Presidents and always worked to find an outcome that everyone can embrace.

– James Connaughton
Chairman, Council on Environmental Quality

Ms. Bear is well known to the DOE NEPA Community, having participated in NEPA 35, NEPA 25, and other DOE NEPA conferences, as well as providing helpful advice on specific DOE NEPA issues for many years. Ms. Bear joined CEQ as Deputy General Counsel in 1981, was appointed General Counsel in 1983, served in that capacity through September 1993, and resumed that position in January 1995. She retired from CEQ at the end of 2007, and was lauded at a reception on February 7, 2008, attended by many who have worked on NEPA and other environmental issues with her.

Dinah Bear is the world's definitive expert on NEPA.

– Michael Deland, Former Chairman
Council on Environmental Quality

Former CEQ Chairmen also praised Ms. Bear. Michael Deland, Chairman of CEQ in the early 1990s, referred to her as “Ms. CEQ,” noting that she was the “guardian of CEQ,” the “dispenser of sage legal advice,” and the “savior of CEQ” in countering legislation to abolish CEQ. George Frampton, Chairman of CEQ in the late 1990s, referred to Ms. Bear as the “ballast in the keel” of CEQ.

“Your contributions have made our environment cleaner, healthier and safer,” read Mr. Connaughton from a letter to Ms. Bear signed by President George W. Bush. Mr. Connaughton then emphasized the words “productive harmony” in Section 101 of NEPA. To commemorate her approach to environmental issues, CEQ staff gave Ms. Bear a Tiffany “Harmony Bowl.”

“It has been a wonderful 25 years,” said Ms. Bear at her reception. She praised Federal employees, saying that she did not work alone and emphasizing that most Federal employees work to serve the public and do the best job they can. She recounted nine serious attacks on the existence of CEQ and described the challenge of getting people to understand its role. Ms. Bear plans to remain in the Washington, DC, area, support the work of Humane Borders, and keep abreast of environmental issues.

Edward “Ted” Boling, Deputy General Counsel of CEQ since August of 2000, is now General Counsel of CEQ and can be reached at eboling@ceq.eop.gov. 

When you asked Dinah Bear for advice, she'd start by telling you what the right thing to do is.

– George Frampton, Former Chairman
Council on Environmental Quality



Dinah Bear participated in a Ministerial Conference on Europe and North Asia Forest Law Enforcement and Governance in Russia in 2005.

Anne Norton Miller Retires from EPA after Long Service



Anne Norton Miller “had the Right Stuff,” complimented her staff when recounting her career and the qualities that contributed to her success at a reception on February 27, 2008, marking her March 2008 retirement after 38 years of Federal service. A charter employee of the Environmental

Protection Agency (EPA), in 1970 she joined EPA at its Region 2 Office (New York), having begun her career as a microbiologist for the Federal Water Pollution Control Board’s Lake Erie Basin Office the year before. Ms. Miller served in the Office of Federal Activities at EPA Headquarters since 1984 and was its Director beginning in 2001.

At the reception, Ms. Miller was recognized for her “pioneering leadership in the field of environmental impact assessment and her visionary leadership in international environmental protection” and received a Distinguished Career Award. Stephen Johnson, EPA Administrator, thanked Ms. Miller for “serving the Nation so well.” “What a great impact she made,” he said, adding “she made a difference.”

Anne Norton Miller’s work demonstrates that the NEPA process produces improvements to the environment. She used the NEPA process to get incredible environmental gain.

*– Granta Nakayama, Assistant Administrator
EPA Office of Enforcement and Compliance Assurance*

Noting Ms. Miller’s strong belief in collaboration, Granta Nakayama, Assistant Administrator for the EPA Office of Enforcement and Compliance Assurance, commended her work to bring Tribes into NEPA and other environmental processes. EPA staff, commenting on Ms. Miller’s qualities that contributed to her success as a protector of human health and the environment, said she was “an environmental tiger” that was “well ahead of her time.” Other characterizations ranged from “she actualized the inspiration found in NEPA Section 101” to “she had eagle-eye editorial skill.”

*There will always be a need for science,
partnerships, regulations, and enforcement.*

– Anne Norton Miller

“Working at EPA has been a great honor and a lot of fun,” said Ms. Miller. She reflected that her first EIS review was for the Sports Complex in the Hackensack Meadowlands, New Jersey, but that her greatest challenge was establishing EPA’s Indian program and bringing the agency’s technical and financial expertise to it. She emphasized that she believes in the dedicated people at EPA, working together for the common goal of a healthy environment. She plans to keep in touch with EPA issues and staff, but also will continue international travel and docent work at the National Air and Space Museum.

Susan Bromm, currently Director, Office of Site Remediation Enforcement, has been named Acting Director, Office of Federal Activities, and can be reached at bromm.susan@epa.gov. 



DOE’s NEPA Community has benefitted from Anne Norton Miller’s (right) strong guidance on collaboration with stakeholders, other agencies, and Tribes at DOE’s NEPA Community Meetings and Conferences, such as the NEPA 35 Conference, November 2005 (with Yardena Mansoor, DOE Office of NEPA Policy and Compliance).

New NEPA Compliance Officer

Carlsbad Field Office: Susan McCauslin

Susan McCauslin recently joined the Carlsbad Field Office and was designated its NCO, following the retirement of Harold Johnson. Ms. McCauslin will tackle her new responsibilities with the benefit of more than 20 years of experience in managing environmental compliance programs and remediation projects, including almost 5 years as a Regulatory Compliance Specialist for the Carlsbad Field Office's Technical Assistance Contractor supporting DOE's Waste Isolation Pilot Plant.



Susan McCauslin, NCO

"Harold was a tremendous asset to the Carlsbad Field Office," she said. "After supporting his NEPA work, I know that filling his shoes here at Carlsbad will be

challenging, but he helped by sharing his lessons learned as NCO!" (For his advice to new NCOs, see *LLQR*, December 2007, page 18.)

Before going out West in 2003, Ms. McCauslin served as a contractor manager for remedial projects at a Defense Department facility in Ohio and supported the facility's NEPA reviews. She started her career as an Environmental Scientist in the Public Drinking Water and Hazardous Waste sections of the Ohio Environmental Protection Agency. We welcome

Ms. McCauslin to the DOE NEPA Community. She can be reached at susan.mccauslin@wipp.ws or 575-234-7349.

Beverly K. Stephens, 1961–2008 NEPA Office Associate

Beverly K. Stephens, former Special Assistant to the Deputy Assistant Secretary for Environment, lost a valiant battle with cancer on February 13, 2008. Beverly, known to many in the DOE NEPA Community, attended several NEPA community meetings and authored the mini-guidance, "Adopting Another Agency's EIS or EA" (*LLQR*, June 2000, page 13) while on detail to the Office of NEPA Policy and Compliance. Her commitment and support of DOE environmental programs will be missed by her colleagues in the NEPA office.

Brian Costner Recognized for Leadership

The work of Brian Costner, Office of NEPA Policy and Compliance, has earned him the General Counsel's 2008 Award for Leadership. This award may be granted annually to recognize extraordinary contributions or achievements that significantly improve the operations or productivity of the Office of the General Counsel or client DOE organizations, significantly reduce the cost of operations, or help attain a major goal of the General Counsel or Department. Brian was honored at a ceremony on January 10 for his simultaneous reviews of two significant, highly complex, and potentially controversial programmatic EISs: Complex Transformation (Draft EIS issued January 11, 2008) and the Global Nuclear Energy Partnership (in preparation).

Congratulations, Brian! 



DOE General Counsel David Hill (right) observed that Brian Costner not only identifies problems, but finds solutions.



Litigation Updates

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

What Constitutes an Emergency under NEPA?

In a high-profile case involving marine mammals, national security, and the emergency provisions of the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1506.11), the U.S. Court of Appeals for the Ninth Circuit on February 29, 2008, affirmed a District Court's preliminary injunction. The preliminary injunction disagreed with CEQ's and the Navy's determination (January 15, 2008; www.whitehouse.gov/ceq/Letter_from_Chairman_Connaughton_to_Secretary_Winter.pdf) that an emergency exists for purposes of allowing "alternative arrangements" to replace the normal NEPA process for eight major naval training exercises to be conducted off

the southern California coast through next January, when an EIS now in progress for the training program is expected to be completed.

An appeal to the Supreme Court is possible. *LLQR* will provide a more detailed summary of this case and report on any further developments. See www.ca9.uscourts.gov, Case No.: 08-55054, *Natural Resources Defense Council (NRDC) et al. v. Winter, Secretary of the Navy*.



DOE Sued on National Interest Electric Transmission Corridor Designations

Pursuant to Section 216(a) of the Federal Power Act, promulgated by Section 1221 of the Energy Policy Act of 2005, DOE designated two National Interest Electric Transmission Corridors within which, under certain circumstances, the Federal Energy Regulatory Commission may authorize the construction and modification of electric transmission facilities (72 FR 56992; October 5, 2007). (See related article, page 12.) The Mid-Atlantic Area Corridor covers all or parts of Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and the District of Columbia. The Southwest Area Corridor covers large areas of southern California and parts of Arizona.

DOE's designation of the Mid-Atlantic Area National Interest Electric Transmission Corridor is the subject of three civil suits filed in the District Court for the Middle District of Pennsylvania. In February 2008, suits filed by the National Wildlife Federation and Piedmont Environmental Council were consolidated into the suit filed by the Pennsylvania Public Utility Commission.

The Pennsylvania Public Utility Commission claims that DOE interpretations of the Federal Power Act, as amended by the Energy Policy Act, are in conflict with Congressional intent and DOE's corridor designation conflicts with state permitting and regional planning authorities. The complaints filed by the National Wildlife Federation and Piedmont Environmental Council both claim that DOE violated NEPA by failing to prepare an EIS or an EA that supports a finding of no significant impact. They claim further that DOE violated the Endangered Species Act and the National Historic Preservation Act by failing to conduct consultations required under these Acts, and the Federal Power Act, as amended by the Energy Policy Act of 2005, by not meeting the requirements for corridor designation.

Separately, the Center for Biological Diversity has sued DOE for violating NEPA and the Federal Power Act, as amended by the Energy Policy Act of 2005, in designating the Southwest Area National Interest Electricity Corridor.

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NRC Grants Hearing on Analysis of Potential Terrorist Acts

In a case involving the potential consequences of a terrorist attack on a proposed nuclear facility, the Nuclear Regulatory Commission (NRC) will consider two contentions filed by San Luis Obispo Mothers for Peace challenging the adequacy of a supplement to an environmental assessment (EA Supplement) that NRC staff prepared last year in response to a court order [Ninth Circuit; Case No.: 03-74628]. The EA Supplement addresses the proposed independent spent fuel storage installation at the Diablo Canyon nuclear power reactor in California. Following a hearing to be scheduled no sooner than April 2008, the NRC could determine that the EA Supplement is adequate, that it must be revised, or, as Mothers for Peace has requested, that an EIS must be prepared.

In a January 15, 2008, Memorandum and Order, the NRC agreed with Mothers for Peace that there are indications in the EA Supplement that the list of references is incomplete. “While the unlisted documents may be general background references – as the [NRC] Staff suggests – the Staff has identified no applicable FOIA [Freedom of Information Act] exemption(s) to justify excluding any documents from the reference list. Nor is it clear whether any withheld documents, even if they include safeguards information or classified national security information, might be redacted, with portions released.” Thus, the NRC directed its staff to “prepare a complete list of the documents on which it relied in preparing its environmental assessment,” together with an index of documents for which the staff claims a FOIA exemption.

Second, the NRC agreed that the EA Supplement is “silent” on the possibility of both land contamination and non-fatal health effects from a terrorist attack. “The Staff may be able to easily explain how such issues were addressed by reference to source documents, including the 2003 environmental assessment [on the proposed storage installation], or how such issues are bounded and were implicitly addressed by the very low dose estimates and other considerations, but we believe further inquiry is appropriate,” the NRC wrote.



The NRC rejected other contentions made by Mothers for Peace, including that the EA Supplement failed to: define terms and explain methodology, consider credible threat scenarios with significant environmental impacts, address the National Infrastructure Protection Plan (which provides a coordinated national approach to protection roles and responsibilities for critical infrastructure and key resources), and consider vulnerability of the proposed storage installation in relation to other spent fuel storage at Diablo Canyon.

The NRC Memorandum and Order (Docket No. 72-26-ISFSI) is available on its website.  Additional information on the proposed Diablo Canyon storage installation is available at www.nrc.gov/waste.html under “Diablo Canyon ISFSI License Application” and in *LLQR*, September 2007, page 8, and September 2006, page 19. 

Training Opportunities

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

- DOE Project Management Career Development Program (PMCDP)
For more information, contact the DOE Office of Human Capital Management (HC-21), Enterprise Training Services training consultant assigned to your DOE organization.
NEPA and Environmental Laws and Regulations (PMCDP-Level 2)
Nevada Site Office, NV: July 1-3
Code: 001046; Session 0014
Fee assessed to organization's Working Capital Fund account
- USDA Graduate School
202-314-3300 or 888-744-4723
customerservicecenter@grad.usda.gov
grad.usda.gov
NEPA: Policy, Procedure and Science/Art
Washington, DC: April 14-June 23 (3 hours per week for 10 weeks)
Fee: \$365
Search under code ENVS4435E
- Continuing Legal Education (CLE)
800-873-7130
www.cle.com
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
NEPA
Reno, NV: March 27-28
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available
- International Institute for Indigenous Resource Management
303-733-0481
www.iiirm.org
A Workshop on NEPA in Indian Country
Denver, CO: March 24-25
Fee: \$495
- ICF Jones & Stokes
916-737-3000
www.jonesandstokes.com
NEPA Overview and Refresher
UC Davis, Sacramento, CA: May 8
Fee: \$290
Portland State University, Portland, OR: May 30
Fee: \$265
Introduction to NEPA
UC Irvine, Orange, CA: May 14
Fee: \$235
Effective Public Communication and Participation for CEQA and NEPA
UC Davis, Sacramento, CA: May 16
Fee: \$290
- 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 until 4/9/08
Preparing and Documenting Environmental Impact Analyses
Durham, NC: May 19-22
Fee: \$1,150 until 4/28/08
Implementation of NEPA
Durham, NC: June 2-6
Fee: \$1,150 until 5/12/08
Certificate in NEPA
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.

(continued on next page)

Training Opportunities

(continued from previous page)

- Northwest Environmental Training Center
206-762-1976
www.nwetc.org

NEPA: Writing the Perfect EA/FONSI or EIS

Reno, NV: April 1-2

Fee: \$495 (Government employee: \$395)

Dallas, TX: June 4-5

Fee: \$495 (Government employee: \$395)

- Resource Training Institute
706-951-5685
registrar@rtii.org
www.rtii.org

Environmental Laws and Regulations

Las Vegas, NV: March 11-13

Fee: \$895

Clean Air Act

Las Vegas, NV: June 2-4

Fee: \$1,095

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

Introduction to Professional Practice under Section 106 of the National Historic Preservation Act

Mesa, AZ: March 25-27

Fee: \$795 (10% GSA discount available)

- The Shipley Group
888-270-2157
shipley@shipleygroup.com
www.shipleygroup.com

NEPA Cumulative Effects Analysis and Documentation

Salt Lake City/Park City, UT: March 11-13

Fee: \$934 (GSA contract: \$844)

Jackson Hole, WY: May 6-8

Fee: \$894 (GSA contract: \$804) until 3/19/08

NEPA Climate Change Analysis

Nashville, TN: March 18-19

Fee: \$734 (GSA contract: \$644)

Environmental Conflict Management

Salt Lake City, UT: April 1-3

Fee: \$934 (GSA contract: \$844)

How to Manage the NEPA Process and Write Effective NEPA Documents

San Francisco, CA: April 1-4

Fee: \$1,134 (GSA contract: \$1,044)

Baltimore, MD: May 13-16

Fee: \$1,094 (GSA contract: \$1,004)

until 3/26/08

Cultural and Natural Resource Management/Endangered Species Act Overview

Albuquerque, NM: April 15-17

Fee: \$955 (GSA contract: \$865)

Integrating Federal Environmental Laws into NEPA

San Antonio, TX: April 15-17

Fee: \$955 (GSA contract: \$865)

Clear Writing for NEPA Specialists

Las Vegas, NV: April 22-24

Fee: \$894 (GSA contract: \$804) until 3/5/08

Adaptive Management

Salt Lake City/Park City, UT: May 1-2

Fee: \$694 (GSA contract: \$604) until 3/12/08

Overviews of the NEPA Process/Endangered Species Act/Section 106 of the National Historic Preservation Act

Missoula, MT: May 13-15

Fee: \$894 (GSA contract: \$804) until 3/26/08

NEPA Certificate Program

Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.

Fee: \$5,450 (includes course fees)

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

judy.kurtzman@usu.edu;

www.cnr.usu.edu/htm/students/graduate_programs/nepa

EAs and EISs Completed October 1 to December 31, 2007

EAs

Office of Energy Efficiency and Renewable Energy

DOE/EA-1463 (11/1/07, FONSI 1/11/08)
*10 CFR Part 433, "Energy Efficiency Standards
for New Federal Commercial and High-Rise Multi-
Family Residential Buildings" and 10 CFR Part 435,
"Energy Efficiency Standards for New Federal
Residential Low-Rise Residential Buildings"*

Cost: \$10,000
Time: 62 months

DOE/EA-1530 (EA/FONSI 11/7/07)
*Proposed Energy Conservation Standards for
Residential Furnaces and Boilers*

Cost: \$37,000
Time: 46 months

DOE/EA-1565 (10/12/07, FONSI 11/9/07)
*Energy Conservation Standards for Distribution
Transformers*

Cost: \$15,000
Time: 84 months

Golden Field Office/ Office of Energy Efficiency and Renewable Energy

DOE/EA-1597 (10/15/07, FONSI 10/18/07)
*Construction and Operation of a Proposed Cellulosic
Ethanol Plant, Range Fuels, Inc., Treutlen County,
Georgia*

Cost: \$160,000
Time: 3 months

Western Area Power Administration

DOE/EA-1586 (11/29/07, FONSI 1/2/08)
*Interconnection Request for the Happy Jack
Wind Project, Laramie County, Wyoming*
Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.

Time: 10 months

DOE/EA-1587 (EA/FONSI 11/30/07)
*Northern Arizona Energy Project, Mohave County,
Arizona*

Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 9 months

DOE/EA-1595 (EA/FONSI 11/5/07)
*Mead/Davis 230 kV Transmission Line Reconductor,
Arizona and Nevada*

Cost: \$57,000
Time: 27 months

EISs

Bonneville Power Administration/ Office of Electricity Delivery and Energy Reliability

DOE/EIS-0378 (72 FR 58081, 10/12/07)
(EPA Rating: EC-2)

*Port Angeles-Juan de Fuca Transmission Project,
Clallam County, Washington*

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

Time: 29 months

Office of Fossil Energy/ National Energy Technology Laboratory

DOE/EIS-0357 (72 FR 62229, 11/2/07)
(EPA Rating: EC-2)

*Gilberton Coal-to-Clean Fuels and Power Project,
Schuylkill County, Pennsylvania*

Cost: \$1,182,000
Time: 55 months

DOE/EIS-0361 (72 FR 63579, 11/9/07)
(EPA Rating: EC-2)

*Western Greenbrier Co-Production Demonstration
Project, Greenbrier County, West Virginia*

Cost: \$1,960,000
Time: 53 months

DOE/EIS-0394 (72 FR 64618, 11/16/07)
(EPA Rating: EC-2)

FutureGen Project

Cost: \$5,200,000
Time: 16 months

Western Area Power Administration

DOE/EIS-0389 (72 FR 67723, 11/30/07)
(EPA Rating: LO)

*Construction and Operation of the Trinity Public
Utilities District Direct Interconnection Project,
Trinity County, California*

Cost: \$982,000
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.)

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 5 EAs for which cost data were applicable was \$37,000; the average was \$56,000.
- Cumulatively, for the 12 months that ended December 31, 2007, the median cost for the preparation of 19 EAs for which cost data were applicable was \$80,000; the average was \$159,000.
- For this quarter, the median completion time for 7 EAs was 27 months; the average was 34 months.
- Cumulatively, for the 12 months that ended December 31, 2007, the median completion time for 21 EAs was 16 months; the average was 26 months.

EIS Costs and Completion Times

- For this quarter, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1,571,000; the average was \$2,331,000.
- Cumulatively, for the 12 months that ended December 31, 2007, the median cost for the preparation of 5 EISs for which cost data were applicable was \$1,378,000; the average was \$2,140,000.
- For this quarter, the median completion time for 5 EISs was 29 months; the average was 34 months.
- Cumulatively, for the 12 months that ended December 31, 2007, the median completion time for 7 EISs was 18 months; the average was 29 months.

NEPA Contracting Update



Pre-solicitation Announcements

The Integrated Project Team for DOE-wide NEPA support services acquisition, led by the National Nuclear Security Administration (NNSA) Service Center and including NEPA Compliance Officers, recently issued pre-solicitation announcements indicating the Acquisition Strategy for DOE-wide NEPA contracting.

The February 5, 2008, announcements (amended February 7, 2008) indicate that two competitive solicitations will be issued – one will be a set aside for small business concerns, and the other will be under full and open competition. Under each of the solicitations, up to four Indefinite Delivery Indefinite Quantity contracts could be issued. The contracts, to be offered under NAICS code 541712, are anticipated to be 5-year contracts with a base period of performance of 2 years and three 1-year options.

Information on this acquisition, including the pre-solicitation announcements, is available at www.doeal.gov/nepa. The point of contact is Francis Ting, fting@doeal.gov or 505-845-4912.

DOE-wide NEPA Contracts Extended

The NNSA Service Center has again extended the DOE-wide NEPA Contracts, and all six – those awarded under full and open competition and those awarded to small businesses – are extended through September 30, 2008. Information on the contracts and how to issue task orders under them is available on the DOE NEPA website at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting or by contacting David Nienow, Contract Administrator, NNSA Service Center, at dnieow@doeal.gov or 505-845-6072. Tasks issued before the expiration dates need not be completed before the expiration dates.

Recent EIS-Related Milestones (December 1, 2007, to February 29, 2008)

Draft EISs

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0399

*Montana Alberta Tie Ltd. (MATL) 230 kV
Transmission Line, Great Falls, Montana*
February 2008 (73 FR 8869, 2/15/08)

National Nuclear Security Administration

DOE/EIS-0236-S4

*Complex Transformation Supplemental
Programmatic Environmental Impact Statement*
January 2008 (73 FR 2027, 1/11/08)

Notice of Cancellation

Office of Fossil Energy

DOE/EIS-0284

*Low-Emission Boiler System Project,
Elkhart, Illinois*
February 2008 (73 FR 11101, 2/29/08)

Notice of Additional Public Hearing

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0386

*Designation of Energy Corridors on Federal Land
in 11 Western States*
January 2008 (73 FR 2905, 1/16/08)

Notice of Extension of Comment Period

Western Area Power Administration

DOE/EIS-0377

*Big Stone II Power Plant and Transmission Project,
Proposed Power Plant, South Dakota and Minnesota*
January 2008 (73 FR 861, 1/4/08)

**Not previously reported in LLQR*

Final EIS

Western Area Power Administration

DOE/EIS-0323-S1

*Sacramento Area Voltage Support Project,
Sacramento, Sutter, and Placer Counties, California*
February 2008 (73 FR 8869, 2/15/08)

Record of Decision and Floodplain Statement of Findings

Western Area Power Administration

DOE/EIS-0389

*Construction and Operation of the Trinity Public
Utilities District Direct Interconnection Project,
Trinity County, California*
January 2008 (73 FR 5184, 1/29/08)

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0355

*Remediation of the Moab Uranium Mill Tailings,
Grand and San Juan Counties, Utah*
February 2008 (73 FR 11103, 2/29/08)

Supplement Analyses

Bonneville Power Administration

Transmission System Vegetation Management Program

Environmental Impact Statement

(DOE/EIS-0285)

DOE/EIS-0285-SA-345*

*Olympia - Shelton No. 3, Olympia - Kitsap No. 3,
Towers 18/5 to 20/5 Transmission Line
Corridor Vegetation Management, Thurston
and Mason Counties, Washington*
(Decision: No further NEPA documentation
is required)
October 2007

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

DOE/EIS-0285-SA-346*

Vegetation Management along North Bonneville - Troutdale No. 2, 230 kV Transmission Line Corridor from North Bonneville Substation to Troutdale Substation, Skamania and Clark Counties, Washington

(Decision: No further NEPA documentation is required)

October 2007

DOE/EIS-0285-SA-347*

Vegetation Management along the Shelton - Kitsap Transmission Line Corridor from the Shelton Substation to the Kitsap Substation, Thurston, Mason and Kitsap Counties, Washington

(Decision: No further NEPA documentation is required)

October 2007

DOE/EIS-0285-SA-348*

Vegetation Management along the Chehalis - Raymond No. 1, Chehalis - Olympia No. 1, Chehalis - Mayfield No. 1, Chehalis - Centralia No. 2, Chehalis - Covington No. 1, and the Raymond - Cosmopolis No. 1 Transmission Line Corridors, Lewis, Pacific, and Thurston Counties, Washington

(Decision: No further NEPA documentation is required)

November 2007

DOE/EIS-0285-SA-349*

Santiam - Alvey No. 1 and 2 Transmission Line Vegetation Management, Linn and Lane Counties, Oregon

(Decision: No further NEPA documentation is required)

November 2007

DOE/EIS-0285-SA-350*

Vegetation Management along the Chief Joseph - Sickler No. 1, 500 kV Transmission Line Corridor Right of Way from Structure 36/3 to 38/5, Douglas County, Washington

(Decision: No further NEPA documentation is required)

November 2007

DOE/EIS-0285-SA-351

Vegetation Management along the Satsop Park - Cosmopolis No. 1, 115 kV Transmission Line Corridor between Structures 14/2 to 14/4, Grays Harbor County, Washington

(Decision: No further NEPA documentation is required)

December 2007

DOE/EIS-0285-SA-352

Vegetation Management along the John Day - Marion No. 1 Transmission Line Corridor from Structures 1/1 to 56/1, Wasco County, Oregon

(Decision: No further NEPA documentation is required)

December 2007

DOE/EIS-0285-SA-353

Vegetation Management along the Jones Canyon - Santiam Transmission Line Corridor from Structures 92/2 to 102/2, Wasco County, Oregon

(Decision: No further NEPA documentation is required)

December 2007

**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.

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

- *Coordinated effort with applicant.* The applicant held the scoping meeting for the EA. DOE followed up by providing additional information about the project to the state, local agencies, and landowners.

What Didn't Work

- *Existing resources not used.* Existing staff resources and expertise were not fully utilized, which inhibited the EA scoping process.

Data Collection/Analysis

What Didn't Work

- *Contractor not onsite.* The applicant's environmental contractor was located far from the project location. This made it difficult for the contractor to describe site-specific needs in the EA.
- *Lack of understanding of EA process.* The applicant did not understand that an EA should not make conclusions regarding the significance of impacts. Several iterations of draft reviews were needed to obtain a correct understanding of the EA process.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Quick turn around.* Prompt DOE reviews contributed to the timely completion of the EA.

Factors that Inhibited Timely Completion of Documents

- *Inadequate drafts.* The applicant's submission of poorly-written documents inhibited timely completion of the EA.

- *Disregard for DOE guidance.* The applicant did not follow the DOE guidance it received, which inhibited timely completion of the EA.
- *Lack of coordination.* Ineffective internal coordination of the project schedule with NEPA process requirements inhibited timely completion of the EA.
- *Unrealistic schedule.* The EA schedule was developed in response to the proponent's construction schedule and was not realistic.
- *Schedule planned too early in advance.* The proponent's project schedule was developed prior to selection as a candidate for a financial assistance award. DOE became involved in the project at a point where NEPA instantly became a critical path to construction.

Teamwork

Factors that Facilitated Effective Teamwork

- *Project awareness.* A clear understanding of the project scope facilitated effective teamwork.
- *Common goals.* The team exhibited a collective sense of urgency to complete the EA in order to determine whether DOE would or would not provide financial assistance to the project. NEPA was a priority for all involved.

Factors that Inhibited Effective Teamwork

- *Applicant confusion.* The applicants were confused by DOE's EA requirements.
- *Inadequate knowledge of resources available.* An incomplete understanding of options available to minimize delays and promote effective coordination inhibited effective teamwork on the EA.
- *Miscommunication.* Poor communication among EA team members inhibited effective teamwork.

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What Worked and Didn't Work

(continued from previous page)

Process

Successful Aspects of the Public Participation Process

- *Multiple meetings.* Public meetings and subsequent meetings with the state, local agencies, and landowners facilitated understanding and acceptance of the EA.
- *No adverse public reaction.* There were no significant adverse reactions or comments presented to DOE on the EA.
- *Prior public awareness.* The public was largely aware of and in support of the proposed project prior to the EA process.
- *Use of existing process.* Utilizing the rulemaking process for public review and comment on the draft EA facilitated the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *No substantive public comments received.* Despite notices and opportunities to provide comments, only wildlife agencies provided substantive comments.
- *Lack of publicity.* The EA public participation process was not very aggressive. As a result, there was no public reaction.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *External agency input on mitigation measures.* Several mitigation measures were identified through coordination with other agencies.
- *Best practices.* The EA process effectively ensured the inclusion of best practices in facility design, construction, and operation.

Enhancement/Protection of the Environment

- *Mitigation measures.* Several mitigation measures were identified and adopted as a result of the EA process.
- *Early identification of protection measures.* Wetland and species protection measures were identified early and included in the proposed action.

Other Issues

- *Clear direction to applicants.* Provision of solid direction, firmness, and reminders to applicants regarding DOE's ownership of the EA was essential.
- *Use of staff resources.* A very large NEPA workload could have hindered document preparation, but due to applicant delays on several action items, DOE completed the EA in time.

Guidance Needs Identified

- *Integrating NEPA and rulemaking processes.* Guidance on how to integrate an EA into a technical support document for a rulemaking process that complies with all NEPA requirements is recommended.

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 "5" stated that without successful completion of the EA, DOE would not have signed a financial assistance award with the proponent, and the proponent likely would have constructed the facility on a much delayed schedule.
- A respondent who rated the process as "3" stated that there was an apparent lack of interest in the EA by the public, which supported the project. Also, the resource agencies chose to get involved, but other agencies did not.
- A respondent who rated the process as "2" stated that the EA was based on a congressionally-mandated rulemaking and did not influence decisionmaking.
- A respondent who rated the process as "0" stated that the decision had already been made prior to the EA.

LESSONS LEARNED

June 2, 2008; Issue No. 55

Second Quarter FY 2008

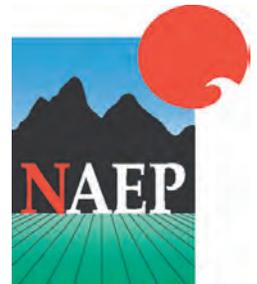
Old NEPA Tools Still Work in a “Changing Climate”

By: Carolyn Osborne, *Unit Leader, Office of NEPA Policy and Compliance*

When we are immersed in the work of preparing and reviewing NEPA documents, we may lose sight of what “good NEPA” is and how to achieve it. I have found that the Council on Environmental Quality NEPA regulations and associated guidance have withstood the test of time. They provide a useful framework for environmental impact analysis, while allowing us flexibility to exercise judgment and try innovative approaches.

NEPA practitioners face many challenges, and the existing regulations and guidance help us address them. How can we have more effective public participation in preparing environmental impact statements (EISs)? To what extent is public participation needed in preparing environmental assessments (EAs)? How should we establish the basis for a new categorical exclusion? How should we analyze the impact of greenhouse gas emissions? How can we determine if impacts are significant? What is the difference between indirect and cumulative impacts? What are we overlooking in the available NEPA tools?

In the following pages, I have summarized several discussions that addressed these and other questions at the 2008 Conference of the National Association of Environmental Professionals (NAEP) and the California Association of Environmental Professionals. These articles are indicated by the meeting logo. The conference, *Changing Climates*, March 26–28, was preceded by a one-day symposium on greenhouse gas emissions and global warming. You will also find lessons from our recent NEPA activities (public scoping for a supplemental EIS), information from Federal NEPA contacts meetings (how to integrate the NEPA process with an environmental management system, and factors to consider in an analysis of health impacts), and standard features that aim to help you make NEPA work for the Department of Energy.



September Meeting: *Making NEPA Work for DOE*



With the support of David Hill, DOE General Counsel, planning for the next DOE NEPA Community meeting is underway! The September 2008 meeting in Washington, DC, will provide opportunities to discuss “hot topics” and meet new members. The meeting will start on Wednesday, September 24,

with a morning session for NEPA Compliance Officers, followed by afternoon NEPA training sessions and a September 25 plenary session for the DOE NEPA Community. On September 26, training sessions may be repeated and consultations may be scheduled with DOE

NEPA and legal staff. Additional information will be sent to the DOE NEPA Community soon. Recognizing that efficient NEPA compliance is an important step to accomplishing DOE missions, the meeting theme will be *Making NEPA Work for DOE*. The agenda will include:

- *Producing high quality documents*: taking ownership, the approval process, lessons from major EISs, NEPA contracting
- *NEPA procedures*: categorical exclusions and applicant processes
- *Analytical issues*: greenhouse gas emissions and global climate change, intentional destructive acts.

Inside **LESSONS LEARNED**

Welcome to the 55th quarterly report on lessons learned in the NEPA process. We are pleased to feature the recent NAEP conference, *Changing Climates*, thanks to our on-the-scene reporter Carolyn Osborne. There are also several articles related to global climate change and NEPA. Thank you for your continuing support of the Lessons Learned program. 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 August 1, 2008. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

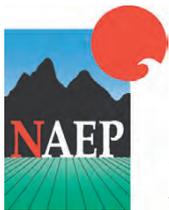
Quarterly Questionnaires Due August 1, 2008

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2008 (April 1 through June 30, 2008) 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. (Please see note on page 30.) 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. This icon () indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.

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Keynote Speaker: Holistic, Collaborative Approach Needed To Address Climate Change Challenge

"Addressing climate change is challenging us to apply a more holistic approach to environmental issues than has been applied in the past," said Wayne Nastri, Regional Administrator, Environmental Protection Agency (EPA), Region 9. In his keynote address to participants at the NAEP Conference in San Diego, March 26, he acknowledged the particular challenge to EPA, where the focus in the past was on pollution control rather than pollution prevention, and which is compartmentalized in separate EPA Offices (e.g., for air or water) and Regions (with different approaches and drivers for action). Few have the opportunity to see the big picture of all that EPA does, he said.

"How can we make progress?" Mr. Nastri asked. He answered reassuringly that there are ways to protect the

environment – emphasizing the role of partnerships and collaborations at the Federal, state, and local level, and individual action. Mr. Nastri described the formation of the West Coast Collaborative, a public-private partnership with EPA Regions 9 and 10, environmental groups, industry and the states, working to reduce diesel emissions along the West Coast. An agency can be influential by the groups that it brings together and the nature of the financial assistance it gives; results may be seen more quickly than by establishing regulations, he added.

He challenged Conference participants to work toward a broader buy-in from the public, asking how we can instill a sense of responsibility in individual consumers for their carbon footprints. If we are creative, we can do a lot, emphasized Mr. Nastri. 

Public Scoping Is a First Step to Modifying a Recent Decision

By: Yardena Mansoor, Office of NEPA Policy and Compliance, and EIS scoping team

A little more than a year ago, DOE issued a record of decision (ROD) announcing the selection of Richton, Mississippi, as the location of a new site to expand the Strategic Petroleum Reserve (SPR) and the locations of associated infrastructure. This site was selected for its large and undeveloped salt dome, oil distribution capabilities, and inland location that is less vulnerable to damage from hurricanes than other sites considered. In its decision, DOE committed to develop mitigation plans during the permitting process, after consulting with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Mississippi Department of Environmental Quality, and other Federal, state, and local natural resource agencies.

As a result of initial consultations, DOE is now revising the conceptual plan for support operations for the Richton expansion site and considering different locations from those addressed in the EIS for certain facilities and their associated pipelines.

- ✓ For the source of water to create the storage caverns and retrieve stored crude oil (drawdown), DOE is considering the Pascagoula River and other sources with greater water availability than the Leaf River, which was selected in the ROD.
- ✓ Due to factors such as shipping channel depth, potential commercial development, and site suitability, DOE is considering alternative locations in Pascagoula, Mississippi, for a crude oil marine terminal.
- ✓ Because of the proximity of the proposed brine diffuser to the Gulf Islands National Seashore and tanker channels, DOE is considering an alternative location for brine disposal.

DOE determined that changing the locations of the raw water intake, marine terminal, and brine disposal pipeline and diffuser would be substantial changes that are relevant to environmental concerns, and announced in March its intention to prepare a Supplemental EIS for the Richton SPR facility.

A supplemental EIS is required, under the Council on Environmental Quality NEPA regulations, if the 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 (40 CFR 1502.9).

SPR NEPA Documents and Resources

- *EIS for Site Selection for the Expansion of the Strategic Petroleum Reserve* (DOE/EIS-0385, December 2006)
- *Record of Decision and Floodplain Statement of Findings* (72 FR 7964; February 22, 2007)
- *Notice of Intent to Prepare Supplemental EIS* (73 FR 11895; March 5, 2008)
- *LLQR* reported on the SPR Site Selection EIS and its ROD (March 2007, page 1) and on DOE's extension of public scoping following Hurricane Katrina (December 2005, page 30).
- The SPR website (www.fossil.energy.gov/programs/reserves/spr/expansion-eis.html) provides extensive additional resources, including the scoping meeting posters.

Different Meeting Formats, Locations Elicit Different Public Scoping Reactions

In mid-April, DOE conducted public scoping meetings in three towns and one city in Mississippi, covering each of the counties that would be directly affected by the project. As people entered these scoping sessions, they were invited to register and request future information on the project, including the draft Supplemental EIS; they could then proceed to seven information stations with displays and handouts. These stations were staffed by knowledgeable representatives of the Headquarters Office of Petroleum Reserves and its EIS contractors, the SPR Project Office in New Orleans and its management and operating contractor, and the Office of NEPA Policy and Compliance. Visitors could also watch a video on SPR. Tables were provided for writing comments and a court reporter was present to take oral statements.

Three of the scoping meetings – in the small towns of New Augusta, Leakesville, and Lucedale – employed an “open house” format for several hours so participants could “drop in” when convenient. The fourth meeting, in Pascagoula, included an open house in the afternoon and a “town hall” meeting in the evening, with speakers addressing the assembled participants as well as the DOE officials.

Participants in the open house meetings generally stayed an hour or more. A few provided positive feedback: that while they still had concerns about the impacts of the

(continued on page 5)

Lessons Learned from SPR Scoping Process

Members of the SPR scoping team – 16 people from 3 DOE and 3 contractor organizations – offer these observations and recommendations as “Lessons Learned.”

On Preparing for Meetings

- **Establish a clear assignment of responsibility, based on expertise, for providing information.** Inevitably, scoping team members at one information station were asked questions regarding matters best answered by the representatives at other stations. Direct questions to the appropriate responder.
- **Anticipate how the agency’s process may be perceived.** More than 2 years after scoping for the SPR Site Selection EIS, local citizens still express anger that DOE held scoping meetings immediately after Hurricanes Katrina and Rita, at a time when local populations were scattered, without access to local media, and overwhelmed by the need to repair their homes and restore their livelihoods. Given the unavailability of public venues in Pascagoula (Jackson County) at that time, DOE instead held scoping meetings in the city of Jackson, some 200 miles away. Several individuals expressed the belief that DOE exploited the conditions of the time to avoid dealing with public opposition to the project, behavior they did not excuse even though Congress had established a 1-year deadline for DOE to complete the EIS.

On the Conduct of Scoping Meetings

- **Strive to explain the difference between the EIS process and decisionmaking.** When inviting comments, clearly explain that scoping seeks input to the environmental analysis – not votes for or against the project.
- **“Know your stuff” and stay grounded in fact.** Some individuals may make incorrect assertions that a knowledgeable spokesperson should be able to address. One participant, for example, claimed the SPR Site Selection EIS was deficient because it did not contain a cost benefit analysis, and its absence demonstrates that DOE cannot justify the project. Scoping team members responded that NEPA implementing regulations do not require a cost benefit analysis. If a complete answer cannot be given on the spot, consider asking the individual to submit the question in writing.
- **Respond to provocative interactions by restating scoping’s purpose and procedures and inviting written or recorded comment.** Some people claimed that DOE’s environmental analysis was scientifically invalid or politically influenced to favor the project. Others made personal attacks on the intelligence of DOE officials and contractors. An appropriate response is to invite the speaker to submit a written comment or present a statement to the court reporter.

On General Comment Procedures

- **Avoid informal receipt of scoping input.** The NEPA Document Manager received several phone calls from individuals who wished to comment on the Supplemental EIS scope. He correctly advised them that written comments could be delivered by a number of means and oral comments would be accepted through recorded testimony at the scoping meetings. The potential problem with informal records, such as notes of a phone conversation, is the possibility that DOE might not capture the comment correctly.
- **Clarify privacy expectations and respect personal information.** A local environmental organization asked DOE to provide a copy of the registration lists from the scoping meetings. General Counsel staff advised that a request for such lists should be filed under the Freedom of Information Act; Counsel would then make a determination whether the information may be withheld under the provision that protects the personal information of individuals.
- **Cooperating and consulting agencies may continue to provide input.** The public scoping period need not be extended to enable state and local agencies with roles in project planning and permitting to provide information. Their input, while part of the administrative record, need not be grouped with the public scoping comments unless the commenting agency submits the comments as such.

Public Scoping (continued from page 3)



Despite the leftover Mardi Gras decorations, the atmosphere at the town hall scoping meeting in Pascagoula was far from festive. (Photo: Joyce Teerling, DynMcDermott Petroleum Operations)

project, they felt they now understood it much better. Attendance was relatively low at the first two scoping meetings; about 35 people registered in New Augusta and Leakesville, two towns closest to the Richton site. At Lucedale, closer to a candidate water intake site on the Pascagoula River, attendance was about 100.

Some 380 individuals registered at the Pascagoula meeting, and 42 spoke during the town hall session – all

of them against the project. Various speakers opposed the concept of emergency petroleum reserves that would support continued reliance on imported oil, the selection of the Richton site, the use of the Leaf or Pascagoula Rivers as water sources, the discharge of brine in the near offshore areas, and the proposed development of the Pascagoula marine terminal.

Many people spoke movingly about their love of the natural ecology of the rivers, estuaries, and barrier islands; of the hardships they have endured from the 2005 weather disasters and current economic conditions; and their concerns that the local residents will bear a disproportionate share of the environmental impacts relative to the benefits. One speaker provided information on improving the modeling of underwater dispersal of brine. There was also criticism of the Site Selection EIS.

Next Steps, Additional Resources

The scoping period closed on April 29, 2008. DOE is now analyzing more than 300 comment documents received, continuing consultations, and preparing the draft Supplemental EIS. For further information, contact the NEPA Document Manager, Don Silawsky, Office of Fossil Energy, at donald.silawsky@hq.doe.gov or 202-586-1892. 

Poster Displays Presented Technical and Process Information

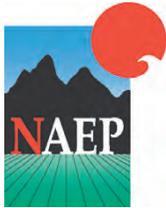


The positive interactions in the open house meetings were due in part to a series of informative posters prepared for the occasion. In sequence after the registration table, seven posters addressed: an overview of the SPR Program; the initial and supplemental EIS processes; proposed changes to the water supply, brine disposal, and the marine terminal; the SPR Program's commitment to environmental stewardship; and the socioeconomic impacts of the proposed expansion project.

The “greeters” at the overview poster were able to give visitors needed background information, explain the sequence of posters, and direct visitors to information and experts on the topics of concern. The large, attractive posters anticipated the likely questions of the public and emphasized the differences between the support facilities included in the 2007 ROD and alternatives to be considered in the Supplemental EIS.

Information displays on water intake and brine disposal for the SPR expansion project drew the most public interest.





Underappreciated Provisions of the CEQ NEPA Regulations



When people refer to NEPA as “just a process,” they are forgetting the goal set forth in Section 101 of NEPA – “to create and maintain conditions under which man and nature can exist in productive harmony” – stated Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), at the NAEP Conference.

Discussing provisions of the CEQ NEPA regulations¹ that do not receive the attention, nor the affection, they deserve, Mr. Greczmiel pointed to Section 1505.1, *Agency decisionmaking procedures*, which directs that agency NEPA implementing procedures shall achieve the requirements of Sections 101 and 102(1) of the Act. He then challenged Conference participants to let him know of any EIS that states its purpose as furthering the goals of Section 101.

Make Diligent Efforts to Involve the Public

The courts have said that the public needs to have meaningful involvement in the NEPA process, Mr. Greczmiel reminded Conference participants, and he emphasized “don’t blindsides the public.” Agencies are directed in Section 1506.6, *Public involvement*, to make diligent efforts to involve the public in implementing their NEPA procedures, he noted, and in Section 1501.4(b), agencies are specifically directed to involve the public, to the extent practicable, in preparing EAs; he added that “practicable” means “possible.”

“Every sector wants to get involved in the NEPA process early,” said Mr. Greczmiel. In referring to Section 1501.2, *Apply NEPA early in the process*, he emphasized that an agency can do more about impacts to resources when it knows about them early rather than playing “catch-up.” In cases where actions are planned by non-Federal entities before Federal involvement, this Section directs agencies to consult early with state and local agencies, Indian tribes, and interested persons and organizations when the agency’s involvement is reasonably foreseeable.

Write to Be Readily Understood

“Five pages of acronyms may not inspire” nor result in a document that meets the requirements of Section 1502.8, *Writing*, warned Mr. Greczmiel, noting the requirement that “the public can readily understand” the document. He urged writers to “do a fresh read” of what they have written, including a check that it is free of jargon.

With special attention to the *Summary* (Section 1502.12), Mr. Greczmiel said writers should ask whether it covers

the “who, what, when, where, why, and how” of the proposed action, identifies the issues to be resolved, and presents options and recommendations to resolve those issues. He acknowledged that this can be difficult to do. However, noting the emphasis in Section 1500.2, *Policy*, to make the NEPA process useful to decisionmakers and the public, Mr. Greczmiel stated that he intends to focus in the future on the usefulness of EIS summaries and will consult with agencies on any problems that he finds. (See DOE’s *EIS Summary Guidance* available at www.eh.doe.gov/NEPA under NEPA Compliance Guide, Volume II.)

Use the Flexibility in the Regulations

Take advantage of the options provided in the CEQ regulations, advised Mr. Greczmiel. Although Section 1502.10, *Recommended format*, sets forth a standard EIS outline, the Section permits needed information to be presented differently if there is a compelling reason to do so (e.g., integration with another statute or with a state agency). Certain items are required, however, as Mr. Greczmiel illustrated with item (i), *List of agencies, organizations, and persons to whom copies of the EIS are sent*; this list is important information for the decisionmaker, informing that person of “who knows what” and with whom consultation has occurred or should occur, he said.

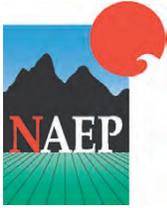
The need to compare alternatives – the heart of the EIS, as described in Section 1502.14, *Alternatives including the proposed action*, – can be met in many ways, advised Mr. Greczmiel. Choose an approach that best illustrates the differences among alternatives, their consequences, and how they would meet the purpose and need for agency action, he urged. Use charts, graphs, and other presentation devices as aids, he said. Names of alternatives should “resonate” – clearly indicating how they are unique – rather than being alternative A27 in a list of 27 alternatives. He reminded the audience that mitigation measures can be presented as a stand-alone alternative or part of an alternative.

Read and Reread the Regulations

There is always something “new” to be found when rereading the CEQ regulations, said Mr. Greczmiel, explaining that provisions can be more meaningful to you over time, based on your NEPA experiences. He referred to several sections of the NEPA regulations in this regard. Assessment of potential impacts to children (highlighted in Executive Order 13045) has always been required

¹ 40 CFR Parts 1500–1508

(continued on next page)



Underappreciated Provisions (continued from previous page)

under Section 1508.8, *Effects*. Although not explicitly called out, it is certainly part of human health, he said (related article, page 18). Similarly, socioeconomic impacts must be addressed in both EAs and EISs under Section 1508.14, *Human environment*. However, he noted that significant socioeconomic impacts alone, without an interrelationship to the physical or natural world, would not trigger an EIS.

Although the CEQ regulations specify that certain parties must receive an entire EIS (Section 1502.19, *Circulation of the environmental impact statement*), Mr. Greczmiel advised that it is good practice to ask other recipients their preferences before EIS distribution. (See DOE's guidance on *EIS Distribution*, available at www.eh.doe.gov/nepa under New Guidance Tools.) He emphasized that paper

copies are still required for filing with the Environmental Protection Agency because technology is changing, asking, "Who could work with a microfiche copy of an EIS today?"

NEPA documents do not need to repeat information from another source in its entirety, under Section 1502.21, *Incorporation by reference*, but must briefly describe the materials referenced and their relevance to the current analysis. Writers must also make sure that any references are available to readers, he said.

Overall, Mr. Greczmiel urged Conference participants to be sure to "focus on what counts," referring to item (b) in Section 1500.1, *Purpose*, that states that NEPA documents must concentrate on the issues that are truly significant, rather than amassing needless detail. **LL**

CEQ Interagency Work Groups Make Progress

The DOE Office of NEPA Policy and Compliance continues to participate in developing and reviewing NEPA guidance prepared by the Interagency Work Groups led by the Council on Environmental Quality (CEQ). The Work Groups were established in 2005 to help implement recommendations from the NEPA Task Force report to CEQ, *Modernizing NEPA Implementation* (September 2003; *LLQR*, December 2003, page 1). For more information on these initiatives, see the CEQ website at www.nepa.gov.

Coordinating NEPA with Related Laws

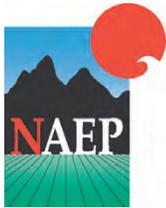
The NEPA Office recently submitted DOE's comments on draft sections of a handbook under Work Group development, *Coordinating NEPA with Other Federal Environmental Laws*, which CEQ had distributed for Federal agency review. This *Handbook* is intended to assist NEPA practitioners in "harmonizing" the NEPA process with review processes under other environmental statutes, implementing regulations, and executive orders, which may have overlapping substantive and procedural requirements with NEPA. As the draft Introduction explains, the *Handbook* will focus on achieving efficiencies by identifying, for each Federal environmental law, requirements that promote or inhibit integration with NEPA and then recommending a process that could satisfy the procedural requirements of NEPA and the related law.

In comments on the draft chapter on the National Historic Preservation Act (NHPA), DOE recommended clarification and expansion of certain topics, such as describing the similarities and differences between NEPA and NHPA requirements to highlight the benefits and challenges of coordinated compliance. The Work Group is now considering the comments received and will provide a revised draft of the NHPA chapter for another round of review by the Federal agencies, along with draft chapters on other environmental laws.



Other Work Group Documents

- ✓ *Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act* – The Work Group has completed its revision of this guidance based on public comments on the draft version (71 FR 54816; September 19, 2006). CEQ is conducting its review of the guidance before issuing it as a final document.
- ✓ *NEPA Programmatic Guidance* – The Work Group has revised the guidance based on Federal agency comments on a preliminary draft that CEQ distributed in September 2007. CEQ plans to issue the draft soon for public review. **LL**



Innovative NEPA Procedures Highlighted in CEQ Annual NEPA Updates



New approaches to NEPA compliance, not explicitly called out in the Council on Environmental Quality (CEQ) regulations, were described by Horst Greczmiel, Associate Director for NEPA Compliance, CEQ, in the CEQ Annual NEPA Updates session at the recent NAEP Conference.

The examples below – concerning the basis for proposing categorical exclusions, analysis of how mitigation measures would minimize impacts, and emergency EA procedures – illustrate that agencies are not unduly restricted by the CEQ regulations. Mr. Greczmiel encouraged agencies to be proactive in their NEPA procedures, within the framework of NEPA and the CEQ regulations.

Substantiating a Categorical Exclusion

The Bureau of Land Management (BLM) web-posted its analysis and rationale for each of six proposed categorical exclusions in a *Categorical Exclusion Analysis Report* and then, following public comments on some of the proposals, web-posted additional supporting material before establishing the categorical exclusions. See www.blm.gov/planning/news.html for these reports.

As stated when establishing the categorical exclusions (72 FR 45503; August 14, 2007), BLM followed CEQ's proposed guidance, *Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act* (71 FR 54816; September 19, 2006), which describes various ways an agency can document its experience and substantiate its determination that a proposed class of actions would not individually or cumulatively have a significant effect on the human environment, including evaluations of the environmental impacts of past actions and the use of professional staff and expert opinion.

Incorporating Adaptive Management in Alternatives Analysis

Both the Department of the Interior (DOI) and the U.S. Forest Service have proposed incorporating adaptive management into analyzed alternatives. CEQ has addressed the use of adaptive management in the NEPA process, describing how “an EMS [environmental management system] can support the implementation of a NEPA ‘adaptive management’ approach” (in its guidance, *Aligning National Environmental Policy Act Processes with Environmental Management Systems; A Guide for NEPA and EMS Practitioners*, April 2007).

Mr. Greczmiel, however, took care to distinguish EMS – a policy tool to help manage environmental issues – from NEPA – a legal requirement to consider environmental factors in decisionmaking.

DOI defines adaptive management in its proposed rulemaking (43 CFR Part 46; 73 FR 126; January 2, 2008) as “a system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes.” The proposed regulation further states that “The NEPA analysis conducted in support of . . . an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring, and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.”

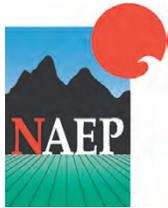
Similarly, the U.S. Forest Service has proposed that adaptive management strategies may be incorporated into alternatives if the strategies are “clearly articulated and the effects of said strategies analyzed . . .” (36 CFR Part 220; 72 FR 45998; August 16, 2007).

Providing NEPA Review for Emergency Actions Normally Requiring an EA

The U.S. Forest Service's proposed NEPA regulations address a gap with regard to NEPA review for those emergency actions that would be the subject of an EA because the proposed action cannot be categorically excluded and does not have potential for significant environmental impact. (Emergency actions with potential for significant impact are addressed in the CEQ regulation, 40 CFR 1506.11, *Emergencies*, which provides for alternative NEPA arrangements.) The proposed regulation, 36 CFR 220.4(b), *Emergency Responses*, provides for consultation among Regional Offices and U.S. Forest Service Headquarters for EA-level emergency actions.

Suggestions for CEQ Website?

Mr. Greczmiel concluded with an invitation for participants to provide suggestions for improving CEQ's *NEPAnet* website, www.nepa.gov, adding that CEQ will be updating its listing of Federal agency NEPA contacts and regulations soon. Suggestions can be submitted by using the “*NEPAnet* Feedback System” link located at the bottom of the opening page of the *NEPAnet* website.



“Real-time” Interactive Process Proposed as Pathway to Quality NEPA Documents

An incremental, iterative EIS preparation process involving “real-time” collaboration with stakeholders has been proposed by the U.S. Forest Service in its NEPA implementing regulations (36 CFR Part 220; 72 FR 45998; August 16, 2007). The proposed optional interactive process was described by Joe Carbone, Assistant Director, Ecosystem Management Coordination, Forest Service, in an NAEP Conference session on *Producing Quality NEPA Documents*.

Incremental changes an agency makes in its alternatives or analytical results during EIS preparation would be presented to stakeholders in “real-time” – in preliminary draft or final EIS documents, said Mr. Carbone. In turn, the public would be able to participate in the agency’s ongoing decisionmaking process in “real-time.” Each subsequent preliminary EIS document could incorporate by reference and summarize earlier versions to show the development of the document. Multiple preliminary EIS documents circulated under the proposed iterative process, explained Mr. Carbone, would be similar to the *Congressional Record* concept, where versions of bills and other records are available to the public during the legislative process.

NAEP Conference participants reacted positively to the proposed option to EIS preparation, but not without some reservations. They saw benefits in reacting to stakeholder

comments as issues arose, rather than only later, in a formal response to comment. Mr. Carbone emphasized that the Forest Service was aiming to take down barriers and have dialog with its stakeholders. Participants also noted that technologies, especially the Web, are opening up many new ways of sharing documents in preparation.

Although some participants were concerned that the option would result in more paperwork, Mr. Carbone did not think so. He explained that individuals would not see specific responses to their comments in subsequent documents, just revisions made in response, and the agency would be simply making publicly available incremental stages of a draft EIS that it would, without the optional process, otherwise prepare but not circulate.

Requirements to circulate a draft and final EIS and to file each with the Environmental Protection Agency (under 40 CFR 1506.10 and 1502.19) would apply to the last draft and last final EIS prepared, Mr. Carbone emphasized. Questions on the proposed Forest Service NEPA procedures may be addressed to Mr. Carbone at jcarbone@fs.fed.us or 202-205-0884. 



Thoughts on Quality

A good EIS tells the story and ties the pieces together. A good EIS is written with the audience in mind – just enough detail, not too much. More is not better – a shorter document forces better understanding.

– David Mattern, *Parametrix*, Moderator, Panel on Producing Quality NEPA Documents

Improving quality is hard work. Be prepared to rethink things.

– Stephanie Miller, *Parametrix*

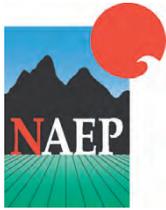
The “quality conundrum” – keep it simple versus keep it defensible. The two are not mutually exclusive. Muddy writing equals muddy thinking. Einstein said – if you can’t explain something simply, you don’t understand it well.

– Kelley Dunlap, *California Department of Transportation*

Distinguish between the document and the documentation record. Plan for a pyramid, with the greatest volume, the administrative record, on the bottom. The next layer of the pyramid would be the technical reports, and the next layer would be the document appendices. The top of the pyramid is the EIS or EA.

– Lamar Smith, *Federal Highway Administration*

Analyzing Climate Change Under NEPA Is “Feasible”



“What is it that the CEQ regulations do not already do?” asked Ted Boling, General Counsel, Council on Environmental Quality (CEQ), on the issue of climate change and NEPA. A major purpose of the regulations is to identify “at an early stage the significant environmental issues deserving of study,” he emphasized (referring to 40 CFR 1501.1(d), *Purpose*).

The global nature of carbon dioxide emissions presents a unique cumulative impact, illustrated by CEQ Chairman James Connaughton at the recent Bali Conference on climate change, related Mr. Boling. The CEQ handbook on cumulative impacts assessment addresses global climate change as a cumulative impact to be analyzed, noted Mr. Boling. (See *Considering Cumulative Effects Under the National Environmental Policy Act*, 1997, www.nepa.gov.) He acknowledged that CEQ is actively considering a recent petition to specifically address the issue in the CEQ NEPA implementing regulations and a guidance memorandum. (See related article, page 11.) Mr. Boling emphasized several sections of the regulations that provide general direction on analyzing the effects of agency action in light of available information on global climate change, pointing to sections on *Scope*, *Significantly*, *Incorporation by reference*, and *Incomplete or unavailable information* (40 CFR 1508.25, 1508.27, 1502.21, and 1502.22, respectively).

- “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)
- “Effects” include:
 - (a) Direct effects, which are caused by the action and occur at the same time and place.
 - (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems . . . (40 CFR 1508.8)

Analyzing climate change impacts is “feasible,” said Mr. Boling, but he acknowledged that analysts have many questions on how best to handle the scoping of the issue. Questions raised during the Conference included whether a finding of no significant impact could be justified for any project causing a net increase in greenhouse gas emissions and whether there could be a *de minimus* approach to greenhouse gas emissions analysis.

Mr. Boling emphasized that CEQ does not prescribe thresholds for agencies to use in analysis, but leaves such matters to informed agency discretion. Decisions regarding the extent to which environmental effects of greenhouse gas emissions and climate change warrant analysis and documentation under NEPA are committed to the expertise and sound discretion of the agency decisionmakers, he said.



Mr. Boling directed analysts to the website of the US Climate Change

Science Program, www.climatescience.gov, characterizing it as the best available source for up-to-date results on the science of climate change. The US Climate Change Science Program integrates Federal research on climate and global change, sponsored by 13 Federal agencies and overseen by the Office of Science and Technology Policy, CEQ, the National Economic Council, and the Office of Management and Budget. The site presents results from the Intergovernmental Panel on Climate Change, which together with the approach outlined in the CEQ regulations should guide analysts well, said Mr. Boling. 

On May 27, 2008, the US Climate Change Science Program issued its final report, *The Effects of Climate Change on Agriculture, Land and Water Resources, and Biodiversity in the United States*, available on its website.

NEPA Case Law and Global Warming

In his paper “Global Warming in EAs and EISs: What the NEPA Case Law Tells Us” and as he discussed at the NAEP Conference, Owen Schmidt (an environmental attorney who worked for the Bonneville Power Administration in the 1980s) concludes from a study of case law to date (13 lawsuits) that global warming is not an impact apart from any other foreseeable environmental consequence. Contact Mr. Schmidt for a copy of his paper at oschmidt@att.net.

Petition to CEQ on Climate Change Analysis and NEPA

Is climate change a “reasonably foreseeable” impact under NEPA? If so, how should an agency conduct such an analysis?

In a petition filed with the Council on Environmental Quality (CEQ) in February, the International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club are seeking an amendment to CEQ’s NEPA regulations to clarify that climate change should be addressed in NEPA documents and CEQ guidance on how to do so. To date, CEQ has not taken action on the petition but has the petition under review.

To support their contention that climate change is reasonably foreseeable, petitioners first summarize “the substantial scientific evidence of global climate change and its current and future adverse effects on the natural environment.” They include findings from the Intergovernmental Panel on Climate Change, the 2002 U.S. Climate Action Report (submitted to the United Nations by the U.S. Department of State), and the 2001 National Academy of Sciences Report (through the National Research Council), *Climate Change Science: An Analysis of Some Key Questions*, and cite several scientific studies on human health and on the connection between climate change and “extreme weather” events.

In presenting their conclusion that “NEPA mandates consideration of climate change as part of each Federal agency’s NEPA process as a ‘reasonably foreseeable’ effect,” the petitioners refer to the existing CEQ NEPA implementing regulations and guidance and to case law. The regulations require the analysis of both direct and indirect, as well as cumulative, effects in NEPA documents, state the petitioners. They add: “While some

uncertainties about climate change may remain, agencies cannot, by law, wait until after climate change effects are certain to occur in order to address them. Rather, CEQ’s regulations mandate that federal agencies address all ‘reasonably foreseeable’ environmental impacts of their proposed programs, projects, and regulations. . . . It is well-established that some ‘reasonable forecasting’ by the agency is implicit in the NEPA process. . . . Stated differently, climate change is ‘reasonably foreseeable’ as that phrase is understood in the context of NEPA and the CEQ regulations,” the petition states.

The petitioners point to 40 CFR 1502.22, *Incomplete or unavailable information*, in emphasizing that “. . . when the nature of an effect is reasonably foreseeable but its extent is not, the agency cannot simply ignore the effect.” They also point to existing CEQ guidance, *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997), in which CEQ cited climate change effects as a component of cumulative atmospheric effects to be addressed in describing the affected environment and in alternatives analyses.

To review the petition, which includes proposed amendments to the CEQ regulations and proposed guidance that would explicitly address a requirement to analyze effects of global climate change in NEPA documents, see the International Center for Technology Assessment website, www.icta.org (under Global Warming & the Environment, Legal Actions, find *Petition Requesting that the Council on Environmental Quality Amend Its Regulations to Clarify that Climate Change Analyses Be Included in Environmental Review Documents*, February 28, 2008.) 

Executive Order on Climate Change and NEPA Proposed

The Federal government already has statutory mandates and regulatory processes to identify, disclose, and mitigate the effects of global warming, emphasized a panel of environment experts at a symposium hosted on May 5, 2008, by the Center for American Progress, a non-partisan nongovernmental organization. The need to do so is pressing, they urged. The panelists, who included former Secretary of the Interior Bruce Babbitt and former Environmental Protection Agency Administrator Carol Browner, said that the agencies must more diligently fulfill their responsibilities under NEPA, the Clean Air Act, the Endangered Species Act, and other environmental statutes to consider climate change.

To promote that goal, the Center issued a proposal for the immediate issuance of an Executive Order that would obligate the Council on Environmental Quality to issue guidance and instructions on addressing global

climate change in NEPA compliance documents and support rulemaking through which guidance would be incorporated into agency policy. Specific proposals for NEPA reviews include:

- A quantitative analysis of a proposal’s direct and indirect contributions to greenhouse gas emissions
- An evaluation of the consequences of changing climatic conditions on a proposal
- Consideration of alternative actions and mitigation measures that could reduce greenhouse gas emissions and climatic vulnerability.

Full Disclosure: An Executive Order to Require Consideration of Global Warming Under the National Environmental Policy Act is available at www.americanprogress.org/issues/2008/05/full_disclosure.html. 

NEPA Analysis of CAFE Standards Focuses on Climate Change



The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) is analyzing the impacts of its corporate average fuel economy (CAFE) program on climate change, consistent with a 2007 court decision (*LLQR*, December 2007, page 24). Although the Government is seeking a rehearing in the Ninth Circuit on the appropriateness of the court's remedy, NHTSA intends to consider issues raised in the litigation and announced its intent in March (73 FR 16615; March 28, 2008) to prepare an EIS to address the potential environmental impacts of its CAFE standards for model year 2011–2015 passenger cars and light trucks.

The Energy Policy and Conservation Act (EPCA), recently amended by the Energy Independence and Security Act of 2007, directs the Secretary of Transportation, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency (EPA), to establish standards for passenger cars and light trucks that achieve a combined fleet-wide fuel economy average for model year 2020 of at least 35 miles per gallon, up from model year 2010 levels of 27.5 miles per gallon for passenger cars and 23.5 miles per gallon for light trucks.

Supplemental Notice Requested Comments on Climate Change Impacts

A recent supplemental notice (73 FR 22913; April 28, 2008) focused on climate change and provided additional information about the scoping process, which ended May 28, 2008, the proposed standards, and the alternatives to be considered in its EIS.

In this notice, NHTSA requested comments on the potential impacts of the CAFE standards on climate change. Specifically, the agency requested:

- peer-reviewed scientific studies issued since the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (*LLQR*, December 2007, page 5);
- information on how to estimate potential temperature change from proposed emissions and potential resulting environmental impacts; and
- reports analyzing potential specific impacts of climate change on particular U.S. geographical areas.

In the supplemental notice, NHTSA noted that it placed monetary values on environmental considerations, including the benefits of reductions in carbon dioxide

(CO₂) emissions. NHTSA also stated that it consulted with DOE and EPA on a wide variety of matters in developing its standards.

In its EIS, NHTSA is considering seven alternatives, including “no action” – which the agency cannot adopt under EPCA. The NEPA analysis will consider an “optimized scenario” alternative, with standards based on applying technologies until net benefits are maximized. Three other alternatives consider standards at varying levels below and above the optimized level. The sixth alternative would apply technologies to increase fuel economy until the total costs equal total benefits, and the seventh alternative would require every manufacturer to apply every technology that may be available for its model year 2011–2015 fleet.

Uncertainty in Evaluating Climate Change

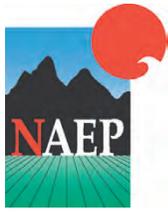
NHTSA expects to encounter considerable uncertainty in evaluating the potential impacts of the proposed standards and their alternatives on climate change. In its supplemental notice, the agency noted that “it may be difficult to predict with a reasonable degree of certainty or accuracy the range of potential global temperature changes that may result from changes in fuel and energy consumption and CO₂ emissions due to new CAFE standards. In turn, for example, it may be difficult to predict and compare the ways in which potential temperature changes attributable to new CAFE standards may impact many aspects of the environment.” Therefore, NHTSA expects that its NEPA analysis will apply the provisions in the Council on Environmental Quality regulations (40 CFR 1502.22) addressing “[i]ncomplete or unavailable information.” NHTSA will rely on the IPCC 2007 Fourth Assessment Report as a recent “summary of existing credible scientific evidence.”

The agency plans to incorporate material into its NEPA analysis by reference “when the effect will be to cut down on bulk without impeding agency and public review of the action,” as directed by the CEQ NEPA regulations at 40 CFR 1502.21.

Next Steps

According to the supplemental notice, NHTSA plans to issue a draft EIS for public comment “later this spring” and a final EIS to support a final rule later this year. NHTSA intends to update its website with relevant CAFE information (www.nhtsa.dot.gov). 

Interagency Partnership Receives NEPA Excellence Award



An Interagency Work Group, representing two Federal agencies and a state agency, won the NAEP 2008 NEPA Excellence Award for two guidance documents prepared collaboratively. The California Division of the Federal Highway Administration, the California

Department of Transportation (known as Caltrans), and Region 9 of the Environmental Protection Agency (EPA) prepared *Guidance for Preparers of Cumulative Impact Analysis* (2005) and *Guidance for Preparers of Growth-related, Indirect Impact Analysis* (2006)¹ under a 2000 partnership agreement to “support concerted, cooperative, effective and collaborative work” in the transportation and environmental planning processes.

Although targeted for California transportation proposals being reviewed under NEPA and the California Environmental Quality Act, the guidance documents can be of general use to NEPA document preparers when considering indirect impacts and cumulative impacts. Both guidance documents provide a step-by-step approach to identifying and assessing the impacts, a hypothetical example, and links to more detailed references and manuals. Both also emphasize that use of the approaches and tools presented will depend on the potential impacts of the proposed project, the type or condition of the resource under consideration, and the professional judgment of the analyst.

Relationship between Indirect Impacts and Cumulative Impacts

The guidance on growth-related indirect impacts distinguishes indirect impacts from cumulative impacts and emphasizes that direct and indirect impacts of a proposed action are a subset of cumulative impacts. The guidance acknowledges the difficulty in analyzing potential growth-related impacts in general and describes

NAEP Award Nominations Due September 30

NAEP invites nominations for its President’s and National Environmental Excellence Awards by September 30 to recognize outstanding achievement in eight categories, including NEPA Excellence, Public Involvement/Partnership, and Environmental Management. Nominations may include self-nominations; the nominator need not be a member of NAEP. Instructions for submitting award nominations are provided on the NAEP website (www.naep.org).

factors for determining whether there is “causality” between an action and impact and also judging the reliability of a prediction that an impact is “reasonably foreseeable.” The guidance directs the reader to the website informally known as “Re: NEPA” (nepa.fhwa.dot.gov/ReNEPA/ReNepa.nsf/home), the Federal Highway Administration’s online “community of practice” (i.e., blog) for the latest exchange of information on these and other aspects of the NEPA process.

Relevance to Determination of “LEDPA”

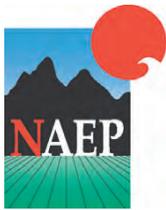
Both guidance documents can assist in assessing impacts on jurisdictional waters of the United States, which are those waters protected by Section 404 of the Federal Clean Water Act. As the guidance documents explain, EPA guidelines specify that a permit to discharge into jurisdictional waters can be issued only if the discharge is determined to be the least environmentally damaging practicable alternative (LEDPA), and the guidelines require an analysis of cumulative and secondary (indirect) impacts to make this determination. As the guidance documents emphasize, “it is possible for an alternative with greater direct impacts, but fewer indirect impacts (including growth-related impacts) to be selected as the LEDPA.”



Kent Norton (left), President, California Association of Environmental Professionals (CAEP); Jim Melton (center), President, NAEP; and John Irving, Conference Co-Chair, confer at the start of the NAEP/CAEP Conference Awards Ceremony.

¹ The guidance documents are available, along with other “standard environmental references” at www.dot.ca.gov/ser.

Are There “Mistakes and Gaps” in the CEQ Regulations?



“Have you ever puzzled over a section of CEQ’s regulations, wondering if you are the only one who does not understand it? Or cannot understand how it could be implemented?” asked attorney Owen Schmidt in a presentation at the NAEP Conference on mistakes and gaps

that he has found in the Council on Environmental Quality (CEQ) NEPA implementing regulations. To open a dialog among a panel of NEPA experts (photo) and Conference participants, he described some of the 29 mistakes (something that operates to produce a result contrary to what was intended) and 25 gaps (a lost opportunity) in the regulations about which he has recently written.¹

Using the word “cumulative” to refer to a distinct type of impact is the biggest mistake in the CEQ regulations, asserts Mr. Schmidt. He explained that consequences occur in natural systems in a chain of causation – one thing leads to another – and he adds, a complete “impacts analysis” will in fact account for all incremental environmental impacts. In contrast to Mr. Schmidt, Nicholas Yost (former CEQ General Counsel and lead draftsman of the regulations, now with Sonnenschein Nath & Rosenthal, LLP) believes that the specific requirement to look at cumulative impacts works well, as it is important to consider what others are doing and the regulatory language emphasizes that. Mr. Ron Bass (ICF Jones & Stokes and coauthor of *The NEPA Book*²) agreed, pointing in particular to the cumulative nature of growth inducing impacts.

Popularity of EA Was Not Foreseen

Failing to provide more definition of an EA and finding of no significant impact (FONSI) presents the most gaps in the CEQ regulations, stated Mr. Schmidt. He noted in particular the failure to define whether an increment to a “significant problem” could be found “not significant” (and if so, how). For example, NEPA practitioners assessing potential impacts of greenhouse gas emissions on global climate change are asking if there would be emissions of greenhouse gases, could a FONSI be written?

No one foresaw the predominance of EAs over EISs, Mr. Yost said, referring to a ratio of 100 EAs to 1 EIS he saw in a recent tabulation. He agrees that the failure to give more attention to EAs and FONSI is the biggest gap in the regulations. What should they look like? How extensive should they be? Should there be a draft, then a final EA? With regard to the last question, he said that he believes the Ninth Circuit got it right in its recent decision (*Bering Strait Citizens v. U.S. Army Corps of*



Dubbed the “NEPA Dream Team” (by Moderator Michael Smith, not pictured), from left to right: Ron Bass, Owen Schmidt, Nicholas Yost, and Horst Greczmiel discuss the meaning of the CEQ NEPA implementing regulations.

Engineers), that is, an agency must provide the public with sufficient information to allow them to inform agency decisionmaking. (See related article, page 21.)

Looking back almost 30 years after the CEQ regulations were issued, Mr. Yost emphasized the importance of remembering the context in which they were written. He recounted the extensive consensus-building needed among the various groups brought into the process, such as the U.S. Chamber of Commerce, environmental groups including the Natural Resources Defense Council, state legislatures, and Federal agencies. The degree of acceptance under the five Presidential administrations since the regulations were issued is noteworthy, he said.

Focus on Timeliness and Timelines Urged

Reflecting on other provisions of the regulations, Mr. Yost emphasized that practitioners need to focus more on timeliness in NEPA implementation. He noted that the provisions in the CEQ regulations concerning timelines are the most underused provisions, meriting revisiting and strengthening. Also he advised that more could be done to foster cooperation among states and the Federal agencies. He added that global climate change issues, although not specified in the regulations, should be considered along with energy issues that were emphasized when the regulations were written (i.e., the potential energy requirements and conservation potential of alternatives).

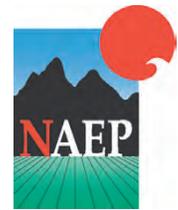
“Why has the main NEPA document become an EA?” asked Mr. Bass, agreeing with the others that regulatory emphasis on EISs does not reflect current NEPA practice. He speculated that if there were time limits for EIS preparation, which he advocates, there might be a greater proportion of EISs. Mr. Bass, referring to situations where

¹ Mr. Schmidt’s paper can be found at www.studioskb.com/NEPA/Downloads.html.

² See LLQR, December 2001, page 11.

(continued on next page)

“Mistakes and Gaps”? (continued from previous page)



FONSI are reached by mitigating impacts, expressed concern that there is no mechanism for enforcing mitigation or monitoring to test its effectiveness.

writers of the regulations chose to just give factors for practitioners to think about.

Better Implementation of Regulations Needed

Regulatory changes would not fix problems with NEPA implementation, emphasized Horst Greczmiel (CEQ), stating that what is needed is more effective and efficient NEPA practice. To that end, he referred to the ongoing development of NEPA guidance by CEQ, including guidance on the preparation of EAs. Mr. Greczmiel emphasized that practitioners should focus on the options and opportunities presented by the CEQ regulations, also pointing to the recent Ninth Circuit decision concerning public participation for EAs (related article, page 21) to illustrate a situation where agencies have to apply good judgment in NEPA implementation.

In response to a question on whether NEPA review of a plan could conclude there were no environmental consequences, Mr. Yost said that he could not imagine that situation. Mr. Greczmiel acknowledged that the technology available today, such as geographic information systems, aids us in identifying resources and other aspects of areas being considered in a plan.

Professional judgment is needed to determine the threshold for the level of significance of an impact, acknowledged Mr. Greczmiel, noting that agency-specific discretion must also be applied. Mr. Yost agreed that significance is very difficult to define and said that the

“What is keeping decisionmakers from getting environmental information of value from the NEPA process?” asked Mr. Greczmiel, encouraging Conference participants to ask themselves how to provide timely and useful information when they engage in any NEPA process. He said that one factor he believes is critical to providing useful information is to have project proponents and document preparers work together. He also emphasized that NEPA practitioners need to keep the goals of Section 101 of the Act in mind to add greater value to the NEPA process and document. ■■

Transitions: New NEPA Compliance Officers

Loan Guarantee Program Office: Dan Tobin

Dan Tobin has been designated Acting NEPA Compliance Officer (NCO) for the Loan Guarantee Program Office, which reports to DOE’s Chief Financial Officer. Mr. Tobin has 10 years of professional experience in the energy, electricity, and environmental fields. Prior to joining DOE, he completed economic and policy analyses to deploy renewable energy technologies into rural areas of India and China. His professional experience includes preparation of Master Plans and EISs for Department of Defense and Department of Homeland Security facilities. He can be reached at daniel.tobin@hq.doe.gov or 202-586-1940.

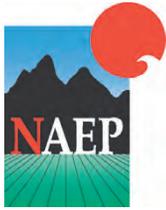
Nevada Site Office: Linda Cohn

At the Nevada Site Office, National Nuclear Security Administration, Linda Cohn has been designated NCO after serving for several years as Deputy NCO under Mike Skougard, who has retired after 31 years of Federal service. Ms. Cohn is also the Office’s Cultural Resource Program Manager, American Indian Consultation Program Manager, and Program Coordinator for classified projects. She can be reached at cohl@nv.doe.gov or 702-295-0077.

The NEPA Office expresses its appreciation for Mike Skougard’s many contributions as the Nevada Site Office’s NCO since 1997 and, on behalf of the DOE NEPA Community, wishes him success and fulfillment in his future endeavors.

Southwestern Power Administration: Larry Harp

Southwestern Power Administration’s new NCO is Larry Harp, a 30-year veteran of the U.S. Army Corps of Engineers before he joined the Power Administration 4 years ago. Mr. Harp is currently the Director, Division of Engineering and Planning, which includes the Administration’s environmental program. He can be reached at larry.harp@swpa.gov or 918-595-6700. The previous NCO, Darlene Low, served in the position since 2000 and now serves as Program Manager over the Safety and Health Program Office. ■■



Analyzing Greenhouse Gas Emissions under CEQA

Guidelines on how California state and local agencies should analyze, and when necessary, mitigate greenhouse gas emissions under the California

Environmental Quality Act (CEQA) process are required to be issued and adopted by 2010, through actions taken by the Governor and state legislature in 2007. (See Senate Bill 97 and the Governor’s Signing Message.) At the one-day symposium on global warming that preceded the NAEP Conference, NEPA and CEQA practitioners learned of ongoing planning and coordination efforts as state agencies respond to the recent mandates. NEPA practitioners who prepare joint NEPA/CEQA documents should be aware of the alternative approaches under consideration.

A key question of CEQA practitioners is what level of new emissions to consider as the threshold for significance. The Governor’s Office of Planning and Resources, charged with establishing guidelines for analysis of impacts from greenhouse gases and mitigation strategies under CEQA (which will be certified by the California Resources Agency), has various thresholds under consideration. One would be to set no threshold level for significance; this would continue the current practice whereby agencies have discretion to set significance threshold levels. Another would be to set the threshold at

zero, whereby all emissions of greenhouse gases would be significant (and would have to be mitigated to zero unless there were “overriding considerations,” as allowed under CEQA). Also under consideration are non-zero thresholds based on state emission reduction targets (e.g., 1990 levels by 2020) or on specified project characteristics.

Until CEQA Guidelines are established, the Office of Planning and Resources advises CEQA practitioners to approach the analysis of climate change as a cumulative impact analysis and to consider preparing programmatic environmental impact reports from which to adopt programmatic mitigation strategies.

For Further Information

Check the following websites for CEQA information, updates on California initiatives concerning analysis of greenhouse gas emissions and global climate change, and scientific information:

- CEQA – www.ceres.ca.gov/ceqa
- The Governor’s Office of Planning and Research – www.opr.ca.gov (under CEQA Guidelines and Greenhouse Gases)
- California Climate Change Portal – www.climatechange.ca.gov 

DOE-wide NEPA Contracting Update

On April 8, 2008, the National Nuclear Security Administration (NNSA) Service Center issued two solicitations – one for small business concerns and one under full and open competition – for DOE-wide NEPA support services. An Integrated Project Team, led by the NNSA Service Center and including NEPA Compliance Officers, is now evaluating proposals submitted in response to the solicitations. The NNSA Service Center expects to establish contracts no later than September 30, 2008. 



What’s better than winning the lottery? Winning a CEQ NEPA t-shirt, says Jim Daniel, Unit Leader, Office of NEPA Policy and Compliance, who was one of three attendees at the April CEQ NEPA Federal Contacts Meeting to answer a CEQ regulation question posed by Horst Grezmiel, Associate Director for NEPA Oversight, CEQ.



NEPA Strategy for Restructured FutureGen Project

DOE has taken a step toward implementing a restructured approach to the FutureGen project by issuing a draft Funding Opportunity Announcement (FOA) on May 7, 2008. [DOE announced its intent to restructure the FutureGen project in January 2008, following issuance in late 2007 of the Final EIS for the original FutureGen project (*LLQR*, March 2008, page 4)].

As explained in the draft FOA, under the restructured approach DOE aims to accelerate the near-term deployment at a commercial scale of advanced clean coal technology by equipping multiple new Integrated Gasification Combined Cycle or other clean coal power plants with cutting-edge carbon capture and storage technology.

The draft FOA outlines the planned scope of possible projects, evaluation criteria, terms and conditions, and cost sharing requirements for public-private cooperation under the restructured FutureGen project. DOE's estimated investment, which would be set out in cooperative agreements or technology investment agreements awarded to commercial partners, would range from \$100 million to \$600 million per project. Subject to compliance with NEPA, DOE expects that commercial operation would begin as soon as plants are commissioned but no later than December 31, 2015.

100,000+ Commented on Draft Complex Transformation SPEIS

The National Nuclear Security Administration (NNSA), a semi-autonomous agency within DOE, has received comments from more than 100,000 people on its Draft *Complex Transformation Supplemental Programmatic Environmental Impact Statement* (SPEIS; DOE/EIS-0236-S4). In response to public comment, NNSA extended the 90-day public comment period by 20 days to end on April 30, 2008 (73 FR 19829; April 11, 2008) and is still logging comment documents and reviewing individual comments. The SPEIS analyzes alternatives for the future of the U.S. nuclear weapons complex and could affect facilities in six states.

The vast majority of comments are part of campaigns by public organizations opposed to nuclear weapons production. These campaign comments, which repeat a concise statement, were submitted primarily by email (about 81,000 separate messages) and petition (more

Comparative Environmental Evaluation

Under the NEPA strategy described in the draft FOA, DOE would request environmental information from applicants. DOE would use the environmental information together with other information provided by the applicants or that DOE develops to perform a comparative environmental evaluation of potential environmental impacts of the proposals per 10 CFR 1021.216 before making selection(s) of one or more projects for further consideration. DOE would then conduct a site-specific NEPA review for each project before making a go/no-go decision. The draft FOA states that, preliminarily, DOE anticipates that an EIS will be required for each project.

Next Steps

The comment period on the draft FOA ended May 21, 2008. After considering the comments received, DOE expects to issue the final FOA in mid-summer 2008, with the selection of projects for further consideration targeted for December 2008. DOE would then initiate site-specific NEPA reviews in early 2009. 

than 15,000 signatures). NNSA also received more than 2,000 detailed written comment documents. In addition, 625 people provided comments at 20 public hearings held in 14 cities across the country during February and March 2008.

"We've begun reviewing the suggestions to add additional alternatives and other major comments," said Ted Wyka, Complex Transformation SPEIS Document Manager. "We're impressed by the level of detail in many of the comments and have teams in place to ensure that each comment is carefully considered."

For additional information on the SPEIS, see *LLQR*, March 2008, page 1 or www.complexttransformationspeis.com. Mr. Wyka may be reached at theodore.wyka@nnsa.doe.gov or 202-586-3519. 

Integration of NEPA and Health Impact Assessments

What is a Health Impact Assessment (HIA)? Can NEPA and HIA documents be integrated? These questions were addressed by Dr. Aaron Wernham, Project Director, Alaska Collaborative for Health Impact Assessment, Alaska Inter-Tribal Council, in his presentation at the Council of Environmental Quality's (CEQ's) Federal NEPA Contacts Meeting on April 22, 2008, in Washington, DC. Dr. Wernham explained that health concerns are often not fully assessed in EISs. In a survey of 45 EISs, 83 percent of them did not discuss health, while in the remainder, the discussion was limited to single-substance cancer risk assessment, he said. Another survey found that among NEPA professionals there was little understanding of health concerns, he said.

Dr. Wernham claimed that most EISs rely on regulatory compliance as a proxy for health analysis and avoid any discussion of community health concerns: social ills (domestic violence, drug and alcohol use, suicide, criminality), mental health problems (depression, anxiety, stress), or issues dealing with dietary change and diabetes (because subsistence resources are less available). But for certain types of projects, such as major oil and gas development, such human impacts can be significant and long term, said Dr. Wernham.

Dr. Wernham focused his presentation on three main points: (1) including public health in NEPA analyses

improves the planning process; (2) NEPA and related statutes clearly define health as a consideration; and (3) a well-defined methodology for addressing health concerns exists (i.e., HIA). According to Dr. Wernham, including public health in NEPA reviews improves the planning process by preventing harm to public health and maximizing public health benefits, focusing on the issues of greatest concern to the public, and strengthening relationships between the agency, industry, and the community.

Definition of an HIA

HIA is defined as a combination of procedures, methods, and tools by which a proposed policy, program or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population. It also identifies appropriate actions to manage those effects.

Dr. Wernham identified five stages of the HIA process that are similar to environmental impact assessment and environmental management system processes:

1. Screening: determine if the impacts are large enough to require HIA
2. Scoping: public meetings and literature review to determine the potential health concerns to be analyzed
3. Assessment/Analysis: using existing data, define baseline health status and model the potential health effects; develop mitigation measures
4. Reporting and Evaluation: write the HIA and present it for public review
5. Monitoring and Reassessment: monitor health effects and make modifications to plans as necessary

Existing public health data, public testimony, quantitative or qualitative analysis, expert opinion, and risk assessment would be used when preparing a HIA.

Could an HIA Improve NEPA Reviews?

Dr. Wernham thinks an HIA would improve a NEPA review, but adds that there are problems or barriers to be overcome. Many agencies lack health expertise, funding, and staff time, as well as a familiarity with HIA. Agencies would also have to develop guidance. Federal agencies should consider partnerships with local, regional, Tribal, or state health agencies, he said.

Following the presentation, Horst Greczmiel, CEQ's Associate Director explained that an HIA probably would not be required in all EISs because not every EIS would identify health issues as significant. Mr. Greczmiel added that CEQ has no plans to prepare NEPA/HIA integration guidance at this time. 

Health Requirements Related to NEPA

NEPA

- Section 2: "The purposes of this Act are: . . . to promote efforts which will . . . stimulate the *health* and welfare of man . . ."
- Section 101: The government must "assure for all Americans safe, *healthful* . . . surroundings; attain the widest range of beneficial uses of the environment without . . . risk to *health* . . ." "The Congress recognizes that each person should enjoy a *healthful* environment . . ."

CEQ Regulations, 40 CFR Part 1508

- Section 1508.8: "Effects includes . . . *health*, whether direct, indirect, or cumulative."
- Section 1508.27: "The degree to which the proposed action affects public *health* or safety" should be considered when evaluating intensity.

Executive Orders (E.O.)

- E.O. 12898: Environmental Justice in Minority Populations and Low-Income Populations (Presidential Transmittal Memorandum).
- E.O. 13045: Protection of Children from Environmental Health Risks and Safety Risks.

emphasis added

Integrating NEPA and EMS Benefits Planning

Integrating the NEPA process with an Environmental Management System (EMS) sounds like a good idea, but many agencies have little experience in doing so. At the March 2008 meeting of the Federal NEPA Contacts, Matthew McMillen described how the Federal Aviation Administration (FAA) pioneered Federal efforts to effectively coordinate EMS and NEPA and use the EMS framework to accomplish environmental goals.

FAA's internal procedures for NEPA implementation provide that "where available and applicable, an environmental management system may be used for tracking and monitoring mitigation commitments," explained Mr. McMillen. As most of FAA's NEPA reviews are related to airport actions, FAA has specific implementing instructions for these actions. A regional FAA office can use an airport sponsor's EMS or an EMS for a similar airport action to determine if mitigation measures proposed in an EA would likely prevent significant impacts, he said, and the internal procedures direct that "the regional airports office responsible for the proposed action should track an airport sponsor's mitigation compliance via an EMS." Incentives are



**Federal Aviation
Administration**

needed to promote EMS development, Mr. McMillen emphasized, and FAA provides financial aid to sponsors of medium to large public-use hub airports to develop an EMS, he said.

The 2004 FAA paper, *Environmental Management Systems (EMS) and NEPA Adaptive Management*, at www.faa.gov/regulations_policies/policy_guidance/envir_policy, laid the groundwork for the 2007 CEQ guidance, *Aligning National Environmental Policy Act Processes with Environmental Management Systems – A Guide for NEPA and EMS Practitioners*, at www.nepa.gov. For further information on promoting EMS development and aligning it with the NEPA process at FAA, contact Mr. McMillen at matthew.mcmillen@faa.gov or 202-493-4018. 

BLM Expands NEPA Handbook



The Bureau of Land Management (BLM) recently announced the availability of its revised *NEPA Handbook* (73 FR 22162; April 24, 2008), which provides procedures, guidance, and examples to assist BLM NEPA practitioners in complying with Council on Environmental Quality (CEQ)

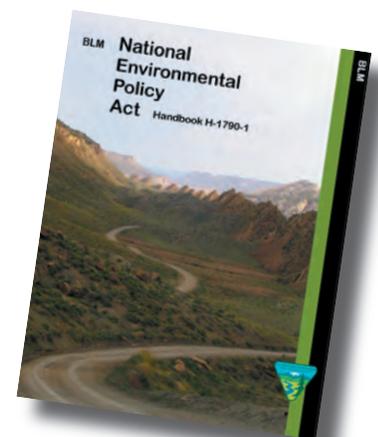
NEPA regulations and the Department of the Interior's environmental procedures. Last updated in 1998, the expanded *Handbook* now includes guidance on new topics, including cumulative effects analysis and public involvement for EAs.

The *Handbook* starts with a Users Guide and a "NEPA Screening Process" flowchart that includes chapter references for each step. Flowcharts also are provided for BLM's EA and EIS processes and for screening a proposal for conformance with a land use plan. The *Handbook* uses "plain language" to identify legal requirements and BLM's analytical and procedural approaches and to describe the content of the sections of a NEPA document. Other

chapters address monitoring, cooperating agencies, working with advisory committees, and administrative procedures such as recordkeeping and preparing an administrative record. A chapter on adaptive management will be added at a later date, and the online *Handbook* (at www.blm.gov/wo/st/en/info/nepa.2, under NEPA Handbook)

will in the future activate links to references (e.g., CEQ regulations and guidance) and to BLM examples of NEPA document content (e.g., description of the no-action alternative) and administrative documents (memoranda of understanding with tribes and cooperating agencies).

Because DOE is a cooperating agency with BLM in several ongoing EISs, DOE NEPA practitioners may find the *Handbook* useful. For questions on the *Handbook*, inquire by email to NEPA@blm.gov. 





Litigation Updates

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

New DOE NEPA Litigation

Complaint Claims NEPA Review Needed for Coal Project Tax Credits

On March 3, 2008, Appalachian Voices and The Canary Coalition, two nonprofit environmental groups, filed a complaint and a motion for an injunction against DOE and the Department of the Treasury, seeking to suspend a program under section 1307 of the Energy Policy Act of 2005 that allocated \$1.65 billion of tax credits for nine experimental coal-fired power projects. In its consultation role, DOE reviewed applications to assess the technical and financial feasibility of the proposed projects and submitted a list of the qualifying applications to the Internal Revenue Service, which then decided which projects to certify for tax credit award. The plaintiffs allege the agencies violated NEPA by failing to assess in an EA or EIS the environmental impacts of advanced coal projects, specifically the effects of mining (e.g., from mountaintop removal and valley fills) and air emissions (e.g., sulfur dioxide, mercury, particulates, and carbon dioxide) that would result from the projects. The Government has filed a motion to dismiss. *Appalachian Voices v. DOE* (D. D.C.) Case No.: 08-00380.

Complaint Alleges Safety Issues for Particle Accelerator in Europe

Two private citizens have sued DOE, Fermilab, the National Science Foundation, and the European Organization for Nuclear Research (CERN), alleging that they violated NEPA by preparing the Large Hadron Collider for operation without NEPA review. The Large Hadron Collider, a physics research facility to be operated by CERN and located on the French-Swiss border, will accelerate proton particles to nearly the speed of light and collide them at the center of four large detectors designed to observe those collisions.

The plaintiffs cite various theories in alleging that adverse consequences could result from the operation of the Large Hadron Collider. A 2003 CERN safety report on new phenomena that might occur during high-energy collisions at the facility found no basis for any conceivable threat, including those alleged by the plaintiffs. The plaintiffs claim that the safety report contained flaws and that DOE should have prepared an EA or EIS addressing safety issues.

The plaintiffs request a temporary restraining order to prohibit the defendants from further preparing the Large Hadron Collider for operation or operating it, a preliminary injunction until an EA or EIS is issued, and a permanent injunction against operation of the Collider until it can be proven to be "reasonably safe within industry standards." *Sancho v. DOE* (D. Hawaii) Case No.: 08-00136.

Complaint Claims EIS Required for Biosafety Level 3 Facility

Tri-Valley CAREs (Communities Against a Radioactive Environment, an environmental organization) and private citizens have filed a lawsuit alleging that DOE violated NEPA by issuing an EA for a Biosafety Level 3 facility at Lawrence Livermore National Laboratory. The plaintiffs allege that DOE's revised EA (DOE/EA-1442-R, January 2008) is inadequate, particularly in its analysis of potential impacts of a terrorist act, and does not support a finding of no significant impact (FONSI); that the EA should have been supplemented to evaluate significant new circumstances and information; that a proposed FONSI should have been issued for public review; and that an EIS is required for the facility. *Tri-Valley CAREs v. DOE* (N.D. Calif.) Case No.: 08-01372.



Court Rules on Public Involvement in the EA Process

Federal agencies have flexibility in how they involve the public in EAs, but they must provide sufficient information to allow such involvement, concluded the U.S. Court of Appeals for the Ninth Circuit in a decision earlier this year. The case involved a major gold-mining project near Nome, Alaska. Plaintiffs in *Bering Strait Citizens v. U.S. Army Corps of Engineers* alleged that the Corps violated the Clean Water Act and NEPA in issuing a permit for the mining project. The court found no violation and upheld the Corps' decisions. This article summarizes those aspects of the court's opinion that relate to NEPA, specifically whether there is a need to circulate a draft EA, whether the EA was adequate, and whether an EIS should have been prepared.

Public Involvement Required for EAs

Plaintiffs argued that the Corps was required to circulate the draft EA in order to comply with CEQ regulations to "involve environmental agencies, applicants, and the public, to the extent practicable" in preparation of an EA (40 CFR 1501.4(b)). The court stressed, however, that the CEQ "regulations governing public involvement in the preparation of EAs are general in approach," and the court concluded that circulation of a draft EA is not required in every case. "Our conclusion is consistent with the views of other circuits, which uniformly have not insisted on the circulation of a draft EA," the court added.¹

The court then addressed the question: "[W]hat level of public disclosure is required under NEPA before issuance of a final EA?" The court noted that each EA will be prepared under different circumstances and concluded that, "An agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process."

In this case, the court found that the Corps had passed this test by disseminating information about the project widely throughout the community. Steps taken by the Corps included distribution via its website and in a printed public notice describing the project, conducting a public meeting, and accepting public comments on the project. In response, "the Corps received a high level of public comment from the Nome community," the court noted. The court also credited the permit applicant's "substantial efforts to provide additional information to the public," including a weekly newspaper column, local presentations, radio interviews, and joint efforts with state agencies.

EA Deemed Adequate

Plaintiffs alleged that the Corps' EA was inadequate in four areas: cumulative impacts, alternatives analysis, mitigation, and environmental impacts. In regard to cumulative impacts, the court called the EA's discussion succinct but adequate and found that plaintiffs had "not identified any comparable project – past, present, or future – that could call into question the cumulative impacts analysis." The court considered other, smaller-scale mining expected to take place in the vicinity of the proposed project but found that the potential impacts are "not germane to the cumulative impacts assessment of the large-scale hard rock mining project at issue here." Also, the court noted that reclamation that is required after any current mining activities is expected to improve environmental conditions because it will, in part, address impacts from past mining in the area that was completed before reclamation requirements were in force.

The EA only addressed environmental impacts of the applicant's preferred alternative, and plaintiffs alleged that the EA failed to adequately discuss other alternatives. The court pointed out, though, that this preferred alternative was based on consideration of 24 design alternatives and discussions between the applicant and the Corps and/or state officials on at least 59 occasions. Consequently, the court found the analysis of alternatives sufficient, noting that an agency need not consider every available alternative.

Plaintiffs alleged that mitigation plans are inadequate because they were to be fully developed after the project begins. In part, plaintiffs referred to comments from the U.S. Environmental Protection Agency (EPA), which in the words of the court, had objected "to the propriety of issuing the permit while some details of the mitigation plan were not finalized." The court pointed out, though, that "the mitigation plans that have not yet been fully developed are only a small part of the overall mitigation plan" and concluded, "Because the measures overall are developed to a reasonable degree, the Corps could reasonably conclude that additional mitigation measures would be developed after work commenced at the site."

Plaintiffs alleged that the EA did not adequately consider environmental impacts, including air quality, water quality, and biological habitat. In each case, the court found the analysis in the EA adequate, in part by considering an Environmental Information Document that was incorporated by reference into the EA.

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¹ DOE's NEPA regulations require DOE to "provide the host state and host tribe with an opportunity to review and comment on any EA prior to DOE's approval of the EA" (10 CFR 1021.301(d)), and DOE guidance encourages public distribution, particularly to those who request a pre-approval copy of an EA for review.



Litigation Updates (continued from previous page)

EIS Not Required

Finally, the court addressed plaintiffs’ allegations that the Corps should have prepared an EIS, specifically: (1) whether plaintiffs had raised “substantial questions” about the potential environmental impacts, and (2) whether EPA’s disagreement regarding certain mitigation requirements raises a substantial question that requires preparation of an EIS. The court wrote, “An EIS must be prepared if ‘substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.’”²

On the first point, the court concluded, as summarized above, that the EA and referenced Environmental Information Document “show that the Corps undertook a reasonable approach” to address environmental impacts. Quoting a prior Ninth Circuit opinion,³ the court wrote, “Simply because a challenger can cherry pick information and data out of the administrative record to support its position does not mean that a project is highly controversial or highly uncertain.”

On the second point, the court determined that EPA’s objections were limited. As summarized above, the court found the Corps’ approach to mitigation to be reasonable, noting both that finalizing some details after issuing the permit was suggested by U.S. Fish and Wildlife Service

Additional Court Opinion on Mitigation

The Ninth Circuit also addressed mitigation earlier this year in a separate opinion. In *NRDC et al. v. Navy* (related article, below), the court addressed, among other issues, whether mitigation measures discussed in an EA justified a decision not to prepare an EIS. The court acknowledged that mitigation can be relied on for this purpose in some circumstances but added, “However, we have also held that a ‘perfunctory description’ or ‘mere listing of mitigation measures, without supporting analytical data,’ is insufficient to support a finding of no significant impact.”

and that the mitigation would favorably affect parts of the area that suffered environmental damage from previous mining. “That EPA disagreed with the Corps’ assessment does not create a substantial issue requiring an EIS under these circumstances,” the court concluded.

The complete opinion in *Bering Strait Citizens v. U.S. Army Corps of Engineers* (Case No.: 07-35506) is available on the court’s website at www.ce9.uscourts.gov by selecting “Opinions” then searching by date. The court’s opinion was filed on January 3, 2008, and amended on April 30, 2008.

² Quoting *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1212 (9th Cir. 1998).

³ *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1240 (9th Cir. 2005).

Navy Appeals to Supreme Court in Case Involving Emergency Provisions under NEPA

In a case involving the emergency provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.11), the Navy has appealed to the Supreme Court, following an adverse ruling by the U.S. Court of Appeals for the Ninth Circuit. The Court of Appeals on February 29, 2008, affirmed a district court’s preliminary injunction that disagreed with CEQ’s and the Navy’s determination that an emergency exists for purposes of allowing “alternative arrangements” to replace the normal NEPA process (*LLQR*, March 2008, page 19).

The proposed action is a series of major naval training exercises that employ mid-frequency active sonar, including mitigation measures developed with the National Marine Fisheries Service, which reviewed the effectiveness of the mitigation, including the results of their use in recent exercises in the southern California naval training area. These exercises are necessary to certify Navy strike groups for deployment throughout the world, including combat support near Afghanistan and Iraq. The exercises are scheduled to be conducted off the

southern California coast through January 2009, when the Navy expects to have completed an EIS for the use and expansion of the southern California naval training area.

The Court of Appeals order affirmed the district court’s preliminary injunction that permits the Navy to proceed with training exercises on the condition that it use a number of measures to mitigate the potential for harm to marine mammals, harm that the district court found would, “to a near certainty,” result from the Navy’s use of the mid-frequency active sonar.

The Court of Appeals order left in place two mitigation measures that the Navy claims would significantly limit its conduct of training and jeopardize its ability to certify that the Navy forces were ready for deployment. These two measures, which are more restrictive than the mitigation measures the Navy accepted as part of the CEQ alternative arrangements, involve suspending the use of sonar or reducing its level when marine mammals are detected

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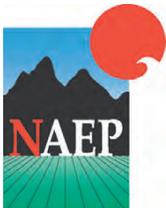
Litigation Updates (continued from previous page)

within certain distances or when certain conditions are present. The Court of Appeals stayed the injunction while the case is pending before the Supreme Court, allowing sonar exercises to proceed under the Navy's mitigation measures until the Supreme Court rules.

The Navy petitioned the Supreme Court for a *writ of certiorari* (petition to review the Court of Appeals decision) on March 31, 2008. Natural Resources Defense

Council filed its opposition brief on May 23 and the Government response is due on June 2, after which time the Supreme Court will determine whether it will review the case.

Natural Resources Defense Council (NRDC) et al. v. Winter, Secretary of the Navy. See www.ca9.uscourts.gov, Case No.: 08-55054 and www.supremecourtus.gov/docket/docket.html, Case No.: 07-1239. 



NEPA Litigation Scorecard Examined

For the first time in several years, the Government did not win the majority of NEPA cases decided in 2007, said Lucinda Low Swartz, Battelle Memorial Institute, in her annual update of recent NEPA cases for NAEP Conference participants. In 28 substantive decisions involving the implementation of NEPA, she explained, the Government prevailed in 12 cases (43 percent).

DOE, involved in three cases, won two (*Citizens for Alternatives to Radioactive Dumping et al. v. DOE et al.*, *LLQR*, June 2007, page 21; *Coalition on West Valley Nuclear Wastes et al. v. DOE, LLQR*, December 2007, page 22), but lost *Natural Resources Defense Council et al. v. DOE et al.* (concerning remediation of Area IV of the Santa Susanna Field Laboratory in California; *LLQR*, June 2007, page 20).

Litigation themes generally paralleled those for 2006, Ms. Swartz explained: Courts upheld decisions where the agency could demonstrate that it had given potential environmental impacts a "hard look." Conversely, courts invalidated decisions where the agency failed to do so. Courts invalidated NEPA documents that were not based on the best available science or that used faulty scientific methodologies, and invalidated decisions where the agency could not demonstrate that it had applied a categorical exclusion (or considered extraordinary circumstances when doing so) at the time the decision was made.

Regarding cumulative impacts, courts upheld NEPA documents that properly analyzed the cumulative impact of the proposed action with other projects and invalidated NEPA documents that failed to fully consider them. Those upheld were *Miccosukee Tribe of Indians v. United States* (S.D. Fla., July 30, 2007; No. 02-22778), an Army Corps of Engineers' analysis of water and flood control in southern Florida, and *Natural Resources Defense Council v. Kempthorne* (D. D.C., November 30, 2007; No. 07-1709), a Bureau of Land Management analysis of natural gas development in Wyoming.

Those not upheld include *Center for Biological Diversity v. National Highway Traffic Safety Administration* (*LLQR*, December 2007, page 24; related article page 12). Three others not upheld were *Oregon Natural Resources Council Fund v. Brong* (9th Cir., July 24, 2007; Nos. 05-35062, 05-35063) concerning logging after a forest fire, *Oregon Natural Resources Council Fund v. Goodman* (9th Cir., September 24, 2007; No. 07-35110) concerning an endangered species, and *Sierra Club v. United States Army Corps of Engineers* (W.D. Missouri, May 24, 2007; No. 03-04254) concerning levee work along the Missouri River.

Ms. Swartz, formerly the Council on Environmental Quality Deputy General Counsel and long-time associate of DOE's NEPA Community, left Battelle in April 2008 to work on her own.

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; please check with the course provider.

- American Law Institute - American Bar Association
800-CLE-NEWS
www.ali-aba.org
Environmental Due Diligence in the Era of Climate Change
Live Webcast: Jul 23
\$199
- Northwest Environmental Training Center
206-762-1976
rsobol@nwetc.org
www.nwetc.org
Wetlands Demystified! Navigating the Complicated World of Wetland Delineation, Regulation, and Restoration
Troutdale, OR: Jul 8-10
\$695
NEPA & CEQA Workshop
Pasadena, CA: Jul 15-16
\$495
NEPA: Writing the Perfect EA/FONSI or EIS
Phoenix, AZ: Aug 6-7
\$495
Helena, MT: Sep 3-4
\$495
Lacey, WA: Oct 8-9
\$495
- 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
Ecological Risk Assessment: Theory and Practice
Durham, NC: Jun 23-27
\$1,150
Tribal Consultation
Keystone, CO: Aug 6-8
\$800
Accounting for Cumulative Effects in the NEPA Process
Durham, NC: Sep 10-12
\$800
- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
Overview of the NEPA Process
Olympia, WA: Jul 15
\$355 (GSA contract: \$265)
Clear Writing for NEPA Specialists
New Orleans, LA: Jul 15-17
\$845
NEPA Climate Change Analysis
San Antonio, TX: Jul 22-23
\$715 (GSA contract: \$625 until 6/4/08)
Jacksonville, FL: Sep 23-24
\$715 (GSA contract: \$625 until 8/13/08)
How to Manage the NEPA Process and Write Effective NEPA Documents
Portland, OR: Jul 29-Aug 1
\$1,115 (GSA contract: \$1,025 until 6/11/08)
Reviewing NEPA Documents
Phoenix, AZ: Aug 18-20
\$894 (GSA contract: \$804 until 7/2/08)
NEPA Project and Program Management
Phoenix, AZ: Aug 21-22
\$694 (GSA contract: \$604 until 7/2/08)
NEPA Cumulative Effects Analysis and Documentation
Dallas/Ft. Worth, TX: Sep 16-18
\$915 (GSA contract: \$825 until 8/6/08)
How to Manage the NEPA Process – Emphasis on Native American Issues
Las Vegas, NV: Sep 30-Oct 2
\$915 (GSA contract: \$825 until 8/13/08)
NEPA Certificate Program
Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.
\$4,955 (includes tuition, course fees, and all materials)
Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922;
judy.kurtzman@usu.edu;
www.cnr.usu.edu/htm/students/graduate_programs/nepa

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Training Opportunities

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Customized NEPA Training

- Environmental Training & Consulting International, Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.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 Impact Training
512-940-7969
info@eiatraining.com
www.eiatraining.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 Planning Strategies, Inc.
563-332-6870
jleeeps@mchsi.com
www.jlee-eps.com/workshops.php

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

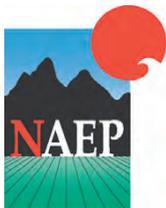
Length tailored to need

NEPA: Powerful Planning Focusing on Purpose and Need

3-4 days

Developing and Implementing Effective NEPA Planning Strategies

Length tailored to need



“Green” Conference

Planners for the April Conference of the National Association of Environmental Professionals and the California Association of Environmental Professionals went “green.” Conference bags and lanyards were 100% natural fiber. Lanyards and name badges were collected for reuse and recycle. Food was served in bulk whenever possible to minimize packaging, and no plastic utensils were used. Conference participants received a water bottle that they were able to refill at the conference and save for use afterwards; no bottled water was served. Individuals could choose to reuse hotel linens. (See *LLQR*, June 2007, page 19, for more information on “green” meetings and conferences.)



EAs and EISs Completed January 1 to March 31, 2008

EAs

Bonneville Power Administration

DOE/EA-1576 (3/28/08)

Olympic Peninsula Transmission Line Reinforcement Project, Clallam, Jefferson, Kitsap, Harbor, Mason, and Thurston Counties, Washington

Cost: \$130,000

Time: 17 months

Livermore Site Office/

National Nuclear Security Administration

DOE/EA-1442-R (1/25/08)

Revised Environmental Assessment for the Proposed Construction and Operation of a BSL-3 Facility at Lawrence Livermore National Laboratory, Alameda County, California

Cost: \$25,000

Time: 13 months

Oak Ridge Operations Office/Office of Science

DOE/EA-1575 (2/20/08)

Oak Ridge Science and Technology Project at the Oak Ridge National Laboratory, Oak Ridge, Tennessee

Cost: \$57,000

Time: 18 months

Western Area Power Administration

DOE/EA-1389 (2/20/08)

Charlie Creek-Williston Transmission Line Fiber Optic Overhead Ground Wire Installation Project, McKenzie and Williams Counties, North Dakota

Cost: \$345,000

Time: 83 months

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

Cost: \$80,000

Time: 6 months

* Not previously reported in LLQR

EISs

Western Area Power Administration

DOE/EIS-0323-S1 (73 FR 16672, 3/28/08)

(EPA Rating: EC-2)

Sacramento Area Voltage Support Supplemental Environmental Impact Statement, Sacramento, Sutter, and Placer Counties, California

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

Time: 22 months

DOE/EIS-0376 (72 FR 18644, 4/13/07)*

(EPA Rating: LO)

White Wind Farm Project, Construct a Large Utility-Scale Wind-Powered Electric Energy Generating Facility, Brookings County, South Dakota

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

Time: 26 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 4 EAs for which cost data were applicable was \$93,000; the average cost was \$139,000.
- Cumulatively, for the 12 months that ended March 31, 2008, the median cost for the preparation of 16 EAs for which cost data were applicable was \$104,000; the average was \$165,000.
- For this quarter, the median completion time for 4 EAs was 18 months; the average was 33 months.
- Cumulatively, for the 12 months that ended March 31, 2008, the median completion time for 18 EAs was 22 months; the average was 30 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended March 31, 2008, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1,571,000; the average was \$2,331,000.
- For this quarter, the median and average completion times for 2 EISs were 24 months.
- Cumulatively, for the 12 months that ended March 31, 2008, the median completion time for 8 EISs was 24 months; the average was 30 months.

Recent EIS-Related Milestones (March 1 to May 31, 2008)

Notices of Intent

Office of Energy Efficiency and Renewable Energy

DOE/EIS-0403

*Programmatic Environmental Impact Statement
for Solar Energy Development* (co-lead: Bureau
of Land Management)

May 2008 (73 FR 30908, 5/29/08)

Office of Environmental Management

DOE/EIS-0402

*Remediation of Area IV of the Santa Susana
Field Laboratory, Ventura County, California*

May 2008 (73 FR 28437, 5/16/08)

Office of Fossil Energy

DOE/EIS-0385-S1

*Supplemental Environmental Impact Statement
for Site Selection for the Expansion of the Strategic
Petroleum Reserve, Mississippi*

March 2008 (73 FR 11895, 3/5/08)

[Additional scoping meeting: 73 FR 15150, 3/21/08]

Draft EIS

Bonneville Power Administration

DOE/EIS-0397

*Lyle Falls Fish Passage Project, Klickitat County,
Washington*

March 2008 (73 FR 16672, 3/28/08)

Final EIS

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*

May 2008 (73 FR 28461, 5/16/08)

Additional Public Hearing

National Nuclear Security Administration

DOE/EIS-0236-S4

*Complex Transformation Supplemental
Programmatic Environmental Impact Statement*

March 2008 (73 FR 12409, 3/7/08)

(continued on next page)

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

Extension of Comment Period

National Nuclear Security Administration

DOE/EIS-0236-S4

Complex Transformation Supplemental Programmatic Environmental Impact Statement
April 2008 (73 FR 19829, 4/11/08)

Records of Decision

Bonneville Power Administration

DOE/EIS-0312

Fish and Wildlife Implementation Plan
May 2008 (73 FR 26380, 5/9/08)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0361

Western Greenbrier Co-Production Demonstration Project, Greenbrier County, West Virginia
April 2008 (73 FR 23214, 4/29/08)

Western Area Power Administration

DOE/EIS-0323-S1

Sacramento Area Voltage Support Project, Sacramento, Sutter, and Placer Counties, California
May 2008 (73 FR 24970, 5/6/08)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0285-SA-354*

Vegetation Management along the SnoKing Tap to Echo Lake - Monroe No. 1, 500 kV Transmission Line Corridor, Snohomish County, Washington

(Decision: No further NEPA review required)
January 2008

DOE/EIS-0285-SA-355*

Vegetation Management along the Metaline Falls Tap to Colville - Boundary No. 1, 115 kV Single Circuit Transmission Line Corridor Right-of-Way from Structure 1/1 to 1/11, Pend Oreille County, Washington

(Decision: No further NEPA review required)
January 2008

*Not previously reported in LLQR

DOE/EIS-0285-SA-356*

Vegetation Management along the North Bonneville - Ross No. 1 and No. 2, 230 kV Transmission Line Corridors; along the Sifton - Fishers Road No. 1, 115 kV Transmission Line Corridor; and along the Ross - Vancouver Shipyard No. 1, 115 kV Transmission Line Corridor, Clark and Skamania Counties, Washington

(Decision: No further NEPA review required)
January 2008

DOE/EIS-0285-SA-357*

Vegetation Management within the Cape Blanco Beam Path, Curry County, Oregon

(Decision: No further NEPA review required)
January 2008

DOE/EIS-0285-SA-358

Vegetation Management along the Olympia - Grand Coulee 287 kV and Olympia - South Tacoma 230 kV Transmission Line Corridors, Pierce and Thurston Counties, Washington

(Decision: No further NEPA review required)
March 2008

DOE/EIS-0285-SA-359

Vegetation Management along the Kitsap - Bremerton No. 1, 115 kV Transmission Line Corridor, Kitsap County, Washington

(Decision: No further NEPA review required)
April 2008

DOE/EIS-0285-SA-360

Vegetation Management along the Paul - Satsop No. 1, 500 kV, Paul - Olympia No. 1, 500 kV, and Chehalis - Olympia No. 1, 230 kV Transmission Line Corridors, Grays Harbor, Lewis, and Thurston Counties, Washington

(Decision: No further NEPA review required)
March 2008

DOE/EIS-0285-SA-361

Vegetation Management along the Chief Joseph - Monroe No. 1, 500 kV Transmission Line Right-of-Way from Structure 35/2 to 64/5 and Chief Joseph - Snohomish No. 3 and 4, 345 kV Transmission Line Right-of-Way from Structure 35/2 to 64/5, Chelan County, Washington

(Decision: No further NEPA review required)
March 2008

DOE/EIS-0285-SA-362

Vegetation Management along the Grand Coulee - Bell Transmission Line Corridor, Grant, Lincoln, and Spokane Counties, Washington

(Decision: No further NEPA review required)
March 2008

(continued on next page)

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

DOE/EIS-0285-SA-363

Vegetation Management along the Kitsap - Bangor No. 1, 115 kV Transmission Line Corridor, Kitsap County, Washington

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-364

Vegetation Management along the Tacoma - Raver No. 1 and 2, 500 kV Transmission Line Right-of-Way from Structure 1/1 to 15/6, Pierce and King Counties, Washington

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-365

Vegetation Management along the McNary - Roundup, McNary Powerhouse, Lower Monumental - McNary, McNary - Badger Canyon No. 1, and Radar Tap Transmission Line Corridors, Umatilla, Benton, and Franklin Counties, Washington

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-366

Vegetation Management along the Paul - Allston No. 2 et al., 500 kV, 230 kV, and 115 kV Transmission Line Corridors, Cowlitz and Lewis Counties, Washington, and Columbia County, Oregon

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-367

Vegetation Management along the Satsop - Aberdeen No. 2 and 3 (1/1 to 21/3) and Satsop Park - Cosmopolis No. 1 (7/6 to 16/7) Transmission Line Corridors, Grays Harbor County, Washington

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-368

Vegetation Management along the Taft - Hot Springs No. 1, 500 kV Transmission Line Corridor Right-of-Way from Structure 1/1 to Structure 22/1, Mineral and Sanders Counties, Montana

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-369

Vegetation Management along the Raver - Paul No. 1, 500 kV Transmission Line Corridor, Pierce and King Counties, Washington

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-370

Vegetation Management along the St. Johns - St. Helens No. 1 and St. Helens - Alston No. 1, 115 kV Transmission Line Corridors, Multnomah and Columbia Counties, Oregon

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-371

Vegetation Management along the Chehalis - Centralia No. 1, 69 kV and Chehalis - Centralia No. 2, 115 kV Transmission Line Corridors, Lewis County, Washington

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-372

Vegetation Management along the Elbe Tap to Alder - LaGrande 115 kV, and Lynch Creek Tap to LaGrande - Cowlitz 115 kV Transmission Line Corridors, Pierce County, Washington

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-373

Vegetation Management along the Cheney Tap to Silver Lake - Sunset, 115 kV Transmission Line Corridor Right-of-Way from Structure 1/1 to 10/5, Spokane County, Washington

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-374

Vegetation Management along the St. Johns - Keeler No. 2, 115 kV Transmission Line, Tower 3/4 to Keeler, Multnomah and Washington Counties, Oregon

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-375

Vegetation Management along the Hungry Horse - Conkelley No. 1, 230 kV Transmission Line Right-of-Way from Structure 1/1 to 10/2 and along the Hungry Horse - Columbia Falls No. 1, 230 kV Transmission Line Right-of-Way from Structure 1/1 to 8/8, Flathead County, Montana

(Decision: No further NEPA review required)

May 2008

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.

Note: The server supporting the Lessons Learned online questionnaire was deactivated in late April due to security concerns. Persons trying to use the questionnaire experienced an array of problems, including the disappearance of completed submissions. This report is based on questionnaires submitted online before loss of service, or via other means. We value your input and apologize for any inconvenience. Please contact Vivian Bowie at vivian.bowie@hq.doe.gov if you have any questions.

Scoping

What Worked

- *Pre-scoping workshop.* At the beginning of the NEPA process, DOE hosted a workshop for the alternative site teams and the industrial partner to: (1) provide an overview of the NEPA process, (2) express DOE's expectations for information and support for the NEPA process, and (3) answer any questions.
- *Informal sessions.* Informal sessions before the formal portion of the scoping meetings provided a good opportunity for information exchange between the project representatives and the public.
- *Exhibits and models.* Exhibits at the scoping meeting served as conversation starters and provided members of the public with a better understanding of the project.
- *Active participation by site proponents in the scoping meetings.* The local site proponents facilitated communication, helped set up media events, and assisted with logistical needs.

What Didn't Work

- *Failure to discuss concerns garnered from scoping meeting.* Insufficient time remained after the scoping meeting for a debriefing with the DOE team members and local site proponents.
- *Lengthy speeches by officials.* DOE allowed public officials to speak for too long at scoping meetings, taking valuable time from other speakers. Before the public hearings for the draft EIS, DOE worked with stakeholders to better allocate time among participants.

Data Collection/Analysis

What Worked

- *Early environmental input.* Environmental information prepared by the applicant was helpful and delivered early in the process.
- *Excellent contractor support.* The EIS contractor appropriately directed information collection efforts, filled data gaps, and provided extensive analytical work.
- *Simulations, analyses, and further data.* Simulations, analyses, and other information provided by the local proponent were helpful in preparing the EIS.
- *State-of-the-art risk assessment.* Because of the unprecedented nature of the proposal, a special study was commissioned to prepare a comprehensive risk assessment of carbon sequestration.
- *Contractor principals involved.* The EIS preparation contractor committed the resources needed to complete the work in a timely fashion.

What Didn't Work

- *Lack of direct involvement by EIS drafters.* Drafters of the EIS did not develop as much understanding of the issues and potential impacts of the proposed action as they would have obtained from gathering information for themselves. The contractor would have preferred to gather its own data rather than depend on data gathered by the industrial partner.
- *Lack of time.* The EIS was drafted over a 4-week period that included major holidays, and far too little time was allotted to write, assemble, edit, and proofread the draft EIS prior to DOE review. As a result, extensive revision of the document was required after DOE review.

(continued on next page)

Questionnaire Results

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

- *Insufficient time for QA/QC.* The schedule and process provided too little time for thorough analysis, general editing, and quality assurance/quality control, resulting in delays during the approval process.
- *Frequent communication.* Close and constant communication between the organizations comprising or contributing to the NEPA team facilitated the timely completion of the EIS.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Detailed schedule and statement of work.* A detailed schedule and a statement of work, both focused on the EIS process steps and deliverables, effectively communicated what was expected, and facilitated better planning and more realistic cost estimates.
- *Widespread support.* The EIS process was completed in a timely manner. This was made possible by a tremendous amount of goodwill from all organizations involved. The project generated enthusiasm because of the widespread belief that it would benefit society and provide outcomes needed to mitigate environmental and economic harms.

Factors that Inhibited Timely Completion of Documents

- *Terrorism analysis.* Defining expectations for a new analysis in the EA, regarding terrorism/intentional destructive acts, took considerable time.
- *Changes in scope.* Changes in the proposed action's scope made timely completion of the EA difficult.
- *Overly aggressive schedule is counterproductive.* While an aggressive schedule may be appropriate, a schedule must be achievable or quality problems may result in delays. Sufficient time should be allocated to develop NEPA documents.

Teamwork

Factors that Facilitated Effective Teamwork

- *Effective contractor teaming arrangement.* The strengths of three firms combined into a NEPA contractor team achieved more as a whole than an individual firm could have accomplished.
- *Team leadership.* Excellent leadership and a results-oriented attitude on the part of all organizational units led to a superior outcome. Needs were met quickly once they were identified.

- *Weekly conference calls.* Weekly conference calls helped to orient all involved in drafting the EIS and allowed for faster resolution of problems.
- *Established points of contact.* Routing requests for information through established points of contact reduced the potential for confusion and inaction.
- *Status as an "informal" cooperating agency.* Serving as an "informal" cooperating agency simplified the process for coordinating document reviews and resolving comments between agencies, but still allowed for meaningful participation.

Factors that Inhibited Effective Teamwork

- *Too many voices.* The participation of about 50 people in preparing the EIS made it difficult for the contractor's project manager to fit all the pieces of the EIS together seamlessly. A small number (e.g., 5 to 7) of "resource leads" should write their respective sections of the EIS based on input from others, to achieve a document written in one voice with internal consistency.

Process

Successful Aspects of the Public Participation Process

- *Meetings with neighbors.* The proponent's communications team visited the communities hosting the alternative sites, including residents near the proposed sites, the general public, and local leaders.
- *Qualified lead for communications team.* The communications team was headed by a trained scientist who could effectively communicate the concepts underpinning the project.
- *Meetings with local leaders.* The NEPA team first met with local leaders to both ask and answer questions which served as an effective introduction between the two groups. The local leaders arranged tours and for local experts to meet with the team and provide substantial amounts of information.

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

- *Informal sessions at public meetings.* Informal sessions provided an opportunity for concerned parties to voice their concerns to the appropriate parties and to receive direct responses without having to do so in front of a large audience.
- *Post-hearing debriefs.* Debriefs held after the public hearings provided the best opportunity for DOE, the project proponent, and the EIS team members to compile and discuss the informal comments heard from attendees and to gauge public sentiments and concerns.
- *Community input benefitted project design and plans.* Both the community input and the analyses of the NEPA process had a positive impact on the development of project plans and designs.
- *Public awareness.* People at the alternative sites gained considerable understanding of the project and were suitably introduced to DOE and the industrial participants.
- *Bridge for future projects.* Local participation in the EIS process prepared local leaders to participate in planning for another similar project.
- *Dedicated email address.* A dedicated email address enabled electronic capture of comments and allowed DOE to quickly forward actions to responsible parties.
- *Improved facility appearance.* The appearance of the proposed facility received greater attention due to the level of public concern.
- *Incorporation of environmental concerns.* The EIS process allowed environmental concerns to be carefully considered and incorporated into the project plans, designs, and operational practices (including mitigation measures).

Other Issues

Guidance Needs Identified

- *Intentional destructive acts/terrorism guidance.* Guidance that considers intentional destructive acts/terrorism in NEPA documents is recommended.
Editor's Note: See LLQR, December 2006, page 3, for information on DOE's interim guidance on intentional destructive acts.

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 2 EAs and 1 EIS, 2 out of 3 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the process for the project was the most effective he had seen in meeting the intent of NEPA from his perspective and in terms of dealing with the industrial participant.
- A respondent who rated the process as "3" stated that because the land in question was already disturbed, the NEPA process was not as necessary to consider impacts.
- A respondent who rated the process as "2" stated that DOE's NEPA expectations regarding the level of detail used in describing the laboratory's work greatly exceed expectations of other agencies more familiar with the hazards associated with similar type of work.

Unsuccessful Aspects of the Public Participation Process

- *Second public comment period.* DOE received public comments requesting a second opportunity for public comment, after incorporating public comments into the draft EA.
- *Dedicated telephone number.* A dedicated telephone number was established for the public to provide oral comments; however, very few calls were received.
- *Second court reporter.* At meetings and hearings, a second court reporter was put in an area where the public could make recorded oral statements without having to face an audience; however, this accommodation was scarcely used.

Enhancement/Protection of the Environment

- *Protection of public health and safety.* Because of the risk assessment work involved in the EIS, numerous potential concerns were addressed in the planning and design process.

LESSONS LEARNED

September 2, 2008; Issue No. 56

Third Quarter FY 2008

NEPAssist: EPA's New Tool for NEPA Practitioners

Imagine a web-based tool that could “cut” through various sets of environmental data and layer the results meaningfully on a geographic basis.



For a given location, this tool could consolidate information on features specified by the user – for example, proximity to roads, contaminated sites, aquifers, wetlands, minority populations, and critical habitats of

endangered species. This is the essence of NEPAssist, developed for the Office of Federal Activities, Environmental Protection Agency (EPA), and now available for use by National Environmental Policy Act (NEPA) practitioners – including governmental agencies at all levels, parties supporting the preparation of NEPA documents, and – eventually – the public. EPA will introduce NEPAssist to the Department of Energy (DOE) NEPA Community at the September meeting (page 2).

NEPAssist, a web-based nationwide Geographic Information System application, draws environmental data dynamically from multiple sources within the 10 EPA Regions; other Federal agencies such as the Census Bureau; state and local governmental agencies; and private entities. For a project area, the user can

generate a real-time geospatial analysis report on environmental features in proximity to the project location and potential environmental impacts.

“NEPAssist is a powerful tool with great potential to help access, interpret, and present geospatial data relevant to environmental decisions,” said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, at the July meeting of Federal NEPA Contacts.

What Can You Do with NEPAssist?

- Specify a project location by address, county, airport code, watershed, or latitude and longitude
- Digitize a specific project area
- Turn on or off different layers of data: for example, geophysical, environmental, demographic, socioeconomic, and health information
- Analyze a location for the presence or absence of, or the distance to, specified environmental conditions: Is the site within 400 feet of a 100-year floodplain? Where is the closest school?
- Add in an aerial photo, topographical map, or satellite image
- Save a NEPAssist session for further development or email it to others for review

(continued on page 6)



Making NEPA Work for DOE – more on page 2

2008 Meeting of the DOE NEPA Community – Washington, DC

Sep 24 – a.m.
NEPA Compliance
Officers

Sep 24 – p.m.
NEPA
Training

Sep 25
DOE NEPA
Community

Inside **LESSONS LEARNED**

Welcome to the 56th quarterly report on lessons learned in the NEPA process. We are pleased to feature EPA's web-based tool for NEPA practitioners, as well as the new DOE NEPA Website. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

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Carol Sorgetron
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, 2008. Contact Yarden Mansoor at yarden.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 3, 2008

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2008 (July 1 through September 30, 2008) should be submitted by November 3, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at www.gc.energy.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.



Printed on recycled paper



This icon indicates that LLQR online (www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.

Making NEPA Work for DOE: September Meeting

The 2008 Meeting of the DOE NEPA Community is now just days away. In addition to the NEPA Compliance Officers meeting in the morning of September 24 and training open to all in the afternoon, the agenda for the plenary session on September 25 has evolved:

- David Hill, DOE General Counsel, will explore the meeting's theme, *Making NEPA Work for DOE*, and Ted Boling, General Counsel, Council on Environmental Quality, will discuss current NEPA issues.
- Members of the Yucca Mountain Environmental Impact Statement (EIS) team – including the NEPA Document Manager, contractors, and the Bureau of Land Management project manager – will offer perspectives on *Taking Ownership* of the NEPA process.
- Robert Hargrove, Director of the NEPA Compliance Division, Office of Federal Activities, and

Environmental Protection Agency staff will introduce and demonstrate NEPAassist (page 1), a new geospatial web-based service.

- DOE General Counsel staff will discuss “hot topics” – including NEPA and applicant processes, and greenhouse gas emissions and global climate change in NEPA documents.

Training sessions will offer a choice from among *NEPA Fundamentals*, *Using the Greenbook to Avoid NEPA Pitfalls*, and *NEPA and Applicant Processes* in the first session and *Effective Leadership, EIS Distribution and Comment Response*, and the *DOE Supplement Analysis Process* in the second.

Registration by September 5 is requested. For more information and to register, contact Jim Sanderson at jim.sanderson@hq.doe.gov or 202-586-1402. 



Loan Guarantee Office Plans NEPA Compliance Reviews

DOE's Loan Guarantee Program Office is gearing up to conduct a number of NEPA reviews for proposed commercial-scale projects that would use new or significantly improved energy technologies as part of DOE's decisionmaking on whether to grant loan guarantees to project sponsors.

An initial solicitation for proposed projects was held in 2006 under guidelines then in effect ([LLQR, March 2008](#), page 11; [December 2007](#), page 25). Under regulations established in late 2007 (72 FR 60116; October 23, 2007), DOE announced three solicitations on June 30, 2008, for clean energy projects that employ innovative energy efficiency, renewable energy, and advanced transmission and distribution technologies (up to \$10 billion); advanced nuclear power facilities (up to \$18.5 billion); and advanced front end nuclear fuel cycle facilities (up to \$2 billion). DOE plans to issue another solicitation later this month for Federal loan guarantees for coal-based power generation and industrial gasification (up to \$6 billion) and advanced coal gasification (up to \$2 billion).

Some loan guarantee applications are expected to involve projects that are also candidates for financial assistance (e.g., grants, cooperative agreements) from the Office of Fossil Energy (through the National Energy Technology Laboratory) or the Office of Energy Efficiency and Renewable Energy (through the Golden Field Office). "Coordination among the affected DOE offices is needed to assure an adequate and efficient NEPA process,"

said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. "Also, coordination with the Nuclear Regulatory Commission will be important for proposed nuclear power and nuclear fuel cycle projects," she said.

Applicant Environmental Information Required under 2008 Solicitations

The solicitations include a request for environmental information and describe DOE's strategy for NEPA review of private sector proposals. Applicants must provide enough information for DOE to determine the level of NEPA review required and to support preparation of the NEPA document, if an applicant were selected to begin negotiations with DOE on the terms of a potential loan guarantee. If the number of qualified applicants exceeds the appropriations authority, the applicant's environmental information would also assist DOE in preparing an environmental critique under 10 CFR 1021.216 of the DOE NEPA implementing regulations for use in selecting among the qualified applicants. Guidance on the NEPA process, including a list of environmental data to include in an application, is provided in the solicitations.

The solicitations are available at www.lgprogram.energy.gov. For further information about the NEPA process for DOE's loan guarantees, contact Matt McMillan, Director, NEPA Compliance Division, Loan Guarantee Program Office, at 202-586-8336 (related article, page 16). 

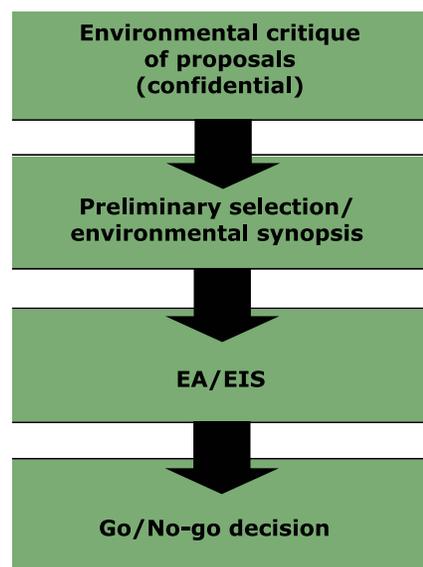
Environmental Process When Private Sector Proposals Compete – 10 CFR 1021.216

If the number of qualified private sector proposals exceeds the amount of DOE resources available, DOE would follow the process outlined in 10 CFR 1021.216 of the DOE NEPA regulations.

First, DOE would conduct a comparative environmental evaluation of qualified proposals and prepare an *Environmental Critique*, tailored to confidentiality requirements of the selection process.

Once preliminary selections among the qualified proposals are made, DOE would issue a publicly-available *Environmental Synopsis* to describe how environmental considerations were factored into deciding which proposals to consider further for DOE assistance.

Then, DOE would prepare an EA or EIS for each proposal under consideration before the final ("go/no-go") decision on each.



New DOE NEPA Website Launched

By: Denise C. Freeman, Office of NEPA Policy and Compliance

It's time to update your bookmarks and website links. The NEPA Office has recently launched a new version of the DOE NEPA Website at a new Internet address: www.gc.energy.gov/nepa.

The new website has been fundamentally redesigned to be more user friendly, using standardized DOE "energy.gov" templates.

Users will find they need fewer clicks or key strokes and less time to find and download information. Faster content accessibility has been enabled through a streamlined menu system, more intuitive navigation labels, improvements to the underlying HTML coding and supporting databases, and smaller ("optimized") file sizes. In addition, an improved site architecture and search tool should result in faster and more effective searches for information. Online tools, such as the Lessons Learned Questionnaire, should operate more reliably.

Please note that using the old website address will result in a redirect to the new site, so it is not necessary to modify existing documents or notices that cite the old address. However, links to specific documents on the old site will not work; users will need to locate the documents on the new site.

The DOE NEPA Website has served as the focal point for DOE NEPA practice since it was created in 1993. The new website contains all of the content from the former website, including:

- Information about current NEPA events
- A calendar of public participation opportunities
- A centralized archive of DOE NEPA documents
- NEPA and related requirements (including the NEPA statute, DOE and Council on Environmental Quality (CEQ) implementing regulations, the DOE NEPA Order, and Executive Orders)
- Comprehensive DOE and other guidance (including the DOE *NEPA Compliance Guide* and frequently used DOE and CEQ guidance on a range of topics)
- *Lessons Learned Quarterly Reports*
- DOE NEPA document status and schedules
- NEPA contracting information
- NEPA annual planning summaries
- DOE NEPA points of contact (new)
- Links to other NEPA websites



Electronic Document Archive

The NEPA document archive (under the DOE NEPA Documents tab) is the only centralized electronic collection of DOE NEPA documents and is among the most frequently used site features. The collection includes:

- Environmental assessments (EAs)
- Findings of no significant impact
- Draft and final EISs
- Notices of intent, notices of availability, and records of decision (RODs)
- Supplement analyses (SAs)
- Other NEPA-related documents (mitigation action plans, floodplain and wetland assessments, and floodplain statements of findings)

While most of these documents are publicly available online, DOE has limited the public's access to some of them. Most of the limited access documents are EAs and EISs issued in 2001 or earlier for which new security reviews for Internet publication have not been conducted. These documents are contained on a secure server accessible only by password. Passwords may be provided to DOE employees, contractors helping DOE prepare NEPA documents, and Federal, state, local, and tribal governmental officials. While members of the general public cannot obtain online access to documents on the secure server, upon request DOE will provide paper copies as available or electronic formats (e.g., compact disks).

Notwithstanding the inconvenience of limited access to some documents, DOE NEPA practitioners and

(continued on next page)

All password account holders need to re-apply for a new password to access documents on the secure server of the new DOE NEPA Website. This is necessary to comply with current security requirements, and applies to those who received a new password on or before August 15, 2008.

members of the public have told us of the value of maintaining the electronic document archive. The documents are valuable to NEPA document preparers seeking past examples of approved documents, to members of the public to help them in formulating comments on new documents, as references in new NEPA documents (especially when few paper copies of the original document are available), and for general research purposes (such as studies of how particular environmental issues previously have been addressed).

New Web Posting Procedures

Maintaining the archive, however, is resource intensive, requiring cooperation from the DOE NEPA Community to ensure the accuracy and completeness of the collection. To that end, we have revised the procedures for submitting documents for publication. The procedures are posted online and summarized in the text box.

Regarding completeness, while the archive includes nearly all EAs and EISs issued since the mid-1990s, several SAs and a few EAs have not been posted. Recently, the SAs were needed as references in a new NEPA review, which could have been delayed had we not been able to find and post the documents. NEPA Compliance Officers are reminded of their obligation under DOE Order 451.1B to provide electronic files and paper copies of completed NEPA documents, including SAs, EAs, findings of no significant impact, draft and final EISs, RODs, and mitigation action plans.

The revised document posting procedures include technical recommendations to optimize file size before submitting for posting. This is important to enable reasonable download times and ensure the long-term integrity of the archive. For example, several EISs on

Highlights of New DOE NEPA Website Document Posting Procedures

- For EISs and other NEPA documents – please notify the DOE NEPA Website Manager, Denise Freeman, and submit three paper copies (for archives) and the electronic files (no password or write protection, please) of completed documents via overnight mail to:

Denise Freeman
Office of NEPA Policy and Compliance (GC-20)
1000 Independence Avenue, SW
Washington, DC 20585-0103
202-586-7879

- State the security review status of the document (whether the document may be made publicly available online).
- Provide key words.
- Optimize electronic files, especially images and other graphics.
- Use recommended file naming conventions.

The new procedures are available on the DOE NEPA Website under Guidance, then Selected Guidance Tools (look under Other Tools).

the previous website appeared to be missing sections. However, the sections had been placed in a new electronic appendix that did not exist in the original document, apparently because the sections contained extremely large graphic files. These files could have been reduced in size (optimized) before submission to be posted, so that the original document would appear the same online as it appears in paper. The concern is not limited to old documents. Some EISs recently submitted for posting contained extremely large graphics (e.g., high-resolution photographs and other images) that could have been optimized before submission for posting.

Feedback Welcome

We are planning additional website improvements and consider this a work in progress. We are always open to comments and suggestions. If you have any questions or feedback regarding the DOE NEPA Website, please contact Denise Freeman at denise.freeman@hq.doe.gov or 202-586-7879. 

Two USDA Agencies Revise NEPA Procedures

The Natural Resources Conservation Service (NRCS) and the Forest Service, both agencies within the U.S. Department of Agriculture, recently modified their NEPA procedures. NRCS introduced provisions for a programmatic EA and made its procedures on the timing of a finding of no significant impact (FONSI) consistent with Council on Environmental Quality (CEQ) requirements. The Forest Service addressed practices such as adaptive management and codified its procedures.

Natural Resources Conservation Service



NRCS may now prepare a “program” (i.e., programmatic) EA when a program EIS is not required and the proposed

program is not categorically excluded, or to aid in decisionmaking and NEPA compliance. The revisions also establish that the “Responsible Federal Official” will determine whether a tiered site-specific EA or EIS is required for an action included in a program EA or EIS. A revised NEPA compliance flowchart shows the role of a program EA and associated tiering in the Service’s planning process.

Publishing a notice of availability in the *Federal Register* for an EA and FONSI and allowing for a 30-day public review before implementing the action – a requirement that NRCS formerly applied to every EA and FONSI – now applies only to an EA and FONSI for an action for which NRCS would normally prepare an EIS or that has no precedent in the agency, language that mirrors 40 CFR 1501.4(e)(2) of the CEQ regulations. Under the revised rule, NRCS will provide for public involvement during the preparation of an EA and FONSI for actions that do not require a 30-day review of the EA and FONSI, including appropriate methods (such as local media) for publicizing their availability, allowing NRCS to implement actions within a shorter time frame while meeting the requirements and intent of NEPA.

NRCS issued the amendments to its NEPA regulations as an interim final rule (73 FR 35883; June 25, 2008) – effective on the date of publication, and received no comments during a 30-day public review period. NRCS NEPA regulations are found at 7 CFR Part 650.

Forest Service

The Forest Service announced that it has revised its NEPA procedures to better align them with current practice in decisionmaking, collaboration, and adaptive management, and to reflect CEQ guidance. In addition, the Forest Service moved its NEPA procedures from the *Forest Service Manual*



and *Forest Service Handbook* to the *Code of Federal Regulations*, where they will be codified at 36 CFR Part 220. The final rule (73 FR 43084; July 24, 2008,) responds to comments on the proposed rule (72 FR 45998; August 16, 2007). It provides for an optional incremental process for EIS preparation, as described in [LLQR, June 2008](#), page 9, but does not provide for circulation of preliminary draft or final EISs as proposed. Forest Service NEPA guidance remains in the revised *Forest Service Handbook*, Section 1909.15 (www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?1909.15), to facilitate timely responses to new information, procedural interpretation, training needs, and editorial changes. [L](#)

NEPAssist (continued from page 1)

EPA is expanding NEPAssist capabilities through partnerships with Federal and state agencies to improve the tool and incorporate additional data. To further enhance functionality, EPA is incorporating a Microsoft “Virtual Earth” mapping interface that is scheduled to be deployed this fall.

Use of NEPAssist has many benefits. It is designed to raise important environmental issues at the earliest stages of project development, focus in-depth reviews on projects likely to have significant environmental impacts, help direct project siting to areas that are the least environmentally sensitive, and facilitate collaboration among agencies during the review of NEPA documents.

For DOE NEPA practitioners, NEPAssist could prove most useful in screening candidate sites for proposed actions – such as technology demonstration projects and applicant projects – that would not be located on DOE lands (for which DOE already has extensive environmental information).

The NEPAssist website is <https://iasint.rtpnc.epa.gov/NEPA>. The user-friendly site is accessible without a license and does not require any special desktop configuration, but a password is needed. For further information or to apply for a password, contact Aimee Hessert, EPA Office of Federal Activities, at hessert.aimee@epa.gov or 202-564-0993. [L](#)

Administration Seeks Agency Collaboration on “NEST” Environmental Indicators Program

Three agencies within the Executive Office of the President recently announced a program to develop “high-quality, science-based statistical measures of selected conditions of our environment and natural resources” – information that could be useful in NEPA assessments of environmental impacts. The National Environmental Status and Trends (NEST) Indicators project, launched by the Council on Environmental Quality (CEQ), the Office of Management and Budget, and the Office of Science and Technology Policy, is designed to support high-level policy making and broad program evaluation inside and outside the Federal government.

NEST indicators are envisioned to be the environmental counterpart to the principal Federal economic indicators that are issued regularly and compiled using measurement methods and statistical designs that are consistent across the country and repeated regularly over time. The announcement was accompanied by a policy memorandum to heads of Federal agencies requesting their support for the program, which the Administration expects could be conducted within existing budgets. The policy memorandum outlines a collaborative pilot project to demonstrate the selection and development of NEST indicators of water availability, to include both water quantity and quality.

Management Team to Test Pilot

An interagency Federal Executive Management Team has been formed, with members drawn from the Departments of Agriculture (Forest Service and Natural Resources Conservation Service), Commerce (National Oceanic and Atmospheric Administration), and Interior (Office of the Secretary and U.S. Geological Survey) and the Environmental Protection Agency. The team will develop four major products during the pilot test:

- A clearly defined and well-documented set of attributes for NEST indicators, suitable for evaluating indicator fitness across multiple environmental sectors, not just water availability,
- A set of key policy-related questions that guide indicator creation/selection and that are developed through dialogue with policy makers and the environmental indicator user community,
- An initial set of five to seven NEST indicators for water availability that address key policy-related questions of ongoing, enduring, national and regional interest, and

- An “after action review/lessons learned analysis” that evaluates how well existing institutional arrangements among agencies and partners worked in developing the water availability indicators.

As part of testing the ability to report on five to seven indicators of water availability, the Executive Management Team will identify improvements in data consistency, compatibility, and accessibility needed to serve policy making needs across multiple environmental sectors.

“Most NEST indicators will be produced from data collected by ongoing Federal and State programs. This action plan will improve the quality and uniformity of those data to provide nationally consistent, and more widely accessible, indicators.”

***–James Connaughton, Chairman
Council on Environmental Quality
June 17, 2008***

To promote dialogue within the environmental indicators community, the Executive Management Team will convene a national forum to help identify relevant questions for which statistically rigorous, nationally comparable indicators would inform analyses, evaluations, and policy making. The forum will involve state and local governments, other Federal agencies, universities and research organizations, businesses, and nongovernmental organizations to ensure the relevance, usefulness, and fairness of the indicators to be produced. The Committee on Environment and Natural Resources of the National Science and Technology Council will help identify key observations required to provide the consistent statistical basis for the NEST Indicators pilot project, and develop protocols for agency use in data collection, archiving, and delivery.

The Executive Management Team is led by Richard Guldin, Director of Quantitative Services, Office of Research & Development, U.S. Forest Service, available at rguldin@fs.fed.us or 703-605-4177. Program updates and pilot project results will be issued via a publicly accessible website to be established. Future phases, to be determined, may address environmental indicators for cropland, forests, rangeland, and air quality. 

Making Your Voice Heard – Public Scoping Meetings Held for Santa Susana Field Laboratory Area IV EIS

Situated near the densely populated San Fernando Valley is the Santa Susana Field Laboratory (SSFL). This multi-purpose facility in the hills between Chatsworth and Simi Valley, California, was developed as a remote site to test rocket engines and conduct nuclear research. Area IV was established at SSFL in 1953 by the Atomic Energy Commission (predecessor agency to DOE) and occupies 290 acres of the 2,850-acre Laboratory. As a legacy of the DOE operations at Area IV, both radiological and hazardous contamination on the site require remediation.

DOE is preparing an EIS for Area IV in response to a May 2, 2007, decision by the U.S. District Court of Northern California. The court determined that DOE was in violation of NEPA for its 2003 decision to issue a finding of no significant impact (FONSI), and to conduct remediation of the Energy Technology Engineering Center site (which encompasses 90 acres of Area IV), on the basis of an EA rather than an EIS. 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.”

DOE issued a Notice of Intent (NOI) to prepare an EIS and conduct public scoping meetings on May 16, 2008 (73 FR 28437). Previously, DOE had issued an Advance Notice of Intent (ANOI) on October 17, 2007 (72 FR 58834), in order to inform the public and request early comments and assistance. Informal discussions with both members of the public and other stakeholders resulting from publication of the ANOI aided in the development of the NOI.



Thomas Johnson, Federal Project Director, and Stephie Jennings, NEPA Document Manager, at Area IV of the Santa Susana Field Laboratory

AREA IV NEPA CHRONOLOGY

- March 2003, *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345) and FONSI
- May 2007, decision by the U.S. District Court for the Northern District of California requires DOE to prepare an EIS for the remediation of Area IV of SSFL (*Natural Resources Defense Council et al. v. DOE et al.*)
- October 2007, Advance Notice of Intent
- May 2008, Notice of Intent to Prepare an EIS and Conduct Public Scoping Meetings
- July 2008, Public Scoping Meetings

Early Public Involvement

After publication of the ANOI, DOE began a series of interviews with local stakeholders to obtain early input on the scope of the EIS and remediation activities at Area IV. The interview process was designed to obtain community perspectives on the cleanup and to learn how stakeholders would like to be involved during the development of the EIS. Approximately 60 persons were interviewed, including neighbors, current and former Area IV employees, elected officials, representatives of various state and Federal agencies, the local business community, and persons with environmental or health concerns. The results of the interview were published in a report available on the web (reference below).

Extensive comments and concerns were expressed by stakeholders and regulators about the previous sampling and characterization activities. In response, DOE directed a contractor team to identify and independently review and analyze existing radiological and chemical data to determine what additional data are required for EIS analyses. The data gap study began by considering stakeholder comments on the EA and focused on chemical and radiological contamination, ecological risk concerns, groundwater, and materials from building demolition.

The *Draft Data Gap Analysis Report*, issued in June and available on the web, will guide decisions for additional data collection. The Draft Report recommends additional sampling activities in all media in order to more fully define the nature and extent of contamination in Area IV and to perform the human health and ecological

(continued on next page)

Making Your Voice Heard (continued from previous page)

risk assessment. The results of the sampling effort and the risk assessments will also help evaluate a full range of cleanup alternatives for the EIS. The Report will be finalized after input from regulators and stakeholders is incorporated.

The Draft Report responds to the community's concerns to better understand the type and extent of radiological contamination that remains at Area IV. DOE held two public meetings in June to present the results and recommendations of the Draft Report to the public for comment.

A separate analysis of other data needed to analyze the proposed alternatives of the EIS is also underway. This separate analysis will evaluate data available for other resource areas such as cultural resources, socioeconomics, and transportation to determine what additional data would be needed to complete a thorough analysis for the EIS.

“Open House” Before Formal Meeting Proves Successful – Again

Public scoping meetings were held July 22–24 in Simi Valley, Northridge, and Sacramento, California.

The SSFL Area IV staff began the scoping meetings using the Open House format that DOE has used effectively (*LLQR*, June 2004, page 1; June 2008, page 3) before beginning the more formal scoping meeting.

“We wanted to be responsive to the recommendations from the early interviews,” said Stephanie Jennings, NEPA Document Manager. “Also, the Open House format before the more formal, facilitated scoping meeting gave us the opportunity to use handouts and graphics to explain the rather complex NEPA process for Area IV.” DOE provided a handout entitled, “Making your Voice Heard: Details on Public Scoping Comments.” This handout provided helpful hints on making comments count (text box).

The public scoping period ended August 14. More than 80 individuals attended one of the six scoping meetings, and some stakeholders attended more than one. The comments included concerns and suggestions, including that the Environmental Protection Agency (EPA) conduct a radiological characterization study, all of SSFL be included in the cleanup, protection of endangered species be preserved, cultural resources be evaluated and protected, and an alternative that considers an agricultural scenario as a future use be considered and evaluated. Although not required as part of the DOE NEPA process, the

Making Comments Count¹

- Offer ideas for issues to be considered and alternatives to be evaluated during scoping.
- Sign up for relevant agency mailing lists.
- Make a checklist of the issues you want addressed, give examples, tell what you support and what you don't support.
- Review the draft document, make a checklist of issues not addressed, inconsistencies, omissions, and relevance to issues you consider important – then make your comments.
- Write your comments or make notes if you are presenting them orally.
- Finally, understand comment deadlines and processes.

¹*Adapted from A Citizen's Guide to the NEPA: Having Your Voice Heard, Council on Environmental Quality, December 2007.*

Area IV EIS team will prepare a comment response document after review of all scoping comments. This document will not only respond to the comments, but will also describe how the comments will be considered in the EIS process.

Next Steps

EPA will develop a scope of work, schedule, and cost estimate for a radiological survey of Area IV and areas adjacent to Area IV, based on DOE's Office of Environmental Management July 24 agreement to provide funds to EPA Region 9 to determine site-specific background values at SSFL. “The Record of Decision for the EIS was scheduled to be completed in fall 2010. Now, some of the analysis portions of the EIS will be rescheduled in order to use radiological data obtained by EPA,” said Thomas Johnson, Federal Project Director, for SSFL Area IV.

For additional information on the Area IV EIS, see previous *LLQR* articles ([September 2007](#), page 3; [June 2007](#), page 20), contact Stephanie Jennings at stephanie.jennings@emcbc.doe.gov, or go to the Area IV EIS link at www.etc.energy.gov. 

DOE Conducts Public Scoping for a Transmission Line EA

The Office of Electricity Delivery and Energy Reliability issued a notice of intent to prepare an EA and conduct public scoping meetings for a proposal to grant a Presidential permit to Baja Wind U.S. Transmission, LLC, for an international electric transmission line. The proposed transmission line would originate at a wind generation facility to be located near La Rumerosa, in northern Baja California, Mexico; cross the U.S.-Mexico international border near the community of Jacumba in San Diego County; and extend 1 mile into California, to terminate at a substation to be constructed. If granted, the Presidential permit would authorize only the interconnection and the 1-mile portion of the applicant's proposed transmission line that would be constructed and operated wholly within the United States, but would not require that the line be built.

The *Baja Wind U.S. Transmission Environmental Assessment* (DOE/EA-1608) will assess potential environmental impacts from the proposed action and the range of reasonable alternatives in the United States, and help DOE determine whether to prepare an EIS. As noted in the notice of intent (73 FR 45218; August 4, 2008), DOE believes an EA is appropriate, based on the short length of the proposed transmission line and small anticipated environmental impacts in the United States. If DOE determines that an EIS is needed, DOE will issue a notice of intent to prepare an EIS, but would not conduct additional scoping meetings.

DOE invited interested parties to comment on potentially significant environmental issues, such as visual impacts, impacts that would accrue to the United States as a result of related activities occurring inside Mexico, and impacts on protected, threatened, endangered, or sensitive species of animals or plants or their critical habitats – in particular, the quino checkerspot butterfly and migratory birds.

The public scoping period that started with the publication of the notice of intent runs through September 3, 2008. DOE conducted a public scoping meeting on August 26 in Jacumba, which was well attended.

CEQ Guidance on Use of Scoping

The Council on Environmental Quality addresses scoping for an EA process in *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (46 FR 18026, March 23, 1981; as amended, 51 FR 15618, April 25, 1986), on the DOE NEPA Website at www.gc.energy.gov/nepa, under Guidance.

Question 13 asks: Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?

The response provided is Yes: Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process....Scoping that is done before [an EA], and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI [notice of intent to prepare an EIS], 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.

See *LLQR*, December 2007, page 13, for discussion of cases where DOE prepared an EIS after beginning an EA.

For additional information, contact Ellen Russell, NEPA Document Manager, Office of Electricity Delivery and Energy Reliability, at ellen.russell@hq.doe.gov or 202-586-9624. 

EPA Commented Favorably on Yucca Mountain Final EISs

In July 2008, the Department of Energy issued three final EISs regarding the proposed Yucca Mountain repository in Nye County, Nevada: the Repository Supplemental EIS (SEIS) (DOE/EIS-0250F-S1), the Nevada Rail Corridor SEIS (DOE/EIS-0250F-S2), and the Rail Alignment EIS (DOE/EIS-0369). (The latter two EISs were combined in a single document.) DOE received favorable comments on the three final EISs in two letters from the Environmental Protection Agency (EPA), dated August 11, 2008.

The Department's extraordinary efforts resulting in the completion of these documents have been highlighted in previous *Lessons Learned Quarterly Reports*, including discussions of the efficient comment-response process used, expertise provided by cooperating agencies, and coordination with DOE program offices preparing other EISs, including the Global Nuclear Energy Partnership Programmatic EIS and the Greater-Than-Class-C EIS (*LLQR*, March 2008, page 5; December 2007, page 8).

EISs Differ in Scope, Detail

The Repository SEIS analyzed the potential environmental impacts of the construction, operation, and eventual closure of a repository at Yucca Mountain. The Repository SEIS also evaluated the potential impacts from national transportation, as well as the potential impacts in Nevada from the construction and operation of a railroad along specific alignments in the Caliente and Mina rail corridors. DOE concluded in the Repository SEIS that the potential impacts associated with the repository design and operational plans are similar in scale to the impacts in the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F), issued in 2002.

The Nevada Rail Corridor SEIS analyzed the potential impacts of constructing and operating a railroad for shipments of spent nuclear fuel, high-level radioactive waste, and other materials (i.e., those related to construction and operation of a repository) in the Mina corridor. DOE concluded in this SEIS that the Mina corridor warranted further analysis at the alignment level.

The more detailed analysis at the alignment level was presented in the Rail Alignment EIS, which analyzed the potential environmental impacts of constructing and operating a railroad along rail alignments in both the Caliente and Mina rail corridors. The Rail Alignment EIS also analyzed the potential environmental impacts from shipments of general freight (also referred to as common carriage shipments or the Shared-Use Option) on a railroad in either corridor.

EPA Supports Conclusions, Recommends Wetland Mitigation

In its comments on the Repository SEIS, EPA stated, "The final SEIS has addressed EPA's concerns about the language regarding EPA's radiation protection standards and the explanation of DOE's determination of the appropriate strain rates to be incorporated into the conceptual seismic model. Based on our review of the final SEIS, we do not object to the implementation of this action."

On the Final Nevada Rail Corridor SEIS, EPA stated, "...EPA supports DOE's conclusion to evaluate potential alignments in the Caliente and Mina Rail Corridors... [W]e reiterate that EPA does not have any concerns about this project...EPA agrees with the conclusions of the Nevada Rail Corridor final SEIS and does not object to the implementation of this action."

On the Final Rail Alignment EIS, EPA's comments focused on wetlands: "EPA appreciates the efforts DOE has made to address our comments...[B]ased on the additional information and analyses provided in the final EIS (Appendix F), it appears that the preferred Caliente alignment...represents the least environmentally damaging practicable alternative..." However, EPA recommended that DOE implement one of three specific compensatory wetland mitigation options and stated: "It is our understanding...that DOE will provide a more detailed compensatory mitigation plan in the Record of Decision (ROD)."

Next Steps

The Office of Civilian Radioactive Waste Management currently anticipates issuing the ROD for the Nevada Rail Alignment EIS this fall following the receipt of the final Biological Opinion to be issued by the U.S. Fish and Wildlife Service. A Departmental decision to construct and operate a railroad will be subject to receipt of a right-of-way from the Bureau of Land Management (BLM), and, if DOE decides to select the Shared-Use Option, a Certificate of Public Convenience and Necessity from the Surface Transportation Board (STB). (BLM and STB were cooperating agencies for the Rail Alignment EIS.)

For further information regarding the Yucca Mountain Final EISs, contact Dr. Jane Summerson, NEPA Document Manager and NEPA Compliance Officer, at jane_summerson@ymp.gov or 702-794-1493. 

2008 Stakeholders Directory Issued

The newest *Directory of Potential Stakeholders for DOE Actions under NEPA* (25th Edition, July 2008) has been issued. The Directory, updated annually, is meant to supplement lists that DOE Offices compile of potentially affected or interested parties for particular projects or facilities, and complements DOE's June 2006 *EIS Distribution* guidance.

The 2008 *Directory* identifies almost 400 potential NEPA document reviewers in Federal agencies, states, and national and regional nongovernmental organizations. For the convenience of NEPA Document Managers, the *Directory* includes appendices that list 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. Appendix D, a new feature of the 2008 *Directory*, lists public reading rooms where DOE Program and Field Offices typically make NEPA documents available for review.

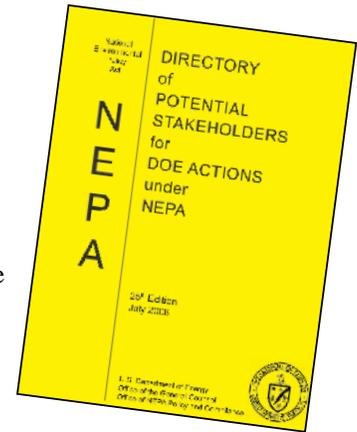
Most Stakeholders Say “No Thanks” to Paper Copies

As in the past, preparation of the 2008 *Directory* included asking stakeholder contacts for the number of paper copies or compact disks they would like to receive. Continuing a trend of recent years, an increasing number of stakeholders

expressed preference for compact disks over paper, and some of those would prefer notification of web posting of a NEPA document, if available at the time of document distribution. Of the contacts who expressed a preference for one mode over another, 20 percent prefer to receive a paper copy, 68 percent prefer to receive a compact disk, and 12 percent requested only to be notified of the web address where the document is posted.

With advance planning (and use of the *Directory*), a NEPA Document Manager can achieve cost savings while meeting stakeholder preferences. Because the Council on Environmental Quality NEPA Regulations specify that EISs are to be filed with the Environmental Protection Agency “no earlier than they are also transmitted to commenting agencies and made available to the public” (40 CFR 1506.9), web-posting should be accomplished before filing the EIS.

The *Directory* has been distributed to the DOE NEPA Community and posted on the DOE NEPA Website. For more information or to suggest additional organizations for inclusion in the 2009 edition, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.



Abstracts and Award Nominations Due September 30 for NAEP 2009 Conference, *Making Sustainability Happen*



The National Association of Environmental Professionals (NAEP) announces that its 2009 Conference, to be held May 3–6 in Scottsdale, Arizona, will explore the theme of *Making Sustainability Happen: Goals, Practices, and Challenges*. The

conference will include many sessions on NEPA, as well as diverse related topics such as environmental management systems and global climate issues. Program Chair Darcey Rosenblatt (drosenblatt@esassoc.com or 415-896-5900) invites abstracts for a presentation, panel, or poster session. NAEP membership is not required. 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.

Information on conference registration and how to submit abstracts and award nominations will be provided soon on the website of the Arizona Chapter of the NAEP, www.azaep.org. Contact Ms. Rosenblatt for immediate information. Discounted registration is offered for government workers; cancellation fees will be charged after March 1. Award nominations and abstracts are due September 30, 2008.

NHTSA's Draft EIS on CAFE Standards Focuses on Climate Change



The National Highway Traffic Safety Administration's (NHTSA) recent draft EIS on proposed new corporate average fuel economy (CAFE) standards for passenger cars and light trucks includes a substantial discussion of greenhouse gas emissions in response to a 2007 court order ([LLQR, June 2008](#), page 12; [December 2007](#), page 24).

The Draft EIS describes potential environmental impacts to a variety of resources and concludes that the impact areas warranting the most detailed analysis are energy resources, air quality, and climate – as well as resources that may be impacted by global climate change. Whereas the 2007 court decision found that NHTSA's EA failed to adequately evaluate cumulative impacts of greenhouse gas emissions, a substantial portion of the Draft EIS addresses potential climate change impacts from seven alternatives. DOE NEPA practitioners may be interested in NHTSA's approach to analyzing this topic. Features of the analysis include:

- Extensive use of findings of the United Nations' Intergovernmental Panel on Climate Change and the U.S. Climate Change Science Program. The Draft EIS also uses information from DOE's Energy Information Administration.
- Explicit analysis of direct, indirect, and cumulative impacts on global climate change.

- Estimates of potential changes to global carbon dioxide (CO₂) concentrations, global mean surface temperature, global mean rainfall, and sea level rise.
- Discussion of uncertainty and incomplete and unavailable information per 40 CFR 1502.22. For example, the Draft EIS states, "...the magnitudes of the changes in these climate effects that the alternatives produce – a few parts per million (ppm) of CO₂, a hundredth of a degree C [centigrade] difference in temperature, a small percentage-wise change in the rate of precipitation increase, and a 1 or 2 millimeter...sea level change – are too small to meaningfully address quantitatively in terms of their impacts on resources. Given the enormous resource values at stake, these distinctions may be important – very small percentages of huge numbers can still yield substantial results – but they are too small for current quantitative techniques to resolve...."
- Projected specific impacts of climate change globally and in the United States.
- Analysis of potential environmental justice impacts.

Issued in June 2008, the public comment period on the Draft EIS ended on August 18, 2008. The Draft EIS and the associated Notice of Proposed Rulemaking are available at www.nhtsa.dot.gov.



REGISTER NOW!

Contact Jim Sanderson at
jim.sanderson@hq.doe.gov
or 202-586-1402

2008 Meeting of the DOE NEPA Community – Washington, DC

Sep 24 – a.m. NEPA Compliance Officers	Sep 24 – p.m. NEPA Training	Sep 25 DOE NEPA Community
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Collaboration and NEPA: Benefit or Burden?

By: Kathy Binder, Director, Office of Conflict Prevention and Resolution

In May, I was fortunate to attend a conference in Tucson, Arizona, sponsored by the U.S. Institute for Environmental Conflict Resolution (ECR), which highlighted the many synergies between the goals of the NEPA process and those of my office. The conference featured three days of training workshops, panel sessions, interactive roundtable discussions, and opportunities to attend agency-specific side meetings. The sessions were organized along three tracks:

- Technology, Tools and Innovations in ECR
- Evaluating ECR: What's in It for Me?
- Matching the Process to the Problem: Navigating Process Choices

Because of my close working relationship with the Office of NEPA Policy and Compliance, a sister office in the Office of the General Counsel, I was particularly interested in the sessions related to NEPA. One session that I attended, *Collaboration and NEPA*, had as its learning objectives:

- Develop basic skills for assessing whether, with whom, when, and how to collaborate with others on NEPA.
- Develop basic skills for designing collaboration.
- Become familiar with the Council on Environmental Quality's (CEQ's) new *Collaboration in NEPA: A Handbook for NEPA Practitioners* (October 2007) ([LLQR, December 2007](#), page 14).

Go Beyond Minimum Requirements

Horst Greczmiel, CEQ Associate Director for NEPA Oversight, and Cherie P. Shanteau and Michael Eng, U.S. Institute, led discussions that began with a review of Section 101 of NEPA and its emphasis on the Federal government's commitment to the environment. They then turned to Section 102, which contains the procedural aspects that often receive the focus of both the Federal agencies and the courts. Section 102 and the CEQ NEPA implementing regulations provide the minimum requirements for engaging the public, but the facilitators encouraged agencies to go beyond the minimum if they thought it might be helpful. Identifying stakeholders is often a difficult first step, but critical to the collaboration process. Agencies could initially identify the entities that would be willing to collaborate, if a relationship of trust exists with their stakeholders, or agencies could use an outside neutral party to identify entities for collaboration.

In addition to considering the benefits of collaboration, such as better and more sustainable outcomes, the session also

considered situations in which collaboration might be a burden to the agency; for example, in cases where decisions have already been made or where the relevant stakeholder groups lack organization. In identifying opportunities for collaboration, agencies should also consider:

- With whom does the agency need to engage? Is the establishment of a Federal Advisory Committee necessary to ensure transparency of the process?
- To what extent is the agency willing to share influence?
- When in the NEPA process does the agency want to engage the affected stakeholders? Where and when is the best way for the agency to get information from the right people?

Rethink Comment Response Process

Another session considered the comment process under NEPA. Entitled *NEPA Comment Analysis: Formalized War or Opportunity for Interest-based Dialog?*, the session facilitator was Carie Fox, of Fox Mediation, with panelists from The Wilderness Society, ICF International, University of Colorado, Society of American Foresters, and Bureau of Land Management.

These presenters proposed the rethinking of NEPA comment analysis. The sheer number of comments, the disconnect between what the agency will respond to and what the public seeks to express, and the emphasis on litigation outcomes have created a system that is costly and often polarizing. The presenters suggested that basic negotiation principles, such as interest-based dialogue, might be able to inform some aspects of NEPA comment analysis. In examining the comment process as a whole, agencies should consider:

- The need for a complete characterization of the NEPA comment analysis process: is it based on anecdotal experience?
- The achievements of the comment process: an airing of the arguments of each side, or an opportunity for interest-based dialogue?
- The importance of comment process timing: are comments addressed too late in the process?
- The identification of commentor motivation: are formula comments always without substance?
- The neutrality of the comment responses process: does the response address only "legitimate NEPA" issues or all needs, and how will stakeholder expectations be addressed?

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Collaboration and NEPA (continued from previous page)

U.S. Institute for Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution, a program of the Morris K. Udall Foundation, was established by the U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The U.S. Institute serves as an impartial, non-partisan agency providing professional expertise, services, and resources to all parties involved in such disputes regardless of who initiates or pays for assistance. With nearly 300 qualified facilitators and mediators, the U.S. Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict.

See www.ecr.gov for more information about the U.S. Institute.

The need to filter the universe of comments for only “unique” and “substantive” comments means that in practice fewer than 10 percent of comments may receive a considered agency response, according to Ms. Fox. In addition to potentially costing hundreds of thousands of dollars just to sift through the comments, interested parties are often left dissatisfied. One way to approach this problem is to try to increase the proportion of unique substantive

comments through processes that engage the public, and to respond to those that meet the substantive standard. Another approach is to try to decrease the number of non-substantive comments, perhaps by creating more realistic expectations about how comments will be used. Alternatively, agencies can choose to consider comments beyond what NEPA guidance requires.

Benefits of Comment Response System

Despite its drawbacks, Ms. Fox noted that it is also useful to consider the benefits of the current system:

- When an agency publishes a draft EIS, it has to provide a robust level of information. In order to have an effective comment, the commentor must also provide information that supports his or her point of view. This gives the agency an opportunity to try to bolster its arguments based on what was revealed, and participants in the process can review the information in making their choice of whether to go to court. This process may clarify alternatives to negotiated settlement and prompt negotiation.
- Many people use the comment process as an opportunity to “vote” for or against a project, despite public guidance to the contrary. They know that those comments also make their way to legislators and other policy makers who respond to policy preferences. This may in fact be the real audience for many comments.

For further information, contact Kathy Binder at kathleen.binder@hq.doe.gov or 202-586-6972. 

Public Participation Can Improve Decisionmaking

Public involvement usually leads to better environmental decisionmaking, according to a report issued in August by the National Research Council of the National Academies. “When done well, public participation improves the quality and legitimacy of a decision and builds the capacity of all involved to engage in the policy process. It can lead to better results in terms of environmental quality and other social objectives. It also can enhance trust and understanding among parties,” the report states.

The report acknowledges that not everyone agrees that public participation is beneficial. Proponents of public participation argue that those who must live with the outcome of an environmental decision should have some influence over it. Moreover, when done correctly, public involvement increases the likelihood that the decisions will be implemented effectively. Detractors criticize the process as “ineffective and inefficient.” The research panel found that “participatory processes have sometimes made matters

worse.” When participation is “a superficial formality or without adequate support by decision makers,” it increases public distrust of government.

To assure success, the report details principles and practices that agencies can use to involve the public. Among other things, the report recommends that when government agencies engage in public participation, they should do so with “clarity of purpose, commitment to use the process to inform their actions, adequate funding and staff for the duration of the process, appropriate timing in relation to decisions, a focus on how conclusions or policies can be implemented, and a commitment to self-assessment and learning from the experience.”

The report was sponsored, in part, by the Department of Energy. Copies of “Public Participation in Environmental Assessment and Decision Making” are available at www.nap.edu. 

Transitions

Two Old Friends Become New NCOs

Larry Stirling and Matt McMillen are “old friends” of the DOE Office of NEPA Policy and Compliance, as both have provided technical assistance to the office in the past, and “old friends” to each other due to their common interest in environmental management systems (EMS).

Health, Safety and Security: Larry Stirling



John (Larry) Stirling has been designated the first NEPA Compliance Officer (NCO) for the Office of Health, Safety and Security, where he now serves as special assistant to Andy Lawrence, Director, Office of Nuclear Safety, Quality Assurance and Environment. Mr. Stirling has been with the Department for more than 20 years. Mr. Stirling was the co-author of DOE Order 5400.1, *General Environmental Protection Program*, in 1988. He was instrumental in establishing DOE’s EMS framework as the principal author of DOE Order 450.1, *Environmental Protection Program*, issued in 2003 (*LLQR*, March 2003, page 1). Mr. Stirling also served as the first co-chair of the Federal Interagency EMS Work Group with the Environmental Protection Agency (EPA) and was DOE’s representative on the American National Standards Institute-Registrar Accreditation Board for EMS. Before joining DOE, he worked as an environmental specialist at EPA and with several state and local governments. He can be reached at john.stirling@hq.doe.gov or 202-586-2417.

Loan Guarantee Program: Matt McMillen



Matthew (Matt) McMillen, who joins DOE on September 2, is the new NCO for the Loan Guarantee Program Office, within the Office of the Chief Financial Officer. He brings a wide range and depth of NEPA experience to the office, which is now developing strategies for efficient and timely environmental review of applicant proposals. Since 2001, Mr. McMillen was the senior NEPA staff of the Federal Aviation Administration (FAA), Office of Environment and Energy, where he was responsible for developing NEPA policies, procedures, and guidance for FAA. He was a leader of the Council on Environmental Quality (CEQ) NEPA Task Force and the Interagency Work Group on Environmental Management Systems (*LLQR*, June 2007, page 17) and a principal author of CEQ’s guidance on cumulative effects. As a consultant before working at FAA, Mr. McMillen prepared and reviewed EISs and EAs and supported the Office of NEPA Policy and Compliance, among other DOE offices. He can be reached at 202-586-8336. *Dan Tobin, formerly Acting NCO, continues to serve the Program as a Senior Investment Officer.*

DOE-wide NEPA Contracts Update

All six of the DOE-wide NEPA contracts now in place will expire on September 30, 2008. Tasks issued before the expiration dates need not be completed before the expiration dates. Information on the contracts and how to issue task orders under them is available on the DOE NEPA Website at www.gc.energy.gov/nepa under NEPA Contracting or by contacting David Nienow, Contract Administrator, NNSA Service Center, at dnielow@doeal.gov or 505-845-6072. The solicitations for new contracts closed on May 22, 2008, and DOE is evaluating the proposals. The following tasks have been issued recently:

Description	DOE Contact	Date Awarded	Contract Team
Supplement Analysis Support for Sandia Site Office	Susan Lacy 505-845-5542 slacy@doeal.gov	7/21/2008	AGEISS
EA for Auburn Landfill Gas Electric Generators and Anaerobic Digester Energy Facilities	Roy Spears 304-285-5460 rspear@netl.doe.gov	7/23/2008	Potomac-Hudson

DOE Issues New Environmental Justice Strategy

DOE has issued a new *Environmental Justice Strategy*, the plan by which the Department manages its environmental justice responsibilities and commitments. DOE will further the implementation of the *Strategy* and its goals by continuing to use the NEPA process to assess whether Departmental actions would have disproportionately high and adverse human health or environmental effects on minority, low-income, and tribal populations.

Acting Deputy Secretary Jeffrey Kupfer announced the new *Strategy* – which emphasizes community participation, stakeholder involvement, and community empowerment – on May 22, 2008, at the *State of Environmental Justice in America* conference in Washington, DC. At this conference, co-sponsored by DOE and attended by Federal agencies and environmental justice stakeholders, DOE highlighted its commitment to meet its responsibilities under Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which tasked each Federal agency to make achieving environmental justice part of its mission.

DOE is now preparing a *Five-Year Implementation Plan* for its environmental justice activities. The *Strategy* and other environmental justice materials are found at www.lm.doe.gov/env_justice/policy.htm. For additional information on the Department's Environmental Justice Program, contact Melinda Downing, Environmental Justice Program Manager, Office of Legacy Management, at melinda.downing@hq.doe.gov or 202-586-7703. 

DOE's Environmental Justice Goals

Environmental justice is “fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or education level with respect to development, implementation, and enforcement of environmental laws, regulations, and policies.”

Goal 1 Identify and address programs, policies, and activities of the Department that may have disproportionately high and adverse human health or environmental effects on minority, low-income, and tribal populations.

Goal 2 Enhance the credibility and public trust of the Department by further making public participation a fundamental component of all program operations, planning activities, and decision-making processes.

Goal 3 Improve research and data collection methods relating to human health and the environment of minority, low-income, and tribal populations.

Goal 4 Further Departmental leadership by integrating environmental justice with activities and processes related to human health and the environment.

Do You Have the Latest Code?

Public comment on a recent draft EIS pointed out that DOE had not used the most current computer modelling software to estimate dose from radionuclide emissions to air. The EIS had relied on Version 1 of the Environmental Protection Agency's (EPA's) CAP-88 (Clean Air Act Assessment Package – 1988) computer model rather than the current Version 3. While EPA allows use of any of the three versions of CAP-88 for enforcement purposes, the Agency states on its website

that “because Version 3 incorporates the latest science and is more versatile than the older versions, it is recommended.” Likewise, the DOE NEPA Office recommends always using the current version of software and other analytic tools for NEPA analyses. The analysis in the EIS in question has been updated for the final.

EPA's CAP-88 software – current and earlier versions – and related information are available at www.epa.gov/radiation/assessment/CAP88. 

Here Comes the Sun—Solar Energy Programmatic EIS To Support Utility-Scale Solar Development in the West

Preparation of a Solar Energy Programmatic EIS (PEIS) by DOE and the Bureau of Land Management (BLM) is underway, following a 47-day scoping period that ended July 15 and generated about 16,000 public comment documents. Most of the comment documents were part of a campaign from two environmental groups – the Wilderness Society and Defenders of Wildlife – supporting solar energy, but concerned about the need to protect sensitive environmental resources such as national parks, wilderness areas, and critical habitat.

“The PEIS is a great opportunity for the BLM and DOE to make sure solar energy is done right in the West. The same landscapes that make utility-scale solar energy possible are often the ones that are most at risk from the impacts of climate change and in need of protection,” states the Wilderness Society campaign letter. The Defenders of Wildlife campaign letter emphasizes the organization’s support of renewable energy and the need for strong policies to minimize negative



This 14-megawatt single axis, flat panel photovoltaic cell system is located at Nellis Air Force Base, Nevada. More than 72,000 solar panels occupy 140 acres – the largest solar photovoltaic system in North America.

environmental impacts, and protect our public lands and wildlife for future generations.

PEIS Scope Covers Policies, Technologies

The PEIS will analyze agency-specific policies and programs to facilitate utility-scale development of two alternative solar technologies – concentrating solar power (CSP) and photovoltaic solar power. The PEIS study area includes BLM-administered lands or other Federal, state, tribal or private lands in six western states – Arizona, California, Colorado, Nevada, New Mexico, and Utah. The study has been limited to these six states based on an initial resource assessment showing that they encompass the most prospective solar resources suitable for utility-scale development over the next 20 years.

In the PEIS, DOE and BLM will propose to develop and implement agency-specific programs that establish environmental policies and mitigation strategies for solar energy development. Policies and mitigation measures adopted as part of the proposed programs would identify best practices for deploying solar energy and ensuring minimal impacts to natural and cultural resources.

Scoping Meetings In 11 Cities, 6 States

Following the issuance of the Notice of Intent to prepare the PEIS on May 29, 2008 (73 FR 30908), DOE and BLM conducted scoping meetings in 11 cities in the six-state study area in June and July. The scoping meetings provided information on utility-scale solar energy projects, an overview of the proposed DOE and BLM actions,

What Is Utility-Scale Solar Power?

Utility-scale Solar Energy Facilities are facilities that generate large amounts of electricity, greater than 10 megawatts, to be put directly into the electricity transmission grid. Solar energy technologies potentially suitable for use in utility-scale applications are concentrating solar power and photovoltaic technologies.

Concentrating Solar Power Technologies use mirrors to concentrate the sun’s radiant energy to heat fluids or solids. The heat from the fluids or solids drives steam turbines or other devices to generate power.

Photovoltaic Solar Power Technologies use panels of semiconductor materials that absorb the sun’s radiant energy and convert it directly to electricity, rather than first converting it to heat. Although this technology can be built to utility scale, it is often built on a smaller scale for distributed generation.

Excerpted from the Solar Energy Development PEIS Information Center, <http://solareis.anl.gov>.

(continued on next page)

Solar Energy Programmatic EIS (continued from previous page)



An example of a concentrating solar power U-shaped (parabolic) trough system at Kramer Junction, California.

PEIS scope and content, alternatives, and environmental issues and impacts.

Prior to the scoping meetings, BLM had temporarily suspended acceptance of new solar development applications for projects on BLM lands pending completion of the PEIS. Based on public comments received during the scoping meetings, BLM decided to continue to accept applications for solar energy development on BLM lands, as well as process the 125 applications previously received. “We heard the concerns expressed during the scoping period about waiting to consider new applications,” said BLM Director James Caswell in a July 2, 2008, press release, “and we are taking action.”

Potential Environmental Impacts From Solar Energy Development

Solar energy development projects can require large tracts of land; for example, CSP facilities can occupy at least 5 acres for each megawatt. Also, a 100-megawatt CSP facility may consume 600 acre/feet per year of water for operations. In addition to public concerns about land and water use, public comments addressed habitat fragmentation and impacts to sensitive biological resources; visual impacts near wilderness areas and parks; cultural, paleontological, tribal, and geologic impacts; and the use of hazardous fluids and solids in some solar technologies.

Next Steps

DOE and BLM are considering requests from the California and Nevada Region of the U.S. Fish and Wildlife Service, the Southwest Region of the U.S. Forest Service, and several state and local jurisdictions to participate as cooperating agencies. A Draft PEIS is expected to be issued in Spring 2009.

For further information on the DOE Solar Energy Technology Program, contact Frank “Tex” Wilkins, Office of Solar Energy Technology, Energy Efficiency and Renewable Energy, at frank.wilkins@ee.doe.gov or 202-586-1684. For information on the Solar PEIS, contact Lisa Jorgensen, NEPA Document Manager, Golden Field Office, at lisa.jorgensen@go.doe.gov or 303-275-4906. Additional information is also available on the Solar Energy Programmatic EIS website at <http://solareis.anl.gov>. 



See you at the September 2008
DOE NEPA Community Meeting!



Litigation Updates

Two New NEPA Suits Filed

Complaint Claims Programmatic EIS Required for DOE Uranium Leasing Program

The Colorado Environmental Coalition and three other nongovernmental organizations have filed a lawsuit challenging DOE's plans to extend and expand its Uranium Leasing Program. The complaint, filed on July 31, 2008, alleges that DOE failed to adequately consider environmental impacts of expanding its active leasing from 13 to up to 38 individual lease tracts.

The plaintiffs allege that DOE's *Uranium Leasing Program Programmatic Environmental Assessment* (DOE/EA-1535, July 2007) is inadequate, particularly in its analysis of direct, indirect, and cumulative impacts of lease sales, mine approvals, and reclamation plans, and does not support a finding of no significant impact (FONSI). Plaintiffs request that the court invalidate DOE's Programmatic EA and FONSI and issue an injunction to prevent implementation of programmatic decisions, issuance of uranium leases, renewal of uranium leases, and on-site implementation of the leasing program until DOE

completes a programmatic EIS and site-specific NEPA analyses. The plaintiffs also request that the court direct DOE to take immediate steps to stabilize and reclaim the inactive mines and secure and stabilize the uranium ore that is being stored at the lease tracts. DOE's response is due October 6, 2008. *Colorado Environmental Coalition v. DOE* (D. Colorado), Case No.: 08-01624.

Suit Filed over Computational Facility at Lawrence Berkeley National Laboratory

Save Strawberry Canyon, a nongovernmental organization, has sued DOE and others regarding the planned Computational Research and Theory Facility, to be constructed and operated at Lawrence Berkeley National Laboratory, which is owned by DOE and managed by the University of California. The complaint, filed on July 21, 2008, alleges that DOE violated NEPA by not preparing an EA or EIS. DOE's response is due September 29, 2008. *Save Strawberry Canyon v. LBNL* (N.D. California), Case No.: 08-03494.

Assessing and Managing Cumulative Environmental Effects

International Meeting Announced for November 2008



The International Association for Impact Assessment (IAIA) has announced a special topic meeting on cumulative

effects, to be held November 6–9, 2008, in Calgary, Alberta, Canada. The program will take stock of key trends and issues; identify strengths and weaknesses of current impact assessment and resource management approaches for cumulative effects; and document good practice and ways forward to improve and integrate the institutions, science, and practice of cumulative effects assessment and management.

The keynote address, "Toward More Integrated Approaches to Cumulative Effects Assessment and Management that Link Science, Institutions, and Practice More Effectively," will be presented by Stephen Lintner, senior professional and advisor on environmental and social safeguard policies at the World Bank.

Meeting sessions will be organized around four themes:

- Institutional arrangements (including legal and policy frameworks, processes, and instruments) for assessment, planning, and management of cumulative impacts,
- Science-based frameworks, knowledge systems, and methodologies and tools in support of decisionmaking, particularly within sustainability frameworks,
- Operational practice in analysis, mitigation, and monitoring of cumulative effects and in evaluation of project performance after implementation, and
- Integrated approaches that demonstrate the effective linkage of institutions, science, and practice in strategic (top down) and/or project (bottom up) approaches to assessing and managing cumulative effects.

Further information on IAIA and the cumulative effects meeting is available at www.iaia.org; inquiries may be addressed to info@iaia.org.

Training Opportunities

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

- Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
 - NEPA/309 Review (FED 103)**
San Francisco, CA: September 9-11
No Fee
 - NEPA Cross-Cutting Training (FED 108)**
New York, NY: September 16-18
No Fee
 - NEPA and Air Impacts (FED 111)**
Washington, DC: November 18-19
No Fee
 - NEPA and Adaptive Management (FED 110)**
Philadelphia, PA: December 9-10
No Fee
- ICF Jones & Stokes
916-737-3000
eeducation@jsanet.com
www.jonesandstokes.com
 - The National Environmental Policy Act (NEPA): Common Mistakes and How To Avoid Them**
Teleconference: September 12
\$249
- 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
 - Accounting for Cumulative Effects in the NEPA Process**
Durham, NC: September 10-12
\$750
 - Implementation of NEPA**
Durham, NC: October 20-24
\$1150 (\$1225 after 9/29/08)
 - Current and Emerging Issues in NEPA**
Durham, NC: November 12-14
\$750 (\$825 after 10/22/08)
- **Considering Greenhouse Gas Emissions and Climate Change under NEPA**
Durham, NC: December 10-12
\$800 (\$875 after 11/19/08)
 - Certificate in NEPA**
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 CEQ.
Fee: Included in registration for constituent courses.
del@nicholas.duke.edu
www.env.duke.edu/del/continuing/courses.html
- Northwest Environmental Training Center
206-762-1976
rsobol@nwetc.org
www.nwetc.org
 - NEPA: Writing the Perfect EA/FONSI or EIS**
Lacey, WA: October 8-9
Gulfport, MS: November 13-14
Houston, TX: November 18-19
Washington, DC: December 3-4
Denver, CO: December 9-10
\$495 (discounts available)
- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
 - NEPA Cumulative Effects Analysis and Documentation**
Dallas/Ft. Worth, TX: September 16-18
\$955 (GSA contract: \$865)
San Francisco, CA: November 4-5
\$715 (GSA contract: \$625 until 10/8/08)
 - NEPA Climate Change Analysis**
Jacksonville, FL: September 23-24
\$755 (GSA contract: \$665)
San Francisco, CA: November 6-7
\$715 (GSA contract: \$625 until 10/8/08)

Training Opportunities

(continued from previous page)

Writing for Technical Specialists

Phoenix, AZ: September 29-October 1
\$934 (GSA contract: \$844)

How to Manage the NEPA Process – Emphasis on Native American Issues

Las Vegas, NV: September 30-October 2
\$955 (GSA contract: \$865)

Integrating Federal Environmental Laws into NEPA

Las Vegas, NV: October 21-23
\$915 (GSA contract: \$825)

How to Manage the NEPA Process and Write Effective NEPA Documents

Denver, CO: October 21-24
\$1,115 (GSA Contract: \$1,025)
Baltimore, MD: December 2-5
\$1,115 (GSA contract: \$1025 until 10/15/08)

Clear Writing for NEPA Specialists

San Diego, CA: October 28-30
\$915 (GSA contract: \$825 until 9/8/08)

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

San Antonio, TX: November 4-6
\$915 (GSA contract: \$825 until 9/12/08)

NEPA Cumulative Effects Analysis and Documentation/NEPA Climate Change Analysis

San Francisco, CA: November 4-7
\$1,115 (GSA contract: \$1,025 until 10/8/08)

NEPA Certificate Program

Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.

\$4,955 (includes tuition, course fees, and all materials)

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

judy.kurtzman@usu.edu;
www.cnr.usu.edu/htm/students/graduate_programs/NEPA

- SWCA Environmental Consultants
800-828-7991

training@swca.com
www.swca.com/training

Advanced Topics in NEPA

Pasadena, CA: October 8-9
\$695 (discounts available)

Comprehensive NEPA

San Diego, CA: October 15-17
\$795 (discounts available)

Places that Count: Identifying and Managing Traditional Cultural Properties

Portland, OR: October 21-22
\$695 (discounts available)

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

Portland, OR: October 23-24
\$695 (discounts available)

- USDA Graduate School
202-314-3300 or 888-744-4723
customerservicecenter@grad.usda.gov
<http://grad.usda.gov>

NEPA: Policy, Procedure and Science/Art

Washington, DC: Fall 2008 (Dates to be announced) (ENVS4435E)
Fee: to be announced

- U.S. Institute for Environmental Conflict Resolution
520-901-8501
usiecr@ecr.gov
www.ecr.gov/Training/Training.aspx

Collaborative Competencies

Washington, DC: September 23-25
Tuscon, AZ: November 5-7
\$1,495

Advanced Multi-Party Negotiation of Environmental Disputes

Tuscon, AZ: October 8-10
\$1,295

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Training Opportunities

(continued from previous page)

Customized NEPA Training

- Environmental Impact Training
512-940-7969
info@eiatraining.com
www.eiatraining.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 Training & Consulting International, Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.com

NEPA Toolbox™ Training

Several courses are available. 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 Planning Strategies, Inc.
563-332-6870
jleeeps@mchsi.com
www.jlee-eps.com/workshops.php

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

EAs and EISs Completed April 1 to June 30, 2008

EAs

Bonneville Power Administration

DOE/EA-1591 (EA/FONSI 5/30/08)

Palisades-Goshen Pole Replacement Project, Idaho

Cost: \$302,000

Time: 13 months

Chicago Office/Office of Science

DOE/EA-1570 (EA/FONSI 6/11/08)

Construction and Operation of Neutrinos at the Main Injector Off-Axis Electron Neutrino (V) Appearance Experiment (NOvA) at the Fermi National Accelerator Laboratory, Batavia, Illinois, and St. Louis County, Minnesota

Cost: \$300,000

Time: 23 months

Golden Field Office/Energy Efficiency and Renewable Energy

DOE/EA-1609 (EA/FONSI 5/15/08)

Supplement to the Proposed Operations and Improvements at the National Renewable Energy Laboratory's South Table Mountain, Golden, Colorado

Cost: \$151,000

Time: 8 months

Kansas City Site Office/National Nuclear Security Administration and General Services Administration

DOE/EA-1592 (EA/FONSI 4/21/08)

Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at Kansas City Plant, Kansas City, Missouri

Cost: \$140,000

Time: 11 months

Lawrence Berkeley National Laboratory/Office of Science

DOE/EA-1541 (EA/FONSI 4/3/08)

Demolition of Building 51 and the Bevatron, Lawrence Berkeley National Laboratory, Berkeley, California

Cost: \$215,000

Time: 26 months

Pantex Site Office/ National Nuclear Security Administration

DOE/EA-1613 (EA/FONSI 6/11/08)

Proposed High Explosive Pressing Facility, Amarillo, Texas

Cost: \$26,000

Time: 2 months

Sandia Site Office/National Nuclear Security Administration

DOE/EA-1603 (EA/FONSI 4/17/08)

Expansion of Permitted Land and Operations at the 9940 Complex and Thunder Range at Sandia National Laboratories, Albuquerque, New Mexico

Cost: \$150,000

Time: 12 months

Western Area Power Administration

DOE/EA-1590 (EA/FONSI 4/14/08)

Wessington Springs Wind Project, South Dakota

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

Time: 12 months

EISs

Bonneville Power Administration

DOE/EIS-0379 (73 FR 32331, 6/6/08)

(EPA Rating: EC-2)

Project-specific Environmental Impact Statement for Rebuild of the Libby (FEC) to Troy Section of Bonneville Power Administration's Libby to Bonners Ferry 115-kV Transmission Line Project, Lincoln County, Montana

Cost: \$1,200,000

Time: 37 months

National Nuclear Security Administration/ Los Alamos Site Office

DOE/EIS-0380 (73 FR 28461, 5/16/08)

(EPA Rating: LO)

Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico

Cost: \$17,300,000

Time: 40 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$151,000; the average cost was \$183,000.
- Cumulatively, for the 12 months that ended June 30, 2008, the median cost for the preparation of 18 EAs for which cost data were applicable was \$145,000; the average cost was \$147,000.
- For this quarter, the median completion time for 8 EAs was 12 months; the average was 13 months.
- Cumulatively, for the 12 months that ended June 30, 2008, the median completion time for 22 EAs was 13 months; the average was 23 months.

EIS Costs and Completion Times

- For this quarter, the median and average costs for the preparation of 2 EISs were \$9,250,000.
- Cumulatively, for the 12 months that ended June 30, 2008, the median cost for the preparation of 6 EISs for which cost data were applicable was \$1,580,000; the average cost was \$4,637,000.
- For this quarter, the median and average completion times for 2 EISs were 39 months.
- Cumulatively, for the 12 months that ended June 30, 2008, the median completion time for 10 EISs was 26 months; the average was 31 months.

Recent EIS-Related Milestones (June 1 to August 31, 2008)

Notice of Intent

Office of Energy Efficiency and Renewable Energy/Golden Field Office
DOE/EIS-0407
Environmental Impact Statement for the Abengoa Biorefinery Project, Hugoton, Kansas
August 2008 (73 FR 50001, 8/25/08)

Extension of Public Scoping Comment Period

Office of Energy Efficiency and Renewable Energy
DOE/EIS-0403
Programmatic Environmental Impact Statement for Solar Energy Development
July 2008 (73 FR 38443, 7/7/08)

Final EISs

Office of Civilian Radioactive Waste Management
DOE/EIS-0250F-S1
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
July 2008 (73 FR 39958, 7/11/08; 73 FR 41351, 7/18/08, correction)

DOE/EIS-0250F-S2
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
July 2008 (73 FR 39958, 7/11/08; 73 FR 41351, 7/18/08, correction)

DOE/EIS-0369
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
July 2008 (73 FR 39958, 7/11/08; 73 FR 41351, 7/18/08, correction)

(continued on next page)

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

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

*Business Plan Environmental Impact Statement
ROD for the Electrical Interconnection of the Willow
Creek Wind Project, Gilliam and Morrow Counties,
Oregon*

June 2008 (73 FR 36500, 6/27/08)

DOE/EIS-0183

*Business Plan Environmental Impact Statement
ROD for the Electrical Interconnection of the
Shepherds Flat Wind Energy Project, Gilliam and
Morrow Counties, Oregon*

July 2008 (73 FR 43730, 7/28/08)

DOE/EIS-0379

*Rebuild of the Libby (FEC) to Troy Section of
Bonneville Power Administration's Libby to Bonners
Ferry 115-kV Transmission Line Project, Lincoln
County, Montana*

August 2008 (73 FR 44979, 8/1/08)

Bonneville Power Administration/ Office of Energy Delivery and Energy Reliability

DOE/EIS-0378

*Port Angeles-Juan de Fuca Transmission Project,
Clallam County, Washington*

June 2008 (73 FR 32686, 6/10/08)

Office of Energy Delivery and Energy Reliability

DOE/EIS-0395

*San Luis Rio Colorado Project, Yuma County,
Arizona*

August 2008 (73 FR 49447, 8/21/08)

Amended Record of Decision

National Nuclear Security Administration

*Environmental Impact Statement on a Proposed
Nuclear Weapons Non-proliferation Policy
Concerning Foreign Research Reactor Spent
Nuclear Fuel*

August 2008 (73 FR 50004, 8/25/08)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0285-SA-376

*Vegetation Management on the Tanner Tap to
Snoqualmie - Lake Tradition Transmission Line
Corridor, King County, Washington*

(Decision: No further NEPA review required)

June 2008

DOE/EIS-0285-SA-377

*Vegetation Management along the Olympia - Grand
Coulee No. 1, 287 kV Transmission Line Corridor
from Structure 53/4 to Structure 70/6, King and
Pierce Counties, Washington*

(Decision: No further NEPA review required)

June 2008

DOE/EIS-0285-SA-378

*Vegetation Management along the Schultz - Raver
No. 1, 500 kV Transmission Line Corridor, King and
Kittitas Counties, Washington*

(Decision: No further NEPA review required)

June 2008

DOE/EIS-0285-SA-379

*Vegetation Management (Reclaim and Danger Tree
Cutting) along the Naselle - Tarlette #1 Transmission
Line Corridor, Pacific County, Washington*

(Decision: No further NEPA review required)

June 2008

DOE/EIS-0285-SA-380

*Vegetation Management (Reclaim and Danger Tree
Cutting) along the Satsop - Aberdeen No. 1 & 2,
Transmission Line Corridor between Structures 12/1
and 13/1, Grays Harbor County, Washington*

(Decision: No further NEPA review required)

June 2008

DOE/EIS-0285-SA-381

*Vegetation Management for Little Goose - Lower
Granite, between Structures 16/3 and 16/4, Garfield
County, Washington*

(Decision: No further NEPA review required)

June 2008

(continued on next page)

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

DOE/EIS-0285-SA-382

*Vegetation Management for Monroe-Custer
No. 1 from Tower 7/5 to 46/1, Snohomish and Skagit
Counties, Washington*

(Decision: No further NEPA review required)

July 2008

DOE/EIS-0285-SA-383

*Vegetation Management (Reclaim and Danger
Tree Cutting) along the Raymond - Henkle Street
No. 1 Transmission Line Corridor, Pacific County,
Washington*

(Decision: No further NEPA review required)

July 2008

DOE/EIS-0285-SA-385

*Vegetation Management (Reclaim and Danger Tree
Cutting) along the Olympia - Shelton Transmission Line
Corridor, Thurston and Mason Counties, Washington*

(Decision: No further NEPA review required)

July 2008

DOE/EIS-0285-SA-386

*System-wide Emergency Management of Vegetation
Encroachment*

(Decision: No further NEPA review required)

July 2008

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

- *Scoping meeting schedules.* The potential for bad weather during our snowy winter was taken into account when scheduling scoping meetings.
- *Stakeholder involvement.* Extra effort was expended to ask stakeholders for suggestions of things to consider in the supplement analysis.

What Didn't Work

- *Changes to alternatives.* The need to add an alternative to the EIS was not identified until months after the scoping period closed and the draft document was well under preparation.

Data Collection/Analysis

What Worked

- *Sharing data.* The document manager used DOE Headquarters resources effectively to obtain information and shared data with other affected DOE sites.
- *Alternative comparison table.* Using a table to indicate differences among alternatives was very effective.
- *Single point of contact for data collection.* Use of a single point of contact at the site for collecting data for the EIS worked well.

What Didn't Work

- *Lack of data at the site.* Due to the lack of data at the site, site personnel had to get the site data from non-site sources.
- *Difficulty identifying appropriate methodology.* The lack of specific guidance led to delays in identifying the appropriate methodology for intentional destructive act analysis.

- *Lack of DOE involvement with initial state processes.* DOE staff did not fully participate in the preliminary state NEPA-like processes, although the related Federal EA process was dependent on that initial effort.
- *Gaps between state and DOE requirements.* The product of the state NEPA-like process did not meet all of the requirements of the DOE EA process; a gap analysis of the two would have been useful.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Daily interaction.* Daily review and communication between DOE Headquarters and the site facilitated timely completion of the EA.
- *Designating priorities.* Producing an EA in a short time period was possible because the project was designated a top priority by management.
- *In-house preparation.* Substantial savings and a short completion time were realized by preparing the EA by DOE staff instead of using a contractor.
- *Early development of project schedule.* The existence of a schedule from the first day of the process was a key factor for timely completion.
- *Weekly calls.* Pre-arranged weekly calls among the team members helped keep the project on schedule.
- *Attention to detail.* Constant attention to detail ensured that the EA was completed on time.
- *Continual communication.* Continual communication with cooperating agency contacts and the design team allowed the EA to progress as scheduled.
- *Team member flexibility.* Team members fulfilled the tasks assigned to others when conflicting priorities would have prevented timely completion.

(continued on next page)

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

- *In-house preparation of document.* Bringing the project in-house and working with an in-house writer-editor allowed a quality EA to be completed on time.

Factors that Inhibited Timely Completion of Documents

- *Unfamiliarity with related program.* Complex transformation program issues played a role in a site-specific EIS, but many staff were not familiar with that program.
- *Absence of draft deadlines.* Although the lack of time pressure allows preparation of a good document, the absence of a deadline for the final EIS may result in a document remaining in draft form for longer than necessary.
- *Change in level of NEPA review.* The original NEPA document prepared was found to be inadequate late in the process, resulting in the need to prepare an EA in a very short time.
- *Changes in direction.* Delayed and changing decisions by DOE Headquarters resulted in a significant amount of rework and changes to the EIS.
- *Other priorities.* Document review at DOE Headquarters was delayed for both the draft and final EISs in part to accommodate the schedules of other EISs. These delays resulted in repeated requirements for additional funds across multiple fiscal years, which created accounting challenges.
- *Lack of contractor experience.* The EA contractor seemed to lack experience in the DOE NEPA process, and most importantly general NEPA experience.
- *Late identification of technical issues.* New technical issues were identified late in the EA process, requiring additional time for resolution.
- *Priorities of cooperating agencies.* The internal priorities of the cooperating agencies conflicted with the lead agencies' schedule.
- *Constant data changes.* Constant changes to the engineering and design data required revisions to the EA.
- *Lack of quality in contractor work.* Problems with the quality of the contractor's work led DOE to complete the EA in-house.

Teamwork

Factors that Facilitated Effective Teamwork

- *Effective document manager.* Because the document manager was considered credible, people were more likely to accept her input. She was easy to communicate with and eager to improve the document to facilitate its passage through the review process.
- *Agency leadership.* The National Nuclear Security Administration provided leadership in ensuring that major issues were discussed and that the EIS was reviewed and revised as needed.
- *Timely communication.* The EA process was facilitated by daily conference calls between DOE Headquarters and the site and by fast turnaround on reviews and email responses to inquiries.
- *Effective division of tasks.* DOE and the contractor each worked on separate sections of the document to prevent duplication of effort.
- *Good working relationships.* DOE and its contractors worked well together despite differences of opinion regarding the alternatives.
- *Experienced participants.* The participation of team members who had worked on other NEPA documents resulted in an improved document.

Factors that Inhibited Effective Teamwork

- *Disagreements with contractor.* The contractor seemed unwilling to make necessary changes to the EIS, resulting in conflict with DOE Headquarters.
- *Lack of participation from all team members.* All of those involved in preparation of a NEPA document need to work well within a team structure.
- *Lack of NEPA experience.* The applicant's scientific excellence and project familiarity did not automatically translate to success preparing an EA. Participation of environmental, safety and health staff with NEPA experience and/or procurement of an experienced NEPA contractor are essential for a successful NEPA process.

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

- *Exclusion of NEPA staff from project scheduling and budget discussions.* NEPA staff should be consulted regarding NEPA milestones and estimated costs to be integrated into the overall project schedule and budget. The NEPA Document Manager should participate in project meetings and be aware of the project's Gantt chart.
- *Unrealistic expectations of team.* A team approach can reduce the number of follow-on comments, but it is not realistic to expect there to be none.
- *Direct contact between DOE Headquarters participants and the contractor.* DOE field staff should act as a liaison between the contractor and DOE Headquarters participants to ensure appropriate communication.
- *Lack of in-house team.* Because an in-house team was not available to support the full EA process, DOE used a contractor, which was more expensive and less committed to the project, resulting in a lower quality product.

Process

Successful Aspects of the Public Participation Process

- *Individual comment responses.* DOE provided respectful responses to individual comments.
- *DOE participation addressed concerns.* Although members of the public appeared negatively disposed to the project, DOE responded effectively to their concerns through both Headquarters and site participation.
- *Meetings with tribes and Federal stakeholders.* Direct meetings between DOE NEPA staff and tribes and other Federal agencies concerning the project motivated the stakeholders to help with the EA.
- *Soliciting comments when not required.* Requesting public comments, although not required for a supplement analysis, was beneficial.
- *Public cooperation in the process.* Members of the public attended meetings on the EA and provided meaningful comment, at times speaking directly with DOE engineers about alterations to the project that would impact their properties.

Unsuccessful Aspects of the Public Participation Process

- *Divergent interests limit value of input.* Rather than providing DOE with the type of input the agency requests, many members of the public made comments that were directed towards one another.
- *Public participation process is outdated.* The meeting locations, times, and types selected by DOE for the public participation process are often met with protest by potential participants who are unwilling to travel or invest their time in the process. All parties might better be served by using the Internet as a forum for public meetings.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *NEPA process respected.* Respect for the NEPA process by the site as well as by Headquarters resulted in effective interaction.
- *Existing NEPA guidance.* Following the length and content recommendations of existing regulatory guidance regarding EAs avoided problems with document length and content expansion.
- *Alternative design process.* The NEPA process allowed for the identification and resolution of historic preservation issues through redesign of certain aspects of the project.
- *Mitigation planning.* The NEPA process facilitated informed and sound decisionmaking, including the development and implementation of mitigation measures in conjunction with the cooperating agencies.

What Didn't Work

- *Commitment to the EIS process.* Commitment to completing site-wide EISs in a timely fashion is necessary for the impact analyses to be useful for decisionmaking.
- *Decisions already made overturned.* Project decisions had already been made when it was decided that an EA was needed.

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

Enhancement/Protection of the Environment

- *EIS enables mitigation.* Even when the NEPA process seems to result in a validation of existing practices or decisions, mitigation may enhance protection of the environment.
- *Protection of historic properties.* The NEPA process allowed for the identification and protection of properties requiring historic preservation.
- *Protection of undisturbed areas.* A stakeholder provided input that resulted in the protection of undisturbed areas.

Other Issues

Guidance Needs Identified



- *Intentional destructive acts/terrorism guidance.* Guidance that considers intentional destructive acts/terrorism in NEPA documents is recommended. **Editor's Note:** DOE issued interim guidance in December 2006, *Need to Consider Intentional Destructive Acts in NEPA Documents*. *Further guidance is being developed.*
- *Guidance for Internet posting.* Guidance is recommended regarding what information needs to be posted at what point in the process, as well as guidance on Internet servers that can be used (DOE/NNSA or a contractor's) and how long the site should be active.
- *Guidance on considering new studies.* Guidance is recommended on how to handle studies that arise after the NEPA process has begun or been completed. **Editor's Note:** This matter is addressed in DOE's Recommendations for the Supplement Analysis Process, issued in July 2005 (*SA Guidance*).
- *Guidance regarding approval of supplement analyses.* Guidance is needed identifying whose signature is required for a supplement analysis. **Editor's Note:** See Section 4.1, "Approval Authorities," in the *SA 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 the past quarter, in which 6 questionnaire responses were received for EAs and EISs, 5 out of 6 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that most engineers and staff see NEPA as an effective tool that allows a project to be built on time and within budget, because a correctly implemented NEPA process addresses public concerns at an early stage. The general concept of considering the environment in the development of a project has become ingrained in younger generations of engineers.
- A respondent who rated the process as "4" stated that those preparing the NEPA document understood the importance of their work, not only the need to include all relevant information, but also to present it effectively. Therefore, they took the time necessary to prepare the most useful document.
- A respondent who rated the process as "4" stated that environmental issues were both identified and resolved during the NEPA process.
- A respondent who rated the process as "3" stated that the EA reminded project managers of environmental protections needed during construction.
- A respondent who rated the process as "3" stated that the process sometimes seemed more combative than needed or justified, and that key decisions were not sufficiently debated.
- A respondent who rated the process as "0" stated that agency planning and decisionmaking, including mitigation approaches, appear to be driven by political and budget considerations rather than the impact analyses developed through the NEPA process.

LESSONS LEARNED

December 1, 2008; Issue No. 57

Fourth Quarter FY 2008

NEPA Helps Us Make Good Decisions, Accomplish Missions, Secretary Bodman Says

Secretary of Energy Samuel W. Bodman, speaking at the plenary session of the DOE NEPA Community Meeting on September 25, 2008, noted the important contributions of the NEPA process to achieving DOE missions and expressed his appreciation to those who “make NEPA work for DOE.”

“Of course, we must comply with the law,” he said, “both because it is the right thing to do and because we cannot move forward when litigation stops us in our tracks. But even more significantly, NEPA helps us make good decisions.” Many DOE decisions are highly controversial and affect our country’s highest priorities, including our national security and prosperity, he said. By taking all relevant information into account through the NEPA process, “our decisions will be sound and we will be better able to explain them,” the Secretary observed.

“The theme of this meeting – **Making NEPA Work for DOE** – is appropriate. It is all of you who make NEPA work for DOE. I applaud you and thank you,” the Secretary told about 150 DOE NEPA Compliance Officers (NCOs) and Document Managers, environmental attorneys, and NEPA support contractors at the Washington, DC, meeting hosted by the Office of NEPA Policy and Compliance.

In his remarks, the Secretary acknowledged the important environmental impact statements prepared in support of DOE’s high-profile initiatives, such as establishing a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain; transforming the nation’s nuclear weapons complex; and advancing the Global Nuclear Energy Partnership. He also noted the important, but less publicized, NEPA reviews that involve



NEPA advances our missions and serves the public interest, said Secretary Bodman.

DOE’s power marketing projects, cross-border transmission lines, clean coal projects, energy efficiency and renewable energy projects, and diverse scientific initiatives.

The NCOs have a special responsibility to explain to their management the unique benefits of “owning their own NEPA process” and integrating it early into project planning, the Secretary said.

This responsibility is even more important when transition to a new

administration brings new managers who may not have had experience in bringing comprehensive environmental review into the decisionmaking process, he said in response to a question.

Meeting Focuses on Challenges, Changes

Distinguished speakers from DOE, the Council on Environmental Quality, and other Federal agencies all touched on the meeting’s theme: that to continue to make NEPA work for DOE, the Department’s NEPA Community must use effective approaches, better manage the NEPA process and quality of NEPA documents, and meet the challenges and changes that will face the Department.

In addition to the plenary session, the NCOs met with the NEPA Office and the Office of the Assistant General Counsel for Environment on September 24 to discuss their leadership responsibilities, and NEPA training sessions were held on September 24 and 26. (See additional articles inside, indicated by the meeting logo.) 



Inside **LESSONS LEARNED**

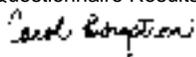
Welcome to the 57th quarterly report on lessons learned in the NEPA process. We are pleased to feature the September DOE NEPA Community Meeting as well as recent case studies.

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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 2, 2009. Contact Yarden Mansoor at yarden.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 2, 2009

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2009 (October 1 through December 31, 2008) should be submitted by February 2, 2009, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at www.gc.energy.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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This icon indicates that LLQR online (www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.



Focus on 2008 NEPA Community Meeting



Remember that we are all trustees of the environment for succeeding generations, said Carol Borgstrom.

As participants entered the DOE NEPA Community Meeting, they saw scenes from the Discovery Channel's documentary "The Planet Earth" interspersed with a video showing an array of activities that DOE is undertaking. "An interesting juxtaposition, isn't it?" asked Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in her welcome. "My hope is that through the NEPA process we can have it both ways – we can have our beautiful planet earth, and we can accomplish our important mission," she said.

"My aim for this meeting is to illustrate the fundamental principle of NEPA – to encourage productive and enjoyable harmony between man and his environment," said Ms. Borgstrom. She emphasized that the meeting participants are the ones who can make NEPA work for DOE. She said she hoped the meeting logo – the strong arm of NEPA turning the DOE gear – would inspire them to work together to ensure that DOE's NEPA process is, in fact, a well-oiled machine that truly works for DOE. "We need to assure our senior management and the public that the DOE NEPA process is, in fact, a useful and a powerful tool," she said. 



General Counsel Emphasizes Value of NEPA, Encourages Programs to “Take Ownership” of Process

“Helping managers to recognize their responsibility for NEPA – that is what ensures that NEPA works for DOE,” said General Counsel David R. Hill in his opening remarks at the plenary session of the NEPA Community Meeting. Mr. Hill challenged DOE’s NEPA practitioners, who coordinate compliance strategies for their Program or Field Offices or who oversee NEPA document preparation, to do a better job of understanding and explaining how NEPA is of value to the Department. Too often, he said, “managers describe actions the Department is planning, and then they acknowledge that they need to ‘do NEPA’ – like one needs to ‘do laundry.’”

Mr. Hill challenged participants to respond by helping senior managers view NEPA not as an obstacle to be overcome or simply a legal requirement, but something that contributes to accomplishing DOE’s critical missions.

“The objective of NEPA is to ensure that we go through a careful decisionmaking process and that we consider relevant information in making informed decisions,” he said. “How can the NEPA process make their Programs more effective, make their jobs easier, or even save money?” he asked. “How can NEPA analysis help them make better decisions?”

The answer, Mr. Hill noted, is for the work of the DOE NEPA Community to become more integrated with decisionmaking, especially early in the process. “It is especially important for Program Offices to own their NEPA analysis” he said, by cultivating strong NEPA managers, and taking responsibility for NEPA compliance strategies, document content, quality control, and schedule, even though the Office of the General Counsel will continue to support the preparation and approval of environmental impact statements (EISs).

“One thing that you can do that would be of great assistance is to inject reality into schedules for key NEPA reviews,” he advised. “If we become better at setting realistic timelines and deadlines instead of overly optimistic or utterly unrealistic ones,” he continued, “we will avoid looking grossly out of compliance with deadlines that were unrealistic the moment that they were set.”

Mr. Hill thanked the meeting participants for their efforts in support of DOE’s NEPA compliance program. LL

Dr. Jane Summerson Recognized for Exemplary Leadership

At the September 2008 NEPA Community Meeting, General Counsel David R. Hill recognized the work of Dr. Jane Summerson, NCO for the Office of Civilian Radioactive Waste Management and NEPA Document Manager for the Yucca Mountain Repository Supplemental EIS (SEIS), the Nevada Rail Corridor SEIS, and the Rail Alignment EIS.

Dr. Summerson received a DOE NEPA Special Achievement Award – with the following inscription:

In recognition of your exemplary leadership of the Yucca Mountain Environmental Impact Statement (EIS) preparation team. Your technical expertise, superior management skills, and profound commitment to NEPA excellence resulted in the timely issuance of high quality EISs, enabling the Department of Energy to meet a major milestone in support of its strategic goal to develop a repository for the disposal of spent nuclear fuel and high-level radioactive waste.



David Hill acknowledged Dr. Jane Summerson’s work as an example of how NEPA should be done and how NEPA should be integrated into a project.

See page 4 for an article on Dr. Summerson’s presentation on the Yucca success story at the recent NEPA Community Meeting. LL



Early Detailed Planning and Integrated Teamwork: Keys to Yucca NEPA Success

“How did we succeed?” asked Dr. Jane Summerson, NEPA Document Manager and NEPA Compliance Officer (NCO) for the Office of Civilian Radioactive Waste Management (RW), as she presented lessons learned from the preparation of the Yucca Mountain Repository Supplemental EIS (Repository SEIS), the Nevada Rail Corridor SEIS, and the Rail Alignment EIS. Integrated teamwork and early detailed planning contributed greatly to our successes, noted Dr. Summerson. She highlighted four elements – senior management buy-in, a management council, traditional project management tools, and formalized EIS-specific procedures – that enabled the timely completion of three high quality EISs.

“This was no easy task,” she said. “Among the major challenges we faced was the need to ensure that the documents were consistent with not only each other, but also with other DOE NEPA actions and DOE’s application to the Nuclear Regulatory Commission [NRC] for authorization to construct the repository, that is, the license application.” Dr. Summerson acknowledged the critical roles played by her EIS support contractors: Jason Associates Corporation, led by Joseph Rivers; Potomac-Hudson Engineering, Inc., led by Michael West; and Lechel Inc., led by David Lechel.

Obtain Senior Management Buy-In

By clearly articulating the need for the EISs to support DOE’s license application to the NRC, Dr. Summerson said she obtained DOE senior management buy-in. Consequently, she explained, the EISs were formally “projectized” within the Program, and the NEPA Document Manager reported directly to the RW Director. Senior management buy-in enabled Department-wide resources, including the EIS preparers and reviewers, to be dedicated to the EIS process, with a corresponding commitment, within both DOE and contractor organizations, that milestones for completing high quality EISs were non-negotiable at all levels, she said.

Use Management Council “Early and Often”

Dr. Summerson outlined DOE’s use of a Management Council, an approach previously used during the preparation of the 2002 Yucca Repository EIS, to ensure that the Yucca EISs met the needs of all owners, on schedule. Members of the Council included not only representatives from DOE offices (RW, General



Counsel, Environmental Management, Naval Reactors) and the EIS preparation team, she said, but also, for the rail EISs, staff from the Federal cooperating agencies (Bureau of Land Management and Surface Transportation Board). She noted that participation by Federal cooperating agencies brought special expertise to the table and ensured that the rail EISs met their agencies’ requirements so they could adopt DOE’s Yucca NEPA documents.

The cooperation among organizations, agencies, and technical leads in completing these EISs serves as a business case management example of how to do things right in the government.

*–Ward Sproat, Director
Office of Civilian Radioactive Waste Management*

In addition, she explained, the Management Council agreed up-front on the analytical approaches, strategy, scope, and appropriate level of detail to be used. For example, she said, the EIS contractors developed technical papers to outline the analytical approach for each impact area and prepared issue papers, which detailed the strategy for resolving policy issues, areas of controversy, and integration issues with other DOE NEPA documents. Subsequently, Dr. Summerson said, “the Council reviewed, agreed upon, and documented in writing each of these decisions.” This approach prevented re-visiting these items and the potential for delays, unless new information or circumstances required it, she said.

Apply Traditional Project Management Tools

Dr. Summerson emphasized the importance of early consideration and implementation of several project management tools, including scope definition, schedule integration, roles and responsibilities, and communication. Detailed planning of scope reduced legal risk, helped ensure consideration of public comments and responsible opposing views, and supported consistency of the Yucca EISs with other DOE EISs, she said. In particular, Dr. Summerson noted that “up-front planning and buy-in of scope resulted in fewer

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Keys to Yucca NEPA Success

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changes later and in turn prevented schedule slips.” A commitment to Congress by the RW Director to meet project milestones and the detailed integration of schedules for the various EIS teams also contributed to the overall adherence to schedule, she said.

Stressing the importance of defining roles and responsibilities, she noted that identifying early on who owns what, designating “tasking authorities” and respecting those boundaries led to the successful day-to-day management of close to 200 (at peak times) authors, contributors, reviewers, and production staff. In addition, she attributed their success largely to team building, which ensured the freedom to communicate and that problem solving approaches were understood and appreciated. Specifically, she underscored the importance of streamlining information flow among document preparation team members and having face-to-face discussions.

Communication and coordination between the team and DOE program offices were essential to ensure the Yucca EISs’ consistency with other ongoing DOE NEPA documents, Dr. Summerson explained. For example, she said, the team coordinated specific language in the Yucca EISs related to the Greater-than-Class C Low-Level Radioactive Waste EIS and the Global Nuclear Energy Partnership Programmatic EIS with DOE’s Office of Environmental Management and Office of Nuclear Energy, respectively ([LLQR, September 2007](#), page 1, and [March 2007](#), page 1).

Formalize EIS-Specific Processes

Dr. Summerson highlighted a series of formalized EIS-specific processes for communication, EIS review and approval, comment response, and document production and distribution. For example, the team used a system of point-of-contact communication among the EISs for content integration and technical data management to identify problems and get them solved early, she noted. In addition, she said, the team established detailed phased review cycles (staggering the review and comment resolution meetings for the EISs) and a formal comment-response process that was accepted by the Management Council prior to start of the public comment period ([LLQR, December 2007](#), page 8, and [March 2008](#), page 5).

Useful Tips for Document Production and Distribution

Document references

- Avoid web references or at least print a paper copy on the day of accessing the information

Publishing

- Use “fresh eyes” for the final quality check before production
- Don’t assume the work ends with document approval; resources must remain available to complete document distribution and to address issues arising after EIS issuance (e.g., litigation support)

Distribution

- Use a “culling” postcard to verify the mailing list and send a summary as the default distribution format for nonresponders

Administrative record

- Screen items early on for potential inclusion in the record

She described an EIS approval approach that included setting up key staff at DOE headquarters to facilitate final document review by DOE program offices, and conducting a series of briefings to inform concurring DOE organizations of the status of the EISs and of issues important to each organization. Dr. Summerson also provided recommendations on document production and distribution. (See text box.)

See related articles (pages 21-23) on the Rail Alignment Record of Decision and the new Groundwater SEIS, plus a timeline and chart showing relationships among the Yucca EISs.

For further information, contact Dr. Summerson at jane_summerson@ymp.gov or 702-794-1493.



NEPA Hot Topics: Sabotage and Terrorism; Global Climate Change

“As a result of heightened public awareness and concern, advancements in science, and increased litigation, the scope of analyses of both sabotage and terrorism and global climate change in DOE NEPA documents has evolved significantly,” said Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance. Mr. Cohen and Bruce Diamond, Assistant General Counsel for Environment, gave their respective technical and legal perspectives on considering sabotage and terrorism and global climate change in DOE NEPA documents and discussed the implications of recent court cases on DOE NEPA practice. “DOE has addressed these topics in NEPA documents for many years – using its discretion,” noted Mr. Cohen, “but in light of these recent court cases, maybe there is less discretion and more direction,” he said.

Sabotage and Terrorism

Mr. Cohen and Mr. Diamond discussed a key court decision in the *San Luis Obispo Mothers for Peace v. NRC* case ([LLQR, September 2006](#), page 19). Mr. Cohen reviewed NRC’s arguments that consideration of sabotage and terrorism is not required under NEPA versus the Ninth Circuit Court of Appeals’ contrary findings, which provide direction and pose challenges for DOE. “As long as the court can see that we’ve done a good faith job of looking at the issue, then we have an enormous advantage should we get in litigation,” Mr. Diamond said.

You are much better off arguing about whether you did an analysis correctly than whether you should have done the analysis at all.

***–Bruce Diamond
Assistant General Counsel for Environment***

 Mr. Cohen summarized DOE’s 2006 Interim Guidance on the [Need to Consider Intentional Destructive Acts in NEPA Documents](#), which directs that DOE NEPA documents, including EAs and EISs, should explicitly address potential environmental consequences of intentional destructive acts. He also described a recent survey of DOE NEPA documents prepared since DOE issued its 2006 Interim Guidance. In virtually all cases, the documents indicated that DOE took a hard look at intentional destructive acts.

NEPA document preparers do not have to “reinvent the wheel” when analyzing intentional destructive acts, he said. The recent terrorism analyses in the Los Alamos National Laboratory Site-wide EIS, the Complex Transformation Supplemental Programmatic EIS, and the Yucca Mountain Repository Supplemental EIS are good examples. He further noted that there are several technical approaches, including the use of generic or specific attack scenarios, and a wide range of information sources, including, for example, safeguards and security documents, safety basis documents, emergency management documents, and sometimes special studies, such as those that review the effects of specific weapons on specific targets.

“Providing a basis for a finding of no significant impact can be challenging because the consequences of a terrorist act may be large but, unlike accidents, the probability of an attack may be unknowable or highly uncertain, so the overall risk may be difficult to quantify,” Mr. Cohen said. He discussed several ways to approach this challenge, such as by addressing whether an attack, assuming it occurred, is likely to be successful.

Mr. Cohen noted several trends in recent DOE NEPA documents, including more analyses that address potential consequences (assuming an event occurs without accounting for likelihood), greater consideration of specific attack scenarios, more airplane crash analyses, even if the “accident” probabilities are remote, and more unclassified summaries in NEPA documents that are based on analyses in classified or Official Use Only appendices. He also reminded NEPA practitioners to consult classification and operations security specialists and review both the Council on Environmental Quality and DOE NEPA regulations in order to successfully balance the NEPA public disclosure requirements with security concerns, including those applicable to Internet publication.

Global Climate Change

Historically, DOE has addressed greenhouse gas emissions and global climate change in its NEPA documents. Mr. Cohen referred to the *Clean Coal Technology Demonstration Program Programmatic EIS* (DOE/EIS-0146, 1989), which discussed global warming and projected both incremental and cumulative emissions from the commercialization of clean coal technologies.

(continued on next page)



NEPA Hot Topics *(continued from previous page)*

There is a “continuing challenge to identify what is the correct or most useful way of evaluating the global climate change impacts of an individual project,” said Mr. Diamond. In particular, “while we have our arms around the terrorism issue, . . . global warming is different and our approach will continue to evolve rapidly because the science keeps evolving.” Mr. Diamond warned that the “old technique” of reporting X emissions, which are 0.0000X percent of the total annual global emissions “is not good enough,” explaining that “we must look at this in a ‘gross’ way, i.e., the proposed project is contributing to a trend of emissions and then consider the impacts from this trend.”

To assist NEPA document preparers in this effort, Mr. Cohen highlighted several useful climate change references that may be cited in a discussion of potential consequences of greenhouse gas emissions from a specific project. For example, he noted that key findings in the Intergovernmental Panel on Climate Change Fourth Assessment Report (www.ipcc.ch/ipccreports/assessments-reports.htm) and the recent U.S. Climate Change Science Program reports (www.climate-science.gov) are expressed with confidence estimates and are useful in a discussion

of potential global and regional impacts. He also described the June 2008 National Highway Traffic Safety Administration’s Corporate Average Fuel Economy (CAFE) Standards Draft EIS,¹ which has a level of analysis that is at the high end of the “sliding-scale” in that it not only has explicit analysis of direct, indirect, and cumulative impacts on climate change, but it also estimates specific changes to global carbon dioxide concentrations, global mean surface temperature, rainfall, and sea level rise. In addition, Mr. Cohen said, the EIS contains a substantial discussion of uncertainty and incomplete or unavailable information (*LLQR*, September 2008, page 13).

Mr. Cohen identified trends in recent DOE NEPA practice, including that more DOE NEPA documents have addressed cumulative impacts on global climate change. In accordance with the “sliding-scale” principle, he said, such analyses have considered a project’s emissions in combination with other greenhouse gas emissions, total project lifetime emissions, the potential to induce other actions, and life-cycle analyses. In addition, he noted that recent documents have focused on the exploration of alternatives, potential mitigation measures, and the communication of uncertainty.

¹The National Highway Traffic Safety Administration issued the Final EIS in October 2008, available on the CAFE website at www.nhtsa.dot.gov.

NEPAssist Demonstration Draws Enthusiastic Response

During a presentation on NEPAssist, EPA’s new web-based environmental mapping application, Environmental Protection Agency (EPA) staff Aimee Hessert and Julie Kocher demonstrated the application using Chattanooga, Tennessee, as the sample project area, accessing a variety of useful information including, for example, demographic information, health information from the Centers for Disease Control and Prevention, minority and low-income data, and regulatory information from the respective EPA Region Office.

Ms. Hessert noted that “EPA is seeking to form partnerships with other agencies to make NEPAssist an even more robust system.” She said that if data are available for a particular element, then EPA can incorporate such data into the application. Several DOE NEPA practitioners offered suggestions for additional data



that could be usefully incorporated, including information on endangered species, migratory bird routes, sites and areas regulated by delegated state authority (and not EPA directly), and international data for border nations.

NEPA Office Director Carol Borgstrom noted that the number of comments was a good indicator of enthusiasm for trying out this new NEPA tool, which may be especially useful in screening possible locations for proposed actions and identifying potential environmental impacts. Participants at the DOE NEPA Community Meeting were then offered a test drive of NEPAssist during the midday break. (Ms. Hessert reports that many DOE staff have requested passwords since the NEPA meeting.)

For more information, see *LLQR*, September 2008, page 1. Direct requests for assistance or a password to the NEPAssist site (<https://iasint.rtpnc.epa.gov/NEPA/>) to Aimee Hessert, EPA Office of Federal Activities, at hessert.aimee@epa.gov or 202-564-0993.



Apply Grade School Advice to NEPA Practice – “Show Your Work” to Get “Credit” for Analysis

“All you ever really need to know about NEPA, you learned in kindergarten or grade school,” said Lisa Jones, Assistant Chief, Appellate Section, Environment and Natural Resources Division of the U.S. Department of Justice. “This boils down to ‘show your work,’” she said, emphasizing the importance of doing so in NEPA documents, so that lay people can understand, and in the administrative record, which may be submitted to the courts. She was joined by Rachel Dougan, Trial Attorney, Environment and Natural Resources Division of the U.S. Department of Justice, to outline current major issues for NEPA practitioners to consider in NEPA practice.

Tell what you did and prepare documents that real people can understand.

– Lisa Jones
U.S. Department of Justice

Consider Context of Proposal in Analyzing Terrorism

The *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* (NRC) case has focused attention on terrorism as an issue for NEPA analysis, said Ms. Jones. In that case, the plaintiff claimed that NRC must consider environmental consequences of a potential terrorist attack on spent nuclear fuel facilities in its NEPA analysis, she explained. Noting DOE’s policy to consider terrorism in its NEPA analyses, Ms. Jones recommended that DOE always explain (including in responses to any comments on the issue) the context of a proposed action and why it structured an analysis of the impacts of terrorism the way that it did, or why it did not analyze those impacts. In other words, always show your work.

Analyze Climate Change Impacts

The failure to adequately consider a Federal action’s contribution to global climate change is an increasingly common allegation, Ms. Jones said, so the issue cannot be ignored. In a 2007 case, for example, the Ninth Circuit held that an environmental assessment (EA) for corporate average fuel economy standards, referred to as the CAFE

Standards EA, must consider the potential for slight changes in carbon emissions as a direct result of agency actions, but also combined with other actions, she said (*LLQR, December 2007*, page 24). She noted that the court said that the underlying benefit – a 2% decrease in greenhouse gas emissions from new emissions standards – must be analyzed in the context of an increase in the number of vehicles to which the standards would apply. At least in the Ninth Circuit, she said, a demonstration of potential beneficial environmental impacts may require preparation of an EIS.

The Council on Environmental Quality regulations direct that the “energy requirements and conservation potential” of an action and alternatives be discussed, Ms. Jones noted. (See 40 CFR 1502.16 regarding the content of an EIS.) Consider the impact of the proposed action on both greenhouse gas emissions and climate change, Ms. Jones advised, which can arise in the context of alternatives analysis, direct and indirect effects, or cumulative effects.

Document Categorical Exclusions

Federal agencies need to clearly document why a proposed action can be categorically excluded and further NEPA analysis is not necessary, Ms. Dougan advised. In so doing, agencies must include an assessment of whether there are extraordinary circumstances that would prevent application of a categorical exclusion (CX), she said. Ms. Dougan emphasized that it is difficult to determine in court if the use of a CX is arbitrary and capricious if there is no contemporaneous documentation of the agency’s decision to use that CX. In addition, she suggested that DOE consider posting the records of its application of CXs to proposed actions on its website, as it would help public understanding of why a proposed action was categorically excluded, she explained.

Have an Organized Administrative Record

As part of “showing your work,” Ms. Jones and Ms. Dougan provided tips on preparing and maintaining an administrative record. Ms. Jones advised that an administrative record should include the inputs and outputs for modeling and cite studies the agencies used.

(continued on next page)



“Show Your Work” (continued from previous page)

It is a misnomer that NEPA just does not apply if there is a categorical exclusion – the categorical exclusion is a way to comply with NEPA.

*– Rachel Dougan
U.S. Department of Justice*

In order to have a comprehensive administrative record, Ms. Dougan advised NEPA practitioners to “be over inclusive, rather than under inclusive” and include, for example, materials that are both for and against the agency’s decision. “Having a record that discloses some level of disagreement is not a bad thing,” she said, because it shows the agency’s consideration of all viewpoints. Most of all, she concluded, “be organized” – chronologically, reverse chronologically, or by resource area. She noted that an organized administrative record allows the agency

to identify items early on that might be missing from the record and builds the court’s confidence in the agency’s decision..

Write for the Nontechnical Reader

Ms. Jones recommended writing environmental documents for the general public, with nontechnical explanations in the main body of an EIS and technical explanations in appendices or the administrative record. She pointed out that including maps and diagrams in an EIS is helpful, noting courts sometimes want to make a site visit. To help ensure the adequacy of environmental documents, Ms. Jones said that preparers should read their documents from beginning to end, and she suggested including a statement in documents to that effect, advising readers to “read the document as a whole.”

“Show your work, explain what you know about uncertainties, and disclose disagreements where they exist,” Ms. Dougan concluded, noting that because NEPA is largely a procedural statute – “the more you show your work, the more ‘credit’ you get in complying with the law.” 

NEPA Training Covers Diverse Topics

“Standing Room Only” characterized some of the training sessions offered by the Office of NEPA Policy and Compliance as part of the September 2008 NEPA Community Meeting. Six topics identified as priorities by the DOE NEPA Community were offered. Almost 100 meeting participants registered for one or more training course and many more audited; 183 certificates were issued to registrants for successful completion of the course and test.

One course – *NEPA Fundamentals: Principles and Process* – was designed for the NEPA novice. One presented a guided tour of DOE’s cornerstone guidance on writing NEPA documents (*LLQR*, March 2005, page 4) – *Using the Green Book to Avoid NEPA Pitfalls*. [The “Green Book” is shorthand for *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (December 2004; www.gc.energy.gov/NEPA/guidance.htm).]

Another course, on *Effective Leadership*, was targeted to DOE’s NEPA Compliance Officers and NEPA Document Managers, and two courses focused on specific aspects of the NEPA process: *EIS Distribution and Comment Response* and *DOE Supplement Analysis Process*. In recognition of DOE’s recently expanded activities in loan guarantees and other forms of financial assistance, a new course was offered on *NEPA and Applicant Processes* (related article, page 14). To allow meeting participants maximum opportunity to take the courses of interest, three courses were offered twice. 





NNSA Associate Administrator/NCO Offers NEPA Advice from HQ and Field Perspectives

Speaking from her experiences as the National Nuclear Security Administration (NNSA) NEPA Compliance Officer (NCO) and Manager of the West Valley (New York) Project Office, and looking ahead to her new role as Manager of the Livermore Site Office,¹ Alice Williams advised NEPA practitioners on how best to tap the potential of the NEPA process and their roles in it. Ms. Williams emphasized the importance of a close working relationship between the decisionmaker and NEPA practitioners, whether it is to define a workable scope for a proposed action or to assure NEPA compliance for the day-to-day activities of a Site or Program Office. In addition to serving as NNSA NCO, Ms. Williams was the Associate Administrator for Infrastructure and Environment in NNSA.

Tie NEPA Reviews to Site Planning

“Sometimes our eyes are bigger than our stomachs,” said Ms. Williams in recounting two proposed projects that were overly ambitious – the proposal for a new production reactor in the late 1980s and the proposed closure of the West Valley Project in the late 1990s. Before the reactor proposal was cancelled and the closure proposal down-scoped, the NEPA processes had been costly to the Department: actions could not be taken, taxpayer funds had been spent on research and documentation, and citizens who had participated in the NEPA processes were worn out and did not like DOE, she explained.

Ms. Williams advised NEPA practitioners to work together with managers on a staged approach to decisionmaking for large and complex projects. She described the successful change of scope (reconfiguration) of the proposed closure of West Valley, first analyzed in a 1996 draft EIS, to two proposed actions considered in separate EISs, one for decontamination and waste management (final EIS issued in December 2003) and one for decommissioning or long-term stewardship (draft EIS to be issued shortly). Ms. Williams urged DOE’s NCOs to take advantage

of the opportunity provided by site or program planning activities to coordinate with the NEPA process.

Pursue Cooperating Agencies

DOE sites that perform Work for Others, said Ms. Williams, should aim to have the other agency cooperate in the EA or EIS that DOE prepares for the proposed work. She urged NEPA practitioners to be assertive in establishing such working relationships. She said that she intends to foster such relationships at the Livermore Site Office.

We must train our new managers, especially if they are new to DOE, as to what NEPA means to DOE and why they have to pay attention to it.

–Alice Williams

Work Closely with Managers/Project Directors

Based on her experience as an NCO, Ms. Williams emphasized the regular interaction that she intends to have with the Livermore Site Office NCO, noting that one important NEPA activity coming up is the 5-year review of the site-wide EIS.

In this regard, she recommended that 10-year site plans and their annual updates should be linked to the NEPA planning process. She recognized, however, that NCOs at other sites and in program offices often must train managers about NEPA and how the process can contribute to good decisionmaking. NCOs must also work directly with project directors to incorporate the NEPA budget and schedule into the overall project budget and schedule. In acknowledging the tough job that NCOs have, she said that it is important for them also to train their successors so there is no gap in meeting the letter and spirit of NEPA. 

¹Ms. Williams assumed her new position as Manager, Livermore Site Office, on November 2, 2008 (related article, page 32).



CEQ Airs “Hot Topics”

The Council on Environmental Quality (CEQ) has been working on a panoply of “hot” NEPA topics in the last several years, said Edward (Ted) Boling, CEQ General Counsel. He illustrated new NEPA approaches, current issues, and resources available to NEPA practitioners, some of which are highlighted below.

Explore More Effective Use of Public Involvement in NEPA Processes

The integration of the NEPA process with other public participation activities by the National Marine Fisheries Service for its proposed NEPA regulations (05/14/08; 73 FR 27997) has illustrated the challenges of integrating NEPA requirements with other planning and environmental review procedures, Mr. Boling said. The agency had found that, notwithstanding many public hearings on its proposed procedures, the agency and stakeholders were “talking past each other,” he explained. Mr. Boling characterized a workshop in which agency representatives and stakeholders worked side-by-side and line-by-line through proposed NEPA procedures as a potential “saving grace” – as he expects the workshop will result in a much improved final rule. Mr. Boling added that agencies may find processes similar to this “negotiated rulemaking” process to be helpful in revising their NEPA procedures or developing NEPA documents.

Apply Current Climate Science Resources

Recognition of climate change issues predates NEPA, said Mr. Boling, and he referred to a 1968 “white paper” prepared by the Joint House-Senate Colloquium, which is a cornerstone of the legislative history of NEPA. The participants considered the long-term and global effects of energy consumption and recommended that a process, such as the NEPA process, would be an essential tool to monitor and address the trend that atmospheric scientists were observing, he said.

Any guidance that CEQ might issue on how to analyze climate change impacts, Mr. Boling explained, would focus on using current scientific resources that are appropriate to the particular action being evaluated. The recent reports by the Intergovernmental Panel on Climate Change incorporated much from the U.S. Climate Change Science Program, he noted, and www.climatescience.gov is the best source for Synthesis and Assessment Products that present this information in a format useful for decisionmakers. Any CEQ guidance also would rely on the growing record of agency EIS analyses that exists, Mr. Boling said, pointing in particular to DOE’s robust history of such evaluation ([LLQR, December 2007](#), page 1).

The area of most common concern to local communities is apt not to be emissions of greenhouse gases from Federal agency actions, emphasized Mr. Boling, but their implications. For example, he said, the recent analysis prepared by the Department of Transportation on the implications of sea level rise, and the associated increased risk of storm surges on infrastructure along the Gulf of Mexico, was outstanding, and he referred NEPA practitioners to it (www.nhtsa.dot.gov; [LLQR, September 2008](#), page 13).



“NEPA is no stranger to the climate change debate,” said Ted Boling, CEQ General Counsel.

As part of the upcoming transition activities in Federal agencies, we should inform new senior decisionmakers about the entire NEPA process and what a great tool it is.

–Ted Boling, CEQ

Take Advantage of Improved Tools

NEPA practitioners should regularly visit the CEQ NEPA website, www.nepa.gov, Mr. Boling said, as materials posted there form the cornerstone of NEPA practice. To illustrate key features, he pointed out, for example, that *Collaboration in NEPA: A Handbook for NEPA Practitioners* emphasizes establishing trust, a hallmark of the NEPA process, and provides recommendations on doing so at each step along the way. He also emphasized that the guidance on aligning NEPA processes with environmental management systems (EMS) illustrates how EMS can help with project monitoring and follow up actions, thereby enhancing NEPA compliance.

CEQ is very interested in technology improvements in the NEPA process, said Mr. Boling, and he expressed interest in agencies pursuing a web-based collaborative approach to document preparation. There is merit in “the wisdom of the crowd,” he said, as collectively we can know more than any one individual. Mr. Boling challenged DOE to lead the way in improving the NEPA process by use of the web-enabled collaboration. **LL**



The Essential Role of the NEPA Compliance Officer

“NEPA is the first line of attack by parties opposed to a government project,” observed Mary Neumayr, Deputy General Counsel for Environment and Nuclear Programs.



Mary Neumayr recognized the contributions of all members of the DOE NEPA Community.

Compared to other agencies, DOE is less frequently a defendant, Ms. Neumayr noted, and when it faces such litigation, DOE’s position is often upheld by the court. She attributed these positive outcomes to three factors.

First, DOE recognizes the importance of NEPA and has institutionalized the NEPA Compliance Officer (NCO) role to help managers

appreciate that NEPA is essential to meeting program goals and is not just another task on the critical path.

Second, DOE has exceptionally capable NEPA staff. Ms. Neumayr characterized NCOs, the Office of NEPA Policy and Compliance, and the Office of the Assistant General Counsel for Environment as experienced professionals committed to performing thorough technical analysis and following prescribed regulatory procedure.

Finally, DOE has a strong working relationship with the Council on Environmental Quality and the Department of Justice as a result of many years of collaboration and cooperation.

Ms. Neumayr advised NCOs to keep their managers apprised of developing issues in NEPA reviews to help them take ownership of their NEPA processes. This is especially helpful during a long decisionmaking process, she noted, when goals, conditions, and information can change. A good NEPA document will address a broad range of reasonable alternatives so the process does not need to start over in the face of change. “Make your EIS an enduring piece of work,” she said.

Addressing NEPA issues early on pays large dividends.

***–Mary Neumayr
Deputy General Counsel
for Environment and Nuclear Programs***

Ms. Neumayr noted that the administrative record is generally publicly available and used to support the government’s position in NEPA litigation. All components may have to be disclosed unless protected by applicable privileges; she advised NCOs to consult with counsel on appropriately identifying such materials. She also urged NCOs and members of their NEPA document teams to maintain a professional tone even in informal, internal communications, as this can influence perceptions of the quality of an agency’s analysis in a NEPA document. Finally, it is essential to deal with issues raised by other Federal agencies to demonstrate a consistent governmental position; she advised that the comment response section of a final EIS should make it easy to see the responses to agency comments made on the draft EIS.

In closing, Ms. Neumayr thanked the NCOs for their contribution to achieving the Department’s missions: “You have a challenging role, and a very important one.” 

Ms. Neumayr offered advice to the NCOs on how to enhance their effectiveness:

- ✓ Engage the NEPA Office and legal counsel early in the NEPA process to obtain the benefits of their advice and experience.
- ✓ Be personally involved in developing critical parts of the NEPA approach, including the statement of purpose and need for agency action, and the alternatives that flow from that need.
- ✓ Look at other environmental statutes, such as the Endangered Species Act, and consult with other Federal and state agencies early in the NEPA process.
- ✓ Consider whether there are candidates for cooperating agency roles and seek to establish collaborative relationships.
- ✓ Learn how other DOE NEPA reviews have addressed issues that are critical to your analysis; don’t reinvent the wheel.
- ✓ Learn how DOE is addressing emerging issues in NEPA documents, such as terrorism and climate change.
- ✓ Keep NEPA on your manager’s radar screen.



Advice from Counsel

Internal DOE reviewers are finding ineffective writing and poor quality in NEPA documents submitted for approval, in spite of the emphasis on assuring quality at each step of EIS and EA development at a previous NEPA Compliance Officer (NCO) meeting, May 2006 (LLQR, June 2006, page 1). To help ensure that NEPA documents attain legal sufficiency, two DOE Headquarters attorneys offered advice on writing NEPA documents and recommendations on NEPA compliance in general.

Quality Matters!

In working closely with DOE Program and Field environmental attorneys to prepare EAs and EISs, NEPA Document Managers often ask, “Why are lawyers so picky?” stated Bruce Diamond, Assistant General Counsel for Environment. Although not characteristic of all documents that his Office reviews, he said that far too many NEPA documents are not written well and do not read well – jeopardizing defensibility of the documents.

“We have a bedrock obligation to inform the public as to what the environmental and other consequences of an action would be,” Mr. Diamond emphasized. When sentences are garbled, logic flow is not evident, or tables are inconsistent, for example, it is hard to persuade a judge that we have analyzed the situation properly, he said. Quality does matter, he insisted.

***If a NEPA document does not read well,
our credibility goes out the window.***

***–Bruce Diamond
Assistant General Counsel for Environment***

Demand a Thorough QA Process

“Are we doing enough to make sure that strong internal Quality Assurance (QA) processes are in place during EA and EIS preparation?” Mr. Diamond asked. NEPA document preparation contractors should have QA staff who are separate from the technical writing staff and who have sign-off authority before a document is submitted for approval, he proposed. Mr. Diamond acknowledged the “toxic situation” that we can find ourselves in when an inferior product is received from a contractor, program management is up against a deadline to issue the NEPA document, and legal counsel is seen as giving the DOE NEPA Document Manager and EIS preparation team “a hard time.”

“How can we avoid this situation? How can we keep from rewarding contractors for suboptimal work? Should we develop best practices?” Mr. Diamond asked the NCOs. For example, he posed, would it help make the system work better if we simply sent a document back to a contractor, with the general direction to remove inconsistencies and correct grammar and misspellings?

Some NCOs responded that, more effective than what might be perceived as “bring me a rock,” would be to write the task order or the contract for the NEPA document as specifically as possible. A specific task order, the NCOs explained, could have a requirement for a robust QA system, including a QA plan that provides for an independent editorial review. Others suggested working with Contracting Officers, perhaps to set up penalties in case high quality documents are not received the first time, on time, and to routinely give thorough evaluations of contractor performance to Contracting Officers.

The Good, the Bad, and the Ugly

The NCOs are a “good” part of DOE’s NEPA program, said Paul Detwiler, Deputy General Counsel, National Nuclear Security Administration (NNSA), as they know “on the ground” facts about a site and serve as institutional experts, e.g., has a document been issued? has a facility been built? has the environment changed? He acknowledged that NCOs often find themselves caught in the middle – pressured between project deadlines and the time needed for the NEPA process. He emphasized that DOE’s terrorism guidance and, building on it, DOE’s analysis of the effects of terrorism, are also “good” aspects of DOE’s NEPA practice. He offered additional advice on how to improve other aspects of the DOE NEPA Compliance Program. (Also see page 33.)



Applicants and the DOE NEPA Process

“What’s different about applicant processes?” asked Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in distinguishing DOE’s NEPA process for a private entity’s request to DOE for financial assistance from DOE’s process for a DOE proposal. Ms. Borgstrom highlighted four potentially different features – the source of project and environmental information, contracting mechanisms, the number of alternatives, and competition among proposals for funding.

The Council on Environmental Quality (CEQ) and DOE NEPA regulations and “Frequently Asked Questions” provide direction and guidance on issues related to NEPA review of applicant proposals, she advised, referring to them throughout her presentation. Noting in particular the DOE NEPA regulations concerning NEPA review for private entity proposals, she explained that 10 CFR 1021.215, “Applicant process,” and 1021.216, “Procurement, financial assistance, and joint ventures,” define both applicant and DOE responsibilities for an efficient NEPA process (text box, next page). She emphasized that the regulations do not apply when an applicant’s proposal can be categorically excluded.

For Project and Environmental Information, Applicant Submits and DOE Verifies

An applicant must provide enough information to assist DOE in determining the level of NEPA review required for the applicant’s proposal, but DOE is required to assist the applicant by outlining the types of information needed, Ms. Borgstrom said. “You must specify what you need to know,” Ms. Borgstrom advised, “as we depend in large measure on what the applicant gives us when applying for a permit or submitting a proposal in response to a solicitation.” DOE’s recent solicitations for loan guarantee applications provided an outline of an environmental report to be submitted by applicants that DOE will also use to prepare an EA or EIS, if necessary, or compare proposals, if necessary, she explained. (*LLQR*, September 2008, page 3.)

“It is important for DOE to validate and verify environmental information from the applicants,” Richard Ahern, Deputy Assistant General Counsel for Environment, stressed. DOE was challenged over one EIS where applicant information was erroneous, but was not verified, he said.

In Third-Party Contracting, DOE Selects and Directs, Applicant Pays

Third-party contracting refers to the preparation of an EA or EIS by a contractor chosen and directed by DOE, but paid for by the applicant, Ms. Borgstrom explained. She said that an applicant may issue a “request for proposal” and then present a slate of candidate contractors for DOE to consider, but DOE is not limited to those proposed by an applicant. Ms. Borgstrom said that an EIS preparation contractor for an applicant proposal must sign a statement indicating no “conflict-of-interest,” the same as is required of any contractor preparing an EIS for an agency proposal.

A memorandum of understanding among DOE, an applicant, and a document preparation contractor should be established, she recommended, to define roles and responsibilities of each. Although an applicant establishes the contract for NEPA document preparation, she emphasized that DOE is fully responsible for document scope and content. Mr. Ahern added that applicants may be reluctant to fund environmental analyses for actions and activities not in the scope of their proposals, and the memorandum of understanding can serve to emphasize that the agency must meet its NEPA obligations.

DOE does not serve an applicant well if the NEPA process is not followed, impacts are not adequately analyzed, and information is not validated or verified.

–Richard Ahern

Deputy Assistant General Counsel for Environment

Evaluate All Reasonable Alternatives

“Consider both the applicant’s purpose and need and the Department’s purpose and need when developing the range of reasonable alternatives,” Ms. Borgstrom advised, stating that determining the range may be complicated and should be done on a case-by-case basis. Mr. Ahern added that determining the range can be a very creative act, but if carefully done, courts generally give deference to an agency’s determination of the alternatives to analyze.

(continued on next page)



Applicant Process *(continued from previous page)*

NEPA does not dictate the number of alternatives to analyze for any proposal, said Mr. Ahern. Even though the agency's decisionmaking for an applicant proposal would appear to be "go/no-go," that is, grant the proposal or, under no action, deny it, Mr. Ahern explained, DOE should make every effort to identify a range of real, substantive alternatives. He added that even in cases where Congress tells DOE to take a certain action, unless Congress exempts the action from NEPA review, NEPA does not limit an agency analysis to that directed by Congress.

Ms. Borgstrom referred to one of the CEQ "40 Questions" that states that "Reasonable alternatives . . . are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant"¹ in underscoring an agency's responsibility to look beyond an applicant's proposal.

Confidential, Competitive Process Results in Conditional Selection

Under Section 216 of the DOE NEPA regulations, explained Ms. Borgstrom, DOE conducts a confidential, competitive process when there are more applicants than funding resources can support, and there is a need to protect proprietary business information. She said that this confidential process results in a conditional selection of proposals, which is followed by a publically available synopsis of it, and an EA or EIS for each applicant proposal that was selected conditionally. The confidential process and documentation under the "216 process," she emphasized, can be viewed as a "mini EA or EIS to compare environmental impacts of proposals in the competitive range."

This topic was addressed both in the NCO meeting and in a training session. Materials from the training session are available on request from the DOE Office of NEPA Policy and Compliance: (1) excerpts from CEQ and DOE regulations and guidance concerning the applicant process, (2) examples of requests for environmental information, (3) an example memorandum of understanding among DOE, an applicant, and an EIS preparation contractor, and (4) a statement of work for documentation under 10 CFR 1021.216. Contact AskNEPA@hq.doe.gov or call toll free, 800-472-2756. 

¹ Question 2a in "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," see www.gc.energy.gov/nepa, under Guidance.

DOE NEPA Regulations Concerning Applicant Proposals

10 CFR 1021.215, Applicant process applies unless the action is categorically excluded.

Applicant responsibilities:

- ✓ Consult early with DOE
- ✓ Conduct studies that DOE deems necessary and appropriate
- ✓ Consult early with other involved agencies and notify DOE of other required actions for project completion
- ✓ Notify DOE of persons/organizations interested in the proposed undertaking
- ✓ Notify DOE if the applicant plans to take an action . . . that may have an adverse impact or limit the choice of alternatives

DOE responsibilities:

- ✓ May prepare generic guidance on the level/scope of environmental information to be provided
- ✓ Begin its NEPA review as soon as possible
- ✓ Independently evaluate/verify applicant-supplied information
- ✓ Complete and consider any NEPA documents before final decision on the application

10 CFR 1021.216, Procurement, financial assistance, and joint ventures applies unless the action is categorically excluded.

- ✓ When relevant in DOE's judgment, DOE shall require the offeror to submit environmental data and analysis as part of the proposal
- ✓ DOE shall independently evaluate/verify information submitted by offeror
- ✓ For offers in the competitive range, DOE shall prepare and consider an environmental critique before selection (subject to confidentiality requirements)
- ✓ A publicly-available environmental synopsis shall be incorporated in any subsequent EA or EIS



2008 NEPA Community Meeting – NCO Session

DOE NEPA Metrics Update: Achieving 15-Month Goal Remains a Challenge

While EIS costs appear to be under control, EIS completion times remain a concern, said Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance, in updating metrics on EIS completion time and cost, based on a review of data over the past 10 years (January 1998 through December 2007). He noted that this conclusion is a familiar theme, and DOE management continues to show interest in reducing EIS completion times to meet program needs.

Mr. Cohen reminded NEPA practitioners that in 1994 DOE set a median EIS completion time goal of 15 months (from the DOE notice of intent to the Environmental Protection Agency’s notice of availability for the final EIS) and since then, the NEPA Office has provided data and analyses of DOE NEPA metrics in *LLQR*.

EIS Costs

The cost to prepare an EIS has remained about the same over the past 10 years, Mr. Cohen said. The median EIS cost was \$1.8 million for the 49 EISs with applicable cost data completed from 1998–2007 (Figure 1). Median costs for programmatic EISs (about \$4 million) and site-wide EISs (about \$7.6 million) were greater than for project-specific documents (\$1.5 million). Median costs generally are more useful than average costs, which are skewed by a single, extraordinarily expensive document in 2002.

EIS Completion Times

Data for the past 10 years (Figure 2) show that DOE has not met its 15-month median EIS completion time goal, said Mr. Cohen, noting that the median completion time was 27 months for the 68 EISs completed from 1998–2007. On an annual basis, median EIS completion times have varied between less than 20 months and more than 30 months, he explained. Although meeting DOE’s 15-month goal remains a challenge, Mr. Cohen emphasized that DOE can prepare

Figure 1: EIS Cost and Number of EISs, 1998–2007

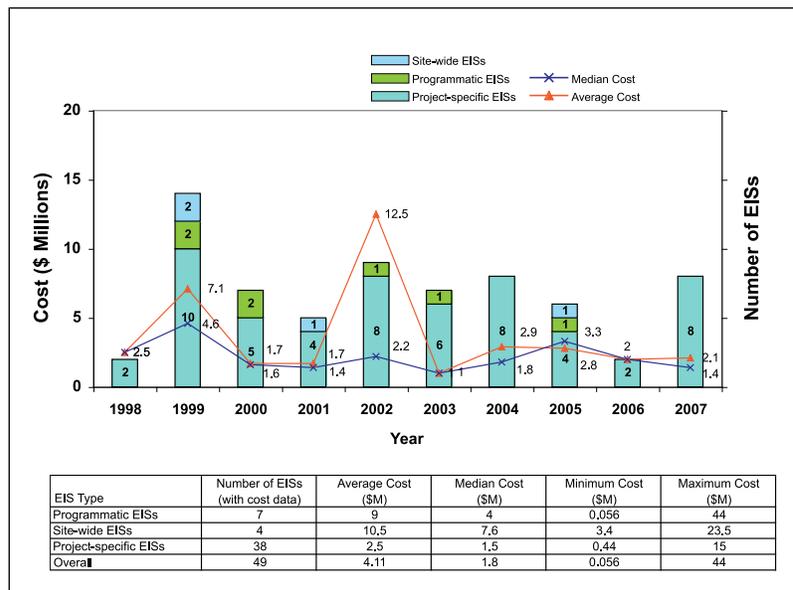
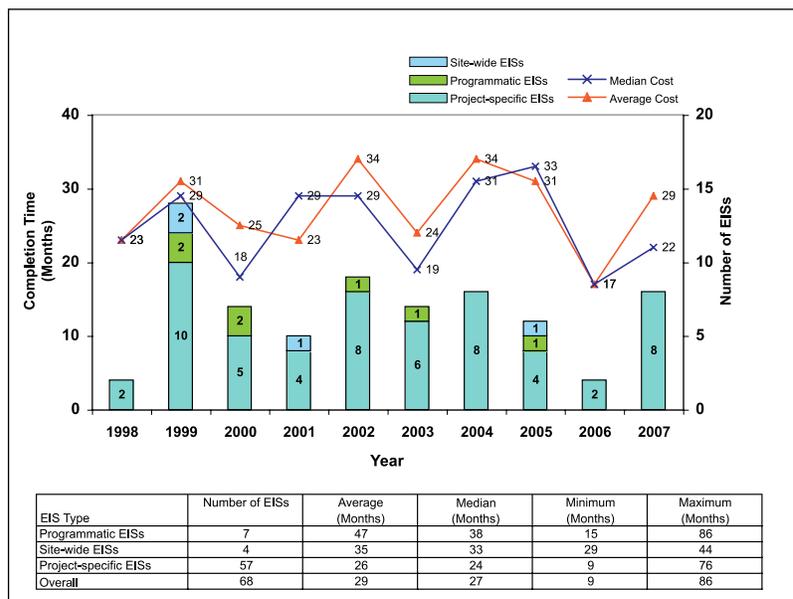


Figure 2: EIS Completion Times and Number of EISs, 1998–2007



EISs in 15 months (or as needed to meet program needs) and pointed to data on DOE’s past EISs as evidence of this fact. Figure 3 shows the distribution of all EIS completion

(continued on next page)



Metrics Update (continued from previous page)

times for documents completed in the past 10 years, and he said the data show that about 20 percent of the EISs were completed in 15 months or less, and that the most frequent completion time (mode) was 15 months.

Factors Contributing to EIS Completion Time

Discussing factors associated with short and long EIS completion times based on a “root cause” analysis of information from Lessons Learned Questionnaire responses, he noted the primary factor associated with short EIS completion times is management attention to scope, schedule, and key issues. Strong preparation teams with dedicated members and appropriate skills, and excellent team communication are among other factors related to short EIS completion times, he said.

Conversely, projects with poor scope definition, including changing proposals and late identification of alternatives, and involvement of multiple DOE program/site offices, which often have competing priorities, are factors contributing to long EIS completion times, he said. In addition, Mr. Cohen noted that cooperating agencies often add to an EIS’s completion time, but cooperating also adds value (e.g., building consensus and ability to implement projects). For EISs completed in 1998–2007, Figure 4 identifies the agencies DOE cooperated with and the number of DOE EISs for each cooperating agency.

How Does DOE Calculate Cost and Time Metrics?

Mr. Cohen responded to questions on how NEPA metrics are determined. With regard to how the metrics account for suspension of or delays in the NEPA process, Mr. Cohen suggested that NEPA document managers officially “stop the clock” by announcing a document’s suspension to the public (and “restart the clock” by announcing a document’s reactivation). (See [Mini-guidance Articles from Lessons Learned Quarterly Reports, December 1994 to September 2005](#), page 6-5, for more information on how to keep the public informed

Figure 3: EIS Completion Time Distribution, 1998–2007

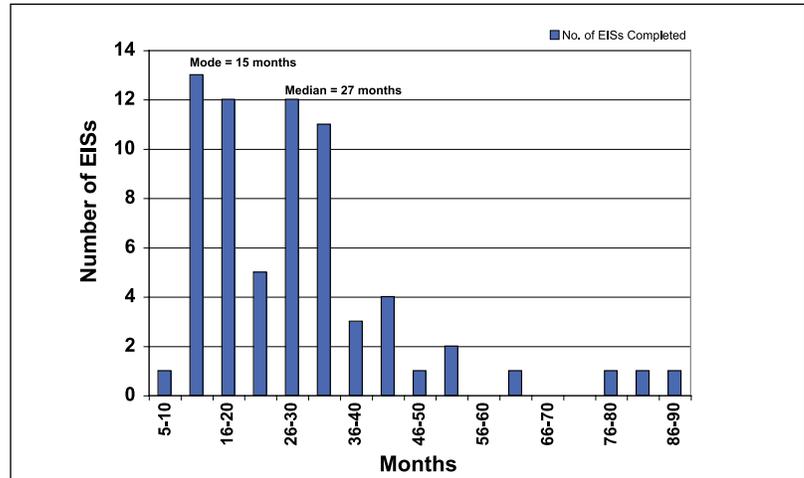
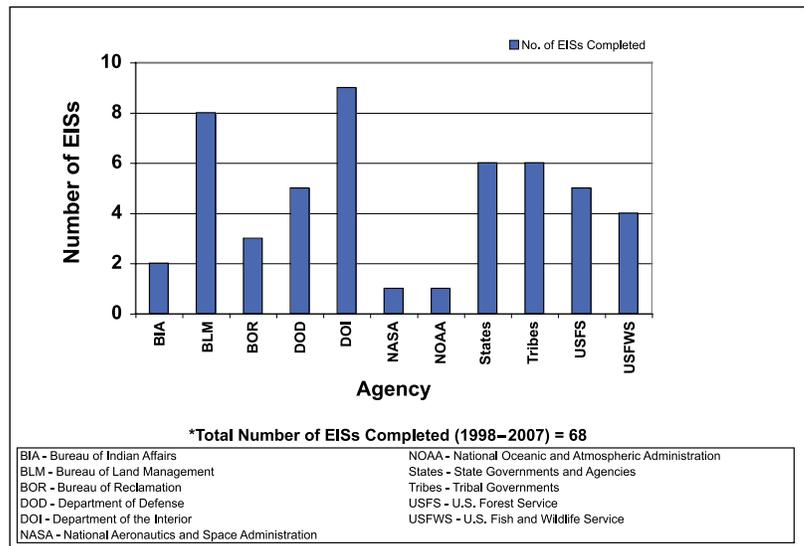


Figure 4: Number of DOE EISs Sorted by Cooperating Agency, 1998–2007*



when EIS plans change.) He also responded to a question on how costs are assigned, noting that DOE NEPA metric costs almost always reflect only contractor costs and do not include Federal staff costs. He added that document managers should only report costs that would not be incurred except for the NEPA process. For example, site characterizations for detailed design and construction purposes, or costs to obtain air and water permits, should be excluded (see Instructions within the Lessons Learned Questionnaire on the DOE NEPA Website at www.gc.energy.gov/nepa). LL





A Closer Look at the DOE NEPA Compliance Officers — Round 2

By Carrie Moeller, *Office of NEPA Policy and Compliance*



At the September 2008 DOE NEPA Community Meeting, the Office of NEPA Policy and Compliance distributed a questionnaire to NEPA Compliance Officers (NCOs) to get a sense of their current NEPA and non-NEPA workloads and their assessment of their ability to perform NEPA responsibilities. The NEPA Office received a total of 23 responses from the 38 NCOs¹ in attendance and from this information we drew four conclusions. Also, the NEPA Office compared this year's questionnaire responses with findings from a similar NCO questionnaire distributed in 2005.² Findings #1 and #2 below were also true in 2005, but were re-emphasized in this year's questionnaire responses.

Finding #1: NCOs [Still] Know NEPA

Based on results from this year's questionnaire, NCOs have served in that capacity for an average of 6 years and have an average of nearly 18 years of NEPA experience. Based on the 2005 questionnaire, NCOs had served an average of 7 years and had an average of 15 years of NEPA experience. Since June 2005, DOE has appointed more than 20 new NCOs. (See Transitions articles in this and the past 14 issues.) Despite this, the overall NEPA experience of the group remains high. The average time served as NCO decreased approximately 15% from 2005 to 2008. However, in the same timeframe, the average amount of NEPA experience per NCO increased 15%. Also, 7 of the 23 NCO respondents stated they had more than 10 years of NCO experience. These 7 NCOs have an aggregate of more than 170 years of NEPA experience (or 43% of the total NEPA experience of the 23 NCO respondents). Therefore, we conclude that the NCOs still know NEPA!

Finding #2: NCOs [Still] Wear Many Hats

As reported in 2005, NCOs have many non-NEPA responsibilities. This remains true today. Based on the 2008 questionnaire, NCOs spend, on average, 45% of their time on NEPA-related activities, which is an increase from the 2005 results when NCOs reported spending, on average, about one-third of their time on NCO duties.

However, there is a wide range of responses – one respondent reported spending only 5% of her time on NEPA-related activities whereas another respondent reported spending 90% of her time on NEPA-related activities.

To illustrate collateral responsibilities, some NCOs serve as the Site's or Program Office's cultural resources contact (including National Historic Preservation Act and tribal contact), Environment, Safety and Health point of contact or manager, and waste management compliance contact – to name a few. NCOs' other responsibilities include environmental compliance and remediation, pollution prevention, site and activity walkthroughs, Clean Water Act permitting, Endangered Species Act compliance, quality assurance, and Work for Others oversight.

Finding #3: NCOs Are Recognized As NEPA Authorities

More than 85% of NCO respondents stated that they frequently were consulted by program and project managers for NEPA advice. Nearly 75% of NCO respondents said their concurrence is always required for NEPA-related actions within their organizations. In addition, more than 90% of NCO respondents indicated that they felt they had enough authority to carry out NCO responsibilities in their organizations. The fact that NCOs are often consulted for NEPA advice and are included as part of the concurrence chain for NEPA-related actions is evidence that NCOs are recognized as NEPA authorities in their organizations.

Finding #4: NCOs Need to Pass On Their NEPA Knowledge

As recognized "NEPA authorities" in their organizations, NCOs must provide NEPA training and disseminate guidance materials and related information (per DOE Order 450.1B, Section 5(d)(9)). In this year's questionnaire, 13 of the 23 NCO respondents (56%) stated they had provided NEPA training in their organization in the past year.

(continued on next page)

¹At the time of the meeting, DOE had a total of 48 NCOs.

²On the occasion of the 35th anniversary of NEPA in 2005, the NEPA Office distributed a questionnaire to gather data and elicit wisdom on the NCO experience (LLQR, June 2005, page 1).



A Closer Look at NCOs *(continued from previous page)*

Several NCOs have retired or changed positions in the past few years and others are considering retirement. Specifically, in the past few years, turnover among NCOs has been high. Also indicative of the NCO turnover is that more than half (12) of the 23 NCOs that submitted questionnaire responses have served 3 years or less as NCO. Five of these individuals were designated NCO within the past year.

As NCOs begin to consider retirement or changing positions, it is increasingly important that they pass on their knowledge to mitigate the loss of NEPA expertise. For example, one NCO, before retiring in January 2008, assembled a NEPA training briefing for his successor that included recommendations based on his years of experience in a small Field Office whose activities are important to many Programs and other Field Offices ([LLQR, December 2007](#), page 18). Another suggestion

would be to bring staff “in training” for your NCO position to DOE NCO meetings (two NCOs did this for the September NCO meeting).

Several NCO respondents stated that the “NCO network” or “system of NCOs” is one of the things DOE does well in NEPA “space” and that they recognized the value of attending NCO meetings and receiving training. To assist the NCO training efforts, the NEPA Office hopes to hold NCO meetings more frequently.

Acknowledgements

The Office of NEPA Policy and Compliance would like to thank the NCOs for their NEPA efforts and for giving the Office a “window” into the NCO world by responding to the questionnaire. The most recent NCO Directory is posted on the DOE NEPA Website under Contact Us. 

Policies and Procedures for the DOE NEPA Website

The DOE NEPA Website (www.gc.energy.gov/nepa) has become an important component of DOE’s NEPA Compliance Program. To be effective, however, NEPA documents need to be posted on time.

“The NEPA document preparation process is not complete until the NEPA Office receives paper and electronic copies for archiving and posting on the DOE NEPA Website,” said Denise Freeman, Office of NEPA Policy and Compliance. Ms. Freeman reminded NCOs of their obligation under DOE Order 451.1B to provide the NEPA Office with copies of completed DOE NEPA documents and discussed the importance of maintaining a complete and accurate central electronic archive.

Ms. Freeman asked NCOs to help meet DOE NEPA Website goals, which include the timely posting of 100% of all DOE NEPA documents on the DOE NEPA Website. “Environmental impact statements should be posted on or before the day that the U.S. Environmental Protection Agency publishes the notice of availability in the *Federal Register*,” Ms. Freeman said.

Suzanne Nawrot, DOE Webmaster, Office of the Chief Information Officer, discussed the launching of the new DOE NEPA Website ([LLQR, September 2008](#), page 4), and emphasized the importance of providing electronic files that have been optimized for internet publication. Ms. Nawrot advised NCOs to review the new *Procedures for Submitting Documents for Posting on the DOE NEPA Website*” (www.gc.energy.gov/nepa/documents/Procedures_NEPA_Doc_Submission.pdf) and discussed key procedures, including the need to:

- ✓ reduce (“optimize”) the file size, particularly graphics;
- ✓ not write-protect files; and
- ✓ not include spaces or special characters in the file name.

Ms. Freeman said that the NEPA Office continues to seek ways to improve the DOE NEPA Website and recognizes that maintaining the archives is a joint effort with the DOE NEPA Community. Questions or suggestions should be directed to Denise Freeman, NEPA Webmaster, at denise.freeman@hq.doe.gov. 



DOE Categorical Exclusions – Are Changes Needed?

As the DOE officials who apply categorical exclusions (CXs) to actions proposed by Program and Site Office managers, NEPA Compliance Officers (NCOs) probably know best whether more CXs are needed and whether any existing CXs should be modified, said Carolyn Osborne, Unit Leader, Office of NEPA Policy and Compliance, at the September NCO meeting. She reviewed the process that DOE followed in establishing its 103 CXs (Appendices A and B to Subpart D of the DOE NEPA regulations, 10 CFR 1021), the last in 1996, and the recordkeeping procedures that DOE has had in place for applying them since 1998 (on the DOE NEPA Website under Guidance).

CXs play a very important role in our NEPA Compliance Program, she said, because applying them properly can free the Department's NEPA practitioners to focus on those proposed actions with potential for significant environmental impact. NCOs have the on-the-ground experience to know whether there are DOE actions that should be categorically excluded, but there is no DOE CX that fits the action or an existing DOE CX is too narrowly defined to be useful, she explained.

In asking NCOs to propose new or modified CXs to the NEPA Office for it to determine whether to begin a NEPA rulemaking, Ms. Osborne advised NCOs generally to apply the draft guidance prepared by the Council on Environmental Quality's interagency work group on CXs that was issued for public comment in September 2006 ([LLQR, December 2006](#), page 9). The draft guidance outlines the types of information that could be in an agency's administrative record and available to the public.

"The closer we can get CXs to fit the work we do that has no potential for significant environmental impact, the better," said Richard Ahern, Deputy Assistant General Counsel for Environment. On the other hand, he explained, if a site-wide NEPA review is comprehensive and includes all site activities, application of a CX for the actions with no potential for significant impact would not be necessary for that site. Such site-wide NEPA reviews, he added, could be used to help support establishment of a CX for Department-wide use.

- **Categorical exclusion [CX]** means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (40 CFR 1507.3) and for which, therefore, neither an environmental assessment [EA] nor an environmental impact statement [EIS] is required. (40 CFR 1508.4)
- **Types of Information to Substantiate a Categorical Exclusion** (summarized from the draft guidance, "Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act," September 19, 2006; 71 FR 54816)
 - *Evaluations of Implemented Actions* – would include evaluations of the environmental effects predicted in an EA or EIS for implemented actions and could use data generated through an Environmental Management System.
 - *Impact Demonstration Projects* – involves evaluation after project implementation of impacts predicted in an EA or EIS for a type of action with which the agency does not have extensive experience. The EA or EIS would need to have explained that one purpose of the document was to establish the basis for a CX.
 - *Professional Opinion and Scientific Analyses* – includes use of professional staff both within and outside of an agency (with supporting credentials) and use of scientific analyses (need not be limited to peer-reviewed findings) as valid sources of information to substantiate CXs.
 - *Benchmarking* – involves using information and records from private and public entities' experiences with similar actions.

As requested in an October 22, 2008, memorandum from Carol Borgstrom, Director, Office of NEPA Policy and Compliance, NCOs should submit suggestions for new or modified CXs and supporting materials by December 15, 2008, to Carolyn Osborne at carolyn.osborne@hq.doe.gov, 202-586-4596, or fax 202-586-7031.

Record of Decision for Yucca Railroad Selects Caliente, Commits to Continuing Consultation/Mitigation

DOE has decided to construct and operate a railroad in Nevada for shipments of spent nuclear fuel, high-level radioactive waste, and other materials to Yucca Mountain, based in part on the *Final 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-0369) (Rail Alignment EIS). Issued in July 2008, the Rail Alignment EIS contains DOE's analysis of alternative alignments within two rail corridors, Caliente and Mina. (See [LLQR, September 2008](#), page 11.) The cooperating agencies on this EIS were the U.S. Air Force; the Bureau of Land Management (BLM); the Surface Transportation Board (STB); Esmeralda, Lincoln, and Nye Counties; and the City of Caliente.

DOE Picks Alignment, Shared-Use Option

In its Record of Decision (ROD), issued on October 10, 2008 (73 FR 60247), DOE selected a specific alignment for the approximately 330-mile railroad in the Caliente corridor. DOE also decided to allow shipments of general freight on the railroad (the Shared-Use Option).

In the ROD, DOE identified the Mina corridor as environmentally preferable to the Caliente corridor. The ROD notes that impacts in either corridor would be similar and generally small, and that differences in environmental impacts generally result from differences in the amount of land disturbance, which would be less for the shorter Mina corridor (281 to 312 miles, depending on the alignment). A railroad in the Mina corridor also would be less costly to construct (about \$2.03 billion for Mina versus \$2.57 billion for Caliente). However, DOE did not select an alignment in the Mina corridor because of objections from the Walker River Paiute Tribe to transportation of nuclear waste across its reservation. Without the Tribe's written consent, DOE could not obtain a right-of-way through the reservation from the Bureau of Indian Affairs.

The ROD explains that DOE's decision to select the Shared-Use Option is responsive to public comments on the Rail Alignment Draft EIS, which identified economic benefits to communities through which the railroad would pass. Implementing this option requires a Certificate of Public Convenience and Necessity from the STB.

Iterative/Consultative Approach to Mitigation

In the ROD, DOE committed to several specific mitigation measures and to an iterative process to develop and implement them. Under this approach, preliminary best management practices and mitigation measures described

in the Rail Alignment EIS will be further developed and detailed through (1) the regulatory process (e.g., DOE's application to the BLM for a right-of-way and DOE's application to the STB for a Certificate of Public Convenience and Necessity), (2) development of the final design for the railroad, and (3) consultation with directly affected parties, such as grazing permittees and communities through which the railroad will pass.

Following are some of the mitigation commitments in the ROD:

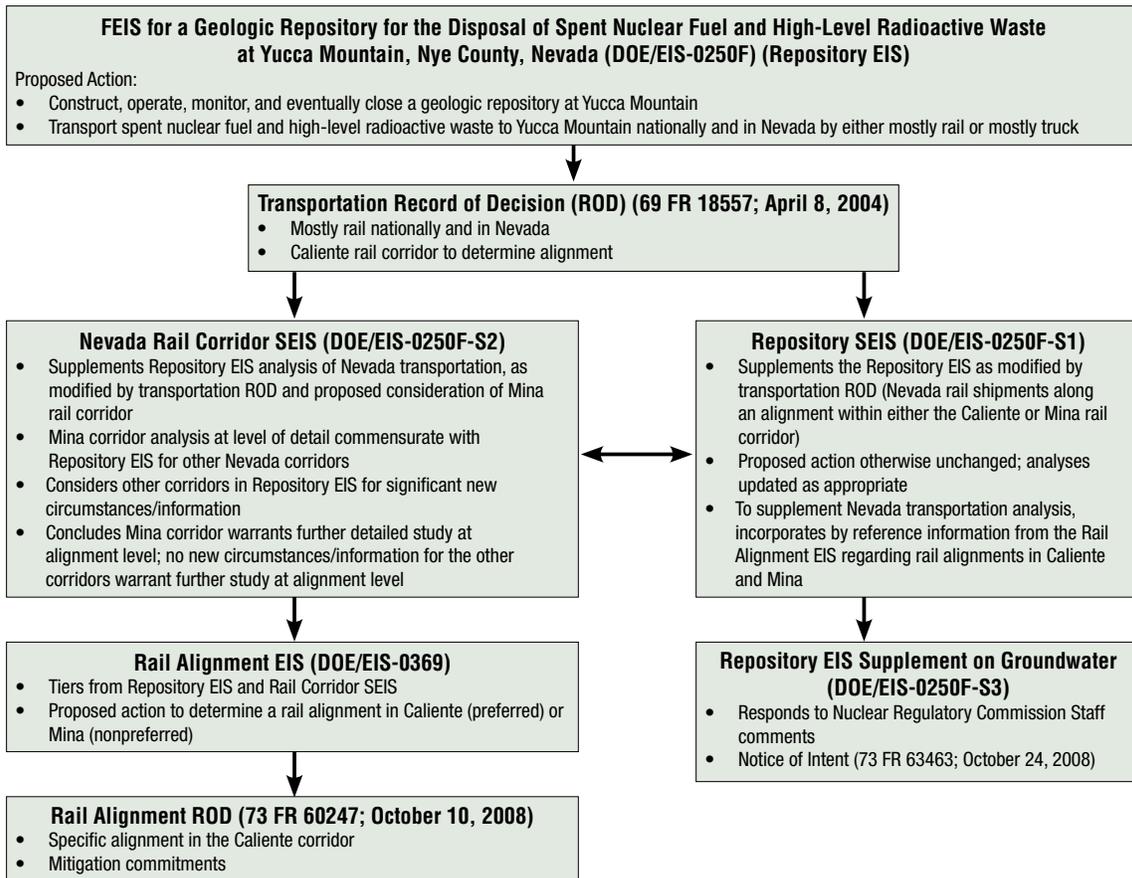
- ✓ Reaffirmation of mitigation commitments in DOE's 2004 transportation ROD (69 FR 18557; April 8, 2004), which include consultation with states, Native American tribes, local governments, utilities, the transportation industry, and other interested parties to refine the transportation system as it is developed;
- ✓ Proposed formation of one or more Mitigation Advisory Boards to enable consultation with Federal, state, and local regulatory authorities and directly affected parties, and to assist DOE, BLM, and STB in developing, implementing, and monitoring best management practices and mitigation during railroad construction and operation;
- ✓ Implementation of a cultural resources management program, including an ethnographic evaluation of the rail alignment area with the proposed assistance of the Consolidated Group of Tribes and Organizations;
- ✓ Implementation of a wetlands compensatory mitigation plan that will include measures specified by the Environmental Protection Agency in its comments on the Final EIS; and
- ✓ Implementation of measures specified by the Fish and Wildlife Service in the biological opinion to protect two endangered species, the Ute ladies'-tresses (a perennial orchid) and the Mojave population of the desert tortoise.

DOE will prepare a Mitigation Action Plan in accordance with DOE NEPA regulations (10 CFR 1021.331), and may revise the Plan as more specific information becomes available or in consultation with the proposed Mitigation Advisory Board(s) and directly affected parties.

For further information about the ROD or the associated EISs, contact Dr. Jane Summerson, NEPA Document Manager and NCO, at jane_summerson@ymp.gov or 702-794-1493. See also the chart and timeline on the next page. 

Background on Yucca EISs

Document Relationships



Yucca EISs Timeline

Document	2002	2003	2004	2005	2006	2007	2008	2009	2010
Repository EIS (DOE/EIS-0250F)			EPA NOA of Final EIS	Transportation ROD					
Repository SEIS (DOE/EIS-0250F-S1)					NOI for Repository SEIS	Draft SEIS	Final SEIS		
Nevada Rail Corridor SEIS (DOE/EIS-0250F-S2) and Rail Alignment EIS (DOE/EIS-0369)				NOI for Rail Alignment EIS	NOI for Rail Corridor SEIS and Expanded Scope Rail Alignment EIS	Draft SEIS and EIS	Final SEIS and EIS		ROD for Rail Alignment EIS
Repository EIS Supplement-Groundwater (DOE/EIS-0250F-S3)									NOI for EIS Supplement
Program Milestones	The Secretary's recommendation of Yucca Mountain to the President (accompanied by Repository EIS)	The President signs Pub. L. 107-200, designating Yucca Mountain						NRC docket License Application; determines practicable to adopt EISs with supplementation	
	FEB 2002	JUL 2002	OCT 2002	APR 2004	OCT 2006	OCT 2007	JUL 2008	SEP 2008	OCT 2008

New Supplement to the Yucca Mountain Repository EISs Will Address NRC Comments on Groundwater Impacts

DOE is preparing a new 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* (DOE/EIS-0250F, February 2002) (Repository EIS) and the *Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F-S1, July 2008) (Repository SEIS). The following summarizes the purpose and proposed scope for the new Supplement (DOE/EIS-0250F-S3).

DOE submitted an application to the Nuclear Regulatory Commission (NRC) on June 3, 2008, seeking authorization to construct a geologic repository at Yucca Mountain. DOE's application was accompanied by the Repository EIS. On June 16, 2008, DOE submitted the Repository SEIS to NRC. On July 11, 2008, the Environmental Protection Agency announced in the *Federal Register* (73 FR 39958) the availability of the Repository SEIS. Under Section 114(f)(4) of the Nuclear Waste Policy Act of 1982, as amended, NRC shall adopt, to the extent practicable, any EIS prepared by DOE in connection with the proposed repository.

On September 8, 2008, in its Notice of Acceptance for Docketing of DOE's License Application, the NRC informed DOE that NRC staff reviewed DOE's Repository EIS and Repository SEIS and determined that it is practicable to adopt, with further supplementation, these EISs. The NRC staff concluded that these EISs did not adequately address all of the repository-related impacts on groundwater, or from surface discharges of groundwater, and therefore requested that DOE prepare a supplement to the Repository EIS and Repository SEIS.

The basis for the NRC staff position is presented in the NRC staff's Adoption Determination Report (available online at www.nrc.gov/reading-rm/adams/web-based.html, at accession number ML082420342).

DOE's Notice of Intent (NOI), published in the *Federal Register* on October 24, 2008 (73 FR 63463), states that based on a review of the NRC staff evaluation, DOE has decided to prepare the requested Supplement. The Supplement will further describe the volcanic-alluvial aquifer near Yucca Mountain, particularly those parts that could become contaminated, and how water (and potential contaminants) can leave the groundwater flow system. In addition, the Supplement will provide an analysis of the cumulative amount of radiological and non-radiological contaminants that can be reasonably expected to enter the aquifer from the repository.

The Supplement also will provide a discussion of the potential impacts on soils and surface materials from the processes involved in surface discharges of contaminated groundwater, describe locations of potential surface discharge of groundwater for present and future wetter periods, and discuss processes at surface discharge locations that can affect accumulation, concentration, and potential remobilization of groundwater-borne contaminants.

The 30-day comment period on the NOI ended November 24, 2008. DOE received four comment documents from three Nevada counties and one Indian tribe. DOE plans to issue the Draft Supplement in the spring of 2009.

For further information about the Supplement, contact Dr. Jane Summerson, NEPA Document Manager and NCO, at jane_summerson@ymp.gov or 702-794-1493. 



Western Corridors Programmatic EIS Completed, A New Era for Energy Transport Projects

The Final Programmatic EIS (PEIS) for the *Designation of Energy Corridors on Federal Lands in 11 Western States* (DOE/EIS-0386) (West-Wide Energy Corridors PEIS) was issued on November 28, 2008 (73 FR 72477). DOE and the Bureau of Land Management (BLM), Department of the Interior, were co-lead agencies together with 13 cooperating and consulting agencies.

Section 368 of the Energy Policy Act of 2005 directed the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior to take a series of steps to designate energy transport corridors on Federal lands. The agencies were also required to perform environmental reviews and incorporate the designated corridors into the relevant agency land use, resources management, or equivalent plans (*LLQR, December 2007*, page 12).

The Final PEIS analyzes a No Action Alternative and the Proposed Action Alternative, which is also the preferred alternative, under which the agencies would designate and incorporate Federal energy corridors through amendment of relevant land use plans.

Public Comments Alter Routes, Operating Procedures

Approximately 14,000 individuals and organizations submitted over 3,500 substantive comments on the Draft PEIS during a 97-day public comment period that ended on February 14, 2008. Public hearings were conducted in all 11 western states (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), the Navajo Reservation, and Washington, DC. Comments, including those resulting from a form-letter campaign, were received from across the United States and from several other countries.

The agencies reviewed and considered all comments received on the Draft PEIS. “We used a database to categorize comment topics, weighed the public’s concerns, made adjustments to the PEIS as called for, and then developed a ‘library’ of responses to create the comment response summary in Volume 4 of the Final PEIS,” explained LaVerne Kyriss, DOE NEPA Document Manager for the PEIS. Among the concerns expressed,

some questioned proposed corridor routing near sensitive environmental areas, and others advocated required, rather than voluntary, interagency operating procedures that would be used to minimize or avoid project specific environmental impacts. As a result of the public comments, some corridor routes were altered to avoid sensitive environmental resources and proposed mandatory resource-specific interagency operating procedures were added to the Final PEIS.

Next Steps

“As applicants propose the construction or operation of new, and potentially cross-jurisdictional, energy transport facilities, BLM and affected agencies will take advantage of a streamlined process to review applications and address environmental and regulatory concerns,” explained Ray Brady, BLM Energy Team Leader. “In the past, project delays have often been the outcome of multiple agency offices issuing environmental reviews, project requirements, and land use authorizations.”

“The designation of energy corridors across all Federal lands, not just the National Forest System lands, provides land managers, the public, and industry a clear road map of where energy transportation facilities can be located,” said Greg Smith, Director of Lands, U.S. Forest Service. “This road map of connected corridor locations would help minimize impacts of multiple uses of our National Forests. This project would improve the procedures for authorizing use of National Forest lands while addressing America’s needs for energy supplies and protect our natural resources,” he said.

Records of decision (RODs) can be issued no sooner than December 29, 2008, 30 days after issuance of the Final PEIS and, for BLM, after the 60-day Governors’ review required by BLM regulations. Although DOE is a co-lead agency, DOE will not issue a ROD, as the Department will not amend any land use, resource management, or equivalent plans.

For additional information, contact LaVerne Kyriss at kyriss@wapa.gov or 720-962-7170, or visit the PEIS website at www.corridoreis.anl.gov. 

Decision Issued for Third Los Alamos Site-wide EIS

The National Nuclear Security Administration (NNSA) issued a Record of Decision (ROD) on September 26, 2008 (73 FR 55833), for the *Site-wide Environmental Impact Statement (SWEIS) for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS-0380, May 2008). The first Los Alamos SWEIS was issued in 1979, the second in 1999, and now the third in 2008. Since publication of the 1999 SWEIS, several new facilities have been constructed, and a major wildfire (Cerro Grande Fire of 2000, which burned approximately 7,700 acres within LANL boundaries) altered environmental conditions at LANL. The new SWEIS updates environmental analyses of this 25,600-acre site, including the cumulative impacts of LANL operations expected in the next 5 years.

In the 2008 SWEIS, NNSA assesses three alternatives for the continued operation of LANL: (1) No Action; (2) Reduced Operations; and (3) Expanded Operations. The Final SWEIS includes an updated seismic hazard analysis, new accident source terms, and a new analysis of seismic risks. The potential environmental impacts of terrorist activities are assessed in a classified appendix.

Decision

As described in the ROD, NNSA has decided to implement the No Action Alternative, i.e., continuing operations at current levels, consistent with the 1999 SWEIS ROD, other RODs, and findings of no significant impact, and to include several elements of the Expanded Operations Alternative (text box).

Elizabeth Withers, SWEIS Document Manager, explained that “NNSA will continue to conduct its current missions at LANL, but will increase certain operations at existing facilities and will implement new facility projects to enhance environmental and worker protection. Several elements from the Expanded Operations Alternative were chosen to facilitate compliance with the 2005 New Mexico Department of Environment Consent Order,” she said.

Taking into account economic, budgetary, environmental, scheduling, policy, and technical considerations, the Expanded Operations Alternative was identified as both NNSA’s preferred alternative and the environmentally preferable alternative because it would best fulfill NNSA’s statutory responsibilities and its environmental responsibilities under NEPA. Many facilities at LANL are more than 40 years old. The proposed new laboratories and production facilities would incorporate modern standards for energy efficiency and environmental and worker safety.

NNSA issued the ROD for the SWEIS while it continued to evaluate alternatives for the proposed transformation of the nuclear weapons complex in the *Complex Transformation Supplemental Programmatic Environmental Impact Statement (SPEIS)*. NNSA issued the Final SPEIS in October (related article, page 27).

Public Involvement/Mitigation

The public involvement process for the LANL SWEIS spanned a 3-year period, beginning with publication of a Notice of Intent on January 5, 2005 (70 FR 807). The Draft SWEIS was issued on July 6, 2006, with a 75-day

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Elements of Expanded Operations Alternative Selected in the 2008 ROD

- ✓ Supporting the Global Threat Reduction Initiative and Off-Site Sources Recovery Project by broadening the types and quantities of radioactive sealed sources stored at LANL.
- ✓ Expanding the capabilities and operational level of the Metropolitan Center for Modeling and Simulation, improving NNSA’s ability to certify that the nuclear weapons stockpile is reliable without nuclear testing.
- ✓ Performing research to improve detection and mitigation methods for beryllium – needed to implement exposure controls to ensure worker safety.
- ✓ Retrieval and disposition of legacy transuranic waste (approximately 3,100 cubic yards of contact-handled and 130 cubic yards of remote-handled) from belowground storage.
- ✓ Planning, design, construction and operation of the Waste Management Facilities Transition projects, facilitating compliance with the Consent Order.
- ✓ Repair and replacement of critical cooling system components for buildings in TA-55.
- ✓ Final design of a new Radioactive Liquid Waste Treatment Facility, and design and construction of the Zero Liquid Discharge Facility component of this new treatment facility, replacing a facility that does not meet current standards and that cannot be acceptably renovated.

GNEP PEIS Evaluates Alternative Futures for U.S. Nuclear Power



Under its Global Nuclear Energy Partnership (GNEP) initiative, DOE advocates a “closed” nuclear fuel cycle for the production of electricity from nuclear power. Nuclear fuel would be recycled by separating used (or “spent”) nuclear fuel into usable materials and waste products. This differs from the “open” nuclear fuel cycle currently used in the U.S. in which spent nuclear fuel is stored pending disposal in a geologic repository.

As part of this initiative, DOE in October issued a Draft GNEP Programmatic Environmental Impact Statement (PEIS) (DOE/EIS-0396; 73 FR 61845; October 17, 2008). The Draft PEIS evaluates the potential environmental impacts of alternative open and closed nuclear fuel cycles in the U.S. The primary analysis is based on an approximate doubling of nuclear generating capacity in the U.S. over about the next 50 years (i.e., from about 100 to 200 gigawatts-electric). The PEIS also evaluates impacts associated with slower and faster nuclear power growth rates.

From Technology Demonstration to Programmatic Analysis

The GNEP PEIS has undergone several major changes over the past 2^{1/2} years that reflect the development of the GNEP initiative. DOE launched GNEP in 2006 as part of President Bush’s Advanced Energy Initiative. The original proposal was described in a March 2006 Advance Notice of Intent (Advance NOI; 71 FR 14505; March 22, 2006). At that time, DOE proposed to demonstrate three closed fuel cycle technologies: (1) proliferation-resistant processes that would separate the usable elements in commercial spent fuel from its waste elements; (2) the conversion of transuranics into shorter-lived radioisotopes; and (3) an advanced fuel fabrication process. (See [LLQR, June 2006](#), page 10.)

Two of the major themes in public comments in response to the Advance NOI were that DOE should prepare a programmatic EIS and that the technologies needed additional bench-scale development prior to the demonstrations proposed by DOE. Also, DOE received input from industry in 2006 that it may be possible to proceed directly to commercial-scale facilities.

By the time the NOI was issued on January 4, 2007 (72 FR 331), DOE had revised its NEPA strategy. The NOI announced that DOE would prepare a PEIS to analyze both programmatic and project-level proposals. The programmatic analysis would address DOE’s proposal to move directly to commercial-scale facilities for the recycling of spent nuclear fuel. (See [LLQR, March 2007](#), page 1.)

The NOI described project-specific proposals. An advanced fuel cycle research facility would be located on a DOE site. A nuclear fuel recycling center (which would undertake the spent nuclear fuel separations and fuel fabrication operations discussed in the Advance NOI) and an advanced recycling reactor could be privately owned and operated and would be located at a site proposed by interested communities. Both the nuclear fuel recycling center and advanced recycling reactor could be somewhat larger than envisioned in the Advance NOI.

Several additional alternatives were suggested during the scoping period. These generally involved different technologies to accomplish DOE’s purpose and need to support an expansion of nuclear energy production while reducing the risks of nuclear proliferation and the impacts associated with the disposal of spent nuclear fuel. DOE considered these comments, and in response, **the Draft GNEP PEIS includes six primary alternatives.**

- ✓ **No Action.** Continue the current open fuel cycle.
- ✓ **Fast Reactor Recycle Alternative.** Spent nuclear fuel would be separated, and certain of the usable materials would be made into fuel for advanced recycling reactors. This alternative is similar to DOE’s original proposal.
- ✓ **Thermal/Fast Reactor Recycle Alternative.** Similar to the Fast Reactor Recycle Alternative, but recovered materials would be recycled in both advanced recycling reactors and light water reactors (the type currently deployed in the U.S.).
- ✓ **Thermal Reactor Recycle Alternative.** Spent nuclear fuel would be separated and certain of the usable materials would be made into fuel for thermal reactors. Three reactor types are analyzed: light water reactors, heavy water reactors, and high temperature gas-cooled reactors.
- ✓ **Thorium Alternative.** Rather than uranium-based fuel, light water reactors would be fueled with a thorium fuel in an open fuel cycle.
- ✓ **Heavy Water Reactor/High Temperature Gas-Cooled Reactor Alternative.** These are two alternatives to the reactor technology currently used in the U.S. Both would use uranium fuel in an open fuel cycle.

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Supplemental PEIS to Support Options for Nuclear Weapons Complex



The National Nuclear Security Administration (NNSA) issued its Final *Complex Transformation Supplemental Programmatic Environmental Impact Statement* (Supplemental PEIS) on October 24, 2008, just over two years after the notice of intent. During those two years, more than 100,000 people participated in the NEPA process for the Supplemental PEIS. NNSA revised the Final Supplemental PEIS in response to public comments and in anticipation of the need for flexibility in planning for the continued transformation of the U.S. nuclear weapons complex into a national security enterprise better suited to address the threats of the 21st century.

“We need to move NNSA from an outdated, Cold War nuclear weapons complex to one that is better able to support our future national security needs,” said NNSA Administrator Thomas D’Agostino in issuing the Final Supplemental PEIS.

The Supplemental PEIS analyzes various combinations of new and existing facilities for consolidating many functions of the nuclear weapons complex among sites in six states. The range of alternatives changed noticeably from the notice of intent (see [LLQR, December 2006](#), page 1) to the Draft Supplemental PEIS (see [LLQR, March 2007](#), page 3, and March 2008, page 1) to the Final Supplemental PEIS.

In remarks to NNSA leadership, the Director of the Office of Strategic Planning and Complex Transformation, Dr. George Allen, said, “The comments received over the past two years have sharpened our understanding of issues and potential alternatives for transforming the nuclear weapons complex in addition to improving the quality of our documents.”

Alternatives for Pit Manufacturing

The future of plutonium pit manufacturing was among the functions of most interest to the public. A pit is the core of a nuclear weapon. In the notice of intent, NNSA proposed to construct a new Consolidated Plutonium Center at one of five sites (Los Alamos in New Mexico, Nevada Test Site in Nevada, Pantex in Texas, Savannah River Site in South Carolina, or Y-12 National Security Complex in Tennessee). The two alternatives outlined in the notice of intent both involved continuing plutonium manufacturing in existing facilities at Los Alamos. In response to scoping comments, NNSA added consolidation alternatives that would co-locate plutonium manufacturing with one or both of the other two functions that would involve significant quantities of weapons-usable nuclear materials (highly-enriched uranium operations and weapons assembly/

disassembly). Also in response to scoping comments, NNSA added to the Draft Supplemental PEIS a qualitative discussion of a smaller nuclear weapons stockpile and an alternative to produce 50–80 plutonium pits per year at Los Alamos (compared to the 125 pits per year in other alternatives).

The public submitted more than 100,000 comment documents on the Draft Supplemental PEIS, most of which were part of several campaigns that oppose nuclear weapons production and asked NNSA to evaluate alternatives that did not involve such production. In response, NNSA added to the Final Supplemental PEIS a No Net Production Alternative that would maintain capabilities but involve production at a very low level – on the order of 10 pits per year.

Alternatives for Flight Testing

Flight testing is another area where alternatives changed through preparation of the Supplemental PEIS. Current flight testing for gravity weapons is conducted at the Tonopah Test Range in Nevada, which NNSA manages under a permit with the Air Force. These tests, which involve modified weapons incapable of a nuclear explosion, check the interface between a weapon and delivery system (airplane) and assess weapon system functions in realistic delivery conditions.

The notice of intent described alternatives that would relocate flight testing to the Department of Defense’s White Sands Missile Range in New Mexico or to the Nevada Test Site, as well as an alternative to upgrade facilities at Tonopah. Public comments during the scoping period and on the Draft Supplemental PEIS from communities around the Tonopah Test Range were strongly supportive of NNSA’s mission and raised concerns about significant adverse socioeconomic impacts if NNSA relocates flight testing. NNSA considered these comments along with other information and revised the alternatives.

In the Draft Supplemental PEIS, NNSA identified as a preferred alternative a plan to cease NNSA operation of Tonopah in approximately 2009 and conduct flight testing at a Department of Defense Facility. The Draft Supplemental PEIS also included a new alternative – Campaign Mode Operations, in which flight testing would continue at Tonopah but most staff would be brought in on an as-needed basis. In the Final Supplemental PEIS, NNSA looked closer at options for maintaining operations at Tonopah. NNSA identified as a preferred alternative a reduction in the area of Tonopah Test Range for which it is

(continued on next page)

Complex Transformation PEIS (continued from previous page)

responsible (the Air Force would take responsibility for the remaining area), an upgrade to use mobile equipment, and operations in campaign mode.

Project Management Paved Way to Success

“We managed this Supplemental PEIS as a project from day one,” said Ted Wyka, NEPA Document Manager. “We established Integrated Project Teams to collect and analyze data on each functional area. These teams worked on the environmental analysis for the PEIS in parallel with information related to mission and technical risk, and the cost and other economic data in business cases.”

As a Supplemental PEIS, the Complex Transformation analysis tiered from the Stockpile Stewardship and Management PEIS completed in the mid-1990s (DOE/EIS-0236). However, as the first broad look at alternatives for the nuclear weapons complex in more than a decade, the Supplemental PEIS required significant quantities of new data and analysis. In addition, public participation was higher than for any previous DOE EIS, and the project’s schedule required the efficient consideration of each comment.

Mr. Wyka emphasized three lessons learned from preparation of the Supplemental PEIS at a training session during this year’s NEPA Community Meeting.

- ✓ **Program Involvement Is Essential** – Use senior management summits, Integrated Project Teams, meetings and videoconferences, and the review and concurrence process to keep senior headquarters managers and site and facilities officials involved in the analysis and decisionmaking.
- ✓ **QA, QA, QA** – The quality of data and analysis matters when preparing a NEPA document or other information to support decisionmaking. Involve field personnel in reviewing data, and do not rely solely on the NEPA support contractor. The clarity of presentation and readability of the document also matter. Quality Assurance is important throughout the NEPA process.
- ✓ **Address Non-Environmental Components of a Decision Early** – Identify all the factors (e.g., cost, program risk) that will go into a decision. Develop a schedule to work these issues in parallel with the NEPA process.

The Complex Transformation Supplemental PEIS and related information are available at www.ComplexTransformationSPEIS.com and www.nnsa.doe.gov. For questions, contact Ted Wyka at theodore.wyka@nnsa.doe.gov. 

GNEP PEIS (continued from page 26)

In addition to adding the last four alternatives, while preparing the Draft PEIS, DOE decided not to pursue any project-specific proposals at this time. Instead, the PEIS focuses on the programmatic alternatives. Project-specific proposals could be made later.

The Draft GNEP PEIS also discusses international initiatives under GNEP. The PEIS includes a general discussion of the types of environmental impacts that could be associated with a reliable fuel services program and the development of grid-appropriate reactors. However, DOE does not have any specific proposals for these initiatives at this time and would not make any related decisions based on the PEIS.

Public Comments on Draft PEIS

The 60-day public comment period on the Draft GNEP PEIS ends on December 16, 2008. However, DOE intends to extend the comment period. Meanwhile, DOE has begun holding a series of 13 public hearings around the country. These are being held in the same cities where scoping meetings for the PEIS were held.

In November, hearings were held in New Mexico, Washington, Oregon, and Idaho. Attendance has averaged from about 25 at the four hearings in New Mexico (Carlsbad, Hobbs, Los Alamos, and Roswell) to more than 100 in Pasco, Washington, and Hood River, Oregon, and about 200 in Idaho Falls, Idaho. Less than half the participants provided oral comments at the hearings. Thus far, most of the public comments express support for or opposition to recycling spent nuclear fuel or to locating facilities in the local area.

Hearings continue in December in Kentucky, Ohio, Tennessee, Illinois, South Carolina, and Washington, DC. DOE has not yet responded to requests to hold additional hearings.

The Draft GNEP PEIS and related information is available on the GNEP website at www.gnep.energy.gov. Additional information also is available from Frank Schwartz, GNEP PEIS Document Manager, at schwarzfg@id.doe.gov or 208-526-6390. 

Department of the Interior Codifies NEPA Procedures

The Department of the Interior (DOI) issued final regulations codifying its NEPA implementing procedures, which had been contained in the DOI *Departmental Manual*. The regulations (43 CFR Part 46; 73 FR 61292; October 15, 2008), which became effective on November 14, 2008, adopt existing practices for NEPA compliance and clarify Departmental requirements. These regulations apply to all DOI Bureaus, whose specific procedures may be revised for conformance to the new rule. DOI anticipates that the codified procedures will provide greater visibility to its NEPA process, enhancing opportunities for public involvement.



Points of Interest

- ✓ **Tiered Documents:** A NEPA document that tiers from a broader NEPA document must evaluate the validity of the previous impact analysis to the proposal in the tiered document. The regulations clarify the use of tiering by describing findings of no significant impact (FONSIs) for tiered EAs. A FONSI from a tiered EA would be, in effect, a finding of no significant impact for impacts other than those already disclosed and analyzed in the EIS (from which the EA is tiered). This FONSI may also be called a “finding of no *new* significant impact.”
- ✓ **Consensus-based Management:** The regulations encourage the involvement of persons, organizations, and communities that may be interested in or affected by a proposed action. When a reasonable consensus-based alternative is proposed, a discussion of its effects must be included in the NEPA document. The Responsible Official determines whether the consensus-based alternative should be the preferred alternative and, if not, must state reasons in the environmental documentation. (See [LLQR, June 2007](#), page 4, for more on consensus building in the NEPA process.)
- ✓ **Adaptive Management:** The regulations state that Departmental Bureaus should incorporate adaptive management approaches in decisionmaking, particularly in circumstances where long-term impacts are uncertain and monitoring will aid in adjusting the course of implementation. The range of management options should be identified and analyzed, and the environmental effects of any adaptive management strategy must be evaluated in an initial or subsequent NEPA analysis.
- ✓ **Mitigation:** For an action proposed by DOI, a NEPA document must analyze the effects of any appropriate mitigation measures and best management practices. NEPA review of an applicant’s proposal must include any “ameliorative design elements” required to make the proposal conform to applicable legal requirements, as well as any voluntary ameliorative design elements. The effects of any additional mitigation measures (i.e., those identified by DOI) also must be analyzed. The analysis of such mitigation measures may be structured as alternatives to the applicant’s proposal or as separate mitigation measures to be imposed on any alternative selected for implementation. LL

Read Tomorrow’s *Federal Register* Today

The public has easy access to pending *Federal Register* notices via the Electronic Public Inspection Desk (www.federalregister.gov/page2.aspx), which was added to the Office of the Federal Register’s website last spring. At about 8:45 a.m. every Federal business day, the website is updated with a new set of documents that are available for public inspection prior to publication in the *Federal Register*, typically up to three days later. Also, the Regular Filing section of the Electronic Public Inspection Desk includes the complete table of contents and notices scheduled to appear in the next day’s issue of the *Federal Register*.

Notices of intent to prepare EISs, notices of availability for draft and final EISs, and records of decision all are published in the *Federal Register*, along with other NEPA-related notices. When developing a communications

plan for an EIS or other NEPA document, DOE NEPA practitioners should bear in mind that the public will have access to these notices prior to the actual publication date. However, this early public access does not affect the start of schedule milestones that are linked to the date of publication in the *Federal Register*. For example, a comment period on a draft EIS still begins on the date of publication of the Environmental Protection Agency’s notice of availability.

Documents filed for publication in the *Federal Register* have always been available for public review prior to the date of publication. The Federal Register Act requires that, “Upon filing, at least one copy shall be immediately available for public inspection” in the Office of the Federal Register (44 U.S.C. 1503). With the Electronic Public Inspection Desk, public access is no longer limited to the physical office in Washington, DC. LL

HUD Offers Tribal Directory Assessment Tool

A Tribal Directory Assessment Tool has been developed by the Environmental Planning Division, Office of Environment and Energy, U.S. Department of Housing and Urban Development (HUD), to assist users with National Historic Preservation Act Section 106 compliance and tribal consultation. This web-based tool is a useful starting point for identifying Federally-recognized tribes that might have an interest in or be affected by a DOE or applicant proposal.

Features

The tool, released in August 2008, identifies tribes at the county level that have potential interest in Federal projects. For each of the identified tribes for a particular county, the tool provides a point of contact within the tribe and the following information (if available): title, mailing address, work phone, fax, email, and whether or not the tribe has assumed the functions of the State Historic Preservation Officer for undertakings on tribal lands (i.e., has a Tribal Historic Preservation Officer) (36 CFR 800.2(c)). If the tribe has a Tribal Historic Preservation Officer, the tool provides similar contact information for that individual. In addition, users can access U.S. Geological Survey (USGS) mapping data from the tool's website by clicking the "National Atlas State Maps" link under Related Information. This feature allows users to view their project locations geographically, access electronically a USGS topographical map, and print or email the map to other parties.

How to Use

The tool is very easy to use and information can be easily obtained in just a few steps. First, the user must download a state report from the tool's website. Second, the user opens the PDF file and performs a word search

for the county in which the proposed project would be located to identify the specific Indian tribes, Native Hawaiian organizations, and Alaska Natives that might be interested in the project. For example, if the project's proposed site is located in Stevens County, Kansas, the tool identifies three potentially-interested tribes (Apache Tribe of Oklahoma, Comanche Nation, Kiowa Indian Tribe of Oklahoma) to consult with as part of the NEPA participation and Section 106 consultation processes. The tool also identifies the tribes' Tribal Historic Preservation Officers. However, for this particular example, none of the three tribes has assumed the functions of the State Historic Preservation Officer.



Additional Information

HUD encourages users to provide feedback on how the Tribal Directory Assessment Tool may be improved and to send updated information and corrections for the tool's database, including tribal areas of interest and contact information. Please send comments or new information to ATEC@hud.gov. Based on the information provided by users and tribes, HUD plans to update the tool's tribal areas of interest information periodically. To access the tool and a Users Guide with general instructions and information on data sources, such as the National Park Service's Native American Consultation Database, go to www.hud.gov/offices/cpd/environment/tribal/. For more information on HUD's Tribal Directory Assessment Tool, please contact David Blick of HUD's Office of Environment and Energy at david.g.blick@hud.gov or 202-402-5718. 

Basic Requirements for Tribal Involvement in the Section 106 and NEPA Processes

Section 106 of the National Historic Preservation Act – requires Federal agencies to consider the impacts of their projects on historic properties and give the Advisory Council on Historic Preservation an opportunity to comment.

The Advisory Council on Historic Preservation Regulations – require Federal agencies to make “a reasonable and good faith effort” to identify Indian tribes¹ (includes Alaska Natives) and Native Hawaiian organizations that shall be consulted in the Section 106 process (36 CFR 800.2).

DOE NEPA Regulations – state that in addition to notifying the host state or host tribe of its determination to prepare an EA or EIS, DOE may also notify any other state or American Indian tribe that, in DOE's judgment, may be affected by the proposal. The regulations also require DOE to afford the host state or host tribe an opportunity to comment on an EA, prior to DOE's approval. In addition, DOE may also provide any other state or American Indian tribe that same opportunity if, in DOE's judgment, that state or tribe might be affected by the proposed action (10 CFR 1021.301).

¹Even though the National Historic Preservation Act's definition of “Indian tribe” refers only to Federally-recognized Indian tribes (and HUD's Tribal Directory Assessment Tool only identifies Federally-recognized tribes), Federal agencies may invite a State-recognized Indian tribe or non-recognized Native American group to participate in consultation based on a demonstrated interest in the undertaking's effects on historic properties (www.achp.gov/regs-tribes.html).

EPA Western Regions NEPA Reviewers Focus on Climate Change



In response to heightened interest in the topic, the Environmental Protection Agency (EPA) focused on global climate change and NEPA at its three-day *NEPA Western Regions Meeting* in Seattle in November. At the meeting, approximately 30 NEPA “Section 309” reviewers from EPA Regions 8, 9, and 10 participated in training on considering greenhouse gas emissions and climate change under NEPA and a review of emerging energy technologies.

Under Section 309 of the Clean Air Act, EPA is required to review and publicly comment on the environmental impacts of major Federal actions including actions that are the subject of EISs. The Seattle meeting was intended to provide information to EPA reviewers to foster better EPA comments on Federal agency EISs.

A one-day course on how to address climate change in NEPA documents was provided. The instructor, Ray Clark, Duke University, reflected on his experience as NEPA coordinator at the Council on Environmental Quality and noted that “each generation of NEPA practitioners has faced challenging new issues. Climate change is such an issue and has the potential to energize the entire practice of NEPA.” The training covered a range of subjects, including: an update on climate change science and policy development; methods to inventory greenhouse gas emissions; discussion of environmental, social, and economic impacts; cumulative impacts; and climate change adaptation and mitigation.

After the training, presentations and group discussions considered the potential impacts on climate change of four major sectors: public lands management, water resources, goods movement and transportation, and energy.

The discussion of public lands management featured a presentation on climate change effects on forest

ecosystems by David L. Peterson, a co-recipient of the Nobel Peace Prize in 2007 for his research and contributions to the Intergovernmental Panel on Climate Change. Dr. Peterson also participated in a panel discussion with Kathy O’Halloran, Natural Resources Staff Officer on the Olympic National Forest, and Professor Alan Hamlet, of the University of Washington, to explore the latest findings relevant to estimating potential impacts on western forests and water resources.

As part of the discussion on the energy sector, Eric Cohen of DOE’s Office of NEPA Policy and Compliance described the consideration of climate change in DOE NEPA documents, and discussed challenges DOE and other agencies face in addressing this topic. Other presentations addressed emerging energy technologies, including presentations on marine wave energy production by representatives of the Minerals Management Service and the State of Oregon Department of Land Conservation and Management; nuclear power and integrated gasification combine cycle technology by experts from EPA; the outlook for geothermal energy production in the West by an expert from the Bureau of Land Management; and the promising potential for concentrated solar power to contribute to meeting the Nation’s electrical power needs by a representative of the organization Clean Energy Action. Other presentations addressed transportation planning in the Puget Sound area and the role of the Federal Energy Regulatory Commission.

EPA’s attention to global climate change indicates that Federal agencies can expect EPA to consider this topic when commenting on draft EISs, Mr. Cohen said. [LL](#)

Third Los Alamos SWEIS (continued from page 25)

comment period. The Notice of Availability for the Final SWEIS was published in the *Federal Register* on May 16, 2008 (73 FR 28461). More than 2,500 comments were received and addressed during the NEPA process. Comments focused on opposition to nuclear weapons and pit production; modernization of the nuclear weapons complex; impacts of LANL operations on groundwater in the regional aquifer and surface water; the generation of waste at LANL and its ultimate disposal; the adequacy of the environmental justice analysis; the potential loss of farmland; impacts of seismic hazards; and NNSA’s efforts to initiate government-to-government consultation with tribal governments.

A Mitigation Action Plan (MAP) is being developed to address mitigation commitments. With respect to concerns raised by the Santa Clara Pueblo, NNSA will continue its efforts to support the Pueblo and other tribal entities in matters of human health, and will participate in various intergovernmental cooperative efforts to protect indigenous practices and locations of concern. NNSA will conduct government-to-government consultation with the Pueblo and other tribal entities and incorporate these matters into the MAP.

Questions about the SWEIS and ROD may be addressed to George J. Rael, NEPA Compliance Officer, Los Alamos Site Office, at 505-665-0308. [LL](#)

Transitions

NNSA NCO Alice Williams Now Manager, Livermore Site Office

Alice Williams, recently Associate Administrator for Infrastructure and Environment and NCO, NNSA, now serves as Manager of the Livermore Site Office. Ms. Williams worked as a contractor to the Idaho Operations Office for 11 years before joining the Operations Office, where she served for 13 years. Her work there included many aspects of the NEPA process (e.g., the Draft New Production Reactor EIS, 1991, and the Spent Nuclear Fuel Programmatic EIS, 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 3 years. She joined the Headquarters Office of Environmental Management in 2003 as Associate Deputy Assistant Secretary for Waste Disposition and Logistics, and in 2004 transferred to NNSA and became its NCO the next year. As a senior DOE manager with more than 20 years of Federal service, she coordinated a number of major EISs for NNSA, most recently Continued Operation of the Los Alamos National Laboratory and Complex Transformation (related articles, pages 25 and 27).

On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance wishes Alice success in her new role and appreciates her dedication to DOE's NEPA activities, her presentations at DOE NEPA meetings, and support for the DOE-wide NEPA contracting acquisition.



Mary Martin (right) takes over the NNSA NEPA responsibilities from Alice Williams, who is now Manager of the Livermore Site Office.

New NCOs

NNSA: Mary Martin

Mary E. Martin, who was designated as NNSA's NCO to replace Alice Williams, has a longstanding interest in the relationship between technology and policy. Most recently, in the NNSA Office of Environmental Projects and Operations, she assisted Ms. Williams in supporting NNSA's NEPA activities, including work on the Complex Transformation Supplemental Programmatic EIS, and the Los Alamos National Laboratory and Y-12 Site-Wide EISs, among other NEPA documents. NNSA Administrator Thomas P. D'Agostino recently acknowledged her NEPA work, particularly her efforts to help develop an approach for terrorist threat analysis in EISs, stating that she was "setting the standard in this new area."

Before joining NNSA in 2001, Ms. Martin served for 23 years on active duty as an engineer in the Navy, developing and applying technologies for defense and national security, and retired from the Navy as a Commander in November 2001. A physicist by training, Ms. Martin is a member of the American Physical Society, American Society of Naval Engineers, the Society of Naval Architects and Marine Engineers, and the Naval War College Foundation. She can be reached at mary.martin@nnsa.doe.gov or 202-586-9438.

CFO: Matt McMillen

Matt McMillen, who was introduced in the September 2008 issue of *LLQR*, has been designated as NCO for the Office of the Chief Financial Officer, which includes the Loan Guarantee Program Office, where he serves as Director of the NEPA Compliance Division. He can be reached at matthew.mcmillen@hq.doe.gov or at his new phone number, 202-586-7248.

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Transitions *(continued from previous page)*

EM: Jeanie Loving

Jeanie Loving transferred in October from the Office of NEPA Policy and Compliance to the Office of Regulatory Compliance within the Office of Environmental Management (EM), and has been designated as EM's NCO. Former NCO Tish O'Connor, now serves as an EM senior environmental policy advisor for site closure, performance assessments, and cleanup transition planning to long-term stewardship.

Since joining the NEPA Office in January 2001, Ms. Loving contributed to a number of EM's major EISs and was the principal author of DOE guidance on the supplement analysis process. She is a strong advocate for quality management in the NEPA process. Recently, Ms. Loving has been and expects to continue working on EISs for West Valley Demonstration Project Decommissioning and/or Long-Term Stewardship, Hanford Tank Closure and Waste Management, and Greater-Than-Class C Low-Level Radioactive Waste Disposal. Ms. Loving can be reached at jeanie.loving@hq.doe.gov or 202-586-0125.

The NEPA Office appreciates Jeanie's many contributions – reviewing EISs, developing guidance and LLQR articles, and championing the cause of NEPA document quality.

NEPA Office Bids a Fond Farewell to NNSA Deputy General Counsel Paul Detwiler

R. Paul Detwiler, the Deputy General Counsel of the NNSA, will become a Senior Management and Technical Advisor at DOE's National Energy Technology Laboratory in Pittsburgh, PA, in January 2009. Dr. Detwiler has made many contributions to the Department's NEPA Compliance Program during his 13 years at DOE Headquarters. Most recently as NNSA's NEPA attorney, he has been a key player in preparation of the *Complex Transformation Supplemental Programmatic EIS* and the *Site-wide EIS for Continued Operation of Los Alamos National Laboratory*.



Dr. Detwiler is a strong advocate of taking the time “to get it right” – the best approach for long-term success. His paper, *The Environmental Style: Writing Environmental Assessments and Impact Statements*, found on the DOE NEPA website under Guidance, will continue to be valuable to NEPA practitioners in this regard. It provides eight guidelines on structuring an EA and EIS in compliance with NEPA and additional guidelines on how to write well, for example, using the active voice and eliminating “freight trains” – long strings of nouns used as adjectives.

DOE's Office of NEPA Policy and Compliance will miss Paul's wisdom and candor and, on behalf of DOE's NEPA Community, wishes him success in his new position. □□

NEPA Contracting Update

The six DOE-wide NEPA contracts now in place have been extended through December 15, 2008. Tasks issued before the expiration dates need not be completed before the expiration dates. Information on the contracts and how to issue task orders under them is available on the DOE NEPA Website at www.gc.energy.gov/nepa under NEPA Contracting.

The Integrated Project Team for procuring the next set of DOE-wide NEPA contracts – led by the NNSA Service Center and including NEPA Compliance Officers – is nearing completion of the selection process, and the results will be announced to NEPA community as soon as available and reported in the next *LLQR*.

David Nienow, formerly the Contract Administrator for the DOE-wide NEPA contracts, retired from the NNSA Service Center in October. The new Contract Administrator is Francis Ting, who can be reached at fting@doeal.gov or 505-845-4912.



Litigation Updates

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

DOE Litigation

Groups Challenge EA for Kansas City Plant Relocation

Four nonprofit organizations and four individuals have challenged the NEPA analysis for a plan by the NNSA and the General Services Administration (GSA) to relocate operations of the NNSA's Kansas City Plant, which manufactures and procures nonnuclear components for nuclear weapons. DOE and GSA prepared the *Environmental Assessment for the Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the Kansas City Plant* (DOE/EA-1592, April 2008) and issued a finding of no significant impact (FONSI) (73 FR 23244; April 29, 2008) for their proposal to relocate the operations to a new facility in the Kansas City, Missouri, area.

The plaintiffs claim, among other things, that the agencies did not adequately consider the potential environmental

impacts of relocating the operations (including potentially necessary environmental remediation of the existing site), or of reasonable alternatives; decided to move forward with the proposal before the NEPA process was complete; and segmented consideration of some aspects of DOE's nuclear weapons-related production activities in separate NEPA documents (referring to the *Complex Transformation Supplemental Programmatic EIS* (DOE/EIS-0236-S4, October 2008)). The plaintiffs requested that the court set aside the FONSI and enjoin the agencies from proceeding with the relocation until they complete an EIS and issue a record of decision. The complaint was filed in the U.S. District Court for the District of Columbia on October 8, 2008; a schedule for the case has not been set. *Natural Resources Defense Council v. DOE* (D. D.C.) Case No.: 08-01709. [LL](#)

Litigation Dismissed Regarding NEPA Review for Coal Project Tax Credits

The U.S. District Court for the District of Columbia on November 10, 2008, dismissed a complaint filed by Appalachian Voices and The Canary Coalition against DOE and the Department of the Treasury. The plaintiffs, two nonprofit environmental groups both located in North Carolina, sought to suspend a program under the Energy Policy Act of 2005 that allocated \$1.65 billion in tax credits for nine experimental coal-fired power projects. The plaintiffs alleged the agencies violated NEPA and the Endangered Species Act by failing to assess the environmental impacts of advanced coal projects, specifically the effects of mining (e.g., from mountaintop removal and valley fills) and air emissions (e.g., sulfur dioxide, mercury, particulates, and carbon dioxide) that would result from the projects.

The court found that the plaintiffs lacked standing and dismissed the case. In its opinion, the court stated that, in

order to demonstrate standing, a plaintiff must satisfy a three-pronged test: (1) the plaintiff must have suffered an injury in fact, defined as a harm that is concrete and actual or imminent, not conjectural or hypothetical; (2) the injury must be fairly traceable to the alleged governmental conduct; and (3) the requested relief will redress the alleged injury. In this case, the court found that the plaintiffs satisfied the injury-in-fact test with respect to only one of the nine projects that qualified for the tax credit, as the others are outside of North Carolina, where the plaintiff organizations are located. The court concluded that the plaintiffs failed to satisfy the traceability criterion because they could not demonstrate that availability of the tax credit was at least a substantial factor motivating the power company's decision to construct the plant. *Appalachian Voices v. DOE* (D. D.C.) Case No.: 08-00380. [LL](#)



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Other Agency NEPA Litigation

Supreme Court Decides Sonar Case in Favor of Navy; Addresses Injunction, not NEPA Emergency Provisions

In a case involving the emergency provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.11), the Supreme Court issued its opinion on October 8, 2008, without addressing whether general national security needs constitute an emergency under NEPA. Without addressing the underlying merits arguments, writing for a majority of the Court, Chief Justice Roberts explained that the lower courts had used an improper formulation of the preliminary injunction standard by evaluating whether the plaintiffs had shown a “possibility” of irreparable harm to themselves, rather than a “likelihood” of irreparable harm. The Court also concluded that the District Court and Court of Appeals had erred by not giving sufficient weight to the harm to the Navy caused by the additional mitigation conditions and by improperly balancing the equities and the public interest.

In litigation brought by Natural Resources Defense Council and others, the Navy had appealed to the Supreme Court following a ruling by the U.S. Court of Appeals for the Ninth Circuit. The Appeals Court had disagreed with CEQ’s and the Navy’s determination that national security needs constitute an emergency for purposes of allowing “alternative arrangements” to replace the normal NEPA process ([LLQR, March 2008](#), page 19, and [June 2008](#), page 22).

The Navy’s proposed action was a series of major training exercises involving “mid-frequency active sonar,” which can harm marine mammals. These exercises, needed to certify Navy “strike groups” of coordinated ships, submarines, and aircraft as ready for deployment, are being conducted off the southern California coast through

January 2009, when the Navy expects to have completed an EIS for the use and expansion of the southern California naval training area.

The Court of Appeals in February 2008 affirmed a preliminary injunction issued by the District Court, which permitted the Navy to proceed with the training exercises on the condition that it use a number of measures to mitigate the potential for harm to marine mammals which exceeded the mitigation measures the Navy had developed in consultation with the National Marine Fisheries Service. The Court of Appeals left in place two particular mitigation measures imposed by the District Court that the Navy had claimed would significantly limit its conduct of training and jeopardize its ability to certify that the Navy forces were ready for deployment.

The Court of Appeals then stayed the injunction while the case was pending before the Supreme Court, allowing sonar exercises to proceed under the Navy’s less restrictive mitigation. The Supreme Court vacated the provisions of the preliminary injunction challenged by the Navy – i.e., the two mitigation measures.

The Navy is expected to issue a comprehensive environmental impact statement in January 2009 encompassing all Navy activities in the Southern California Operating Area, including the types of training activities at issue.

Winter, Secretary of the Navy, v. Natural Resources Defense Council et al.

See www.supremecourtus.gov/docket/docket.html
Case No.: 07-1239.

DOE Issues Alternative Dispute Resolution Policy

DOE issued a [policy statement](#) that reaffirms DOE’s commitment to using Alternative Dispute Resolution to resolve controversial issues in a “fair, timely, and cost efficient manner.” The policy (73 FR 63458; October 24, 2008) incorporates directives of the joint Council on Environmental Quality and Office of Management and Budget Memorandum on Environmental Conflict Resolution (November 28, 2005; [LLQR, March 2006](#), page 13.)

The policy statement encourages the use of Alternative Dispute Resolution, including Environmental Conflict Resolution, to prevent or resolve disputes over contentious issues and decisions, and thereby to avoid litigation and

administrative proceedings. Such conflicts may arise “over the actual, potential or perceived impacts of DOE operations on the environment and natural resources.” Basic principles of the approach include balanced, voluntary, and inclusive representation of affected interests, and distribution and accessibility of relevant information.

DOE’s designated dispute resolution specialist is Kathleen Binder, Director, Office of Conflict Prevention and Resolution, who can be reached at kathleen.binder@hq.doe.gov or 202-586-6972. Resources are provided on the Office’s website, www.gc.doe.gov/disputeResolution.htm.



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.

- Continuing Legal Education (CLE)
800-873-7130
www.cle.com
NEPA
San Diego, CA: February 23-24
San Francisco, CA: March 5-6
\$795 (Discounts available)
- Colleague Consulting
301-277-0255
cvaughan@colleagueconsulting.com
www.colleagueconsulting.com
Environmental Laws and Regulations, and NEPA
Oak Ridge, TN: February 2-4
Albuquerque, NM: April 7-9
No Fee
- 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
Implementation of NEPA
Durham, NC: December 8-12
\$1,225
Considering Greenhouse Gas Emissions and Climate Change under NEPA
Durham, NC: January 28-30
\$800 (\$875 after 1/7/09)
Socioeconomic Impact Analysis under NEPA
Durham, NC: February 18-20
\$800 (\$875 after 1/28/09)
Scoping, Public Involvement, and Environmental Justice
Durham, NC: April 1-3
\$800 (\$875 after 3/11/09)
Certificate in NEPA
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 CEQ.
Fee: Included in registration for constituent courses.
- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org
NEPA: Writing the Perfect EA/FONSI or EIS
Denver, CO: December 9-10
Oakland, CA: January 29-30
\$495 (\$395 reduced tuition is available, see website)
- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
How to Manage the NEPA Process and Write Effective NEPA Documents
San Francisco, CA: January 6-9
\$1,115 (GSA contract: \$1,025)
St. Louis, MO: January 26-28
\$915 (GSA contract: \$825 until 12/16/08)
Cleveland, OH: March 3-6
\$1,145 (GSA contract: \$1,055 until 1/21/09)
NEPA Climate Change Analysis
Portland, OR: January 7-8
\$715 (GSA contract: \$625)
San Francisco, CA: March 26-27
\$745 (GSA contract: \$655 until 2/2/09)
NEPA Cumulative Effects Analysis and Documentation
San Antonio, TX: January 13-15
\$915 (GSA contract: \$825)
St. Louis, MO: January 29-30
\$715 (GSA contract: \$625 until 12/16/08)
San Francisco, CA: March 24-25
\$745 (GSA contract: \$655 until 2/2/09)
Reviewing NEPA Documents
Denver, CO: January 26-28
\$915 (GSA contract: \$825 until 12/2/08)
Reviewing NEPA Documents/Managing NEPA Projects and Teams
Denver, CO: January 26-30
\$1,315 (GSA contract: \$1,225 until 12/2/08)

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Training Opportunities

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How to Manage the NEPA Process and Write Effective NEPA Documents/NEPA Cumulative Effects Analysis and Documentation

St. Louis, MO: January 26-30

\$1,315 (GSA contract: \$1,225 until 12/16/08)

Managing NEPA Projects and Teams

Denver, CO: January 29-30

\$715 (GSA contract: \$625 until 12/2/08)

Cultural and Natural Resource Management/Endangered Species Act Overview

Phoenix, AZ: February 3-5

\$915 (GSA contract: \$825 until 12/29/08)

How to Manage the NEPA Process – Emphasis on Native American Issues

Phoenix, AZ: February 10-12

\$915 (GSA contract: \$825 until 12/31/08)

How to Establish and Manage an Interdisciplinary Team/Clear Writing for NEPA Specialists

Salt Lake City/Park City, UT: February 23-27

\$1,315 (GSA contract: \$1,225)

Clear Writing for NEPA Specialists

Salt Lake City/Park City, UT: February 25-27

\$915 (GSA contract: \$825 until 12/30/08)

NEPA Cumulative Effects Analysis and Documentation/NEPA Climate Change Analysis

San Francisco, CA: March 24-27

\$1,145 (GSA contract: \$1,055 until 2/2/09)

Integrating Federal Environmental Laws into NEPA

Jackson Hole, WY: March 31-April 2

\$945 (GSA contract: \$855 until 2/20/09)

NEPA Certificate Program

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

Natural Resources and Environmental Policy Program

Utah State University

435-797-0922

Judy.Kurtzman@usu.edu

www.cnr.usu.edu/policy/

- SWCA Environmental Consultants

800-828-7991

training@swca.com

www.swca.com/training

Comprehensive NEPA

Tucson, AZ: March 11-13

\$795 (discounts available)

- US Institute for Environmental Conflict Resolution

130 S. Scott Ave.

Tucson, AZ 85701

(520) 901-8501

usiecr@ecr.gov

www.ecr.gov/Training/training.aspx

Introduction to Managing Environmental Conflict

Tucson, AZ: January 13-14

Washington, DC: March 10-11

\$995

Advanced Multi-Party Negotiation of Environmental Disputes

Washington, DC: February 10-12

\$1,295

Collaborative Competencies

Washington, DC: February 24-26

\$1,495

EAs and EISs Completed July 1 to September 30, 2008

EAs

Golden Field Office/Office of Energy Efficiency and Renewable Energy
DOE/EA-1620 (8/11/08)
Burbank Hydrogen Fueling Station Project, California
Cost: \$101,000
Time: 6 months

DOE/EA-1621 (9/21/08)
Oregon Institute of Technology (OIT) Deep Geothermal Well and Power Plant Project, Klamath County, Oregon
Cost: \$41,000
Time: 5 months

DOE/EA-1628 (9/29/08)
Construction and Operation of a Proposed Lignocellulosic Biorefinery, POET Project LIBERTY, LLC., Emmetsburg, Iowa
Cost: \$112,000
Time: 3 months

National Energy Technology Laboratory/Office of Fossil Energy
DOE/EA-1616 (9/10/08)
Power Systems Development Facility, Carbon Research Center Project, Southern Company Services, Wilsonville, Alabama
Cost: \$35,000
Time: 5 months

National Nuclear Security Administration
DOE/EA-1502 (9/23/08)
Transport of Plutonium between the U.S. and a Foreign Country (Classified)
Cost: \$85,000
Time: 52 months

Oak Ridge Office/Office of Science
DOE/EA-1618 (7/28/08)
Oak Ridge National Laboratory Modernization Initiative, Tennessee
Cost: \$80,000
Time: 3 months

Savannah River Operations Office/Office of Environmental Management
DOE/EA-1605 (8/6/08)
Biomass Cogeneration and Heating Facilities at the Savannah River Site, South Carolina
Cost: \$30,000
Time: 11 months

Western Area Power Administration
DOE/EA-1623 (6/20/08)*
Groton Generation Station Unit II Project, South Dakota
Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: Not applicable

* Not previously reported in LLQR

EISs

Office of Civilian Radioactive Waste Management
DOE/EIS-0250F-S1 (73 FR 39958, 7/11/08)
(EPA Rating: EC-2)
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
Cost: \$7,300,000
Time: 21 months

DOE/EIS-0250F-S2 (73 FR 39958, 7/11/08)
(EPA Rating: LO)
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
Cost: See DOE/EIS-0369, below
Time: 51 months

DOE/EIS-0369 (73 FR 39958, 7/11/08)
(EPA Rating: EC-2)
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
Cost: \$18,200,000
(includes cost for DOE/EIS-0250F-S2)
Time: 51 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$80,000; the average cost was \$69,000.
- Cumulatively, for the 12 months that ended September 30, 2008, the median cost for the preparation of 23 EAs for which cost data were applicable was \$85,000; the average cost was \$113,000.
- For this quarter, the median completion time for 7 EAs was 5 months; the average was 12 months.
- Cumulatively, for the 12 months that ended September 30, 2008, the median completion time for 26 EAs was 12 months; the average was 21 months.

EIS Cost and Completion Times

- For this quarter, the median cost of three EISs for which cost data were applicable was \$12,750,000; the average cost was \$8,500,000.
- Cumulatively, for the 12 months that ended September 30, 2008, the median cost for the preparation of 9 EISs for which cost data were applicable was \$3,580,000; the average cost was \$5,930,000.
- For this quarter, the median completion time for 3 EISs was 51 months; the average was 41 months.
- Cumulatively, for the 12 months that ended September 30, 2008, the median completion time for 11 EISs was 37 months; the average was 36 months.

Recent EIS-Related Milestones (September 1 to November 30, 2008)

Advance Notice of Intent

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0406

*Designation of Energy Corridors on Federal
Land in 39 States*

October 2008 (73 FR 57613, 10/3/08)

Notices of Intent

Office of Civilian Radioactive Waste Management

DOE/EIS-0250-S3

*Supplement to the Environmental Impact Statement
for a Geologic Repository for the Disposal
of Spent Nuclear Fuel and High-Level Radioactive
Waste at Yucca Mountain – Groundwater,
Nye County, NV*

October 2008 (73 FR 63463, 10/24/08)

Office of Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0409

*Demonstration of the Integrated Gasification
Combined Cycle (IGCC) Technology,
Kemper County, Mississippi*

September 2008 (73 FR 54569, 9/22/08)

Western Area Power Administration

DOE/EIS-0408

Upper Great Plains Wind Energy Programmatic EIS

September 2008 (73 FR 52855, 9/11/08)

Notice of Cancellation

Western Area Power Administration

DOE/EIS-0390

*Eastern Plains Transmission Project, Colorado
and Kansas*

September 2008 (73 FR 51295, 9/2/08)

Draft EIS

Office of Nuclear Energy

DOE/EIS-0396

*Global Nuclear Energy Partnership Programmatic
Environmental Impact Statement*

October 2008 (73 FR 61859, 10/17/08)

(continued on next page)

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

Final EISs

National Nuclear Security Administration

DOE/EIS-0236-S4

Complex Transformation Supplemental Programmatic Environmental Impact Statement
October 2008 (73 FR 63470, 10/24/08)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0386

Programmatic Environmental Impact Statement, Designation of Energy Corridors on Federal Land in the 11 Western States
(co-lead, Bureau of Land Management, Department of the Interior)
November 2008 (73 FR 72477, 11/28/08)

DOE/EIS-0399

Environmental Impact Statement for the Montana Alberta Tie Ltd. (MATL) 230-kV Transmission Line, Great Falls, Montana
(co-lead, Montana Department of Environmental Quality)
October 2008 (73 FR 57620, 10/3/08)

Records of Decision

National Nuclear Security Administration

DOE/EIS-0380

Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico
September 2008 (73 FR 55833, 9/26/08)

Office of Civilian Radioactive Waste Management

DOE/EIS-0369

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
October 2008 (73 FR 60247, 10/10/08)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0399

Environmental Impact Statement for the Montana Alberta Tie Ltd. (MATL) 230-kV Transmission Line, Great Falls, Montana
November 2008 (73 FR 67860, 11/17/08)

Supplement Analysis

Office of Environmental Management

DOE/EIS-0222-SA-1

Hanford Comprehensive Land-Use Plan Environmental Impact Statement, Hanford Site, Richland, Washington
(Decision: No further NEPA review required)
September 2008

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0222

Hanford Comprehensive Land-Use Plan Environmental Impact Statement, Hanford Site, Richland, Washington
September 2008 (73 FR 55824, 9/26/08)

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.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Regular team meetings.* Pre-arranged weekly meetings with all players facilitated timely completion of the EA.
- *Contractor thoroughness and knowledge.* The contractor's thoroughness and knowledge of the project enabled efficient completion of the EA.

Factors that Inhibited Timely Completion of Documents

- *Team member over-involvement in project details.* Too many of the project "players" provided input on the minor details of the project process, such as every email, meeting, and phone call, which became cumbersome and time consuming.
- *Subcontractor management and staffing difficulties.* DOE attempts to begin the EA were delayed due to subcontractor project management problems with staffing, project details and the inability to establish a realistic timeframe for EA completion.
- *Program Manager's lack of NEPA experience.* The DOE Program Manager started the project without an adequate understanding of NEPA, delaying the start of the NEPA process. The process went smoothly after the Program Manager accepted the process.

Teamwork

Factors that Facilitated Effective Teamwork

- *Direct communication among team members.* Open and direct communication between DOE and all the contractors allowed the project to proceed smoothly and on schedule despite extremely tight scheduling issues.
- *Team review of draft document.* Two "real time" reviews of the draft document using a projector allowed for efficient review of the document by the team, which included the NEPA department, state representatives, and legal counsel.

- *Understanding of project issues.* A very clear understanding of the project by the contractor and recipient facilitated the smooth completion of this EA.
- *Good working relationship with contractor.* A close working relationship between DOE and the contractor facilitated effective EA completion.
- *Previous team experience.* The team had worked together on similar documents previously and knew what needed to be done to meet an aggressive schedule.

Factors that Inhibited Effective Teamwork

- *Poor planning.* Poor planning from the beginning of the project greatly inhibited the flow of the EA process.
- *Workload and budget constraints.* The workload and budget constraints of the state program office did not allow for a site visit by the project officer or his engineer, which would have facilitated their understanding of the project and the EA process.
- *Applicant resistance to NEPA process.* The grant recipient resisted proceeding with the required EA.

Process

Successful Aspects of the Public Participation Process

- *Input from community stakeholders.* The involvement of the local government in the joint state/Federal EA enhanced work with the key stakeholders. As a result, all potential issues were identified early and resolved prior to the public review.
- *Community understanding of project.* No comments were received from the public in the process. The local residents were familiar with the project, which had the full support of the community.

Unsuccessful Aspects of the Public Participation Process

- *Lack of public interest.* The public meeting was poorly attended. Only two individuals from the public attended and only stayed briefly.

(continued on next page)

Questionnaire Results

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

Usefulness

Agency Planning and Decisionmaking:

- *Potential impacts understood and addressed.* The EA thoroughly analyzed potential impacts, which were successfully mitigated prior to the beginning of construction.
- *Evaluation of available resources.* The NEPA process allowed for a complete understanding of the resources affected at the project site and identified the impacts of the planned project activities on the resources.

Enhancement/Protection of the Environment

- *Further impacts prevented.* The project site was previously disturbed; however, the NEPA process ensured that the existing environment was maintained without additional impacts.
- *Environmental disturbance minimized.* Disturbance of the environment will be minimized and maintained within allowable thresholds as a consequence of the NEPA process.
- *Environmental issues identified.* The environment was protected because issues of concern that had not been a part of the prior planning effort were identified.

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, 2 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “2” stated that Federal NEPA requirements prolonged and complicated the state environmental evaluation process. There was no applicable CX for a basic project upgrade, which required a complete NEPA review.
- A respondent who rated the process as “4” stated that the NEPA process allowed the field and program office to fully understand the potential impacts associated with the project and to make the changes necessary to mitigate impacts. Impacts would have been more severe if the NEPA analyses were not required.
- A respondent who rated the process as “4” stated that once the Program Manager acknowledged the need for the NEPA process, its value to the project was evident.

NEPA Staff Positions Open

The Office of NEPA Policy and Compliance is looking to hire up to two Environmental Protection Specialists, GS-0028, at the GS-12, -13, or -14 level. Two vacancy announcements, one a Merit Promotion open to DOE employees and the other a Public Notice open to other Federal or non-Federal applicants, are expected to be posted on December 1, 2008, at www.usajobs.gov.

If you are looking for a challenging and rewarding job, we hope you will apply. Otherwise, please help us spread the word about this opportunity.

LESSONS LEARNED

March 3, 2009; Issue No. 58

First Quarter FY 2009

NEPA Efficiency Essential to Recovery Plan

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

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

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

Recovery Act Calls for Expediting Reviews

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



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

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

(continued on page 4)

NEPA Opportunities in a New Era of Openness

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

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

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

(continued on page 6)

Inside **LESSONS LEARNED**

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

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

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

Quarterly Questionnaires Due May 1, 2009

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2009 (January 1 through March 31, 2009) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at www.gc.energy.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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

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

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

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

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

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

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

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

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

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

Chu Pledges To Improve DOE Management

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

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

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

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

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

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

– Dr. Steven Chu
January 13, 2009

NEPA Efficiency *(continued from page 1)*

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

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

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

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

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

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

NEPA and the American Recovery and Reinvestment Act

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

SEC. 1609. (a) FINDINGS.—

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

NEPA Efficiency (continued from previous page)

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

Recovery.gov

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

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

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

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

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

Recovery Act Funding by DOE Program

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

New Era of Openness (continued from page 1)

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

NEPA and Openness

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

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

“Government should be transparent.

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

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

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

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

“Government should be collaborative.

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

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



(continued on next page)

New Era of Openness (continued from previous page)

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

*– President Barack Obama
January 21, 2009*

First Stop: NEPA Guidance

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

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

Moving Toward Greater Openness

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

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

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

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

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

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

New DOE-Wide NEPA Support Contracts!

New Contracts Being Issued

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

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

DOE Contract Administration Moved to NNSA Headquarters

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

Contracts under full and open competition are being awarded to:

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

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

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

Small business contracts are being awarded to:

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

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

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

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

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

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

Thanks for a Job Well Done!

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

Guidance Available, More To Be Developed

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

Sutley Brings Breadth of Government Experience to CEQ



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

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

CEQ Confers with Agencies on Recovery Act and NEPA

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

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

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

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

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

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

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



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

DOE Advances NEPA Process for Loan Guarantees

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

NEPA Activities for the 2006 Solicitation

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

2008 Loan Guarantee Solicitations

Four additional solicitations were issued in 2008:

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

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

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

Nuclear Solicitations

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

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

Fossil Energy and Renewables Solicitations

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

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

Loan Guarantee Office Seeks NEPA Staff

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

NEPA Activity under the 2006 Loan Guarantee Solicitation^a

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

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

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

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

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

For Efficiency, Make Use of Prior NEPA Documents

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

Understand the Scope of the Existing Document –

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

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

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

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

Determine Whether Information Remains Current –

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

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

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

Ensure that Past NEPA Documents Are Publicly

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

An EIS Is Not a Blanket

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

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



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

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

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

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

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

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

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

Online Availability Statements Should Be Accurate at Time of Signature

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

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

Recommendations:

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

EIS Summary: The Perils of “Copy and Paste”

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

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

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

– CEQ NEPA Regulations, 40 CFR 1502.12

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

Perils of Copy and Paste:

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

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

Perils of Copy and Paste:

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

Perils of Copy and Paste:

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

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



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

– DOE Environmental Impact Statement Summary guidance

Case Study on Adopting Another Agency's EIS

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

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

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

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

Notify EPA of EIS Adoption in Writing

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

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

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

Must an Adopted EIS Be Recirculated?

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

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CEQ NEPA Regulations – Excerpts from 40 CFR 1506.3, Adoption

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

Cape Wind NEPA Review Nearly Complete



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

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

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

Project Details

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

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

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

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

Environmental Review – A Brief History

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

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

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

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Awards Given to Yucca Team and NNSA EIS Manager

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

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

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

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

Status of Yucca Mountain License Application/EISs

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

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

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

What Will Happen Next?

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

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

Interior and Agriculture Designate Energy Corridors



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

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

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

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

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

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

Protect Sensitive Cultural Resource Information

FOIA

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

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

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

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

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

What are Cultural Resources?

Cultural resources include, but are not limited to:

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

Making the NEPA Process Work Again at West Valley

by Cathy Bohan, NEPA Compliance Officer and Document Manager

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

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

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

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

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

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

(continued on next page)

Background:

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

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

West Valley (continued from previous page)



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



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

Core Team Process Started

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

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

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

Progress Accelerates

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

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

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

(continued on next page)

West Valley *(continued from previous page)*

Other Factors

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

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

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

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

Next Steps

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

Cape Wind Review *(continued from page 16)*

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

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

What's Next?

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

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

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

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



Most DOE EISs Being Prepared with Cooperating Agencies

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

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

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

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

Cooperating Agency Questions Under Consideration for Addition to Lessons Learned Questionnaire

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

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

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

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

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

Transitions

Office of NEPA Policy and Compliance: Welcome to Carrie Moeller



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

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

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

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

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

Farewell to Melanie Pearson

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

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

Argonne Site Office: Pete Siebach (Acting NCO)

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



Litigation Updates

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

DOE Litigation

Preliminary Injunction Denied for LLNL Biosafety Laboratory

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

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

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

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

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

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

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

Other Agency NEPA Litigation

Settlement Agreements in Climate Change Case

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

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

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

Under its settlement agreement, OPIC is required to:

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

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

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

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

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

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

Mark Your Calendars: Upcoming Conferences



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

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

NAEP Conference to Highlight Sustainability

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



State of Environmental Justice in America



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



2009 Federal Environmental Symposia

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

International Interdisciplinary Conference on the Environment

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



Training Opportunities

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

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

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Training Opportunities

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

Writing for Technical Specialists

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

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

San Francisco, CA: March 24-27

2-day, individual course registration:

\$785 (GSA contract: \$695)

4-day, two course registration:

\$1185 (GSA contract: \$1095)

Las Vegas, NV: May 12-15

2-day, individual course registration:

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

4-day, two course registration:

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

Integrating Federal Environmental Laws into NEPA

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

Applying the NEPA Process and Writing Effective NEPA Documents

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

San Antonio, TX: June 2-5

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

Clear Writing for NEPA Specialists

Phoenix, AZ: April 21-23

Portland, OR: May 5-7

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

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

Missoula, MT: May 5-7

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

Reviewing NEPA Documents

Las Vegas, NV: June 16-18

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

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

San Antonio, TX: June 23-25

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

NEPA Certificate Program

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

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

judy.kurtzman@usu.edu

www.cnr.usu.edu/policy/

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

Comprehensive NEPA

Tucson, AZ: March 11-13

\$795

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

Salt Lake City, UT: May 18-19

\$695

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

Introduction to Managing Environmental Conflict

Washington, DC: March 10-11

Atlanta, GA: May 12-13

\$995

Advanced Multi-Party Negotiation of Environmental Disputes

Washington, DC: April 7-9

\$1,245

Interest-based Negotiation of Environmental Issues

Portland, OR: April 22-23

\$995

EAs and EISs Completed October 1 to December 31, 2008

EAs

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

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

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

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

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

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

EISs

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

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

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

DOE/EIS-0399 (73 FR 57620, 10/3/08)
(EPA Rating: EC-2)
*Montana Alberta Tie Ltd. (MATL) 230-kV
Transmission Line, Great Falls, Montana
(co-lead: State of Montana)*
Cost: The cost for this EIS was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 16 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 6 EAs for which cost data were applicable was \$50,000; the average cost was \$117,000.
- Cumulatively, for the 12 months that ended December 31, 2008, the median cost for the preparation of 25 EAs for which cost data were applicable was \$85,000; the average cost was \$122,000.
- For this quarter, the median completion time for 6 EAs was 10 months; the average was 14 months.
- Cumulatively, for the 12 months that ended December 31, 2008, the median completion time for 28 EAs was 12 months; the average was 17 months.

EIS Cost and Completion Times

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

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

Notices of Intent

Office of the Chief Financial Officer

DOE/EIS-0412

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

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0414

Energia Sierra Juarez Transmission Line, California

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

Western Area Power Administration

DOE/EIS-0411

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

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

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

DOE/EIS-0415

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

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

Draft EIS

Office of Environmental Management

DOE/EIS-0226-D (Revised)

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

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

Final EIS

Western Area Power Administration

DOE/EIS-0410

Keystone Oil Pipeline Project

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

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

(continued on next page)

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

Records of Decision

National Nuclear Security Administration

DOE/EIS-0236-S4

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

DOE/EIS-0236-S4

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

Western Area Power Administration

DOE/EIS-0410

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

DOE/EIS-0218

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

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

Supplement Analyses

Bonneville Power Administration

DOE/EIS-0332-SA-1

McNary-John Day Transmission Line Project, Washington

(Decision: No further NEPA review required)
February 2009

National Nuclear Security Administration

DOE/EIS-0218-SA-4

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

(Decision: No further NEPA review required)
January 2009

National Nuclear Security Administration/ Pantex Site Office

DOE/EIS-0225-SA-4*

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

(Decision: No further NEPA review required)
October 2008

Amended Records of Decision

National Nuclear Security Administration

DOE/EIS-0283

Surplus Plutonium Disposition Environmental Impact Statement

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

**Not previously reported in LLQR*

EIS Adoption *(continued from page 15)*

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

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

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

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

More Information

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

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports.

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

Scoping

What Worked

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

Data Collection/Analysis

What Didn't Work

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

Schedule

Factors that Facilitated Timely Completion of Documents

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

Factors that Inhibited Timely Completion of Documents

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

(continued on next page)

Questionnaire Results

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

Teamwork

Factors that Facilitated Effective Teamwork

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

Factors that Inhibited Effective Teamwork

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

Process

Successful Aspects of the Public Participation Process

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

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

Usefulness

Agency Planning and Decisionmaking: What Worked

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

Enhancement/Protection of the Environment

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

Other Issues

Guidance Needs Identified

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

(continued on next page)

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

Effectiveness of the NEPA Process

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

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

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

LESSONS LEARNED

June 1, 2009; Issue No. 59

Second Quarter FY 2009

DOE NEPA Compliance Officers Share Strategies

“The Department of Energy is both privileged and challenged” by its critical role in implementing the American Recovery and Reinvestment Act, said Matt Rogers, Senior Advisor to the Secretary, to DOE’s NEPA Compliance Officers (NCOs) and NEPA staff from the Office of General Counsel at the NCO meeting in Washington, DC, on April 28–29, 2009. In the keynote address, Mr. Rogers cited DOE’s intense efforts since late February to identify and approve projects for Recovery Act funding and the imminent need to address an expected 5,000 to 7,000 grant applications. “We must demonstrate to the public that the government *can* work for them,” he continued, “to make a material down-payment on the Nation’s energy and environmental future.”

Noting that DOE will be responsible for distributing a level of Recovery Act funding that exceeds the entire DOE annual budget, Mr. Rogers cautioned that “we need to understand existing constraints and find ways of relieving them in the near term and longer.” This demands coordination and collaboration among Departmental elements, he said, and



Keynote speaker Matt Rogers emphasized that efficient NEPA compliance is essential for DOE success in implementing the Recovery Act.



urged the meeting’s participants to propose creative approaches for the Department to accelerate environmental reviews under NEPA.

Meeting Focuses on Working Smarter

“Expediting schedules and improving quality is applicable to all projects, not just to Recovery Act projects,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. “We must do more, better, faster, and cheaper. How do we do this? My answer is to do it smarter,” she explained, “through more concerted work effort, vigorous oversight, and timely support from many offices.”

To advance the goal of faster, high-quality NEPA compliance, NCOs and General Counsel staff discussed how to effectively and efficiently manage environmental impact statements (EISs), environmental assessments (EAs), and categorical exclusion (CX) determinations. New resources to be applied to improving DOE’s NEPA implementation were described, including procedures for contract use and guidance in preparation. Speakers also addressed the relationship between the NEPA process and the Administration’s Freedom of Information Act policies, and between the NEPA process and the Department’s project management system. (The meeting articles that follow are indicated by the meeting logo, *Accelerating a Quality NEPA Process*.)

In a May 15 memorandum to NCO meeting participants, Ms. Borgstrom outlined follow-up actions that the NEPA Office has been working on since the meeting. In particular, she emphasized the need to effectively manage EIS schedules (related article, page 2). [L](#)

Inside **LESSONS LEARNED**

Welcome to the 59th quarterly report on lessons learned in the NEPA process. We are pleased to feature the DOE NCO meeting and the NAEP annual conference, where streamlining the NEPA process for Recovery Act projects and consideration of climate change in NEPA documents were both addressed. We've begun to follow up on suggestions from the NCO meeting (below). Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for 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 3, 2009. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 3, 2009

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2009 (April 1 through June 30, 2009) should be submitted by August 3, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at www.gc.energy.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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Follow-up to April NEPA Compliance Officers Meeting

"With a heavy NEPA workload, this is an important time to focus on doing our job well the first time," said Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in a May 15 follow-up memorandum to NEPA Compliance Officers (NCOs). "Your suggestions for continuing to improve DOE's implementation of NEPA will help us meet that goal," she said.

A concern raised by NCOs at the meeting is that too often EISs are delayed during the Headquarters review, Ms. Borgstrom noted. She emphasized the attention needed to effectively manage EIS schedules, explaining that "balancing this concern is the recognition that schedules are influenced by both the quality of drafts submitted for review and DOE priorities." In response to a common request from NCOs to reduce the number of review cycles, the memorandum included a sample 15-month EIS schedule, which assumes two reviews each for the draft and final EIS.

Ms. Borgstrom also requested that interested NCOs, as well as NEPA Document Managers and others with NEPA experience, contact Brian Costner about assisting with Recovery Act implementation (brian.costner@hq.doe.gov or 202-586-9924). In addition, she noted that the NEPA Office will host a periodic NCO conference call. The next call will be on Wednesday, June 17.

Panel Offers Variety of Suggestions To Expedite Schedule, Maintain Quality



One of the strengths of DOE's cadre of NEPA practitioners is its diversity. The presentations of a panel advising on "How Can We Expedite Schedule and Maintain Quality?" – followed by an open discussion on "What Can We Do Better" – provided an array of perspectives: from Headquarters and Field representatives, legal and technical staff, and highly-experienced and relatively new NEPA practitioners. The panelists represented DOE Offices with vastly different missions and types of workload, including the extent of responsibility for Recovery Act projects.



Steve Blazek, Shane Collins, and Mike Jensen provide views on expediting the NEPA process.

Despite this diversity, common themes emerged from the panel's recommendations:

- Manage the NEPA process as a project, including management of schedule, contractor and in-house resources, and document quality.
- Anticipate and address issues early in the NEPA process to avoid delays late in the process.
- Streamline by consolidating review of similar actions; establish standard procedures, content, and format for repeated activities and document sections.
- Exploit tools such as NEPA guidance, and project management and other software.

Highlights of Panelists' Recommendations

Steve Blazek, NEPA Compliance Officer (NCO), Golden Field Office

Mr. Blazek described the "tsunami increase in the workload" that the Golden Field Office will face because of its responsibilities for Recovery Act projects, estimated as a 25 percent increase from the Office's previous annual

appropriation. He expects the Office's NEPA workload this year to include preparation of 7 EISs and up to 40 EAs, and about 2,000 categorical exclusion (CX) determinations – a challenge that will require the most effective NEPA strategies and improved coordination between the Field Office and Headquarters. Mr. Blazek recommended:

- Use a tracking system. Golden Field Office uses a database system to track NEPA activities, integrate them with the Office's management systems, and help coordination between project managers and NEPA staff.
- Establish clear assignment of EIS roles and responsibilities, communication pathways, and schedule responsibilities.
- Request environmental information from applicants in Funding Opportunity Announcements when a financial assistance project may need an EA or EIS.
- Categorically exclude groups of similar projects, when appropriate.

Shane Collins, NCO, Western Area Power Administration

Ms. Collins advocated streamlining the EIS process by preparing a draft EIS that will not need extensive changes in response to comments, followed by an "abbreviated" final EIS. Under the Council on Environmental Quality (CEQ) regulations (40 CFR 1503.4(c)), if changes in response to comments on the draft EIS are minor, agencies may circulate only the comments, responses, and changes. This approach saves time and cost, and commentors can easily see how their comments were addressed. Ms. Collins advised:

- Ensure there are no surprises. Address public concerns adequately in the draft EIS, so that if changes are required in the final EIS, they will be only factual, nonsubstantive corrections. This approach requires preparation of a solid, readable, and "noncontroversial" draft EIS.
- Adequately address stakeholder concerns in the draft EIS by up-front work that may go beyond scoping. Meet to resolve issues with the interested public, make personal contact with affected landowners, and coordinate early with Native American tribes.
- Avoid sensitive resources, and commit to mitigation.
- Ensure that the EIS evaluates an adequate range of alternatives and provides appropriate justification regarding alternatives eliminated from detailed study.

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Expedite Schedule, Maintain Quality

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Mike Jensen, Attorney-Adviser, Office of the Assistant General Counsel for Environment

Mr. Jensen emphasized that ensuring the legal adequacy of an EIS is a means of attaining schedule goals and a high level of document quality. He recommended diligent attention to regulatory requirements to avoid delay during Headquarters review. Mr. Jensen also advised:

- The statement of purpose and need should not be so narrow as to rule out alternatives, nor so broad as to expand the range of alternatives beyond those that reflect the Department's need. It should be "just right" (the "three bears" approach).
- Know the project completely to support a clear description in the NEPA document.
- Streamline documents through good writing:
 - Apply the sliding scale; do not provide extensive detail for resource areas with minor impacts.
 - Avoid repetition, for example, for alternatives with identical impacts in a particular resource area; consider combining the sections on affected environment and consequences.
 - Have someone not familiar with the project review the document.
- Reduce litigation risk by carefully considering whether an alternative suggested by the public is within the range of reasonable alternatives to be evaluated in detail. Pay attention to controversial topics that are frequently the subject of litigation: greenhouse gases, terrorism, and transboundary impacts.



Jeanie Loving, Carrie Moeller, and Matt Urie listen to meeting participant comments.

Jeanie Loving, NCO, Office of Environmental Management

Ms. Loving, an NCO who previously worked as a staff member in the Office of NEPA Policy and Compliance, noted that she appreciates Program Office and Headquarters NEPA compliance and legal perspectives. She attested to the value added by them and advised other NCOs that delegation of EIS approval authority (from the General Counsel to the Program Secretarial Officer) can increase litigation risk even though counsel concurrence in the EIS would still be required. Her recommendations included:

- Be aware that contractors and Field Office representatives tend to be highly concerned with the schedule of NEPA review, while Headquarters Offices tend to focus more on the quality side of the review process.
- For a smooth Headquarters review, NEPA Document Managers should "involve GC early and often" (referring to retired NCO Harold Johnson); prepare high quality documents so that the NEPA Office can focus on NEPA adequacy of a document instead of editing.
- The NEPA Document Manager should manage the approval process by seeking agreement on the number of iterative reviews (for example: a preliminary and final review); developing detailed schedules for program, NEPA Office, and legal review; and seeking buy-in by the reviewers.
- To reduce the potential for delay, Headquarters reviewers should look for opportunities to resolve issues early, for example, before approval review of a final EIS; provide specific direction and language, where possible, for requested changes to more efficiently get the desired result; provide final approvals "subject to comments" instead of waiting to receive revised pages.

Carrie Moeller, Office of NEPA Policy and Compliance

Ms. Moeller, a relatively new staff member in the NEPA Office, described her observations on the value added in Headquarters approval review of EISs: providing a comprehensive, objective, "fresh eyes" reading; reviewing the entire EIS, with particular attention to NEPA terminology and principles; applying perspectives on DOE cross-cutting issues and approaches; and focusing on

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Expedite Schedule, Maintain Quality

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readability, good communication, and consistency. She acknowledged that there are actions that the NEPA Office could take to be more proactive:

- Host monthly conference calls with NCOs to identify and resolve issues early and maintain open communication.
- Conduct training to help avoid problems in the “crunch” of EIS preparation.
- Identify recurring issues and address them through guidance.

Matt Urie, Acting Deputy General Counsel, National Nuclear Security Administration (NNSA)

Mr. Urie addressed the need for more effective management of the NEPA process in both Field and Program Offices, and emphasized the need for Program Secretarial Officers “to own” the NEPA process, which can be especially challenging for site-wide EISs. Acknowledging the need for accelerating the NEPA process, he reminded NCOs that the Project Managers they support should understand that “streamlining” must stay within the law. He urged NCOs to manage schedules strictly but realistically, as attempts to meet schedule may result in poor quality documents that will require time-consuming, multiple rounds of review. He recommended:

- Learn from other documents (e.g., for terrorism analyses, look at the Yucca Mountain EISs).
- Use a Management Council and Management Review team approach, and expect to receive comments.
- Establish guidelines for document reviewers to encourage disciplined, value-added comments, and establish realistic schedules that account for the priorities of other Offices.
- Pay attention to the administrative record for the NEPA process, and consider when conversation rather than email is an appropriate approach for deliberations.

Discussion Continued on Process Improvements

NCO meeting participants later conducted a group discussion to further explore “what we can do better.” Carol Borgstrom started the discussion by asking NCOs about the feasibility of posting CX determinations on DOE websites. Several participants suggested that posting CX determinations may be appropriate in light of the President’s emphasis on transparency for Recovery Act projects, and the Attorney General’s March 19, 2009, memorandum regarding the Freedom of Information Act. One NCO previously had posted the title of CX determinations on the Field Office website, but said this practice was discontinued because resources were limited. Several NCOs expressed concern about posting CX determinations because of resource limitations, and one NCO said there was not enough time to post such determinations for Recovery Act projects.

During further discussions on streamlining the EIS process, several NCOs recommended that Headquarters reviewers should better recognize the importance of schedule to Field Offices. NCOs offered several suggestions, such as shortening Headquarters review times and limiting the number of review cycles. Bill Levitan, Director, Office of Compliance, in the Office of Environmental Management, said a paradigm shift is needed, and that Headquarters reviewers should themselves regard their EIS reviews as projects. He recommended developing a master review schedule that includes a baseline, and the use of project management software to manage reviews. “Plan your work and work your plan,” he said.

In response to these recommendations, the NEPA Office proposed an example schedule based on completing an EIS in 15 months (related article, page 2). The NEPA Office requested that NCOs work with NEPA Document Managers to provide their existing, detailed EIS schedules, which will enable the Office to improve its planning and better support Program and Field Office EIS schedules. **L**



At the recent NCO meeting, then Acting General Counsel Eric J. Fygi spoke to the importance of the NCO as the linchpin who holds together the program resources needed for successful NEPA compliance. Mr. Fygi remarked that thanks to the NCOs’ hard work, “the Department’s decisions are durable even in the face of controversy.” (Scott Blake Harris was sworn in as the new DOE General Counsel on May 21, 2009.)

Preparing Focused, Concise EAs

DOE prepares far more EAs than EISs. Because this is the largest component of DOE's NEPA document workload, looking for efficiencies in EA preparation can have a big payback, remarked Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in introducing the session on preparing focused, concise EAs. To structure a group exploration of potential pathways to improvement, the NEPA Office had examined more than 100 DOE EAs issued since 2004. About two-thirds ranged from 50 to 200 pages, but some were quite brief and some significantly longer. Some features of the shortest and longest EAs suggested questions (below) that were discussed during breakout sessions at the NEPA Compliance Officers (NCO) meeting. The results, which were then shared with the reassembled group, represent the "Wisdom of the NCOs."



- Establish aggressive but realistic schedules with senior management involvement and buy-in
- Manage contractors for quality as well as schedule
- Use information from existing sources; tier from existing NEPA documents; require applicants to provide adequate environmental information
- Manage coordination with internal stakeholders (e.g., Program Offices, counsel) and external stakeholders (e.g., State Historic Preservation Officers, tribal organizations)
- Hold to established (i.e., 14–30 day) state and public comment periods; accommodate late comments as practicable without extending the comment period for all
- Exploit available tools, such as online document review and revision software and EA checklists¹

What Factors Tend to Produce a Large EA?

- A purpose and need statement that is unfocused or unclear, leading to unnecessarily broad scope
- A cooperating agency whose requirements or expectations exceed DOE's with respect to scope and level of detail
- Inclusion of content intended to minimize litigation risks ("bulletproofing")
- Inherently complex projects – for example, involving several sites
- Preparation of an EA that is an EIS in disguise
- Repetition

What Techniques Have Proven Effective in Reducing the Time Required to Prepare an Adequate EA?

- If the analysis to be presented in the EA requires much explanation, consider whether an EIS is more appropriate
- Begin EA development only after key elements (purpose and need statement, proposal, alternatives) are defined in order to avoid late scope changes
- Assign clear roles and responsibilities for preparation, review, and approval – for example, by instructing reviewers to focus on substantive comments

Would Combining Affected Environment and Environmental Consequences Help Shorten and Focus EAs?

- Would create a logical flow that enhances readability
- An EA may not require a detailed Affected Environment section

What Minimum Information Is Appropriate to Include for Resource Areas When the Analysis Indicates *De Minimis* Impacts?

- Include only enough information to demonstrate that resource areas were analyzed
- Reference the most recent site documents (e.g., EISs, Annual Site Environmental Reports)
- Use tables or charts to summarize *de minimis* impacts, without restating in text

What Should an EA Present Regarding Standard Operating Procedures (SOPs) and Mitigation Measures?

- Include mitigation and SOPs in site-wide NEPA documents, environmental management systems, and resource management plans; incorporate them by reference in an EA
- Separately identify mitigation measures, but include SOPs in the proposed action (use table format)

(continued on next page)

¹ See, for example, DOE's Environmental Assessment Checklist (www.gc.energy.gov/nepa, under Guidance) and the Washington State Environmental Checklist (www.ecy.wa.gov/pubs/ecy05045.pdf).

What Is Required for an Adequate Finding of No Significant Impact (FONSI)?

- A summary of the environmental consequences presented in the EA or a statement incorporating the EA by reference
- A summary of any stakeholder comments
- Mitigation commitments that are not integral elements of proposed action, if necessary for a mitigated FONSI
- Statement of determination of significance, floodplain findings (as appropriate), date of issuance, signature of approving official (potentially a page or two) LL

“EA Idol” – NCO Edition

In the weeks before the meeting, the NEPA Office asked NCOs to nominate an “excellent EA” that exemplifies a concise, readable, high-quality document. Meeting participants were invited to inspect the candidates and vote for their favorite. Golden Field Office NCO and NEPA Document Manager Steve Blazek received a certificate of recognition for the top vote-getter, *EA for the University of Nevada, Las Vegas Research Foundation Solar Technology Center* (DOE/EA-1622; 2009).

Stakeholder Views on DOE’s NEPA Process

Jay Coghlan, Director of Nuclear Watch New Mexico, which is a member of the Alliance for Nuclear Accountability, was invited to provide a stakeholder perspective on ways to improve DOE’s NEPA process. “I think DOE has an honest intent to implement NEPA,” he said.

“NEPA hurts at times, but it benefits DOE,” Mr. Coghlan said, recalling how the 1999 Los Alamos National Laboratory Site-wide EIS was used during the response to the Cerro Grande fire in 2000 (*LLQR*, June 2000, page 1). He emphasized that the public has to be better informed about adverse effects of intentional destructive acts without compromising national security and called for unclassified summaries to be included in publicly available NEPA documents.

Mr. Coghlan made a number of recommendations to improve DOE’s NEPA Program: make greater use

of Internet services during the NEPA process; post all categorical exclusion determinations online as part of an online NEPA public library; prepare a site-wide EIS for each site routinely every 10 years; include estimated costs in EAs and EISs for each alternative; prepare EISs for projects costing over \$100 million; and ensure uncompromising compliance with NEPA in American Recovery and Reinvestment Act projects. LL



Jay Coghlan, Director, Nuclear Watch New Mexico, presented recommendations for improving openness at the NCO meeting.

Guidance in Preparation: NOI and ROD

To help expedite the EIS process and improve document quality, the Office of NEPA Policy and Compliance is developing guidance on preparing a notice of intent (NOI) to prepare an EIS and a record of decision (ROD). The intent of the guidance is to avoid repeated rounds of revision during the approval process and to meet *Federal Register* requirements routinely. Accordingly, the guidance will address content (“telling DOE’s NEPA story”) of the two types of notices, as well as format and procedures.

“The NOI and ROD are the ‘bookends’ of the public side of the EIS process,” said Yardena Mansoor,

NEPA Office. After completion of the guidance and preliminary coordination with the Office of the Assistant General Counsel for Environment, the DOE NEPA Community will be invited to review the draft guidance this summer. The NEPA Office intends to make available electronic file templates for the two types of *Federal Register* notices and supporting documents.

For further information or to submit suggestions, contact Yardena Mansoor, at yardena.mansoor@hq.doe.gov or 202-586-9326. LL

Recovery Act Stimulates Significant NEPA Workload

Many DOE NEPA personnel, at Headquarters and in the Field, are busy implementing the American Recovery and Reinvestment Act (Recovery Act), including various reporting requirements. Brian Costner, Recovery Act Point of Contact in the Office of the NEPA Policy and Compliance, provided an update at the NEPA Compliance Officers (NCO) meeting on the increased NEPA workload and efforts to accelerate completion of NEPA reviews while maintaining quality.

Section 1609 of the Recovery Act makes clear that established NEPA processes apply to projects and activities proposed to be undertaken with Recovery Act funds. (See [LLQR, March 2009, page 1.](#)) This presents a challenge to DOE because of the amount of funding the Department received (almost \$40 billion) and the sense of urgency to move funds quickly into projects that will create jobs and have lasting benefits, Mr. Costner explained. Most Recovery Act funding must be obligated by September 30, 2010. Obligated balances are available for expenses incurred until September 30, 2015, at which point any remaining balance will be cancelled.



Brian Costner, NEPA Office, encouraged NCOs to seek creative solutions to expedite NEPA without sacrificing quality.

Approximately \$26 billion of DOE's funding will be disbursed through grants and other mechanisms to state, local, and tribal governments, universities, and other external parties, for which DOE expects to receive more than 5,000 to 7,000 applications for funding. Based on past experience and the types of projects to be funded, Mr. Costner said, the current expectation is that the large majority of the proposed activities will fit within DOE's existing categorical exclusions (CXs). Nonetheless, the level of effort required to review these applications and make NEPA determinations in a few months is unprecedented. In addition, even if only a small percentage

of proposals require an EA or EIS, DOE's workload of such NEPA reviews would more than double.

Most of the increased workload would be focused in a few offices – Energy Efficiency and Renewable Energy, Electricity Delivery and Energy Reliability, Fossil Energy, Golden Field Office, and the National Energy Technology Laboratory. Last year, DOE made fewer than 2,000 CX determinations. Normally, DOE prepares about 20 to 30 EAs and completes about 10 EISs per year.

Project Reviews and NEPA Reporting

Since passage of the Recovery Act in February, the NEPA Office has been assisting with Recovery Act implementation primarily in two ways. First, DOE Offices proposed approximately 165 Recovery Act "projects" (many with a broad scope involving several discrete actions). Mr. Costner described how the NEPA Office works with NCOs to identify existing NEPA reviews applicable to the proposed actions or develop an initial strategy for completing such reviews. The NEPA Office incorporates this information into comments on the project plans prior to their approval by DOE senior management.

Second, the NEPA Office is preparing reports to the Council on Environmental Quality (CEQ) on the status of NEPA compliance for approved Recovery Act projects. Section 1609(c) of the Recovery Act requires the President to report to Congress on NEPA compliance status every 90 days for activities through September 30, 2010. The NEPA Office provided input to CEQ on reporting guidance. Mr. Costner further explained that the NEPA Office uses information gathered during the review of DOE Recovery Act project plans to prepare the reports to CEQ.

Mr. Costner provided NCOs a draft of DOE's April 30 report to CEQ and received helpful feedback from them during the meeting. DOE and other Federal agencies provided their reports to CEQ on April 30 for inclusion in the first report to Congress on May 18, 2009 (related article, page 24).

Looking ahead to future Section 1609(c) reports, Mr. Costner said that "We are trying to keep the reporting workload simple." DOE's next report to CEQ (for activities through June 30) is due July 15, 2009. The NEPA Office will use the baseline information from the project reviews and routine tracking of EAs and EISs to compile much of the report. The NEPA Office also will need to know the date of the determination, the CX(s) applied, and the number of grants or other actions to which the determination applies.

(continued on page 11)

Categorical Exclusions: Established Procedures, Possible New Approaches?

DOE makes almost 2,000 categorical exclusion (CX) determinations each year, and prepares a record of nearly all the determinations, although not required to do so, reported Carolyn Osborne, Office of NEPA Policy and Compliance, in relating lessons she had learned from a recent informal exchange with DOE NEPA Compliance Officers (NCOs). She also reported that most NCOs use the model template for CX record keeping provided in 1998 (www.gc.energy.gov/nepa, under Guidance), with many incorporating it in a checklist that also records other environmental information about a proposal.

In addition to reviewing DOE's established procedures and providing recommendations based on information gathered from NCOs, Ms. Osborne encouraged discussion



While it is appropriate to get technical assistance from contractors, a CX determination is a Federal responsibility, advised Carolyn Osborne.

of possible new procedures regarding public notification and availability of CX determinations. Although a few NCOs announce application of a CX and a few others make the determinations available (neither of which is required), most do not, but respond to infrequent requests for them, she said.

Are There Extraordinary Circumstances?

In reviewing DOE's established procedures for applying CXs, Ms. Osborne emphasized the role of the NCO under DOE Order 451.1B, *NEPA Compliance Program*. The NCO is the DOE official in each Program and Field Office with responsibility for making CX determinations for actions under the Office's purview – and that responsibility cannot be delegated, she said.

Ms. Osborne pointed to the need to look for extraordinary circumstances when applying a CX, that is, to look for project-specific time and place considerations that may affect the significance of impacts. In this regard, she added that it is important to revisit CX determinations regularly, especially broad ones, to ensure that the situation has not changed over time. She noted that the Council on Environmental Quality (CEQ) guidance on Recovery Act

reporting emphasizes extraordinary circumstances, calling for either the date of the record of a CX determination or the date when an agency considered extraordinary circumstances.

Are New CXs Needed?

Suggestions received by the NEPA Office in late 2008 for proposing new CXs and revisions to existing ones are under review, Ms. Osborne said. She encouraged NCOs to make further proposals this spring and reminded them of the relevant draft CEQ guidance (71 FR 54816; September 19, 2006).

Noting that an agency's CXs are to be based in its experience with actions and their environmental impacts, Ms. Osborne described DOE's planned approach to apply certain of its CXs to proposals under the Advanced Technology Vehicles Manufacturing Incentive Program (Auto Loan Program). She pointed out that four of DOE's CXs address activities very similar to reequipping and retooling of existing facilities and associated engineering integration proposed under the Auto Loan Program.

She recounted DOE's consultation with CEQ. Secretary of Energy Steven Chu advised CEQ Chair Nancy Sutley on March 19, 2009, that DOE planned, as appropriate, to apply existing CXs established before the Auto Loan Program to certain proposals under that Program. He stated that DOE would verify the validity of Environmental Reports submitted by loan applicants and that extraordinary circumstances do not exist. The CEQ Chair responded on March 20, 2009, that DOE's approach "comports with NEPA and the CEQ regulations" and that it focuses appropriately on the underlying activity funded by DOE, not on whether the activity is directly undertaken by DOE. (The consultation letters are posted on the CEQ NEPA net, www.nepa.gov, under CEQ Guidance.)



Posting CXs and Other New Approaches?

As agencies respond to the new Administration's emphasis on openness and transparency, Ms. Osborne asked NCOs to consider whether DOE should establish procedures to post notices of CX determinations on the web. NCOs expressed general enthusiasm for greater openness and transparency in the Government's work, but reluctance to expand CX procedures in this regard, citing the increased workload it would present.

For further information, contact Carolyn Osborne at carolyn.osborne@hq.doe.gov or 202-586-4596. 

It Helps to Speak and Understand “Project Management” Language

When in Rome, it really helps to speak and understand Italian, right? Because if you don’t know the language, how in the world are you going to communicate? The same is true if you happen to be a NEPA Document Manager or NEPA Compliance Officer (NCO) and have to interact with the program or project management staff, but can’t speak their language. You won’t be able to fully understand the terms they use or how their process might impact the NEPA review. As Drew Grainger, the Savannah River Operations NCO, advised. “We, as NEPA folks, need to become very familiar with the language that

project managers speak” The NEPA staff not only needs to know the project management language, but also understand the process used, he explained. When project managers talk about the initial or execution phase, or that Critical Decision (CD) 1 is scheduled for approval next month, the NEPA practitioners need to understand what that means and how it will affect their EA or EIS schedule.

In explaining DOE Order 413.3A, *Program and Project Management for the Acquisition of Capital Assets*, Jim Daniel, Office of NEPA Policy and Compliance, used a figure from the Order (below) to explain the different phases and CDs associated with the Energy Systems Acquisition Advisory Board process and to show the point where NEPA review should be completed.

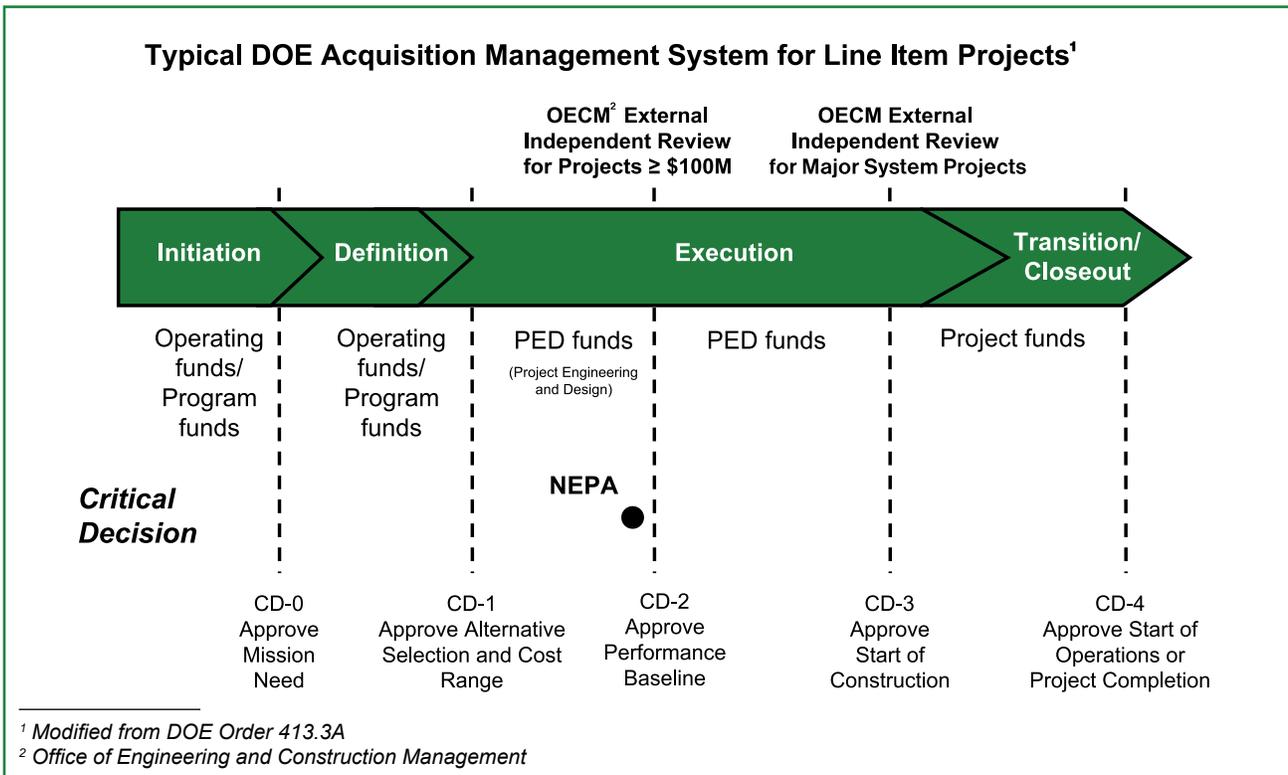


Learn to speak the language and understand the project management process was the theme of Drew Grainger’s and Jim Daniel’s presentations.

“No decision can be made that would limit the choice of reasonable alternatives prior to completion of the NEPA review,” Mr. Daniel emphasized, “and all reasonable alternatives must be considered . . . even though in Project Management language, approval of CD-1 [Approve Alternative Selection and Cost Range] implies that only one alternative is selected for further study.”

In discussing CD-2, Approve Baseline Performance, both Mr. Daniel and Paul Bosco, the Director, Office of Engineering and Construction Management, emphasized the importance of this critical decision.

(continued on next page)





When you go through "Gate 2" (CD-2), you've made a decision and really cannot go back, said Paul Bosco.

Mr. Daniel stressed that the NEPA review needs to be completed before CD-2 is approved, because its approval allows final (detailed) design to proceed.

Mr. Bosco described CD-2 as the "point of no return." In the project management process, he indicated that in approving CD-2, the Acquisition Executive approves cost, schedule, and scope of the project, and then notifies Congress. "You can change your mind after approval of CD-1, but unless

the project is cancelled," Mr. Bosco explained, "you really cannot go back after CD-2 approval."

A final issue concerning CD-2 approval was raised by Mr. Grainger: "When is NEPA complete, so that CD-2 approval can proceed?" While it was clear from the discussion that an EA/finding of no significant impact or EIS must be issued before approval of CD-2, it was not clear whether issuance of a record of decision (ROD) is required prior to CD-2. "Given that CD-2 approval by the Acquisition Executive is approval of the project's cost, scope and schedule, it seems reasonable to conclude that a ROD documenting this decision must follow, not precede, CD-2," Mr. Grainger said. This question will be clarified during the next revision to DOE Order 413.3A, which according to Mr. Bosco will be later this year or early 2010. **LL**

Recovery Act and NEPA (continued from page 8)

Lessons Learned and Recommendations

Mr. Costner thanked the NCOs who helped gather information during the reviews of DOE Recovery Act projects. He noted that in preparing project plans "more often than not, the Program Offices have not engaged NCOs in a discussion of the respective project's NEPA strategy." This slowed the review process, Mr. Costner explained. The NEPA Office intends to continue trying to connect NCOs and project or program managers to improve the review process and project implementation, he said.

There is considerable schedule pressure, he emphasized, and DOE senior management, as well as Congress through the CEQ reports, will be notified when NEPA schedules slip and hamper Recovery Act project implementation. There also is a clear signal from CEQ and DOE senior management that the quality of the NEPA process and analyses remain important. In addition, the President has made clear that the Recovery Act is to be implemented with a high degree of transparency.

Mr. Costner reported several findings from reviewing NEPA compliance for Recovery Act projects. Existing NEPA documents for many ongoing activities are more than 5 years old, he said. "If you are relying on an existing NEPA document for a Recovery Act project, then look at it closely, particularly if it is more than 5 years old, and be

confident that the document is appropriate for the newly funded activities," Mr. Costner advised.

Be extremely mindful of schedule, but also of NEPA values.

– Brian Costner, NEPA Office

Mr. Costner concluded with several recommendations to expedite the NEPA process for Recovery Act projects. Approaches encouraged by CEQ, he said, include grouping similar activities for NEPA review; preparing concise, focused EAs; preparing programmatic EAs; and reviewing other agency NEPA documents for applicable analysis. He also recommended that DOE make more use of Management Councils to bring all interested DOE Offices to the table early in EIS preparation, and prepare the best possible draft (in order to minimize time between draft and final EIS). Also, he suggested the use of "NEPA detailees" to help manage the increased workload as a result of the Recovery Act for some organizations within the Department. For example, an NCO with a lighter workload could assist an NCO with heavy Recovery Act workload on a temporary basis to help distribute the responsibilities and assignments. **LL**

Recommendations for Considering Climate Change under NEPA: “Just Do It”

“Given the advances in climate science, extensive litigation, and potential regulation, there is a little doubt that DOE will need to analyze the reasonably foreseeable effects of greenhouse gas (GHG) emissions in its NEPA documents,” said Eric Cohen, Office of NEPA Policy and Compliance, to participants at the NEPA Compliance Officers meeting. Currently, there is little Federal agency guidance on climate change and NEPA, he said, so DOE’s guidance could be among the first. While guidance is being developed, Mr. Cohen recommended taking a “just-do-it” approach to considering GHGs in EAs and EISs.



Eric Cohen described how impacts from GHG emissions can be readily analyzed in NEPA documents using established methodologies and the application of basic NEPA principles.

The NEPA Office has been working with the Office of the Assistant General Counsel for Environment to develop guidance on the consideration of GHGs and climate change impacts in DOE NEPA documents. In a panel discussion, Mr. Cohen, Felix Amerasinghe, Office of the Assistant General Counsel for Environment, and Paul Detwiler, Director, Office of Project Facilitation and Compliance, National

Energy Technology Laboratory, discussed the preliminary scope of the guidance, some of the key issues, and an example EIS analysis.

GHG Impacts Are Cumulative

Mr. Cohen emphasized that the “sliding-scale” principle could be applied to provide analysts flexibility in determining the appropriate level of GHG analysis for different DOE proposed actions. He noted several distinctive aspects of GHG emissions, including that virtually all measurable climate change impacts are cumulative impacts, not direct impacts from proposed actions. Also, when compared to global GHG impacts, the incremental impacts of a large GHG emission source will nearly always be small; however, GHG emissions combine with other past, present, and reasonably foreseeable emissions, contributing to potentially significant climate change impacts, he said.

Mr. Amerasinghe noted that, for GHG guidance to be useful, it would have to address certain complex and controversial issues that have multi-agency implications and, therefore, warrant multi-agency consideration.

Mr. Amerasinghe recommended that DOE work closely with the Council for Environmental Quality (CEQ) and other agencies when drafting the guidance.



Paul Detwiler shared perspectives from his former role as a Headquarters counsel and his new one as Field Office NCO.

Three-step Approach Proposed

Notwithstanding the distinctive aspects of GHG emissions, Mr. Cohen said that climate change impacts can readily be analyzed using a three-step approach, which he outlined as follows:

1. Identify and quantify relevant GHG emissions;
2. Discuss the *actual* potential environmental consequences, not just actual emissions; and
3. Explore potential mitigation measures and reasonable alternatives that would reduce GHG emissions.

Dr. Detwiler described the analysis of GHG emissions in the preliminary Final EIS for the Mesaba Energy Project (DOE/EIS-0382), which is currently under internal review. He recommended that the Mesaba analysis be used as a model until DOE or CEQ issues guidance on analyzing GHGs in NEPA documents. He noted that the Mesaba EIS assumes that the proposed Clean Coal Power Initiative project would emit “significant quantities” of GHGs. “This example touches on all aspects of climate change analysis that we have been discussing, and could serve as a model that can be easily adapted to other EISs,” he said, emphasizing that analysis of GHG emissions and climate change impacts need not be difficult or unduly lengthy.

Office of General Counsel staff anticipate providing draft guidance to the DOE NEPA community for comment this summer. Comment and suggestions should be sent to Mr. Cohen at eric.cohen@hq.doe.gov or 202-586-7684. 

DOE-wide NEPA Contracts Updates



All Contracts Awarded

DOE completed awarding all seven contracts for NEPA support services – three under full and open competition and four under a small business set-aside – in mid-May, following completion of the required Foreign Ownership, Control, or Influences clearances. The contracts are managed by the National Nuclear Security Administration (NNSA), but are available to all DOE Program and Field Offices, including the Federal Energy Regulatory Commission. These contracts are designed to provide, with performance incentives, high-quality and timely NEPA document support. The contract teams include a range of expertise in disciplines required for DOE NEPA documents. Representatives of the new DOE-wide contracting teams were introduced at the recent NEPA Compliance Officers (NCO) meeting, where they made brief presentations on their teams’ capabilities and engaged in informal discussions through the lunch break. (See [LLQR, March 2009, page 8](#), and the DOE NEPA Website, www.gc.energy.gov/nepa, under NEPA Contracting, for information about the contracts, procurement process, and resources for potential users.)

DOE-wide NEPA Contracting Procedures

New task order and contractor evaluation procedures, using “STRIPES” (Strategic Integrated Procurement Enterprise System) and “CPARS” (Contractor Performance Assessment Reporting System), were described at the recent NCO meeting by staff from NNSA’s Headquarters Procurement Operations and DOE’s Headquarters Procurement Services.

Designation of key personnel in a task order proposal was strongly recommended by both Dan Medlin, Manager, Headquarters Procurement Operations, NNSA, and Drew Grainger, Savannah River Operations NCO and Lead Technical Evaluator in the recent contracts procurement. Mr. Medlin advised contractors to be able to deliver what the DOE customer needs and not change key personnel during task performance.



From left to right, staff from NNSA Headquarters Procurement Operations – Aneesah Vaughn, Won (Bo) Sim, and Richard (Dan) Medlin – described roles and procedures for task orders under the DOE-wide NEPA support contracts.

Aneesah Vaughn, Contract Specialist, described the process to use to compete and issue a task order, including a step-by-step explanation of review and approval procedures. She also displayed how to incorporate delivery milestones into the Statement of Work for an EA or EIS using STRIPES, stating that the system provides efficiencies in task ordering and monitoring.

Mr. Grainger emphasized the importance of frequent contractor evaluation, not just at the end of a task, and reminded NCOs to, at a minimum, review each monthly invoice, matching hours and personnel to work performed. Any concerns from this review should be expressed in writing to the Contracting Officer, Bo Sim, he said.

The Office of NEPA Policy and Compliance plans to update its NEPA contracting guidance to reflect new procedures and recommendations.

First Task Awarded

The first task has been awarded under the new DOE-wide NEPA contracts. For further information, contact Aneesah Vaughn, Contract Specialist, at aneesah.vaughn@nnsa.doe.gov or 202-586-1815. LL

Task Description	NEPA Document Manager	Date Awarded	Contract Team
EIS: Storage and Management of Elemental Mercury	David Levenstein, EM-11 david.levenstein@em.doe.gov 301-903-6500	5/8/2009	SAIC

2009 DOE NEPA Compliance Officers Meeting





Take Control of the EA Process: A Perspective of a Field NCO

By: Gary Hartman, NEPA Compliance Officer (NCO), Oak Ridge Office

Each Federal agency has its own implementing procedures for complying with the Council on Environmental Quality NEPA regulations and its own internal processes. When I came to DOE from another Federal agency way back in December 1989, I experienced NEPA culture shock. My former agency, Tennessee Valley Authority, prepared its NEPA documents in-house with existing staff, so I was really surprised to find that Federal staff did not prepare most NEPA documents at DOE. Noticing the process and length of time for preparing draft categorical exclusion (CX) determinations, I began writing the CX determinations for the Formerly Utilized Sites Remedial Action Program. My preparation of CX determinations for this Program was a major factor in reducing the time to issue them, and I believe it reduced the cost and schedule of project implementation.

Save Time, Save Money

A relatively untapped potential for efficiency and excellence in the DOE NEPA process is in-house preparation of EAs. This is especially true for EAs with well-defined scopes and proposed actions with adequate environmental baseline data. DOE staff could still choose to use a NEPA contractor to prepare EAs that are more complex or that may require the collection of additional data or modeling. NCOs will have to work closely with new NEPA Document Managers electing to prepare their EAs to ensure adherence to the NEPA process and that projected impacts are appropriately addressed. However, for proposed actions that are fairly straightforward with well-defined scope, substantial time and money savings may be realized by preparing EAs in-house. Several DOE sites have already taken the step to prepare some of their EAs with existing Federal staff and find that the staff become more knowledgeable of site operations, program missions, and environmental concerns.

I believe that what I'm proposing – using existing Federal staff to prepare EAs – will be beneficial to DOE's NEPA process in many ways. First is the ability to take total control of the schedule . . . time used to create a Statement of Work and associated documentation and waiting on delivery of a draft product can be used to complete the needed NEPA documents. Second is control of document content . . . multiple reviews can be eliminated. Third, because of the aforementioned first and second benefits, there are resultant cost savings. Fourth, and in my opinion most important, is that there is increased Federal ownership of the document because of the "hands-on" experience and knowledge gained by Federal document preparation. Although the DOE NEPA Document Manager for a contractor-prepared EA constitutes the Federal component and ownership, it is not the same as when you actually prepare the draft document. If you prepare it, you OWN it. NEPA is a Federal responsibility.

Be Responsible: Do It Yourself

You, the NEPA practitioners, are going to have to work a little bit differently to implement my suggestion, but think of all the time expended in reviewing and commenting on multiple versions of EAs that just don't say things the way you think they should. I believe that we may save effort and funds by reviewing fewer preliminary drafts by preparing our own. If I prepare a successful EA and finding of no significant impact, there is great satisfaction in the outcome. Let us all be responsible and accountable for our work, and unafraid to push for improvement in the quality and efficiency of the NEPA process. It is time for DOE to take control of the EA process for our sites by preparing more of our EAs in-house. We can all do this, and DOE will be saving substantial funds and reducing time in the NEPA process!

For further information, contact Gary Hartman at hartmangs@oro.doe.gov or 865-576-0273. LL



2009 NAEP Conference: Focus on Sustainability

By: Eric Cohen and Carrie Moeller, Office of NEPA Policy and Compliance

Under the theme of *Making Sustainability Happen: Goals, Practices, and Challenges*, more than 200 participants met at the 34th annual conference of the National Association of Environmental Professionals (NAEP) in Scottsdale, Arizona, on May 2–6, 2009. “Sustainability is about improving today’s quality of life without sacrificing tomorrow’s options; it is about finding solutions that seek to balance social, environmental, and economic values; and it is about treating the Earth like we intend to stay,” said keynote speaker, Dr. Jonathan Fink, Director of Arizona State University’s Global Institute of Sustainability.

Participants at the conference had the opportunity to hear from a diverse mix of presenters on topics such as

sustainable systems, air and climate change, energy, and public participation. NEPA implementation was a major topic of discussion. Several sessions addressed ways to make the NEPA process faster and more effective, including a presentation on streamlining the NEPA process for Recovery Act projects. Six panels addressed a range of issues regarding the consideration of climate change in NEPA documents.

Articles on these sessions (identified by the NAEP logo), including recommendations by presenters, are on the following pages. The NEPA Office presents the recommendations without endorsement. However, the discussions at the NAEP conference paralleled those at the April NEPA Compliance Officers meeting. 

Many Ways to Streamline the NEPA Process

The NEPA process need not impede the effective, rapid implementation of projects, concluded several presenters, who suggested ways to minimize the time needed to complete EAs and EISs. One presentation focused on streamlining NEPA reviews for Recovery Act projects.

Some Federal agencies have developed proven methods to streamline the EIS process, which will be essential for projects under the Recovery Act, observed Ron Bass, a senior regulatory specialist with ICF Jones & Stokes. Building on those methods, past NEPA streamlining studies, and the experience of his firm, Mr. Bass and his colleagues developed four specific recommendations for streamlining the EA process, and 15 recommendations for the EIS process (summarized in text boxes; the full paper, *Economic Stimulus and NEPA Compliance – Streamlining the Environmental Review Process*, is at www.icfi.com/transition under Climate & Energy).

Most of the recommendations are consistent with those discussed at DOE’s NCO meeting in April and include some new ideas as well. In addition, Mr. Bass suggested providing opportunities for public review of all draft EAs, and encouraged review by the Environmental Protection Agency and independent third parties.

In presenting these recommendations, Mr. Bass noted that, given the importance of Recovery Act projects, agencies should be able to complete an EIS in less than 1 year within the existing legal and regulatory framework, rather than the government-wide average of 3.4 years. Mr. Bass also emphasized the importance of the NEPA process to effective decision making, not only for Recovery Act projects, and he cited former Secretary of Energy James Watkins, who said “Thank God for NEPA” after an EIS helped him avoid making a poor decision. 

Recommendations for Streamlining the EA Process from the NAEP Conference

1. Develop checklists to standardize the preliminary project evaluation. Checklists can help eliminate unnecessary topics and can be tailored to meet agency needs.
2. Develop uniform thresholds for determining significance to ensure that conclusions in a finding of no significant impact (FONSI) are well-supported.
3. Design projects to avoid or reduce impacts. Rather than prepare an EIS, appropriate use of a “mitigated FONSI” can streamline the process.
4. Provide supporting documentation for FONSI. Explaining why a proposed action will not have significant impacts in terms of the concepts of “context” and “intensity” will improve legal defensibility.

Ron Bass, ICF

(continued on next page)



Recommendations for Streamlining the EIS Process from the NAEP Conference

1. *Obtain senior-level commitment to streamlining.* Agency management should commit to making the NEPA process work better and preparing documents expeditiously. Once management makes this commitment and engages in the EIS process, staff and consultants are likely to follow, and can take advantage of all available tools and resources.
2. *Ensure adequate staffing.* Agencies should assign highly-experienced managers, especially for complex, controversial NEPA documents. Effective EIS management requires a combination of skills, including those of experienced management, technical, legal and communication staffs, as well as consultants. Agencies should also commit sufficient qualified staff to avoid bottlenecks during internal EIS reviews.
3. *Establish and stick to time limits for EIS preparation.* Some agencies have proven track records in following time limitations. Federal agencies should consider modifying their internal procedures to adopt time limits.
4. *Establish and stick to deadlines for internal review.* One of the most widespread causes of EIS delay can be avoided if Federal agencies develop and enforce internal EIS review deadlines, and obtain commitments for timely review from cooperating agencies.
5. *Establish internal steering committees.* Committees that include senior agency management, policy staff, legal counsel, cooperating agencies, and, in some cases, the Department of Justice and the Council on Environmental Quality (CEQ), can reveal major issues and develop solutions throughout the EIS process.
6. *Rely on programmatic EISs and tiering.* Using programmatic EISs in conjunction with tiering, agencies can significantly reduce the need for new, time-consuming studies. This approach would be particularly helpful for Recovery Act projects that can tier from an existing programmatic EIS.
7. *Use scoping to eliminate unnecessary studies.* During scoping, an agency can eliminate a specific issue from the EIS if it determines that the issue is not relevant, saving time and effort.
8. *Prepare concise and readable documents.* Consistent with CEQ regulations, some agencies have prepared “reader-friendly” EISs that minimize technical jargon and acronyms and use easy-to-understand graphics.
9. *Prepare for the writing process in advance.* Determine as much as possible about the content and look of the document in advance. Consider project-specific style guides, choice of terminology (e.g., how to refer to the project), need for graphics and tables, level of detail, and need for appendices and references.
10. *Develop comprehensive strategies for integrating NEPA with other laws.* Identify all permitting and consulting agencies, including roles and review timelines; rely on memoranda of understanding for cooperating agencies; and establish interagency steering committees or resource advisory committees. For particularly complex and important projects, CEQ can have a positive influence on inter-agency interaction, which often is responsible for slowing the EIS process.
11. *Engage in effective collaboration with concerned state and local agencies and stakeholders.* Consider using professional mediators or facilitators on particularly complex or controversial projects. Although collaboration may involve considerable up-front effort, it is the best way to gain acceptance for Federal projects.
12. *Encourage pre-application consultation with regulatory agencies.* Agencies should develop procedures for allowing applicants to engage in pre-application consultation with staff. The Federal Energy Regulatory Commission has developed such procedures, which expedite projects.
13. *Conduct “just-in-time” NEPA training.* The level of NEPA knowledge among parties participating in the EIS process (e.g., technical preparers and reviewers) is not consistent, resulting in delays. During scoping and throughout the EIS process, as needed, internal, on-the-job NEPA training sessions may be beneficial.
14. *Use efficient and expedited contracting approaches.* Use of indefinite quantity contracts under which a consultant is selected in advance to prepare one or more NEPA documents on a retainer basis can avoid potentially lengthy delays from selecting consultants anew each time a project is proposed.
15. *Consider what states can do.* States with “little NEPA” laws can achieve considerable streamlining within their existing framework. When both Federal and state approvals are necessary, most state laws encourage state and local agencies to cooperate with Federal agencies to prepare joint documents to reduce duplication of effort and save cost and time.

Ron Bass, ICF



NEPA and Climate Change: “Don’t Do Nothing”

Greenhouse gas (GHG) emissions and climate change continues to be a hot topic, as indicated by six different panel discussions at the NAEP conference. Presenters addressed a range of issues and responded to key questions on this topic relevant to NEPA practitioners.

Are Climate Change Impact Analyses Required under NEPA?

Presenters expressed no doubt about this question.

Michael Smith, ICF International, reviewed recent litigation history that answered this question in the affirmative, and quoted Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ):

“How could you read the NEPA statute and CEQ regulations and not think that NEPA analyses should address climate change impacts?”

“Don’t do nothing,” cautioned Ron Bass, author of *Evaluating Greenhouse Gases and Climate Change Impacts under NEPA: Ten Steps to Taking a Hard Look*.

“There is no need to wait for guidance. NEPA already applies to greenhouse gases and climate change impacts,” he said.

How Do We Do It?

Noting that there is little Federal agency guidance on climate change analyses under NEPA, presenters focused on aspects of *how* to conduct analyses, not *whether*.

“Its not whether, but how much,” said Linda Strozyk, an attorney with the Maryland Attorney General’s office.

Fred Wagner, an attorney with Beveridge and Diamond, said there is “no difference” between the analysis of climate change impacts and other resources. He recommended taking ownership of the issue by making climate change analyses visible in NEPA documents, such as by creating separate sections or appendices on the topic. “Lead with your jaw,” he advised.

One presenter noted that, in the absence of guidance, “every analysis is a new adventure.” Presenters nevertheless characterized climate change impact analyses as “doable” through application of time-tested NEPA principles, and recommended analytical approaches.

“What’s the big fuss?” asked Alice Lovegrove, an air quality engineer with Parsons Brinkerhoff. “GHG analyses can be conducted using approaches and procedures similar to those that are currently used for the other regulated pollutants. There are plenty of tools for analysis that we regularly apply to estimate emissions from all types of projects,” she said.

Honey Walters, a climate change specialist with EDAW AECOM, said “you can’t manage what you don’t measure.” Ms. Walters provided a list of GHG emission estimation tools, described several protocols for emissions inventories, and discussed methodologies for climate change impact assessments. She noted similarities in a variety of models used in analyzing impacts from land use change and transportation that are applicable to climate action plans. “Analysts have discretion to choose the appropriate analytical tools,” she said.

Several presenters discussed step-by-step approaches for climate change impact analyses in NEPA documents, which are consistent with the preliminary approach to DOE guidance discussed at the DOE NEPA Compliance Officers meeting in April (related article, page 12). Albert Herson, SWCA Environmental, suggested a three-step approach involving: (1) a summary of the literature on climate change impacts; (2) analysis of the impacts of the proposed action on climate change (normally under cumulative impacts); and (3) analysis of impacts of climate change on the proposed action. Also, Mr. Bass presented his 10-step approach to addressing GHG and climate change impacts (text box, next page).

What Is the Appropriate Level of Detail?

“Use the scoping process to ‘right size’ the analysis; not every analysis needs to be as robust as the Columbia River Crossing Project,” said Michael Culp, Federal Highway Administration, with regard to the analysis of climate change impacts in NEPA documents for transportation projects. (The Columbia River Crossing Project was the recipient of NAEP’s NEPA Excellence Award – related article page 23).

“You don’t have to win an award to be adequate – do what’s appropriate,” advised Mr. Wagner. He also recommended the use of scoping to help gauge the context and intensity of a project’s GHG emissions (e.g., in relationship to state and local climate action plans). Taking the “public’s pulse” on climate change issues, he said, will help in determining the appropriate level of detail for analyses. Mr. Wagner further noted that the appropriate level of GHG emissions analysis for an EIS on corporate average fuel economy standards will be different than for a highway interchange project. Other presenters also reflected this view: “Scale the analysis proportional to the proposed actions’s GHG emissions and climate change risk,” said Mr. Herson.

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A Ten-Step Approach to Addressing GHG and Climate Change Impacts

The following is an excerpt from Ron Bass's presentation, "NEPA and Climate Change: What Constitutes a Hard Look?" at the NAEP conference.

Although there is little doubt that agencies must evaluate GHG/climate change impacts under NEPA, he said, in the absence of specific requirements, the key question is: *What should an agency do – right now – to avoid putting itself in jeopardy?* The recommended 10-step approach takes into consideration the existing provisions of the NEPA regulations, recent court decisions, and various state programs. The steps conform to the main elements of a NEPA document.

Affected Environment

- Step 1** – Describe the existing global context in which climate change impacts are occurring and are expected to continue to occur in the future.
- Step 2** – Summarize any relevant state laws that address climate change.
- Step 3** – Describe any relevant national, statewide, and regional GHG inventories to which the project will contribute.

Environmental Consequences

- Step 4** – Quantify the project's direct and indirect GHG emissions.
- Step 5** – Convert the GHG emissions into carbon equivalents using an established "carbon calculator."
- Step 6** – Discuss whether the project would enhance or impede the attainment of applicable state GHG reduction.
- Step 7** – Describe the cumulative global climate change impacts to which the proposed action would contribute, i.e., the impacts of the project on climate change. (This may use the same information as in Step 1.)
- Step 8** – Describe how the impacts of global climate change could manifest themselves in the geographic area in which the project is proposed, and therefore potentially affect the project, i.e., the impacts of climate change on the project (e.g., sea level rise could affect a coastal project).

Alternatives

- Step 9** – Include alternatives that would meet the project objectives but would also reduce GHG emissions.

Mitigation Measures

- Step 10** – Identify mitigation measures that would reduce GHG emissions, including both project design or operational changes and potential compensatory mitigation (e.g., carbon offsets).

Should Indirect and "Upstream" Emissions Be Considered?

Several presenters addressed questions regarding the appropriate level of analysis needed for indirect emissions of a project. Indirect emissions may result from a project's consumption of energy (e.g., electricity or steam), water conveyance, waste treatment, or waste disposal. Presenters stated that such indirect emissions should be considered for the construction and operation phases of a project. Several questions centered on how far, if at all, an analysis should go beyond these types of indirect emissions. Should an analysis consider so-called "upstream" GHG emissions

from the processing of raw materials ultimately used in a project?

Heather Phillips, EDAW AECOM, said that there is a point where the analysis must stop, where emission sources become too speculative. Mr. Bass indicated that analysts will need to determine what is foreseeable and what is speculative for this issue, in accordance with established NEPA principles. Ms. Lovegrove addressed this question for transportation projects, explaining that, in documents she has worked on, GHG emissions from vehicle traffic were considered, but emissions from *manufacturing* the vehicles were not.

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What Are Climate Action Plans and Are They Relevant to NEPA Analyses?

A number of states have established or plan to establish GHG reduction targets and goals. In response, many states, communities, and local governmental entities are developing “climate action plans.” Several presenters discussed how climate action plans help to focus land use and transportation planning efforts toward sustainability, and foster the implementation of measures to meet state or regional GHG reduction goals.

Ms. Walters described potential GHG reduction policies and implementing measures for climate action plans, such as roadway, bike, and trail connections; efficient public transportation options; the creation of neighborhood centers and other sustainable urban design concepts; use of

energy efficient lighting and design; and many other mitigation measures that could be relevant in NEPA documents.

Mr. Bass noted that NEPA analyses of climate change impacts for proposed actions should consider climate action plans, and reminded participants that NEPA regulations require discussions of “possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned” [40 CFR 1502.16(c)]. Several presenters stated that consistency with such plans is a factor to consider in determining the *significance* of a proposed project’s climate change impacts, which is one of the issues with which NEPA practitioners continue to struggle. LL

DOE Celebrates Earth Day 2009

DOE Headquarters celebrated Earth Day 2009 from April 20–24 with displays highlighting the Department’s environmental accomplishments and a tree planting, with assistance by children from the DOE Child Care Center, at the DOE Earth Day Park on Independence Avenue.



In April and May, the Office of NEPA Policy and Compliance, represented by Carrie Moeller, featured the NEPA Lessons Learned Quarterly Report in its display at “Earth Week” at DOE Headquarters, the NCO meeting, and the NAEP annual conference in Scottsdale, Arizona.



At the first annual “EStar” (Environmental Sustainability Star) awards ceremony on April 22, Andy Lawrence, Director of DOE’s Office of Nuclear Safety, Quality Assurance, and Environment, explained that DOE changed the name of the award to “highlight the Department’s commitment at all levels to identifying, implementing, and evaluating the practices and programs that advance sustainability in environmental and energy management.” (This is the fifth year the Department conferred awards recognizing exemplary environmental stewardship.)



Towards a More Effective NEPA Process?

In two presentations at the 2009 NAEP conference, Owen Schmidt, an environmental attorney who worked for the Bonneville Power Administration in the 1980s, offered his NEPA perspectives.

Most Asked NEPA Questions?

“Are the answers to CEQ’s 40 Questions¹ still accurate guidance? Are these still the most-asked questions?” asked Owen Schmidt. Based on his in-depth review, he offered a critique, comparing questions issued by the Council of Environmental Quality (CEQ) in 1981 to the current situation, and recommended revisions, based on case law and guidance memoranda. He also proposed several new “frequently asked questions” (FAQs).

Proposed Revisions to CEQ Guidance

In categorizing each of CEQ’s 40 Questions, Mr. Schmidt identified 18 of them as “good to go,” 11 as “need work,” and 11 as “do over.” For example, he identified Question 32, *Supplement to Old EISs*, as a “do over.” Question 32 asks “under what circumstances do old EISs have to be supplemented before taking action on a proposal?” CEQ’s answer is that agencies should reexamine EISs that are more than 5 years old “if the proposal has not yet been implemented, or if the EIS concerns an ongoing program” and prepare supplemental EISs “if an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”

“The answer is not time-dependent,” asserted Mr. Schmidt, stating that 5 years is superfluous and arbitrary. He emphasized that supplementation should not be necessary unless the changes or new information are relevant to remaining decisions. The guidance should focus on the notion of informing decisions yet to be made, he said.

Mr. Schmidt also proposed Question 37, concerning findings of no significant impact (FONSI), as a “do over.” It is problematic that an EA is separate from a FONSI, while at the same time, he explained, a FONSI must include or incorporate an EA. Both documents together constitute a finding in administrative law, he said. He suggested that CEQ’s NEPA regulations be revised to “restore the concept of a finding,” which he described as a combination of evidence, conclusions of fact, and conclusions of law that yield a legal consequence and recommended that the EA and FONSI be bound together because “together they make up the ‘finding.’”

New FAQ Recommendations

Mr. Schmidt proposed several new FAQs for consideration, with one on the proper scope of a FONSI. He said that many agencies simply find only the “proposed action” to be not significant, locking themselves in on the proposed action as the only option to select at the time of a decision.

“The proper scope of a FONSI should be to find all alternatives to be not significant that can be found to be not significant . . . then, at the time of decision, the decisionmaker is free to choose among them on whatever basis their individual merit may be,” he explained.

How much detail is necessary when describing the proposed action and alternatives? asked Mr. Schmidt, in proposing another FAQ. Agencies should not necessarily amass a large amount of detail on a proposal, he said, but should provide enough detail so stakeholders and agencies can understand the proposal and its consequences. “Case-by-case judgments must be made,” he noted. Mr. Schmidt offered tiering as a solution if a proposal does not “fit” well into a single NEPA document. “Complicated projects might benefit from a tiered approach . . . where an initial NEPA document would analyze site selection . . . and a later tiered NEPA document would analyze operational matters, and a third tiered NEPA document would analyze maintenance,” he said.

Mr. Schmidt underscored the importance of identifying at the outset the scope of the current NEPA document and what will be analyzed in subsequent tiered documents.

Mr. Schmidt also proposed a new FAQ on what constitutes an extraordinary circumstance when deciding whether a proposed action can be categorically excluded. He noted that many agencies wrongly equate a judgment of extraordinary circumstances with a judgment of significant impacts. “This is a false approach because the actions within the category have already been found to normally have no significant impacts, individually or cumulatively,” he said. By definition “what is ‘extraordinary’ is what is not ‘ordinary’” – an agency would consider whether the proposal at hand would cause any consequences not originally considered when the category was created and if so, the circumstances are extraordinary, he explained.



(continued on next page)

¹ The Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations is available at www.nepa.gov under CEQ Guidance.



“Perfect” Environmental Impact Assessment

In presenting “My Search for the ‘Perfect’ Environmental Impact Assessment,” Mr. Schmidt said that NEPA documents are often described as adequate, effective, efficient, legally-defensible, but not perfect. Perfect means to be precisely accurate and contain all the required elements and nothing else, he explained. “Perfect is what we want – we want everything that is necessary, and nothing that is not necessary,” he said. Mr. Schmidt proposed how to achieve “perfect” in steps of the NEPA process, as described below.

NEPA documents should take as long as it takes and be as long as need be, and not one minute or page more.

– Owen Schmidt

Perfect FONSI?

A perfect FONSI is simply one that provides enough information to enable the reader to fill in a three-column table, Mr. Schmidt explained: The first column is “what?” – i.e., what is the environmental impact? The second column is “how much?” – i.e., provide the size, magnitude or intensity of the impact. The third column is “why?” – i.e., why is that thing of that size “not significant?” The third column contains the reasons why the consequences in the first column, given their size in the middle column, are not significant, emphasized Mr. Schmidt. Based on his recent review of a number of FONSI, Mr. Schmidt found that all provide information to fill in the first column, about half provide information to fill in the second column, and none provide information to fill in the third column, i.e., the reasons. “Giving reasons is the minimum requirement for any finding,” he said.

Perfect EA? Perfect EIS? Perfect ROD?

There are eight plain language questions that a reader should have readily answered if an EA or EIS is “perfect,” proposed Mr. Schmidt: (1) What are they up to? (2) Why are they doing that? (3) What else would do the same thing? (4) What’s so bad about doing nothing? (5) What are the comparative merits of each alternative? (6) On what basis will a decision be made? (7) What, if anything, will be done about the adverse consequences? (8) What monitoring will be done, if any?

Each question represents a necessary element of an EA or EIS, explained Mr. Schmidt. “If you can answer those eight questions, then the EA/EIS would fulfill its obligations to inform the reader,” he said. Similarly, the perfect record of decision (ROD) would yield answers to three questions, he explained: (1) Should I do something, or should I do nothing? (2) If something, then which something? and (3) Is there anything to be done about any of the adverse consequences? The third question reflects an agency’s duty to investigate the possibility of mitigating the adverse consequences of its actions, Mr. Schmidt noted.

Perfect Range of Alternatives?

Perfect Cumulative Impacts Analysis?

The idea behind the perfect range of alternatives is that agencies must include alternatives that accomplish the same thing (i.e., meet the purpose and need for agency action) that is intended by the proposed action alternative, asserted Mr. Schmidt. He acknowledged that preparing the perfect cumulative impacts analysis can be as simple as analyzing the sum of the incremental impacts of six potential contributing sources, that is, proposed action, existing actions, past actions, other present actions, reasonably foreseeable actions, and mitigation actions.

“The word ‘perfect’ is attention-getting and controversial, but I think it’s an honest word . . . I don’t think perfect is too hard to reach,” Mr. Schmidt said.



For additional information, contact Mr. Schmidt at oschmidt@att.net. His NAEP conference presentations are available at <http://web.mac.com/olschmidt/NEPA/Downloads.html> (case sensitive). 

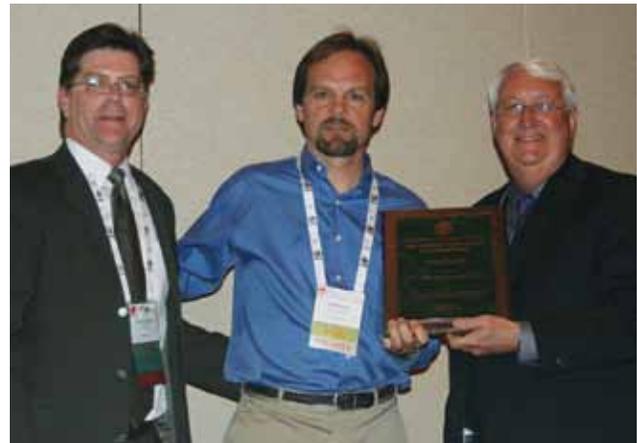
NAEP Award Recognizes Climate Change Analysis



NAEP conferred eight Environmental Excellence Awards to recognize significant achievements in improving the quality of the environment and productively engaging interested citizens. A NEPA Excellence Award was presented to the team that prepared the Draft EIS for the Interstate 5 (I-5) Columbia River Crossing Project in recognition of its innovative methods in climate change evaluation. The Team included the Federal Highway Administration and Federal Transit Administration and several state and regional transportation agencies.

The I-5 Columbia River Crossing Project is a multi-modal project focused on improving safety, reducing congestion, and increasing mobility of motorists, freight, transit riders, bicyclists, and pedestrians along a 5-mile section of the I-5 corridor connecting Vancouver, Washington, and Portland, Oregon. In a later presentation on the Project, Jeff Heilman (Parametrix), the NEPA contractor project manager, described consideration of the following factors to estimate greenhouse gas (GHG) emissions: vehicle trips, expected advancements in vehicle and fuel technology and transit technology (electric for light rail and bio-diesel for buses).

The Draft EIS, issued in May 2008, included a comparative analysis of GHG emissions for each of the five EIS alternatives and specific consideration of both short-term construction-related effects and long-term effects from operations of the highway and the transit system. The Draft EIS evaluates a no-build alternative and four multi-modal build alternatives that replace or rehabilitate the existing river crossing, provide highway improvements, extend light rail or provide bus rapid transit with several transit alignment and length options, and/or improve bicycle and pedestrian facilities. The Draft EIS shows that all of the action alternatives would result in a reduction of GHG emissions compared with the no-build alternative, while differences among the alternatives are relatively small.



NAEP awarded the NEPA Excellence Award to the Columbia River Crossing Team. Left to right: Ron Deverman, President of NAEP; Jeff Heilman, Parametrix, receiving the award for the Team; and Bob Cunningham, Chair of the NAEP Awards Committee.

Independent Expert Review Panel Endorses GHG Analysis

As part of the consideration of a locally preferred alternative for the Project, the Metro Council, the Portland City Council, and the Project's Advisory Task Force requested that the Team assemble an independent expert panel to review and evaluate the findings of the GHG emissions analysis in the I-5 Draft EIS. The Panel issued its report in January 2009 declaring the EIS GHG emissions methodology and findings "sound and reasonable." The Panel also recommended some refinements to the model for the Final EIS, primarily to provide a more comprehensive understanding of traffic-related emissions. For more information on the Project, go to www.columbiarivercrossing.org. The Federal Highway Administration and the Federal Transit Administration expect to issue the Final EIS in late 2009.

Abstracts and Award Nominations Due September 15 for NAEP 2010 Conference on 40 Years of NEPA

The National Association of Environmental Professionals (NAEP) announced that its 2010 conference, planned for April 27–30 in Atlanta, will explore the theme of "Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment."

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 15, 2009.



CEQ Submits First Recovery Act Report to Congress

The Council on Environmental Quality (CEQ) addressed the status of NEPA compliance for more than 51,000 Recovery Act funded projects and activities in its first report to Congress, submitted on May 18, 2009, pursuant to Section 1609(c) of the Recovery Act. NEPA reviews had been completed to support more than \$57 billion in Recovery Act funds obligated as of April 24, 2009, the report said.

“This initial report shows that agencies have and will continue to meet their NEPA obligations in a timely manner,” said Nancy H. Sutley, Chair, CEQ, in her transmittal letter to Congress. “Overall, the progress reported to CEQ indicates that NEPA analyses are informing decisions for expenditure of Recovery Act funds in an environmentally sound manner.”

CEQ’s Report to Congress is based upon reports from individual agencies. The majority of completed NEPA actions identified in the report were associated with a single U.S. Department of Agriculture program. The Rural Development program made more than 26,000 categorical exclusion (CX) determinations for direct and guaranteed loans for single-family housing. The next largest number of completed NEPA actions reported was more than 4,000 CX determinations made by the Federal Highway Administration for infrastructure improvement projects. In addition to completed NEPA actions, CEQ reported that about 5,000 NEPA reviews (approximately 24 EISs, 400 EAs, and 4,500 CX determinations) are underway for Recovery Act projects and activities among all Federal agencies.

DOE Progress Included in Report

CEQ reported that DOE has completed NEPA reviews for 28 of its Recovery Act projects and activities for obligations

Recovery Act and NEPA Milestones

April 30 – DOE submitted its Recovery Act Section 1609(c) Report to CEQ (activities through April 24)

May 18 – On behalf of the President, CEQ submitted the first Recovery Act Section 1609(c) Report to Congress

July 15 – Due date of the next DOE report to CEQ (activities through June 30)

August 3 – Due date of the next CEQ report to Congress

totaling over \$3 billion. NEPA reviews were pending for another 15 DOE Recovery Act projects, the report said, and NEPA reviews are not required for nine projects being undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.

Matt Rogers, Senior Advisor to the Secretary of Energy for Recovery Act Implementation, provided DOE’s Report to CEQ on April 30. The report addressed the 52 DOE Recovery Act projects approved as of April 24, about one-third of the total proposed DOE Recovery Act projects. The 52 projects identified in the report include 37 Office of Environmental Management projects, 6 projects each from the Office of Energy Efficiency and Renewable Energy and Office of Science, and program management and administrative funding for the Loan Guarantee Program Office and the Western Area Power Administration.

Most NEPA reviews yet to be completed for these projects involved applications for grants or other funding. DOE began receiving applications for various programs in May.

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EPA Offers DOE Assistance in Fulfilling Recovery Act Goals

EPA is committed to helping you meet all applicable requirements and to providing timely reviews and approvals that may be needed under [NEPA]. – Lisa P. Jackson, EPA Administrator, April 20, 2009, letter to Secretary Chu.

In an April 20, 2009, letter to Secretary Chu, Lisa P. Jackson, EPA Administrator, offered EPA’s assistance to DOE in “realizing the Recovery Act’s full promise in a timely and responsible manner.” Ms. Jackson’s letter outlined various tools and best practices for “greening” Recovery Act projects, resources for promoting environmental justice, and information on environmental requirements that may arise in carrying out Recovery Act responsibilities and how best to meet them. Many of these resources are available on EPA’s Recovery Act website at www.epa.gov/recovery.

In addition, she requested that DOE provide a list of projects that require preparation of an EIS (and thus, EPA review pursuant to Section 309 of the Clean Air Act) or review under any of the following: transportation/general conformity requirements; Sections 402 or 404 of the Clean Water Act; Section 142(e) of the Safe Drinking Water Act; and Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act/Superfund Amendments and Reauthorization Act. The DOE Office of NEPA Policy and Compliance will provide a project list to EPA’s NEPA Compliance Division, which in turn will distribute the list to EPA’s appropriate regional offices for prompt action.

New FOIA Guidelines Favor Disclosure and Transparency



The Attorney General issued new Freedom of Information Act (FOIA) Guidelines on March 19, 2009. The Guidelines, prepared in response to President Obama's January 21, 2009, memorandum on FOIA, direct all executive branch departments and agencies to apply a presumption of openness when administering FOIA. (See [LLQR, March 2009, page 1.](#)) The Department of Justice (DOJ) Office of Information Policy published additional guidance on April 17, 2009, that summarizes these earlier documents and provides specific instructions on implementing FOIA consistent with Obama Administration policies. Openness is one of NEPA's core principles, and the requirements for public disclosure under FOIA and NEPA are related. Both the Council on Environmental Quality NEPA regulations (40 CFR 1506.6(f)) and the DOE NEPA regulations (10 CFR 1021.340) require making information publicly available, consistent with FOIA.

Second, an agency must consider whether it can make a partial disclosure of requested information whenever it determines that it cannot fully disclose a record. The Attorney General reminds agencies that "FOIA requires them to take reasonable steps to segregate and release nonexempt information." The DOJ guidance further states that, in addition to reviewing records to see if information can be segregated and released as nonexempt, agencies should also determine whether portions that are technically exempt can be released as a matter of discretion. The guidance provides detail on each of the areas of exemption under FOIA and the appropriate application of discretion to disclose information under each of them.

"The combined impact of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is a sea change in the way transparency is viewed across the government."

DOJ Guidance, April 17, 2009

New Standard for Defending Agencies

The Attorney General's Guidelines also outline a new standard for defending agency decisions to withhold records requested under FOIA. DOJ will defend an agency's decision to deny a FOIA request only if the agency "reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions" (e.g., national security, personal privacy, privileged records, law enforcement interests) or if the law prohibits disclosure. The policy of the previous administration had been to defend a denial when agencies had a "sound legal basis" for their decisions.

A Presumption of Openness

"By restoring the presumption of disclosure that is at the heart of the Freedom of Information Act, we are making a critical change that will restore the public's ability to access information in a timely manner," noted Attorney General Eric Holder in a press release accompanying the new Guidelines. The DOJ guidance calls for agency personnel to change their thinking in keeping with this vision of a "new era of open government" heralded by the President. They must focus on the principles set out by the President and Attorney General and, most importantly, "view all FOIA decisions through the prism of openness."

The Attorney General's Guidelines address the presumption of openness in two specific ways. First, they state that an agency should not withhold information simply because it may do so legally. The DOJ guidance expands upon this point and directs agencies to review records "with a view toward determining what can be disclosed, rather than what can be withheld." It also reminds agencies that records cannot be withheld to protect the government from embarrassment, to avoid revealing errors, or because of "speculative or abstract fears."

The DOJ guidance expands upon the requirement to predict "foreseeable harm" when deciding to withhold documents. It recognizes that protection remains appropriate for certain information. However, agencies should review records for their content and the actual impact that would result from disclosing that particular record, rather than simply considering whether that record type could fit under an exemption category. The guidance outlines the factors to consider for each of the FOIA exemption categories and notes that "records protected by Exemption 5 hold the greatest promise for increased discretionary release under the Attorney General's Guidelines." Exemption 5 involves records created as part of an agency's deliberative process, such as that inherent in the NEPA process. The DOJ guidance notes that the discretionary release of such records "will be fully consistent with the purpose of the FOIA to make available to the public records which reflect the operations and activities of the government." When examining such records, agencies should analyze the age of the record, the sensitivity of its content, the nature and status of the decision, and the personnel involved.

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New FOIA Guidelines (continued from previous page)

FOIA Is Everyone's Responsibility

In addition to outlining the disclosure standards, the Attorney General's Guidelines address accountability in the administration of the FOIA process. "Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests," the Attorney General wrote. He noted that all government employees share responsibility for effective FOIA administration, not just an agency's FOIA staff. Agencies must address the obstacles to improving FOIA performance such as competing agency priorities and insufficient technological support. To that end, the guidelines call for the active participation of agency Chief FOIA Officers in supporting the work of FOIA professionals.

Working Proactively and Promptly

In addition to recommending that agencies not withhold information simply because they may do so and suggesting that agencies consider whether they can make a partial disclosure of requested information, the Guidelines address a third tenet of open government – the obligation to work proactively and respond to requests promptly. Agencies should anticipate interest in records and systematically post such information online before receiving a FOIA request. The DOJ guidance calls this "a key area where agencies should strive for significant

improvement" and refers to the principles for the dissemination of information outlined in Section 8 of Office of Management and Budget Circular A-130. In addition, agencies should respond in a timely manner to requests that they do receive, rather than viewing long delays as inevitable given the high demand for information. The Attorney General's Guidelines remind agencies of requirements effective December 31, 2008, to assign tracking numbers to requests that will take longer than 10 days to process and to establish a telephone or Internet service that allows requestors to track the status of their request.

Next Steps

Agency Chief FOIA Officers are to report to DOJ each year on the steps taken at their agencies to improve FOIA operations and facilitate information disclosure. DOJ will issue guidance on the content and timing of these reports. To facilitate implementation of the Guidelines, DOJ hosted a training conference on March 26, 2009, for agency Chief FOIA Officers, agency Principal FOIA Contacts, and FOIA Public Liaisons across the Federal government to discuss the President's and Attorney General's memoranda. In June, the 2009 *Department of Justice Guide to the Freedom of Information Act* will be published by the Government Printing Office and made electronically available on the DOJ website (www.usdoj.gov/oip). 

Key Elements in the Commitment to Open Government

In summarizing the policy of President Obama and Attorney General Holder regarding FOIA under this Administration, the DOJ guidance outlined 10 key elements, abridged below, that agencies must take into account to realize the commitment to open government:

1. The presumption of disclosure should be kept at the forefront of all decisions involving FOIA.
2. Agencies should approach their review of documents by asking, "What can I release?"
3. Records should not be withheld merely because they fall within an exemption.
4. Agency reviews of each document should focus on whether there is foreseeable harm from disclosure of that particular record.
5. Agencies should determine foreseeable harm on a case-by-case basis, considering universal factors such as the age of the document and the sensitivity of its contents.
6. Agencies should make discretionary releases of otherwise exempt records when possible.
7. Agencies should strive to make partial disclosures when full release of a record is not possible.
8. Agencies should anticipate interest in records and set up systems for identifying and posting such records on their websites.
9. Agencies should work cooperatively with requestors and respond promptly.
10. FOIA professionals should work with their agency Chief FOIA Officers.

Transitions

New Staff in the Office of NEPA Policy and Compliance:

The Office of NEPA Policy and Compliance is pleased to welcome two Environmental Protection Specialists to its staff. Both started in April and were able to meet DOE's NEPA Compliance Officers at the recent meeting.



Jeff Dorman

Jeff Dorman comes to DOE with 5 years of NEPA experience in the private sector working on projects for the U.S. Army Corps of Engineers, Mobile District, and U.S. Department of Navy, Strategic Systems Programs. He also has experience with Geographic Information Systems for numerous Federal, state, and local agency projects, including traditional cartography, spatial data creation and management, and data analysis and modeling. Jeff joins the Western Energy and Waste Management Unit and can be reached at jeffrey.dorman@hq.doe.gov or 202-586-3181.



Julie Smith

Julie Smith joins DOE from the Department of Transportation, Federal Transit Administration (FTA), where for almost 5 years she advised headquarters and regional staff on NEPA compliance and other environmental issues and reviewed a range of NEPA documents. She was the FTA's representative on the Federal Interagency Working Group on Transportation, Land-use and Climate Change and a member of FTA's Global Climate Change Reauthorization Working Group. She has an undergraduate degree in Environmental Chemistry and masters and doctoral degrees in Public Policy – Environmental. Julie joins the Eastern Energy and Waste Management Unit and can be reached at juliea.smith@hq.doe.gov or 202-586-7668.

New NEPA Compliance Officers

National Energy Technology Laboratory: Paul Detwiler, Mark Lusk, Roy Spears

The National Energy Technology Laboratory (NETL) has designated three additional NCOs in recognition of the need for timely NEPA compliance for a greatly increased number of proposals expected under the American Recovery and Reinvestment Act. Paul Detwiler (ralph.detwiler@netl.doe.gov or 412-386-4839, located in Pittsburgh), Mark Lusk (mark.lusk@netl.doe.gov or 304-285-4145), and Roy Spears (roy.spears@netl.doe.gov or 304-285-5460) join John Ganz (john.ganz@netl.doe.gov or 304-285-5443) at Morgantown in fulfilling the NEPA responsibilities of NETL.

Paul Detwiler transferred to NETL in January 2009 after 13 years at DOE Headquarters, most recently serving as Deputy General Counsel of the NNSA. (See LLQR, December 2008, page 33.)

Nevada Site Office: Lori Plummer (Deputy NCO)



Lori Plummer now serves as the Deputy NCO for the Nevada Site Office (NSO). She has over 15 years of environment, safety and health experience and is currently the Acting Team Leader for the Environmental Protection Team. She has been with NNSA for more than 3 years and is responsible for a variety of programs including environmental monitoring, and environmental permitting and reporting. Previously she was the Explosive Safety Program Manager for the NSO. As Deputy NCO, Ms. Plummer reports that she is pleased to have the opportunity to support the NSO's NCO, Linda Cohn, and is looking forward to being involved in NEPA processes at her site. She can be reached at plummerl@nv.doe.gov or 702-295-0903.

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Transitions (continued from previous page)

Oakland Projects Office: Stephanie Jennings

Stephanie (Stephie) Jennings now serves as NCO for the Oakland Projects Office, as well as NEPA Document Manager for the Santa Susana Field Laboratory Area IV EIS ([LLQR, September 2008, page 8](#)). Ms. Jennings brings over 30 years of experience working with stakeholders and regulators on highly complex and controversial projects, including facilitating NEPA activities in Idaho and Washington and at the Waste Isolation Pilot Plant (WIPP). Before joining DOE in 2007, she worked at Los Alamos National Laboratory supporting activities related to WIPP and led the team that developed a DOE safety standard for transuranic waste facilities. In the 1990s, she was the Community Relations Manager for several Superfund sites and earlier served for 8 years as a U.S. Congressional staffer. Ms. Jennings can be reached at stephanie.jennings@emcbc.doe.gov or 818-466-8162.

Rich Schassburger, formerly Rocky Flats NCO and now Director of the Oakland Projects Office, explained the genealogy of DOE Offices in and near Oakland as follows: When the Oakland Operations Office was closed, most staff were transferred to NNSA's Livermore Site Office and Albuquerque Service Center, and the Office of Science's Berkeley Site Office and Stanford Site Office. Left behind were a very few Environmental Management (EM) staff to manage cleanup at several nearby sites (Lawrence Berkeley National Laboratory, work now completed; SLAC National Accelerator Center; Energy Technology Engineering Center at the Santa Susana Field Laboratory near Los Angeles; and General Electric Vallecitos Nuclear Center). That EM Office, now called the Oakland Projects Office, is managed by EM's Small Sites Office (EM-3.3).

Farewell to Dan Ruge, Deputy Assistant General Counsel

A strong leadership voice in DOE's NEPA compliance activities, Dan Ruge, retired from the Office of General Counsel in April, closing out a DOE career of 30 years. He had transferred to the Office of the Assistant General Counsel for Environment from the Office of the Assistant General Counsel for Conservation in the early 1980s. As described by friend and (now retired) colleague, Steve Ferguson, Dan was told at the time that his short-term assignments would include the Nuclear Waste Policy Act, but that he could expect to transition out of that work in a few months. It is indeed ironic that, in his later years as a Deputy Assistant General Counsel for Environment, much of Dan's substantial contribution to DOE's mission included NEPA work for the Waste Act. In addition, Dan was the Department's preeminent expert on the Resource Conservation and Recovery Act. Dan also served for a time as the Acting Assistant General Counsel for Environment, providing sage advice on a myriad of NEPA issues.



Dan's Parting Message

I thoroughly enjoyed working with the DOE NEPA Community. I have been fortunate to have worked on many projects where NEPA has been a very important component of the Department's decisionmaking and public involvement. I encourage all to work collectively to maintain NEPA's vitality. There are significant challenges ahead and I urge those involved with NEPA to give serious thought on how to keep NEPA relevant. One challenge, of course, is the increasing tendency for NEPA documents to become lengthy and cumbersome. Although general concerns are frequently raised, there needs to be a universal appreciation of the problem and, more importantly, the resolution. To do this there needs to be a concerted and disciplined effort on the part of all involved to evaluate options and implement recommendations. All affected Offices in DOE need to be a part of this process and other discussions on how to meet the challenges to keep NEPA relevant. I wish you all well.

On behalf of DOE's NEPA Community, the Office of NEPA Policy and Compliance thanks Dan for his significant contributions to DOE's NEPA Program and wishes him well in all his future endeavors.

Litigation Updates



DOE Litigation

Preliminary Injunction Granted for Proposed Facility at LBNL

The Federal District Court for the Northern District of California granted the request of Save Strawberry Canyon, a citizens' group based in Berkeley, California, to temporarily halt construction of the planned Computational Research and Theory Facility pending a ruling on the merits. At issue in *Save Strawberry Canyon v. DOE, et al.* is the construction and operation of the Facility by the University of California at Lawrence

Berkeley National Laboratory. The plaintiff alleged in its complaint that DOE is in violation of NEPA by not preparing an EA or EIS, and sought an injunction to halt any ground-disturbing activity on the project until DOE complies with NEPA. The case is currently set for trial in September 2009. (See [LLQR, September 2008, page 20.](#)) (Case No.: 08-03494 (N.D. Cal.))

Annual DOE Litigation Report to CEQ

In its 2008 NEPA Litigation Survey provided to the Council on Environmental Quality (CEQ) on April 21, 2009, the DOE Office of General Counsel reported on nine active cases. This annual report summarizes basic information about the status of pending cases that challenge DOE decisionmaking under NEPA. CEQ compiles individual agency responses to the annual NEPA Litigation Survey and posts aggregate data on the CEQ NEPAnet, www.nepa.gov. The majority of DOE suits (eight out of nine) contested NEPA review determinations made by DOE – namely the adequacy of environmental assessments, the validity of a finding of no significant impact (FONSI), or lack of NEPA review. Six of the nine cases are new with three cases filed before 2008. Eight of the nine cases are still ongoing. In one case, the court ordered DOE to prepare an EIS because it found that the EA did not support a FONSI. For further information, please contact Steven Miller at steven.miller@hq.doe.gov.



Government-wide NEPA Litigation Scorecard

In her annual NEPA case law update at the 2009 NAEP conference in Scottsdale, Arizona, Lucinda Low Swartz, former CEQ Deputy General Counsel, noted that in 2008, Federal courts issued about 46 substantive decisions involving the implementation of NEPA. The Government prevailed in 29 of the 46 cases (63 percent), which involved 18 different Federal departments and agencies, she said.

Ms. Swartz explained that courts continued to uphold decisions where the agency could demonstrate it had given potential environmental impacts a “hard look” and invalidated those where the agency did not do so. She summarized three decisions involving public involvement requirements for EAs noting that “the court is not dictating what public involvement [for EAs] looks like.” For example, in *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, the court concluded that the circulation of a draft EA is not required in every case, she explained. (See [LLQR, June 2008, page 21.](#)) Federal agencies have flexibility in how they involve the public in EAs, but they must provide sufficient information to allow such involvement, she emphasized.

In cases involving segmentation claims, the courts affirmed that connected actions are those that are automatically triggered or are not independently justified. In *Northwest Bypass Group v. U.S. Army Corps of Engineers* (D. N.H., April 22, 2008; Case No.: 06-00258) concerning a connector road project with three phases, the courts determined that the U.S. Army Corps of Engineers did not segment actions in violation of NEPA as phase II has “independent utility” and it would not automatically trigger phase III.

Ms. Swartz also summarized a decision regarding programmatic EISs where the court concluded that an agency’s decision to prepare a programmatic EIS on a hypothetical future level of activity did not undermine the agency’s issuance of EAs/findings of no significant impact for specific activities during programmatic EIS preparation (*Native Village of Point Hope v. Minerals Management Service*, D. Alaska, July 2, 2008, Case No.: 08-00011).

For additional information, please contact Ms. Swartz at lls@lucindalowschwartz.com.

Training Opportunities

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

- DOE Project Management
Career Development Program
505-245-2112
Register through CHRIS
For DOE employees only

Environmental Laws, Regulations, and NEPA

Oak Ridge, TN: August 3-5
No fee

- International Association for Public Participation
703-837-1197
iap2training@theperspectivesgroup.com
www.iap2.org

Planning for Effective Public Participation

Boston, MA: July 13-14
Albany, NY: August 10-11
St. Louis, MO: August 31-September 1
\$700

Communications for Effective Public Participation

Boston, MA: July 15
Albany, NY: August 12
St. Louis, MO: September 2
\$350

Techniques for Effective Public Participation

Boston, MA: July 16-17
Albany, NY: August 13-14
St. Louis, MO: September 3-4
\$700

- 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

Implementation of NEPA

Durham, NC: June 15-19
\$1,275

Accounting for Cumulative Effects in the NEPA Process

Durham, NC: September 16-18
\$800 (\$875 after 8/26/09)

Certificate in the National Environmental Policy Act

Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses.

- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org

NEPA: Writing the Perfect EA/FONSI or EIS

Philadelphia, PA: June 18-19
Columbus, OH: September 3-4
\$495 (\$395 reduced tuition is available,
see website)

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

Reviewing NEPA Documents

Las Vegas, NV: June 16-18
\$985 (GSA contract: \$895)
Las Vegas, NV: September 28-30
\$945 (GSA contract: \$855) see website
for registration deadlines

Collaboration in the NEPA Process

Olympia, WA: July 6-7
\$785 (GSA contract: \$695)

Applying the NEPA Process and Writing Effective NEPA Documents

Baltimore, MD: July 14-17
\$1,185 (GSA contract: \$1,095)
New Orleans, LA: August 18-21
\$1,145 (GSA contract: \$1,055) until 7/1/09
Salt Lake City/Park City, UT: September 15-18
\$1,145 (GSA contract: \$1,055) see website
for registration deadlines

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Training Opportunities

(continued from previous page)

Applying the NEPA Process – Emphasis on Native American Issues

Las Vegas, NV: July 21-23
\$945 (GSA contract: \$855) until 6/3/09

NEPA Cumulative Effects Analysis and Documentation

Phoenix, AZ: August 4-7
4-day, two course registration:
\$1,445 (GSA contract: \$1,055) until 6/17/09
Phoenix, AZ: August 6-7
\$745 (GSA contract: \$655) until 6/17/09
Eglin, FL: August 19-20
\$745 (GSA contract: \$655) until 6/17/09

Applying the NEPA Process

Phoenix, AZ: August 4-5
\$745 (GSA contract: \$655)

NEPA Climate Change Analysis and Documentation

Denver, CO: August 5-6
\$745 (GSA contract: \$655) until 6/17/09

Core Principles: Telling the NEPA Story, Keeping Documents Brief, Meeting Legal Requirements

Denver, CO: August 18-20
\$945 (GSA contract: \$855) until 7/7/09

Reviewing NEPA Documents and NEPA Project and Program Management

Las Vegas, NV: September 28-October 2
2-day, individual course registration:
see individual course listing for pricing
4-day, two course registration: \$1,345
(GSA contract: \$1,255) until 7/12/09

NEPA Project and Program Management

Las Vegas, NV: October 1-2
\$745 (GSA contract: \$655) until 7/12/09

- Natural Resources and Environmental Policy Program
Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/htm/students/grad-degrees/nepa

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: \$5,896 (includes tuition, course fees, and all materials)

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

Introduction to NEPA

Webinar: July 29-30
\$200

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

Introduction to Managing Environmental Conflict

Washington, DC: September 15-16
\$995

Customized NEPA Training

- Environmental Impact Training
512-940-7969
info@eiatraining.com
www.eiatraining.com
- Environmental Training & Consulting International, Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.com
- Environmental Planning Strategies, Inc.
563-332-6870
jleeeps@mchsi.com
www.jlee-eps.com/workshops.php

EAs and EISs Completed January 1 to March 31, 2009

EAs

Office of the Chief Financial Officer

DOE/EA-1631 (02/27/09)

Loan Guarantee for Beacon Power Corporation Frequency Regulation Facility in Stephentown, New York

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

Time: 7 months

DOE/EA-1638 (03/31/09)

Loan Guarantee to Solyndra, Inc. for Construction of a Photovoltaic Manufacturing Facility and Leasing of an Existing Commercial Facility in Fremont, California

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

Time: 7 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

DOE/EA-1622 (01/13/09)

University of Nevada, Las Vegas Research Foundation: Solar Technology Center, Nevada

Cost: \$50,000

Time: 10 months

DOE/EA-1647 (01/14/09)

Construction and Operation of a Proposed Cellulosic Ethanol Plant, Range Fuels Soperton Plant, LLC (formerly Range Fuels Inc.), Treutlen County, Georgia

Cost: \$65,000

Time: 2 months

Idaho Operations Office/Office of Nuclear Energy

DOE/EA-1386 (02/18/09)

Remote-handled Waste Disposition Project, Scoville, Idaho

Cost: \$240,000

Time: 96 months

National Energy Technology Laboratory/Office of Fossil Energy

DOE/EA-1625 (03/15/09)

Southeast Regional Carbon Sequestration Partnership (SECARB) Phase III Early Test, Oklahoma

Cost: \$91,000

Time: 8 months

Western Area Power Administration

DOE/EA-1596 (02/18/09)

Belfield to Rhame Transmission Line Project, North Dakota

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

Time: 21 months

DOE/EA-1602 (01/20/09)

Transmission Line and Interconnection to Contra Costa Water District Alternative Intake Project, Sacramento-San Joaquin Delta, California

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

Time: 16 months

DOE/EA-1611 (02/02/09)

Interconnection Request for the Colorado Highlands Energy Project (Fleming Wind Energy Project), Logan County, Colorado

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

Time: 12 months

DOE/EA-1612 (03/06/09)

Fairview West – Spring Lake 115-kV Transmission Line Project, Fairview, Montana

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

Time: 12 months

DOE/EA-1633 (12/31/08; FONSI 01/26/09)

Green Mountain Reservoir Substitution and Power Interference Agreements, Colorado

Cost: The cost for this EA was paid by the Bureau of Reclamation and the City of Colorado Springs; therefore, cost information does not apply to DOE.

Time: 4 months

EIS

Western Area Power Administration

DOE/EIS-0410 (74 FR 6289, 02/06/09)

(EPA Rating: EC-2)

Keystone Oil Pipeline Project

[Department of State was the lead agency; DOE was a cooperating agency.] EIS adopted; therefore, time and cost information does not apply to DOE.

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 Cost and Completion Times

- For this quarter, the median cost for the preparation of 4 EAs for which cost data were applicable was \$78,000; the average cost was \$112,000.
- Cumulatively, for the 12 months that ended March 31, 2009, the median cost for the preparation of 24 EAs for which cost data were applicable was \$88,000; the average cost was \$122,000.
- For this quarter, the median completion time for 11 EAs was 10 months; the average was 18 months.
- Cumulatively, for the 12 months that ended March 31, 2009, the median completion time for 33 EAs was 9 months; the average was 14 months.

EIS Cost and Completion Times

- For this quarter, there were no EISs completed for which cost and time data were applicable.
- Cumulatively, for the 12 months that ended March 31, 2009, the median cost for the preparation of 8 EISs for which cost data were applicable was \$5,700,000; the average cost was \$8,600,000.
- Cumulatively, for the 12 months that ended March 31, 2009, the median completion time for 9 EISs was 30 months; the average was 31 months.

Recent EIS-Related Milestones (March 1 to May 31, 2009)

Amended Notice of Intent

**Office of Energy Efficiency
and Renewable Energy**
DOE/EIS-0407
Abengoa Biorefinery Project, Kansas
April 2009 (74 FR 19543, 04/29/09)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0419
Whistling Ridge Energy Project, Washington
April 2009 (74 FR 18213, 04/21/09)

Western Area Power Administration
DOE/EIS-0418
PrairieWinds Project, South Dakota
April 2009 (74 FR 15718, 04/07/09)

Extension of Scoping Period

Western Area Power Administration
DOE/EIS-0411
*Construction and Operation of the Proposed
Transmission Agency of Northern California
Transmission Project, California*
May 2009 (74 FR 21674, 05/08/09)

Records of Decision

Bonneville Power Administration
DOE/EIS-0183
*Bonneville Power Administration's Business Plan
Leaning Juniper II Wind Project, Oregon*
April 2009 (74 FR 18214, 04/21/09)

DOE/EIS-0397
*Lyle Falls Fish Passage Project, Klickitat County,
Washington*
March 2009 (74 FR 9091, 03/02/09)

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

Supplement Analyses

Bonneville Power Administration

Hood River Fisheries Restoration Project (DOE/EIS-0241)

DOE/EIS-0241-SA-02*

*Comparative Hatchery Release Evaluation
for Spring Chinook, Hood River, Oregon*
(Decision: No further NEPA review required)
December 2008

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

DOE/EIS-0285-SA-387*

*Big Eddy-Chemawa No. 1 et al., 500 kV, 230 kV,
115 kV Transmission Line Corridors, Oregon
and Washington*
(Decision: No further NEPA review required)
November 2008

DOE/EIS-0285-SA-388*

Shelton-Fairmount No. 4, Washington
(Decision: No further NEPA review required)
December 2008

DOE/EIS-0285-SA-389*

*Lower Columbia River Transmission Line, Oregon
and Washington*
(Decision: No further NEPA review required)
January 2009

DOE/EIS-0285-SA-390*

*Chehalis-Raymond #1, Raymond-Willapa #1
and Raymond-Henkle St. #1 Transmission Lines,
Washington*
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-391*

*Holcomb-Naselle #1 and Nacelle-Tartlet #1 & #2
Transmission Lines, Washington*
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-392*

*Raymond-Cosmopolis Transmission Line,
Washington*
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-393*

*Multiple Transmission Line Rights-of-Way,
Oregon and Washington*
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-394

Green Bluff Tap to Bell-Trentwood #2, Washington
(Decision: No further NEPA review required)
March 2009

DOE/EIS-0285-SA-395

*Sacheen-Albeni Falls #1, 115 kV Transmission Line
Corridor, Idaho*
(Decision: No further NEPA review required)
March 2009

*Not previously reported in LLQR

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.

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 Didn't Work

- *Alteration of project scenarios.* Constantly changing project scenarios and options made resolving scoping issues difficult.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Contractor responsiveness.* The contractor and applicant were very responsive to requests for additional information and analysis.
- *State infrastructure for document distribution.* The state clearinghouse provided a direct link for distributing the EA to state agencies and tracking agency comments for each submittal. The clearinghouse expedited communication with state agencies, insuring the timely completion of the NEPA process.
- *Early work with applicant.* Early work with the applicant allowed the draft EA to be completed and reviewed on time.

Factors that Inhibited Timely Completion of Documents

- *Resolution of legal matters.* Review took longer than anticipated due to a delayed decision regarding the publication of certain information in the EA.

Teamwork

Factors that Facilitated Effective Teamwork

- *Coordination between NEPA and project staff.* Program Office NEPA staff worked closely with other Program Office staff on the project. The flow of information helped integrate the EA process into overall project planning and close coordination between team members facilitated effective teamwork.
- *Contractor experience.* The contractor selected and paid for by the applicant was very knowledgeable and responsive, adding to an effective EA preparation team.
- *Applicant involvement in NEPA process.* Early involvement of the applicant with Program Office staff regarding NEPA issues facilitated teamwork.

Process

Successful Aspects of the Public Participation Process

- *Usefulness of public comments.* The public participation process produced some very good comments that influenced the EA.

Unsuccessful Aspects of the Public Participation Process

- *Length of comment period.* Some members of the public felt that the comment period was too short.
- *Repeated public participation activities.* Public involvement in the NEPA process was limited because the project had already undergone local public review prior to the EA.

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

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Applicant considered impacts of proposal.* The Program Office found the NEPA process to be of particular value in ensuring that the applicants fully considered the environmental consequences of their loan application proposals early in their decisionmaking process.
- *Communication was enhanced.* The continuous communication facilitated by the NEPA process was used to cross check the status of the project and helped identify any unresolved issues.
- *Technical expertise.* Information received from external technical experts during the EA comment period facilitated the selection of a transportation route that minimized potential impacts and enabled project decisionmaking.

Enhancement/Protection of the Environment

- *Environmental consequences considered in design phase.* The environment was protected through the NEPA process. The state environmental review conducted just prior to the completion of the EA identified potential environmental consequences, allowing impacts to be minimized during the design phase.

Other Issues

Guidance Needs Identified

- *NEPA guidance.* The development of the EA identified the need for a Program Office NEPA Policy and Procedures manual, which is currently being developed.

CEQ Submits Report to Congress (continued from page 24)

Availability of Recovery Act Reports

The May 18, 2009, CEQ report to Congress is available on CEQ's NEPAnet at www.nepa.gov. Also, DOE Recovery Program Plans – high-level plans outlining the type of work, expected outcomes, and how performance will be measured – are available at www.recovery.gov, and other

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, 2 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “4” stated that the NEPA process was effective in selecting a transportation route.
- A respondent who rated the process as “3” stated that the applicant took action in the design of the facility to minimize potential environmental impacts and to demonstrate environmental stewardship. This allowed the rest of the project office team to feel confident in moving forward with the project.
- A respondent who rated the process as “2” stated that the state environmental review process carried out prior to the EA decreased the benefit of the federal NEPA process. By the time work on the EA began, the applicant had adjusted project design to minimize or eliminate potential environmental concerns.

information on DOE's implementation of the Recovery Act is available at www.energy.gov/recovery. For more information on DOE's NEPA activities related to the Recovery Act, contact Brian Costner, Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924. 

LESSONS LEARNED

September 1, 2009; Issue No. 60

Third Quarter FY 2009

DOE NCO Volunteers Lend a Hand To Expedite Recovery Act Projects



A BIG TASK,
BUT REWARDING

When the Office of Energy Efficiency and Renewable Energy (EERE) issued a call for help in meeting its NEPA responsibilities under the American Recovery and Reinvestment Act of 2009 (Recovery Act) early this summer, many experienced NEPA Compliance Officers (NCOs) offered their services. With the assistance of these “volunteers,” two EERE grant programs – the Energy Efficiency and Conservation Block Grant Program (\$3.2 billion) and the State Energy Program (\$3.1 billion) – have begun distributing funds to accelerate the creation of green jobs across the country, achieve widespread energy savings, and deploy a multitude of mostly small-scale renewable energy projects.

This cadre of 16 NCOs from EERE, the Office of Civilian and Radioactive Waste Management, the Office of Environmental Management, the Office of Fossil Energy, the Office of Electricity Delivery and Energy Reliability, the National Nuclear Security Administration, and various Field Offices, has already reviewed more than 800 Recovery Act funding applications and completed more than 900 categorical exclusion determinations. However, more NEPA work remains to be done, and Matt Rogers, Senior Advisor to the Secretary of Energy for Recovery Act Implementation, recently issued another plea for further assistance through September 30 to meet Departmental goals.

(continued on page 6)

DOE General Counsel Scott Blake Harris Aims To Improve the NEPA Review Process



Scott Blake Harris stated that his goals are to improve the speed, efficacy, and transparency of DOE NEPA reviews (interview, page 5).

In his first month on the job, DOE’s new General Counsel, Scott Blake Harris, issued operating principles for NEPA document review by the Office of General Counsel (GC) to reduce the time required for such reviews and avoid multiple rounds of comments, particularly for environmental impact statements (EISs). “We can spend more time on what is important if we spent less time on what is unimportant,” he said about the procedures, which are designed to eliminate unnecessary delays, provide high-quality information to Program Offices, and achieve the environmental assessment envisioned by the National Environmental Policy Act. These process improvements will also encourage Program and Field Offices to take early and active ownership of the quality of their documents, he said.

(continued on page 7)

Inside **LESSONS LEARNED**

Welcome to the 60th quarterly report on lessons learned in the NEPA process. We are pleased to feature the extraordinary support provided by our NCO volunteers and to introduce Scott Blake Harris, DOE General Counsel, and his plans for improving the DOE NEPA process. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for 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 2, 2009. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 2, 2009

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2009 (July 1 through September 30, 2009) should be submitted by November 2, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at www.gc.energy.gov/nepa. Also on the website is a newly formatted cumulative index of the *Lessons Learned Quarterly Report*, described on page 11.

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This icon indicates that LLQR online (www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.



Act Fast – NEPA Office Openings Close September 3!

The Department of Energy's Office of NEPA Policy and Compliance is seeking strong candidates for several Environmental Protection Specialist positions (GS-12, 13 and 14). These are limited term appointments not to exceed 2 years (may be extended up to 4 years) and do not confer competitive status. Job announcement number HQ-09-DE-02-GC-ARRA-2264, posted at www.usajobs.gov, is open to U.S. citizens. If you are interested, please apply online to the job announcement by September 3, 2009.

NAEP Conference To Celebrate NEPA at 40 Abstracts, Award Nominations Due Soon



Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment is the theme of the National Association of Environmental Professionals (NAEP) 2010 conference, to be held April 27–30 in Atlanta. Abstracts for presentations are due by **September 15**. NAEP is seeking Track Chairs and Session Chairs; contact Lynn McLeod at naep2010@battelle.org or 781-952-5381.

NAEP will present Environmental Excellence Awards to acknowledge outstanding contributions in eight categories, including NEPA Excellence, Environmental Stewardship, and Public Involvement/Partnership. Nominations are due **October 1** and do not require NAEP membership. Further information is available at www.naep.org.



More Than 73,000 Recovery Act NEPA Reviews Complete; CEQ Reports No Major Delays

The Council on Environmental Quality (CEQ) reported to Congress on August 3, 2009, on the NEPA status of more than 79,000 projects and activities receiving funding through the American Recovery and Reinvestment Act (Recovery Act). As of June 30, 2009, Federal departments and agencies had completed more than 70,000 categorical exclusion determinations, 1,600 environmental assessments (EAs), and 840 EISs related to Recovery Act projects and activities and had determined that NEPA is not applicable to almost 2,000 other projects and activities. Still pending for these 79,000 projects were almost 6,800 expected categorical exclusion determinations, 3,500 EAs, and 100 EISs.

The CEQ report includes 156 DOE Recovery Act projects – three times the number included in the first report, which CEQ submitted to Congress on May 18. As of June 30, DOE had completed more than 170 NEPA reviews for all or part of 68 projects and determined that NEPA reviews are not required for another eight projects. This effort supported the obligation of more than \$6.6 billion of Recovery Act funding in areas such as weatherization, environmental cleanup, and science.

Agencies Addressing NEPA Quickly

CEQ wrote that, “As the [May and August] reports show, many agencies have ‘shovel ready’ projects which have completed environmental analyses and are fully permitted, approved, and ready for implementation. For any projects and activities for which necessary environmental analyses and permits or approvals have not been completed, agencies are expeditiously addressing their compliance requirements.”

The August report describes NEPA compliance for projects expected to receive more than \$97 billion in funding. More than \$45 billion of this total was obligated by the Department of Education for formula grants to states, for which NEPA review is not required. “Overall, the progress that departments and agencies have reported indicates that NEPA analyses are informing decisions for expenditure of [Recovery Act] funds in an environmentally sound manner,” CEQ noted.

CEQ also highlighted steps by agencies to implement NEPA efficiently. “Several agencies are using programmatic NEPA reviews to address similar projects and activities, to facilitate implementation of individual projects and activities either by providing full NEPA compliance or programmatically addressing common environmental issues, thereby eliminating the need to replicate the review of those issues,” CEQ wrote.

DOE Making Progress, Much Work Ahead

The tripling in the number of DOE Recovery Act projects between the May and August reports reflects progress by DOE Program Offices in completing the approval process for the allotment of funding. The status of NEPA compliance varies among these projects. Most Office of Environmental Management Recovery Act projects rely on pre-existing NEPA reviews and so are reported as complete in the CEQ report. The Office of Science had completed NEPA reviews for almost half of its projects by June 30, primarily by reviewing existing NEPA documents and applying categorical exclusions.

The bulk of NEPA reviews pending as of June 30 are related to applications received in response to funding opportunity announcements issued by DOE. Thousands of applications were received in late June and additional applications are expected through the summer. The Office of Energy Efficiency and Renewable Energy is responsible for most of these, including applications for the State Energy Program and Energy Efficiency and Conservation Block Grant Program (related article, page 1). Funding opportunities also have been initiated by the Advanced Research Projects Agency–Energy, Office of Fossil Energy, Office of Electricity Delivery and Energy Reliability, and the Loan Guarantee Program Office. The Western Area Power Administration and Bonneville Power Administration also are expected to identify projects that will require NEPA review.

Future Reports To Explain Pending Actions

The next CEQ report to Congress will cover NEPA activities through September 30, 2009. DOE and other Federal agencies are required to submit their agency reports to CEQ by October 15, and CEQ will submit its report to Congress on November 2.

The report will continue the cumulative update of the status of NEPA actions to implement the Recovery Act. In addition, CEQ has asked agencies to explain the status of pending NEPA actions. At a meeting of Federal agency NEPA contacts on August 25, Horst Greczmiel, CEQ Associate Director for NEPA Oversight, noted that NEPA actions that remain pending on multiple reports will be scrutinized.

Section 1707(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The CEQ reports to Congress are available at www.nepa.gov. For more information, contact Brian Costner, DOE Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924.

DOE Grants NEPA Variances for Two Solicitations

To facilitate timely review of applications under two programs funded by the American Recovery and Reinvestment Act (Recovery Act), DOE has granted two variances from certain provisions in its NEPA regulations. DOE explained that granting the variances would expedite the award of funding and “facilitate the nation’s economic recovery by creating and retaining jobs.” One program would accelerate “development and production of electric drive vehicles,” and the other would accelerate “deployment of sustainable energy infrastructure and energy efficient industrial technologies that will reduce energy use.”

The variances were for the Electric Drive Vehicle Battery and Component Manufacturing Initiative (advanced battery solicitation; 74 FR 30558; June 26, 2009), and the Deployment of Combined Heat and Power, District Energy Systems, Waste Energy Recovery Systems, and Efficient Industrial Equipment Initiative (combined heat and power solicitation; 74 FR 41693; August 18, 2009). DOE found that the variances from 10 CFR 1021.216(c) through (h), *Procurement, Financial Assistance, and Joint Ventures*, are “soundly based on the interests of public welfare.” These variances primarily negated the need to prepare an environmental critique and environmental synopsis for the solicitations.

Recovery Act Funds Awarded

The Recovery Act includes \$2 billion for DOE to provide grants to manufacturers of advanced battery systems and vehicle batteries to be produced in the United States. The variance notice explains that DOE views these grants as critical to the development and production of electric-drive vehicle systems that will substantially reduce petroleum consumption, and that DOE expects the grants to result in U.S.-based manufacturing jobs that will meaningfully aid in the Nation’s economic recovery. President Obama announced the awardees selected from more than 80 applications on August 5, 2009. (See DOE news release at www.energy.gov/news2009/7749.htm.)

DOE made \$156 million of Recovery Act funds available through the combined heat and power solicitation. The variance notice explained that the funding is “critical to the deployment of new and replacement systems and equipment that are highly efficient and that make use of energy that would otherwise be wasted.” DOE expects to make selections in September from the more than 225 applications received.

Integrating NEPA and Procurement Processes

10 CFR 1021.216 establishes a process for considering potential environmental impacts within the procurement process for evaluating proposals, including prior to the conditional selection of applications for award. As the

variance notices describe, the central element of this “216 process” is preparation by DOE of a confidential environmental critique containing, among other things, a brief comparative evaluation of the proposed projects’ potential environmental impacts. The environmental critique may contain information provided by the applicant as well as supplemental information developed by DOE. This environmental critique forms the basis for an environmental synopsis, which is made available to the public and is incorporated into any EA or EIS prepared. (See DOE’s NEPA regulations and [LLQR, December 2008, page 14](#), both available on the DOE NEPA Website at www.gc.energy.gov/nepa.)

Variances Requested to Speed Process

For both solicitations, DOE received more applications than it is able to fund and undertook a merit review process in order to select awardees. The merit review criteria for the advanced battery solicitation included consideration of anticipated environmental impacts, among other factors. Although there was no similar merit review criterion for the combined heat and power solicitation, applicants did complete an environmental questionnaire that is being considered in the selection process. DOE’s National Energy Technology Laboratory, which was responsible for application review in both cases, noted that there would be some redundancy between the requirements of the merit review process and the 216 process, and it requested a variance to speed processing of the applications.

In granting the variances from certain requirements of 10 CFR 1021.216, DOE concluded that the process for making the funding awards “will provide the selecting official with sufficient information regarding potential environmental impacts in the Merit Review Report.” The variances do not affect requirements to prepare an EA or EIS for selected proposals. Indeed, any such EA or EIS will describe the relevant environmental factors noted in the Merit Review Report, consistent with the openness provisions of the 216 process (10 CFR 1021.216(h)).

The authority to grant variances is established in DOE’s NEPA regulations at 10 CFR 1021.343. DOE has used the authority in the past to implement alternative arrangements for complying with NEPA in order to take emergency actions (10 CFR 1021.343(a)). (See [LLQR, September 2000, page 1](#); [June 2004, page 8](#); and [March 2006, page 1](#).) However, the two recent variances are the first for which DOE has used the provision for actions that are “soundly based on the interests of national security or the public health, safety, or welfare” (10 CFR 1021.343(c)). The regulation states that such variances must be approved by the Secretary, but the Secretary delegated that authority to the General Counsel in December 2008. 

Introducing DOE's New General Counsel

Scott Blake Harris was confirmed in May 2009 as DOE's General Counsel. He is thus the senior official responsible for overall review of DOE NEPA compliance under 10 CFR 1021.105.

Mr. Harris brings a breadth of regulatory experience to the challenges of the NEPA review and compliance process. He has practiced law for 33 years in the private sector and in government in areas including telecommunications, trade, national security, litigation and administrative law. At his confirmation hearing before the Senate, Mr. Harris characterized his most recent experience as being "at the intersection of law, technology and policy."

Before joining DOE, he founded the law firm of Harris, Wiltshire & Grannis and served as its Managing Partner. Previously Mr. Harris served in the Federal government from 1993 to 1996, first as Chief Counsel for Export Administration in the U.S. Department of Commerce, and then as the first Chief of the International Bureau at the Federal Communications Commission. Before starting his own firm he had also been a partner at the law firms of Williams & Connolly and Gibson, Dunn & Crutcher.

An outspoken advocate for public service, Mr. Harris asserts that his most rewarding work experiences have been those in the Federal government. He states that he hopes to bring to DOE an approach to public service that stresses "efficacy and efficiency."

In an interview for LLQR, on August 26, Mr. Harris discussed the DOE NEPA Community's response to the Recovery Act and expanded on his goals of making the Department's NEPA process more transparent, efficient, effective, and useful to decisionmakers.

Thanking the NCOs

Mr. Harris expressed his appreciation for the ongoing work of DOE NEPA Compliance Officers (NCOs) in helping to meet the NEPA obligations for the massive number of Recovery Act projects (related articles: page 1, 3, and 4). The Recovery Act work has been overwhelming, he said. "I am amazed by the way NEPA Compliance Officers have stepped up to the plate to deal with this challenge. They each deserve an award for the astonishing amount of high-quality work. When I look at the Recovery Act metrics, it seems impossible to get all the work done, yet they are succeeding. I stand in awe of their efforts."

"No superlative to describe the NCOs' work would overstate the case."

Promoting Transparency, Efficiency through Technology

In response to questions on how DOE can enhance transparency and public involvement in the NEPA process, Mr. Harris drew from his experience in the communications sector. "I am a deep believer in using technology to enhance transparency," he stated. "One of my top priorities is to help the Department do an even better job in its use of the web and other communications technologies." He described two ways in which technology can help the NEPA process.

First of all, for disclosure: We should be proud of our work. The public should be able to see what we are doing, when we're doing it. If we make a mistake, the public will identify it and corrections can be made quickly, he said.

In addition, for efficiency: Mr. Harris is enthusiastic about the use of technology to facilitate collaboration on creative ideas. He announced that GC's General Law division is testing document review software tools and that he plans to roll them out for the entire Office of General Counsel. (Any new technology brings with it some start-up frustrations, he acknowledged.)

"We can do an even better job in using technology to give the public a view of what its government is doing."

Informing Decisionmakers Effectively

Mr. Harris advocated attention to the purpose of NEPA – which is to provide information on environmental concerns to decisionmakers. "The more that we prepare NEPA documents that present useful information in a concise and meaningful way, the more effective they will be. Unfortunately, some people see NEPA as an obstacle," he observed. Because some have used NEPA to delay projects that they oppose, it is sometimes seen as a litigation tool. In response, in order to strengthen a possible defensive position, we tend to put everything into an EIS. But unneeded detail in an EIS delays the NEPA process, which makes us ineffective, said Mr. Harris, and can result in an EIS so long that no decisionmaker can take the time to read it. "We need to have an output that is accessible by decisionmakers," he said.

"The NEPA process is not about checking the boxes, but rather about making meaningfully informed decisions."

In closing, Mr. Harris said that "The environment counts." The Secretary of Energy cares deeply about the environment, and in large measure, that's why he is here. Environmental considerations are critical to making progress on our Nation's greatest challenges: moving to a greener economy, reducing our reliance on foreign sources of energy, addressing global warming, and enhancing national security. 



DOE NCOs Lend a Hand *(continued from page 1)*

2,300 Block Grant Applications Received

The Energy Efficiency and Conservation Block Grant Program (Block Grant Program) has received approximately 2,300 applications from states, territories, Indian tribes, cities, and counties. The purpose of the Block Grant Program is to provide grants to communities to fund programs and projects that reduce energy use and fossil fuel emissions and improve energy efficiency. Block grants may be used to carry out a wide range of activities, including energy efficiency retrofits, bike lanes and pedestrian walkways, development of advanced building codes, district heating and cooling systems, and renewable energy projects on or in government buildings.

DOE received the first batch of Block Grant Program applications on June 25 and a second batch of applications on August 10. The first Block Grant awards were made in late July and DOE continues to issue awards each week, with the ultimate goal of delivering funding to 80 percent of the June 25 applicants by September 30.

Several DOE Offices have agreed to process a portion of the applications, including conducting NEPA reviews, to help DOE meet this schedule. **Steve Blazek**, NCO for the Golden Field Office, coordinated with NCOs from other offices to develop an overall process to review applications, and each week EERE hosts a conference call among NCOs to check on progress and discuss any issues that arise during the reviews. The review process includes reading applications and environmental questionnaires, and sometimes seeking additional information from applicants.

The NCOs assisting Mr. Blazek are **Kristin Kerwin**, Golden Field Office; **Jody Barringer**, **David Boron**, and **Othalene Lawrence**, EERE Headquarters; **Pete Yerace**, Environmental Management Consolidated Business Center (EM Business Center); **Gary Hartman**, Oak Ridge Operations Office; **Mary Martin**, National Nuclear Security Administration; and **Jane Summerson** and **Narendra Mathur**, Office of Civilian Radioactive Waste Management. John Hudy, an environmental engineer on a 60-day detail from the Federal Aviation Administration, is also supporting the Block Grant Program.

Although the work has been demanding (most of the “volunteer” NCOs are providing support to EERE in addition to their usual workload), the NCOs report satisfaction in supporting the Recovery Act efforts. Ms. Summerson said her participation has been highly rewarding. “First, I appreciate the opportunity to support

my fellow NCOs, who have been so generous in their support to me. Second, to evaluate such proposed projects is fascinating. I actually know physically many of the counties and cities, and in a number of cases can visualize the buildings or districts they are targeting. Most of these applications are well thought out and will make a very real difference to these communities,” she said.

Big Boost for State Energy Program

DOE received 56 applications from states, the District of Columbia, and U.S. territories for grants and technical assistance under its State Energy Program. The purpose of the Program is to provide funding to promote energy conservation and reduce the growth of energy demand. State energy offices use Program funds to develop state plans that identify opportunities for adopting renewable energy and energy efficiency technologies and implementing programs to improve energy sustainability. Many states also proposed to establish revolving loan funds to finance such opportunities over time.

DOE’s National Energy Technology Laboratory (NETL) has the lead for reviewing grant applications under the State Energy Program. Mr. Blazek helped the NETL NCOs (**Paul Detwiler**, **John Ganz**, and **Roy Spears**) initially to determine the level of NEPA review required. Four NCOs (**Drew Grainger**, Savannah River Operations Office; **Pete Yerace**, EM Business Center; **Brian Mills**, Electricity Delivery and Energy Reliability; and **Stephanie Jennings**, Oakland Projects Office) stepped in to help NETL with follow-up calls to applicants to get clarifying information. Mr. Boron observes a “very congenial, collaborative, and diligent team that is working well with EERE State Energy Program project directors and corresponding state points of contact.”

EERE deeply appreciates the dedication and support from all the NCO volunteers as well as from GC staff. Their efforts are helping to make funds available in communities throughout the country that will create jobs while furthering energy conservation.

– Rita Wells, EERE Executive Director for Field Operations

(continued on next page)

New DOE NEPA Procedures

(continued from page 1)

The new GC NEPA review process is based on six operating principles:

Ad Hoc Delegation – GC will delegate EIS approval to the Program Offices on a project-by-project basis, upon request, when GC concludes that its further involvement is no longer required. Factors affecting delegation will include the EIS experience of the Program Office, the quality of the submitted materials, the complexity and sensitivity of the project, and the potential national impacts of the EIS review.

Coordinated Substantive Comments – GC will provide Program Offices with a single set of comments focused on substantive, rather than stylistic, issues. Comments will differentiate between matters legally required and other suggestions.

Single Coordinator – For each NEPA-related document being reviewed, GC will appoint a single GC coordinator to be the Program Office’s point of contact with GC.

Agreed Schedule – GC will begin the process by agreeing with the Program Office on a realistic schedule for all GC work that can be met reliably. Whenever possible, within 5 working days of document receipt, GC will identify any

significant issues that may affect schedule and likely major comments.

Regular Meetings – GC will arrange regular meetings with Program Offices to identify issues and resolve any problems in the EIS process.

Technology – GC will identify and implement modern information technologies to facilitate more efficient review and communication, such as software to facilitate document markup and comment, and videoconferencing to facilitate low-cost collaboration. (See related article, page 14). 

I believe these steps will enhance our ability to meet program needs, particularly in regard to schedule, without sacrificing quality in the NEPA process.

*GC NEPA Review Process Improvements
Memorandum of June 15, 2009*

DOE NCOs Lend a Hand

(continued from previous page)

Now serving an EERE Headquarters detail, Mr. Yerace is working with the other volunteer NCOs to develop approaches for expediting the NEPA process for the State Energy Program to ensure that NEPA review is not a bottleneck.

Reflecting sentiments similar to Ms. Summerson’s, Mr. Grainger described his work for the State Energy Program as “very satisfying,” noting that he is happy to be contributing to the “sustainable and energy independent future of the United States.” “For the first time in 20 years with the Department of Energy, I’m actually working on an energy project, and it’s exciting,” he said.

A key objective of the DOE Recovery Act money is to help boost the Nation’s economy through green jobs and environmentally-friendly energy projects. The NEPA volunteers, through the support and cooperation of their organizations, are helping to make this happen.

– David Boron, NCO
Energy Efficiency and Renewable Energy

More Help Needed!

EERE still needs help from NCOs and NEPA Document Managers to fulfill its responsibilities under the Recovery Act. Matt Rogers, Senior Advisor to the Secretary of Energy for Recovery Act Implementation, sent an email to NCOs on August 20 seeking help through September 30 in reviewing block grant applications. NCOs could work from their offices. Travel to Washington, DC, is not required. Mr. Rogers said that interested NCOs should speak to their supervisors and contact Claire Johnson, Energy Efficiency Advisor, Office of the Secretary, for additional information at claire.johnson@hq.doe.gov or 202-586-2887. “We need your help to complete these awards on a timely basis,” said Mr. Rogers.

EERE also will need experienced NEPA Document Managers to help prepare any EAs or EISs required for the Block Grant Program, State Energy Program, or any of its other Recovery Act programs.

See “NEPA Efficiency Essential to Recovery Plan” and “Recovery Act Stimulates Significant NEPA Workload” (*LLQR*, March 2009, page 1, and June 2009, page 8, respectively). 



Mercury Storage EIS Under Way: A Complex Undertaking

DOE's Office of Environmental Management recently completed an extensive public scoping process for its EIS on the *Long-Term Management and Storage of Elemental Mercury* (DOE/EIS-0423). With seven potential alternative sites across the country, preparing this EIS will be a complex undertaking. Add to the task the controversy associated with the long-term storage of a potentially hazardous material – highlighted in the public scoping comments – and the job becomes harder. Moreover, specific statutory requirements make the challenge even greater.

"While we recognize that completing this EIS is going to be difficult, we're up to the challenge," DOE NEPA Document Manager David Levenstein said. "We intend to give careful consideration to all public comments we receive," he continued, "and will complete detailed analyses of the potential environmental impacts of the alternatives. We aim to have the Draft EIS ready for public review and comment by the end of the year."

Legislation Requires DOE Action

The Mercury Export Ban Act of 2008 (Public Law No. 110-414) prohibits, effective January 1, 2013, the export of elemental mercury from the United States and directs DOE to designate a facility(ies) to manage and store (long-term) elemental mercury generated in the United States. Under the Act, this facility(ies) must be operational by January 1, 2013, and obtain a permit under the Resource Conservation and Recovery Act (RCRA).

There are several sources of elemental mercury in the United States, including the manufacture of chlorine and sodium hydroxide (i.e., the chlor-alkali process), reclamation and waste recovery activities, and gold mining processes (as a byproduct). The Environmental Protection Agency (EPA), a cooperating agency for the preparation of the EIS, estimates the total amount of elemental mercury from commercial sources that would be eligible for DOE storage is between 7,500 and 10,000 metric tons over a 40-year period.

Separate from the commercial inventory, DOE stores approximately 1,200 metric tons of elemental mercury at its Y-12 National Security Complex at Oak Ridge, Tennessee. Additionally, the Department of Defense (DOD) stores approximately 4,400 metric tons of elemental mercury at various locations within the United States. (DOD's Defense Logistics Agency published its mercury storage EIS in 2004 (69 FR 15830; March 26, 2004) and selected the Hawthorne, Nevada, site for consolidated storage (69 FR 23733; April 30, 2004). DOE was a cooperating agency for that EIS.)

Alternatives Identified

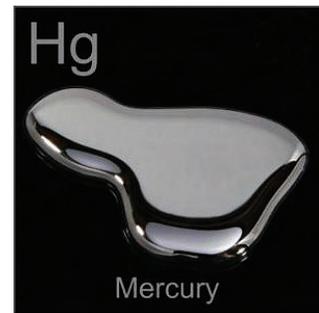
DOE developed a list of criteria to use as a framework for identifying candidate storage alternatives, including no interference with existing site missions; ability to comply with a RCRA storage permit; and compatibility with local land use plans. In March 2009, DOE published a Request for Expressions of Interest in the *Federal Register* (74 FR 11923) as well as in the *Federal Business Opportunities* seeking interest from Federal agencies and the private sector regarding potential storage locations. Section 5 of the Mercury Export Ban Act states that the Secretary of Energy shall designate a facility(ies) which shall not include Y-12 or any other portion or facility of the Oak Ridge Reservation.

Based on responses to the notices and on the criteria developed, DOE selected seven alternative sites to analyze in its EIS: Grand Junction Disposal Site, Grand Junction, CO; Hanford Site, Richland, WA; Hawthorne Army Depot, Hawthorne, NV; Idaho National Laboratory, Idaho Falls, ID; Kansas City Plant, Kansas City, MO; Savannah River Site, Aiken, SC; and Waste Control Specialists, Andrews, TX. Under the No Action Alternative, long-term management and storage of privately-owned mercury would remain the responsibility of its owners, and government-owned elemental mercury would remain at existing facilities. No preferred alternative for the EIS has been identified.

Many Scoping Comments Received

In July and August, DOE conducted eight public scoping meetings in eight states, following the issuance of a Notice of Intent to prepare an EIS (74 FR 31723, July 2, 2009). The initial scoping period for the EIS was extended to accommodate requests for an additional scoping meeting in Portland, Oregon (74 FR 36684, July 24, 2009).

The 52-day public scoping period ended on August 24, 2009, and approximately 490 comments were received, including via email, letters, the telephone, and the Internet (<http://mercurystorageeis.com>). At most of the public scoping meetings, the majority of commentors were against the project. At one or two of the meetings,



Mercury (chemical symbol – Hg) is a heavy, silvery-white metal that is a liquid at room temperature and is used in thermometers, barometers, batteries, and pesticides.

(continued on next page)

Mercury Storage EIS (continued from previous page)



Various flasks used for storing and transporting elemental mercury. Note: All flasks are about 12 inches. See ruler above.

commentors were fairly evenly divided as to their position on the project. Many commentors oppose locating a mercury storage facility in their community, including the Governors of Colorado and Idaho, while a smaller number of commentors support the proposed project. Those who feel the project would be beneficial cite job growth as the main reason for their support. Some commentors were concerned about the shipment of mercury over long distances and on routes that run adjacent to or cross major water sources.

Governors Brian Schweitzer (Montana), Chairman of the Western Governors' Association, and C.L. "Butch" Otter (Idaho), Vice Chairman, wrote to DOE that "We are concerned that in this current proposal for storing mercury, five of the seven sites proposed in DOE's notice of intent are located in Western States. The West is willing to do its share but the region should not become the dumping ground for all of the Nation's waste problems."

Next Steps

In addition to preparing the EIS, DOE, in consultation with EPA and the states, is also in the process of preparing *Guidance on Packaging, Transportation, Receipt, Management, and Long-Term Storage of Elemental Mercury*, as mandated by the Act. This guidance will establish standards and procedures for the receipt, management, and long-term storage of elemental mercury at the facility(ies) DOE eventually selects (including requirements to ensure use of suitable shipping/storage containers). The milestone date for publication of this guidance document, per the Act, is October 1, 2009. 

Savannah River Energy Park EA Cancelled

DOE's Savannah River Operations Office recently determined that a proposal for an "energy park" at the Savannah River Site near Aiken, South Carolina, is not sufficiently specific to permit meaningful environmental analysis under NEPA. (See the definition of "proposal" at 40 CFR 1505.23.)

The energy park concept, still in development, would establish approaches for transferring unneeded resources at DOE sites to support initiatives that address critical national energy, climate change, and economic challenges. The Savannah River Operations Office announced a determination in April 2009 to prepare an EA for a proposed action to lease lands to the Savannah River Site Community Reuse Organization. The mission of this private nonprofit organization is to promote economic growth and diversity within a five-county region in the Central Savannah River Area of Georgia and South Carolina.

The EA would need to provide evidence and analysis sufficient for DOE to determine whether to prepare an EIS or issue a finding of no significant impact

(40 CFR 1508.9). Because the Savannah River Site Community Reuse Organization proposed a very broad range of possible future uses of the leased lands, from light manufacturing to nuclear power generation, the environmental impacts cannot be meaningfully assessed. The Savannah River Operations Office therefore decided to cancel the preparation of an EA at this time and notified the Governors of South Carolina and Georgia.

The Office of NEPA Policy and Compliance responded to inquiries by concerned individuals and organizations regarding the energy park proposal for the Savannah River Site and DOE's NEPA review for it. Similar inquiries were made related to DOE's Portsmouth Site in Piketon, Ohio. DOE is now reevaluating its NEPA approach for energy park proposals.

A public workshop on the Savannah River Site Energy Park was held on August 18, 2009, to discuss the concept of an energy park, and another is being planned for October. During the workshop DOE announced that it had cancelled preparation of the EA. 

Council on Environmental Quality Guidance Updates



The Council on Environmental Quality (CEQ) is progressing towards issuing guidance intended to help agencies make their NEPA processes more efficient, a need heightened by the greatly increased number of proposals associated with

the American Recovery and Reinvestment Act. In mid-June 2009, CEQ provided NEPA contacts at the Federal agencies with the opportunity to review *Establishing, Revising, and Applying Categorical Exclusions under the National Environmental Policy Act* (draft) and *Guidance on Preparing Concise and Timely Environmental Assessments* (draft).

The categorical exclusion guidance aims to reduce the resources and time spent on NEPA compliance for proposals with no significant impacts by encouraging agencies to identify additional categories of such actions, amend their categorical exclusion lists through an appropriate process, and apply categorical exclusions efficiently. The guidance addresses comments provided on proposed guidance that had been developed by an interagency working group and published by CEQ for public comment in September 2006 (71 FR 54816; September 19, 2006).

The EA guidance addresses situations where the proposed action has not been evaluated in an existing NEPA document, does not have potential for significant impacts, and cannot be categorically excluded, and where there is no applicable statutory exemption. It states that a concise and focused EA can be prepared in a short time and describes information to include in the core elements of an EA (40 CFR 1508.9):

- Need for the proposal
- Alternatives as required by NEPA Section 102(2)(E)
- Environmental impacts of the proposed action and alternatives
- Agencies and persons consulted

The draft builds on CEQ guidance issued for forest health projects in 2002 and for Hurricane Katrina response actions in 2005 (www.nepa.gov).

The Office of NEPA Policy and Compliance submitted comments on both draft guidance documents in July 2009, with assistance from several NEPA Compliance Officers and staff of the Office of the Assistant General Counsel for Environment. 

EPA Guidance on Analysis of Diesel Emissions Available



Interim guidance on how to address diesel emissions in NEPA documents, prepared by the Environmental Protection Agency's (EPA's) Office of Federal Activities, was recently provided to Federal NEPA contacts by the Council on Environmental Quality.

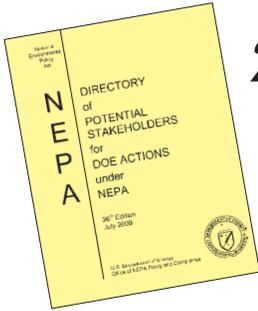
Although intended for internal use by EPA personnel involved in reviewing NEPA documents under Clean Air Act Section 309, the interim guidance is made available to the Federal NEPA community because it addresses the types of projects where diesel emissions may warrant consideration in NEPA documents, the appropriate level of analysis of impacts from the emissions, and possible mitigation measures that could be proposed.

Proposals that involve the use of construction equipment could result in diesel emissions. EPA personnel may review DOE NEPA documents for discussions of total (i.e., direct and indirect) and cumulative impacts of diesel

emissions on air quality and human health related to the short-term use of construction equipment or projects that contain an ongoing transportation component. Projects planned near an existing roadway, port, rail yard, or other transportation facility may also be reviewed for analysis of impacts from diesel emissions.

Regardless of project type, qualitative assessment of diesel emissions is indicated as the starting point for properly disclosing diesel emissions impacts as they relate to the overall proposal. More complex analyses, such as quantification of emissions, toxicity-weighting of emissions, air quality dispersion modeling, and risk assessments, which may need to be considered based on the level of diesel emissions attributable to a proposed project, are also discussed.

For additional information or to request a copy of *NEPA/Clean Air Act Section 309 Diesel Emissions Guidance*, contact James G. Gavin in the EPA Office of Federal Activities at 202-564-7161. 



2009 Stakeholders Directory Issued

The newest *Directory of Potential Stakeholders for DOE Actions under NEPA* (26th Edition, July 2009) has been issued. Updated annually, the *Directory* is intended to supplement Field Office distribution and

notification lists for NEPA documents of national interest or broader geographic scope than is typical for a Field Office document. This responds to the provision of the Council on Environmental Quality NEPA regulations (40 CFR 15.06.6(b)(2)): “In the case of an action with effects of national concern notice shall include publication in the *Federal Register* and notice by mail to national organizations reasonably expected to be interested in the matter . . . Agencies shall maintain a list of such organizations.”

The 2009 *Directory* identifies almost 400 potential NEPA document reviewers in Federal agencies, states, and national and regional nongovernmental organizations. For the convenience of NEPA Document Managers, the *Directory* includes appendices that list DOE contacts who may be involved in certain aspects of NEPA document coordination and distribution: NEPA Compliance Officers, DOE and National Laboratory public affairs directors, and points of contact for tribal issues. A fourth appendix lists public reading rooms where DOE Program and Field Offices typically make NEPA documents available for review.

More Stakeholders Look To the Web for Documents

During preparation of each edition of the *Directory*, every stakeholder contact is asked to identify preferences for receiving NEPA documents as paper copies, compact disks, or notification of the document’s web address, if posted by the distribution date. The trend identified in past years continues: a growing number of contacts wants something other than a full paper copy. If a document is posted on the web at the time of distribution, one-sixth of the stakeholders requested only notification of the document’s web address and one-half prefer to receive only a compact disk. If a document is not available on the web at time of distribution, about two-thirds prefer to receive only a compact disk. Regardless of the timing of web posting, one-third of the stakeholders prefer a paper copy or a paper copy with a compact disk.

To meet these preferences, and to realize the savings in printing, packaging, and mailing, NEPA Document Managers should plan ahead for the timely posting of an EIS online and notification of the posting before filing, as DOE must certify that it has completed the required distribution before filing an EIS with the Environmental Protection Agency.

The *Directory* is posted on the DOE NEPA Website. It complements the June 2006 *EIS Distribution* guidance. For additional information, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326. 



New Approach to the LLQR Cumulative Index

With each issue of *LLQR*, the cumulative index has become more challenging to use, mostly because a large portion of the articles fall within a small range of topics. To facilitate searches, the index has been restructured. The cumulative index is now divided into three parts:

The **Subject Index** lists articles by topic. Several extremely broad first-level keywords (such as “document preparation,” “mini-guidance,” and “process, NEPA”) have been eliminated and the subtopics that were under them are now first-level keywords. Articles that were formerly indexed under “EISs/documents, DOE,” “EAs/documents, DOE,” “Litigation, DOE,” and “Litigation, Other Agency” have been moved into separate sections.

The **DOE NEPA Documents Index** lists articles on specific DOE EAs and EISs. The **Litigation Index** lists articles that report on DOE’s and other agencies’ NEPA litigation. Each DOE case is listed as appropriate to reflect the challenged proposal, that is, one or more of: a specific facility (Fast Flux Test Facility), generic facility (biological research laboratories), program (energy efficiency standards), or activity (transuranic waste shipment). Articles on other agency NEPA cases are listed under the name of the principal defendant agency.

These changes are reflected in the *LLQR* cumulative index posted on the DOE NEPA Website with this 60th issue. A paper copy of the cumulative index will no longer be provided. 

Recent U.S. Climate Science Report – Useful Resource for Climate Change Impacts

By: Julie A. Smith, Office of NEPA Policy and Compliance



The impacts of a changing climate are already being observed across the United

States, according to the latest climate status report to Congress by the U.S. Global Change Research Program, *Global Climate Change Impacts in the United States* (June 2009). Approved by the National Atmospheric and Oceanic Administration and 12 other Federal agencies and organizations, the report provides a “state of knowledge” assessment of the science of climate change and climate change-related impacts, now and in the future.

“Observations show that warming of the climate is unequivocal,” and “. . . is due primarily to human-induced emissions of heat-trapping gases,” the report states. Given increased attention to climate change and a recognized need to address reasonably foreseeable impacts, which may include effects of greenhouse gas emissions, in NEPA documents ([LLQR, June 2009, page 12](#)), this report may be useful to NEPA practitioners seeking current information about potential climate change-related impacts on specific environmental resources, economic sectors, and regions of the United States.

The U.S. Global Change Research Program was established in 1990 by the Global Change Research Act to coordinate interagency Federal research on climate change. DOE is among 13 Federal agencies and organizations participating in the Program with oversight by the White House Office of Science and Technology Policy, Office of Management and Budget, and Council on Environmental Quality. The Global Change Research Program encompasses the U.S. Climate Change Science Program, which synthesizes and provides up-to-date results on the science of climate change ([LLQR, June 2008, page 10](#)), including results from the Intergovernmental Panel on Climate Change ([LLQR, December 2007, page 1](#)).

The report presents a wide variety of scientific assessments and recently published research in an accessible, reader-friendly style. It summarizes what is known about observed and projected (from global climate models) consequences of climate change on different regions across the United States and states that impacts are expected to become increasingly more severe as the level of warming increases. The report synthesizes analyses of impacts on various environmental resource areas – such as water, ecosystems, and energy – with assessments of key

potential impacts on related economic activities – such as agriculture, energy use and production, transportation, and water distribution. For example, the report discusses changes in hydrologic processes, water quality, water demands, and aging water infrastructure in relation to managing limited water resources for multiple uses – including energy production, agriculture, and industry. The report draws particular attention to the connection between water and energy. Water is used by the power generation sector directly for hydropower, and is critical in cooling processes for other forms of electric power generation. Energy, in turn, is used for pumping and heating water, in drinking water treatment, and for wastewater treatment. The report states that competing needs and limitations imposed by the close interconnection between these two resources are already becoming evident in the American West.

Challenges for Energy Supply and Use

A main point of emphasis in the report is on climate change effects already being observed in the United States, including: (1) loss of coastal land in the Southeast and Alaska to rising sea levels; (2) increases in heavy downpours and droughts impacting agricultural crop yields; and (3) increased flooding and storm surges in vulnerable regions like the Gulf Coast that threaten existing transportation infrastructure. Based on observed effects of climate change, the report highlights present and future challenges to the Nation’s energy supply and use, such as:

- Overall increases in demand for cooling energy due to rising temperatures that will likely result in increases in electricity use and high peak demand in most regions;
- Constraints on thermal (fossil and nuclear) energy production caused by limited water supplies and rising temperatures, which reduce the efficiency of power plant cooling technologies;
- Likely disruptions to energy production and delivery systems, such as oil and gas operations, in vulnerable areas (e.g., the Gulf Coast) due to extreme weather events and rising sea levels; and
- Likely effects on renewable energy technologies, such as hydropower (due to changes in precipitation patterns and snowmelt), solar energy (due to changes in cloud cover), wind power (due to variations in wind patterns), and biofuels production (due to changes in water availability and temperature).

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NOAA Issues Revised NEPA Handbook



The National Oceanic and Atmospheric Administration (NOAA) issued a revised *NEPA Handbook* (Version 2.3) in May 2009 that may be useful to *LLQR* readers. Primarily intended as a tool for NOAA staff, the *Handbook* also serves as a useful reference for applicants, contractors, tribal representatives, and others participating in the NOAA NEPA process. In addition, the *Handbook* provides some useful suggestions on topics, such as how to organize an EIS and prepare and maintain an administrative record, that are generally applicable to NEPA practitioners from other Federal agencies.

The *Handbook* outlines the steps to prepare, review, and process environmental analyses and describes NOAA directives, policies, and guidelines to assist NEPA practitioners in complying with NEPA, the Council on Environmental Quality NEPA regulations, and NOAA's administrative order outlining the agency's NEPA implementation. It also summarizes related environmental laws and Executive Orders.

How To Organize an EIS

The *Handbook* identifies four approaches for organizing an EIS: the traditional format, which addresses the affected environment and environmental consequences in separate chapters, and three variations, which involve combining the affected environment and environmental consequences into a single chapter, presenting the environmental consequences on an alternative-by-alternative basis, and presenting the environmental consequences on an affected resource-by-affected resource basis. "All of these approaches (and combinations thereof) are acceptable, but their effectiveness and efficiency are highly dependent on the complexity of the action," explains the *Handbook*.

Regardless of which organizational approach is used, the *Handbook* advises that EIS preparers be consistent – choose one organizational scheme and stick to it. For example, present alternatives and affected resources in the same order throughout the document. Also, the EIS should present the no action alternative first to establish a baseline against which other alternatives will be compared. The *Handbook* also suggests that the EIS summarize the net environmental effects at the beginning or end of the discussion and present the net effects in tabular form to allow ease of comparison.

How To Prepare an Administrative Record

An administrative record "memorializes" consideration of all relevant and reasonable factors. The administrative record should consist of relevant and significant documents considered by the decisionmaker when making the decision and demonstrate and document that the agency examined the proposed action and its reasonable alternatives thoroughly as required by law, explains the *Handbook*. In addition, the *Handbook* describes the types of records and documents an administrative record should contain, including (1) documents relied on by the decisionmaker, or incorporated by reference in documents relied on by the decisionmaker (whether or not those documents support the final agency decision); (2) background documents that help explain the context in which the decision was made; (3) comments received during the public review process and the corresponding agency responses; and (4) summaries of meetings with the public to discuss the proposed action.

The NOAA *NEPA Handbook* is available online at www.nepa.noaa.gov/NEPA_HANDBOOK.pdf.

For questions on the *Handbook*, contact NOAA's Office of Program Planning and Integration at 301-713-1632. 

Recent U.S. Climate Science Report (continued from previous page)

Mitigation and Adaptation

While the primary focus of the report is on impacts, it also underscores the importance of mitigation and adaptation as necessary elements of the Nation's overall response strategy for climate change. It does not evaluate the effectiveness of various approaches or endorse mitigation technologies. Rather, it emphasizes the importance of considering mitigation measures by comparing impacts that are expected to result from scenarios of higher versus lower greenhouse gas emissions, and provides examples

of adaptation approaches being tried in various economic sectors and regions of the country. For example, the report discusses efforts in New York City to adapt the city's water distribution system infrastructure to accommodate the impacts of a changing climate, as well as efforts currently under way to "climate proof" roads in coastal areas against projected increases in heavy downpours and sea level rise.

The full report can be found online at: www.globalchange.gov/usimpacts. 

Challenges in Collaborative Electronic Document Review

By: Carrie Moeller, Office of NEPA Policy and Compliance

Since his arrival at DOE, Scott Blake Harris, the new General Counsel, has emphasized the role of technology in the workplace and its usefulness for improving efficiencies. In particular, Mr. Harris, whose legal background includes communications and information technology litigation, pointed to the use of current technologies for more efficient review of NEPA documents. (See related article on NEPA review process improvements that the Office of General Counsel (GC) will employ for ongoing and future NEPA reviews, page 1.)

Conforming to the operating principle to employ technology in NEPA document reviews, the Office of NEPA Policy and Compliance recently participated in a collaborative electronic EIS review. The NEPA Office had previously participated in collaborative reviews, using the same commenting system. Described below are positive and negative aspects based on these experiences and some tips for improving future collaborative electronic NEPA document reviews.

What Is a Collaborative Electronic Document Review?

A collaborative electronic document review entails reviewing a document online, typically a pdf or word processing file posted on a document management system's website. What makes the review "collaborative" is that multiple reviewers can "share" or read the same document at the same time and post or "publish" comments for others to see.

The sharing and publishing of comments can either be in "real time" or the system may be set up in such a way that a reviewer can "check out" a file (e.g., pdf file or word processing document) for commenting and then "check in" the file (with comments inserted) for others to review and insert their comments or "reply" to existing comments. The document management system application that NEPA Office staff recently encountered allows for reviewers to simultaneously review and comment on the document within an Internet browser, potentially creating a more efficient and productive environment for identifying and resolving issues (rather than each person individually reviewing a document and submitting their comments at the close of the review period).



Tips for a Smooth, Productive Collaborative Electronic Review



✓ Consider the circumstances

For NEPA Document Managers deciding whether to use a document management application, first consider the participants. If the review will involve many different people in different DOE Program or Field Offices commenting on the same portions of the document, then use of such an application, particularly in a "live" or real time manner, may be valuable. However, if the review only involves a few people in one office, then it might not be necessary.

In the recent collaborative review in which the NEPA Office participated, staff from the NEPA Office and the Office of the Assistant General Counsel for Environment were the only reviewers. As a result, it seemed unnecessary to use a collaborative electronic commenting application because the two GC offices coordinated their reviews of the document internally face-to-face and ultimately submitted their comments via a single point of contact, in accordance with GC NEPA review policy. In this circumstance, the main benefit of using a collaborative electronic commenting application (i.e., "live" commenting by several different reviewers from different organizations) was nullified.

The NEPA Document Manager, however, emphasized the benefits of using a collaborative electronic commenting application when reviewers, including staff from the respective DOE Program and Field Offices, GC, and members of the EIS preparation team, are spread across the country. "Using a collaborative electronic commenting application facilitates interaction among reviewers, allows for commenting in the same 'space' – creating a dialogue," said the NEPA Document Manager. In addition, compared to a typical review where each reviewer comments separately, a collaborative electronic review significantly reduces the likelihood of contradictory comments, she said.

✓ Conduct a test run

If you are the NEPA Document Manager for a collaborative electronic review, conduct a test run prior to the start of the collaborative electronic review. Document managers should not assume that reviewers have the technical capability (i.e., software requirements) to be able to participate in a

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e-NEPA Reminder: Optimize Electronic Files for Internet Publication

By: Denise Freeman, NEPA Webmaster



In an environment of openness and transparency, it is extremely important for DOE NEPA Document Managers to “begin with the end in mind” as they prepare NEPA documents. This simply means that as you prepare the electronic files (e-files) of a NEPA document, don't forget to “optimize” (i.e., reduce or compact) the e-file size. Pay particular attention to graphics, which should be optimized prior to including them in documents that will be converted to pdf for web publication. Graphic images can communicate a great deal of information while adding visual appeal to documents. However, large images can cause increased download time and accessibility issues and therefore are contrary to the Administration's goals of transparency and openness.

Recently, for example, the Office of NEPA Policy and Compliance received a large e-file of an EA for posting on the DOE NEPA Website. Due to the large file size, the file

was sent back to the Field Office for optimization. After optimization, the e-file was one-third of its original size.

Suzanne Nawrot, DOE HQ Web Manager, Office of the Chief Information Officer, says in regard to the submission of such large files for posting on the DOE NEPA Website, “...they're too big for the server, they're too big for the bandwidth, and they're too big for users to download without crashing their system.”

NEPA Document Managers and contractors are urged to review current posting procedures, *Procedures for Submitting Documents for Posting on the DOE NEPA Website* (August 2008). Adherence to these procedures will help expedite posting of DOE NEPA documents on the DOE NEPA Website. If you have any questions, please contact me at: denise.freeman@hq.doe.gov. 

Collaborative Electronic Review *(continued from previous page)*

collaborative electronic review or that the software will function as expected. A test run can be as simple as having the website administrator post a sample pdf file to the document management system's website and request that reviewers log on, load the pdf file for review, and enter and publish comments for other reviewers to see.

During a recent test run, the NEPA Office identified staff that were unable to access the commenting features that are part of the collaborative electronic review despite having the required software. Working with the DOE Help Desk over a period of several weeks resolved technical issues for some reviewers, while others still had unresolved technical problems when the review began. As a result, they were unable to take advantage of the collaborative review process. If technical problems remain unresolved, NEPA Document Managers should be flexible and accept comments by other means and in formats that differ from those submitted via the collaborative electronic review application.

NEPA Document Managers should plan to do a test run at least a few weeks prior to the NEPA document review to resolve any technical issues that may arise, particularly if the reviewers are new or unfamiliar with the collaborative review application. In addition to NEPA Document Managers staging a test run in advance of the review, commentors should work proactively with their technical support organization to resolve any potential software compatibility or firewall issues.

✓ Identify comment resolution needs

Reviewers may find it more difficult (and time consuming) to conduct follow-up comment resolution reviews if their original comments were submitted through collaborative electronic application because it is difficult to produce a comprehensive and cohesive list of all submitted comments. For example, generally, commentors have to click through each page of the pdf file scanning for comments, and to produce a paper copy, they either have to selectively print each of the pages where a comment was made or print the entire file. (Either way, printing will result in a comment summary page that follows each page of the document where comments were inserted.) Once the comment period has concluded, reviewers should at least download all document files to their computer to have them for future reviews to check comment resolution status.

Feedback

Please contact Carrie Moeller at carrie.moeller@hq.doe.gov or 202-586-8397 if you have any feedback you'd like to share based on your experiences using a collaborative electronic review application. The NEPA Office welcomes any suggestions on how to improve this process. 

New Tools For Visualizing the Environment

By: Jeff Dorman, Office of NEPA Policy and Compliance

My work as a NEPA practitioner has made me realize that the visualization of information, and the use of new tools, presents unique challenges and opportunities for the NEPA process. Collecting and analyzing the necessary information is a complicated process; so too is reporting all that information to the public and the decisionmaker. Deciding what information to collect and from where, and how best to present it, were some of the questions discussed at a recent Resources for the Future (RFF) seminar I attended, Visualizing Our Relationship with Natural Resources and the Environment – The Role of New Information Technology in Informing and Communicating Research, on June 3, 2009.

Younger generations may first encounter, or may only ever encounter, some natural resources through advanced technologies such as visualization, said Molly Macauley, Senior Fellow and Director, Academic Programs, RFF. When considering protection of natural resources, she asked “What are the implications of a person’s ability to virtually be in a park, or to virtually be in a rainforest?” With high resolution imagery, you can virtually be in another location to experience such locations, and that could change how you value protecting them, she said.

Extraordinary advances are occurring in information technology. It affects the way we do research, the way policy makers make decisions, and the way policies can be implemented.

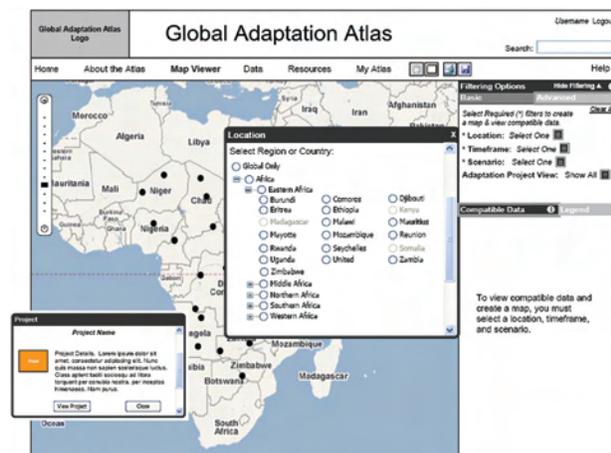
— Philip R. Sharp, President of RFF

How Big Is Your Backyard?

The “not in my back yard” phenomenon applies when considering reactions to where impacts may occur, said Dr. Shalini Vajjhala, Fellow, RFF. People understandably do not want impacts in the areas they care about. In her research, Dr. Vajjhala has asked, “How big is your backyard?” She described how participants defined their backyard by making their own hand drawn map of the places they cared about, and the maps ranged from only a few blocks around their homes to entire metropolitan areas.

Dr. Vajjhala also described the Global Adaptation Atlas (sample at right), which is an online map and visualization tool being developed to help people around the world adjust to local changes in their climates. This project aims to go beyond predicting individual changes in average annual temperature, precipitation, and sea level rise. The aim is to summarize all the anticipated impacts from global warming, including secondary impacts like

disease outbreaks, and identify “hot spots” where those impacts will be most severe. It will not only present this information, but allow users to perform their own analysis and create summaries tailored to their areas of interest.



A more detailed description of the [Global Adaptation Atlas](http://www.rff.org) is available online at www.rff.org. The prototype Global Adaptation Atlas is scheduled for release in December 2009.



Constructive Fantasy

William Gail, Director, Startup Business Accelerator Group at Microsoft, describes visualization as “constructive fantasy.” He said when we visualize the Earth, we are not replicating it as it actually is. We are distorting it in a way that adds information to it. These distortions, such as converting the three dimensional Earth into two dimensional maps, have become second nature to us, he explained, and added that this trend will continue as new technologies allow us to build bigger and better visualizations. In the Microsoft application Virtual Earth (now known as Bing Maps for Enterprise, available at www.bing.com/maps/), one area of focus is Denver, Colorado. Over 100,000 buildings and 300,000 trees were accurately placed to model the area for a variety of applications. This level of detail is currently available for other cities and eventually three dimensional maps will

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New Tools for Visualization

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exist for the entire globe. Mr. Gail noted that technology can blur the line between real and virtual worlds. It allows you to conduct experiments in a virtual world that simply are not possible or responsible in the real world. With visualizations, decisions can be made differently from the way they are today, he predicted.

Basics of Color in Visualization

Bonnie Scranton, an information designer, described principles of presenting visual information by separating the individual components of color: value, intensity, and hue. The differences in these qualities change the way the information is presented and the way it is perceived. Poor choices in color can make it difficult to convey information, such as when reproducing color information in black and white. Unless there are differences in color value, the features in the reproduction will not be distinguishable. Keeping the principles of color in mind

when presenting visual information is as important as selecting the methods used to collect the data, she said.

For more information about this seminar, including video cast of the presentation, visit: www.rff.org/events/pages/visualizing_relationships.aspx. 



Resources for the Future is a nonprofit and non-partisan organization that conducts independent research – rooted primarily in economics and other social sciences – on environmental, energy, natural resource and public health issues.

For more information, visit www.rff.org.

DOE-sponsored Environmental Training Offered

Two upcoming environmental training sessions, to be held in the Forrester Building in Washington, DC, will be hosted by DOE field and contractor environmental attorneys, as well as the Office of Conflict Prevention and Resolution and the Assistant General Counsel for Environment (in the Office of General Counsel) and the Office of Environmental Policy and Assistance (in the Office of Health, Safety and Security).

Environmental Conflict Resolution

On September 25, 2009, the U.S. Institute for Environmental Conflict Resolution (the Institute) will facilitate a discussion about environmental conflict resolution (ECR) approaches with DOE ECR programmatic points of contact, DOE and contractor environmental attorneys, and any NEPA Compliance Officers and NEPA Document Managers who are interested. The Institute is an independent and impartial Federal program, with a mission to help organizations find workable solutions to environmental conflicts. ECR offers techniques that can be used to bridge gaps, build relationships, and promote collaboration. The training discussion will highlight best practices, share lessons

learned, and facilitate a conversation about enhancing DOE ECR efforts.

Current Environmental Issues

On October 20–21, 2009, the annual environmental attorneys' training will have audio links for the entire training and a video link for October 20 only. This training, traditionally held for Departmental and contractor environmental attorneys (Continuing Legal Education credits may be available), is being opened to include DOE NEPA practitioners and program staff involved in environmental issues. The agenda will include Native American issues (including ECR), natural resource damages, appropriations related to cleanup activities, energy parks, the Recovery Act, and other environmental issues.

For more information, and to register for either training, NEPA practitioners should contact Beverly Whitehead in the Office of Environmental Policy and Assistance at beverly.whitehead@hq.doe.gov or 202-586-6073, or Steven Miller in the Office of the Assistant General Counsel for Environment at steven.miller@hq.doe.gov or 202-586-2925. 



Transitions: New NCOs

Energy Efficiency and Renewable Energy: Jody Barringer and David Boron

To accommodate a large increase in NEPA compliance activities resulting from the American Recovery and Reinvestment Act (Recovery Act), the Office of Energy Efficiency and Renewable Energy (EERE) has designated two NEPA Compliance Officers (NCOs) who will serve for the duration of the Office's NEPA-related activities associated with the Recovery Act, along with EERE's long-term NCO, Othalene Lawrence.

Jody Barringer joined EERE in August 2008, after serving as a litigator of environmental insurance coverage claims at a Manhattan law firm. Since March, she has been reviewing applications for the State Energy Program, Weatherization Assistance Program, and Energy Efficiency and Conservation Block Grant Program in the Office of Weatherization and Intergovernmental Programs. Ms. Barringer can be reached at jody.barringer@ee.doe.gov or 202-586-5404.

David Boron, a Supervisory Management and Program Analyst, has 15 years of experience as the NEPA coordinator in EERE's Industrial Technologies Program and previously served as environmental compliance officer for the New York State Energy Research and Development Authority. Mr. Boron is a scientist by training; "a technologist and engineer at heart." He brings program and project management experience to complement his environmental duties. He can be reached at david.boron@hq.doe.gov or 202-586-0080.

Golden Field Office: Kristen Kerwin

The Golden Field Office, which also is facing a substantial increase in NEPA compliance activities for Recovery Act projects, has designated Kristen Kerwin as an additional NEPA Compliance Officer. Since joining the Golden Field Office as an Environmental Specialist in 2004, Ms. Kerwin has worked primarily with NCO Steve Blazek on Golden's NEPA activities for EERE programs and the National Renewable Energy Laboratory. Prior to working at Golden, Kristin facilitated water quality projects in the agricultural and non-profit sectors. She can be reached at kristin.kerwin@go.doe.gov or 303-275-4968.

Idaho Operations Office: Richard Kauffman (Interim)

Richard Kauffman was recently designated Interim NCO of the Idaho Operations Office while the Office's long-time NCO, Jack Depperschmidt, serves a detail as Acting Director for the Office's National Security/Science and Technology Division. Mr. Kauffman has 20 years of radiological and environmental experience with DOE and the U.S. Navy's former Mare Island Naval Shipyard as a program manager and facility representative for environmental monitoring, waste management, wastewater, and drinking water. He has worked closely with Mr. Depperschmidt on Idaho's NEPA activities for the past 2 years. "Mr. Depperschmidt mentored my preparation in the NEPA field," says Mr. Kauffman, who can be reached at kauffmrm@id.doe.gov or 208-526-7177.

Kansas City Site Office: David Caughey

After a 4-year hiatus, David Caughey returns as the NCO for the National Nuclear Security Administration's Kansas City Site Office (KCSO), where he has served for 20 years in numerous environment, safety, health, and operational positions – including as NCO from 1995 through 2005. In 1995, as a member of the Environmental Assessment Process Improvement Team, he received a Secretary of Energy NEPA Team Award.

Curtis Roth, the KCSO NCO since 2005, is moving on to Idaho as the Recovery Act Site Representative for the Office of Environmental Management.

National Energy Technology Laboratory: Fred Pozzuto

Fred Pozzuto was designated as an NCO for the National Energy Technology Laboratory (NETL) soon after he joined its new Office of Project Facilitation and Compliance in May. Mr. Pozzuto brings significant NEPA and regulatory experience to DOE, having spent the past 23 years with the U.S. Army Corps of Engineers (Corps), Pittsburgh District, in the Civil Design, Regulatory, and Programs and Project Management Branches. In the Corps' Regulatory Branch, including 3 years as the Chief of the Permit Enforcement and Compliance Section, he oversaw the preparation of

(continued on next page)

DOE-wide NEPA Contracts Small Business Policy

In its administration of the seven DOE-wide, indefinite delivery-indefinite quantity contracts for NEPA support services (www.gc.energy.gov/nepa, under NEPA Contracting), and other such multiple award contracts, the National Nuclear Security Administration’s Headquarters Procurement Office is applying the “Rule of Two” to competitions for task orders. That is, if there are at least two small businesses that could qualify to perform the work at fair market price, a task order worth over \$100,000 will be set aside for competition among the small businesses.

The “Rule of Two” is found in the Federal Acquisition Regulations (FAR), Section 19.502-2(b) (*Total small business set-asides*). The Government Accountability Office found this section to be applicable to task orders under multiple award contracts in an October 2008 decision involving the U.S. Navy and Delex Systems, Inc. (www.gao.gov/decisions/bidpro/400403.pdf). Under similar conditions found in Section 19.502-2(a) of the FAR, a task order exceeding \$3,000 but not \$100,000 is automatically reserved for small businesses.

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 Aneesah Vaughn at aneesah.vaughn@nnsa.doe.gov or 202-586-1815. Information and resources for potential users of these contracts are available on the DOE NEPA Website. 

Description	DOE Contact	Date Awarded	Contract Team
EIS: Continued Operation of the Nevada Test Site and Offsite Locations within the State of Nevada	Linda Cohn, NSO 702-295-0077 cohnl@nv.doe.gov	7/14/2009	Potomac-Hudson Engineering

Transitions: New NCOs (continued from previous page)



numerous EAs and EISs for Clean Water Act permits and activities. His last assignment with the Corps was in the Programs and Project Management Branch, where he served as program manager for several major environmental restoration projects. Mr. Pozzuto can be reached at fred.pozzuto@netl.doe.gov or 304-285-5219.

Fred Pozzuto joins Paul Detwiler, John Ganz, Mark Lusk, and Roy Spears in carrying out NETL’s NEPA responsibilities, which have been greatly increased by projects funded under the Recovery Act.

Southeastern Power Administration: Douglas Spencer

The new NCO for the Southeastern Power Administration (SEPA) is Douglas Spencer, a hydraulic engineer. He joined SEPA in 2003 and has experience in bulk electric system operations, streamflow analysis, and electrical engineering. Mr. Spencer can be reached at douglas.spencer@sepa.doe.gov or 706-213-3855.

SEPA’s former NCO, Herb Nadler, has taken a new position within the organization. 



Litigation Updates

DOE NEPA Litigation in Brief

Court Orders NEPA Review of Proposed LBNL Facility

Construction of the proposed Computational Research and Theory Facility at Lawrence Berkeley National Laboratory (LBNL) remains enjoined following a Federal district court ruling on August 17, 2009. Despite arguments by the University and DOE that the proposed facility is a University of California project, the court found sufficient Federal involvement to require a NEPA review before the project may proceed. Whether an EA or EIS would be required, the court held, is a decision for DOE in the first instance.

The complaint filed in *Save Strawberry Canyon v. DOE, et al.* on July 21, 2008, alleged that DOE violated

NEPA by not preparing an EA or EIS. (See [LLQR, September 2008, page 20.](#)) The plaintiff, Save Strawberry Canyon, is a local citizens' group based in Berkeley, California, whose stated mission is "to preserve and protect the watershed lands and cultural landscape of Strawberry Canyon." The proposed facility would be constructed at LBNL adjacent to Strawberry Canyon.

The parties have 60 days to appeal the decision. (Case No.: 08-03494 (N.D. Cal.))

DOE Settles Distribution Transformer Suit

In December 2007, the State of California, the Sierra Club, and the Natural Resources Defense Council filed a lawsuit against DOE and petitioned the U.S. Court of Appeals for the Ninth Circuit for review of DOE's establishment of energy conservation standards applicable to electrical distribution transformers. The plaintiffs alleged that DOE violated NEPA by failing to prepare an EIS and by relying on an inadequate EA.

In July 2009, DOE and the plaintiffs executed a settlement agreement, which the Court subsequently approved. DOE agreed to conduct a review of the current standards for liquid-immersed and medium-voltage dry-type distribution transformers (72 FR 58190; October 12, 2007) and publish in the *Federal Register*, no later than October 1, 2011, either a determination pursuant to the Energy Policy and Conservation Act that standards for these products do

not need to be amended, or a notice of proposed rulemaking including any new proposed standards for these products. DOE further agreed that if after such review it determines that amendment of the standards is warranted, DOE shall publish in the *Federal Register*, no later than October 1, 2012, a final rule including any amendments to the standards. As part of the settlement, DOE agrees that the promulgation of any new standard will comply with NEPA.

DOE previously prepared *Environmental Assessment for Energy Conservation Standards for Distribution Transformers* (DOE/EA-1565) in October 2007 and issued a Finding of No Significant Impact in November 2007, which were the subject of this suit. (*State of California v. DOE*; Case No.: 07-74819)

Agencies Sued Over Adequacy of Energy Corridors PEIS

The Wilderness Society, 12 other environmental groups, and the County of San Miguel, Colorado, filed a lawsuit on July 7, 2009, against the Department of the Interior, Bureau of Land Management (BLM), Department of Agriculture, U.S. Forest Service (Forest Service), and DOE. Raising claims under the Energy Policy Act of 2005 (EPA) and several Federal environmental laws, the plaintiffs challenge the adequacy of the *Final Programmatic EIS for the Designation of Energy Corridors on Federal Lands in 11 Western States* (DOE/EIS-0386, November 2008), prepared pursuant to Section 368 of EPA, and associated Records of Decision issued by BLM and the Forest Service ([LLQR, March 2009, page 18.](#))

The complaint includes claims under NEPA, the Endangered Species Act, and the Federal Land Policy and Management Act. However, DOE is listed as a defendant only with respect to the plaintiffs' EPA challenges that the agencies failed to (1) consult with other units of government and interested individuals, (2) perform all the necessary environmental reviews, and (3) account for the need for corridors that will improve reliability, relieve congestion, or enhance grid capability. With regard to the NEPA claims, the plaintiffs contend that the Programmatic EIS does not consider all reasonable alternatives and fails to assess the corridors' direct, indirect, and cumulative environmental impacts. (*The Wilderness Society v. Interior*; Case No.: 09-03048 (N.D. Cal.))

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Other Agency NEPA Litigation

Court Vacates Amendments to FERC NEPA Regulations; Orders Consultation with CEQ

The U.S. Court of Appeals for the Fourth Circuit overturned the Federal Energy Regulatory Commission's (FERC) interpretation of its authority under Section 216 of the Federal Power Act¹ with respect to siting electric transmission facilities and vacated the NEPA regulations FERC had established to implement this authority. Section 216 of the Federal Power Act grants FERC permitting jurisdiction for the construction or modification of electric transmission facilities in national interest electric transmission corridors when a state has "withheld approval [of a permit application] for more than one year." FERC interpreted this phrase to include a state's denial of a permit within this time frame.

The plaintiffs, two state utilities commissions and two community interest organizations, challenged: (1) FERC's Section 216 interpretation, (2) FERC's failure to prepare an EA or EIS before issuing its final rule for filing applications to site electric transmission facilities, (3) FERC's failure to consult with the Council on Environmental Quality (CEQ) before revising its NEPA regulations contained in the final rule for filing

applications, and (4) FERC's restriction, in its revised NEPA regulations, of the environmental impacts and project alternatives that permit applicants are required to evaluate.

In its February 18, 2009, decision, the court held that FERC cannot exercise siting jurisdiction if a state siting authority denies an application within a year after the application is filed. The court affirmed FERC's determination that it did not need to prepare an EA or EIS when issuing procedural regulations pertaining to Section 216 permit applications, but concluded that FERC violated CEQ's NEPA regulations by not consulting with CEQ before amending its (FERC's) NEPA regulations. The court vacated FERC's amendments to its NEPA regulations and remanded FERC to consult with CEQ. As a result of its decision to vacate FERC's NEPA regulations amendments, the court dismissed without prejudice the plaintiffs' challenge to the content of the NEPA regulations, declaring it not ripe for consideration and resolution. (*Piedmont Environmental Council v. FERC*; Case No.: 07-1651) 

Supreme Court Declines To Review Tribes' Challenge to Artificial Snowmaking

The Supreme Court denied an American Indian tribe petition to review a decision by the U.S. Court of Appeals for the Ninth Circuit sitting *en banc* (the full court), leaving in place the *en banc* court's August 8, 2008, decision regarding the use of artificial snow made from treated sewage effluent at a northern Arizona ski resort located on U.S. Forest Service land. The *en banc* court upheld the district court's ruling in favor of the Forest Service for four NEPA claims challenging the adequacy of the related EIS with regard to (1) the range of reasonable alternatives, (2) response to a responsible opposing scientific viewpoint, (3) consideration of the impact of diverting wastewater on the regional aquifer, and (4) consideration of social and cultural impacts. Regarding a fifth NEPA claim that the Forest Service's EIS did not adequately assess the risks posed by possible human ingestion of artificial snow made from treated

sewage effluent, the *en banc* court ruled that it could not consider the claim due to procedural error by the plaintiffs.

The *en banc* court's decision reversed the March 2007 decision of the three-judge panel of the Court of Appeals for the Ninth Circuit that the Forest Service placed a "substantial burden" on the free exercise of religion, violated the Religious Freedom and Restoration Act, and did not fulfill its obligations under NEPA with regard to the fifth NEPA claim (*LLQR*, [September 2007, page 19](#)). For additional details regarding the *en banc* court's findings related to the Religious Freedom and Restoration Act, see the full opinion on the court's website at www.ca9.uscourts.gov/opinions by entering 08/07/2008 as date filed under "Advanced Search." (*Navajo Nation v. USDA Forest Service*; Case No.: 06-15371) 



¹ Section 216 of the Federal Power Act was established by Section 1221 of the Energy Policy Act of 2005.

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.

- American Law Institute and American Bar Association
800-253-6397 (course reference code CR009)
www.ali-aba.org
Environmental Impact Assessment: NEPA and Related Requirements
Washington, DC: December 9-11
\$1,149 (\$949 webcast)
- Continuing Legal Education
800-873-7130
www.cle.com
NEPA Seminar
Denver, CO: December 3-4
\$695
Portland, OR: December 11
\$595
San Francisco, CA: January 21-22
\$795
- International Association for Public Participation
703-837-1197
iap2training@theperspectivesgroup.com
www.iap2.org
Planning for Effective Public Participation
San Diego, CA: September 16-17
Ann Arbor, MI: October 5-6
Orlando, FL: October 19-20
Charlotte, NC: November 2-3
\$700
Communications for Effective Public Participation
San Diego, CA: September 18
Ann Arbor, MI: October 7
Charlotte, NC: November 4
\$350
Outrage, Emotion, and Public Participation
San Diego, CA: September 18-19
\$850
- 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
Accounting for Cumulative Effects in the NEPA Process
Durham, NC: September 16-18
\$875
Implementation of NEPA
Durham, NC: November 2-6
\$1,200
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 course registration.
- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org
NEPA: Writing the Perfect EA/FONSI or EIS
Santa Fe, NM: October 8-9
Atlanta, GA: October 21-22
Pasadena, CA: November 5-6
Denver, CO: December 3-4
\$495 (\$395 for Federal employees)
- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
Applying the NEPA Process and Writing Effective NEPA Documents
Park City, UT: September 15-18
San Francisco, CA: November 3-6
\$1,145 (GSA contract: \$1,055)
see website for details
Reviewing NEPA Documents and Managing NEPA Projects and Teams
Las Vegas, NV: September 28-October 2
\$1,385 (GSA contract: \$1,295) until 9/18/09
see website for details

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Training Opportunities

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Clear Writing for NEPA Specialists

Reno, NV: October 6-8
\$945 (GSA contract: \$855) until 9/26/09
see website for details

Overview of the NEPA Process and Cultural and Natural Resources Management

Park City, UT: October 20-22
\$945 (GSA contract: \$855) until 9/8/09
see website for details

NEPA Climate Change Analysis and NEPA Cumulative Effects Analysis and Documentation

Baltimore, MD: October 27-30
\$1,145 (GSA contract: \$1,055) until 9/15/09
see website for details

NEPA Certificate Program

Requires successful completion of four core and three elective courses offered by The Shipley Group.
\$5,450
Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922; judy.kurtzman@usu.edu; www.cnr.usu.edu/html/students/grad-degrees/nepa/

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

Advanced Topics in NEPA: Project Management

Pasadena, CA: October 8-9
\$695

Comprehensive NEPA

San Diego, CA: November 4-6
\$795

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

Introduction to Managing Environmental Conflict

Washington, DC: September 15-16
\$995

Customized NEPA Training

- Environmental Impact Training
512-963-1962
info@eiatraining.com
www.eiatraining.com

Environmental Impact Training

Courses cover various NEPA topics (see website for details). Topics can be combined to meet the specific training needs of client.

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

NEPA Toolbox Training

A variety of courses custom-designed to meet specific needs and are conducted at the requestor's facility (see website for individual courses). Services are available through a GSA contract.

NEPA Distance Learning Curriculum

ETCI offers a Distance Learning Curriculum which covers selected NEPA and environmental impact assessment topics through modules that can be accessed via podcast.
No fee

- Environmental Planning Strategies, Inc.
563-332-6870
jleeeps@mchsi.com
www.jlee-eps.com/workshops.php
Courses cover a variety of NEPA topics (see website for individual courses).

EAs and EISs Completed April 1 to June 30, 2009¹

EAs

Bonneville Power Administration

[DOE/EA-1636 \(5/6/09\)](#)²

[\[Revision sheet for final EA\]](#)

Albany-Burnt Woods and Santiam-Toledo Pole Replacement Project, Oregon

Cost: \$10,000

Time: 8 months

Office of Energy Efficiency and Renewable Energy

[DOE/EA-1662 \(4/8/09\)](#)

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products and for Certain Commercial and Industrial Equipment, Washington, DC

Cost: \$20,000

Time: 6 months

[DOE/EA-1664 \(6/26/09\)](#)

Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamps and Incandescent Lamps, Washington, DC

Cost: \$50,000

Time: 5 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1648 \(4/10/09\)](#)

White Earth Nation Wind Energy Project, Becker County, White Earth Indian Reservation, Minnesota

Cost: \$50,000

Time: 34 months

Office of Nuclear Energy

[DOE/EA-1607 \(6/24/09\)](#)

Disposition of DOE Excess Depleted Uranium, Natural Uranium, and Low Enriched-Uranium

Cost: \$158,000

Time: 19 months

Western Area Power Administration

DOE/EA-1641 (5/8/09)

Proposed Interconnection for the East Flagstaff Substation, Coconino County, Arizona

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

Time: 7 months

[The U.S. Forest Service was the lead Federal agency. WAPA adopted this EA and issued a FONSI on 5/8/09.]

[DOE/EA-1644 \(6/17/09\)](#)

Killdeer to Mountain Transmission Project, North Dakota

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

Time: 6 months

DOE/EA-1672 (6/25/09)

Basin Electric Power Cooperative Culbertson Combustion Turbine Generator Project, North Dakota

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

Time: 16 months

EIS

Western Area Power Administration

DOE/EIS-0377 ([74 FR 30570](#), 6/26/09)

(EPA Rating: EC-2)

Big Stone II Power Plant and Transmission Project, South Dakota

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

Time: 49 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.)

¹ As a new feature for online readers, blue text indicates a link to the document.

² The final EA includes the pre-approval draft EA and the revision sheet.

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 5 EAs for which cost data were applicable was \$50,000; the average cost was \$58,000.
- Cumulatively, for the 12 months that ended June 30, 2009, the median cost for the preparation of 22 EAs for which cost data were applicable was \$50,000; the average cost was \$87,000.
- For this quarter, the median completion time for 8 EAs was 8 months; the average was 13 months.
- Cumulatively, for the 12 months that ended June 30, 2009, the median completion time for 32 EAs was 7 months; the average was 14 months.

EIS Cost and Completion Times

- For this quarter, there were no EISs completed for which cost data were applicable.
- Cumulatively, for the 12 months that ended June 30, 2009, the median cost for the preparation of 6 EISs for which cost data were applicable was \$4 million; the average cost was \$5.4 million.
- For this quarter, the completion time for one EIS was 49 months.
- Cumulatively, for the 12 months that ended June 30, 2009, the median completion time for 8 EISs was 34 months; the average was 35 months.

Recent EIS-Related Milestones (June 1 to August 31, 2009)¹

Notices of Intent

Bonneville Power Administration

DOE/EIS-0421

Big Eddy-Knight Transmission Project, Wasco County, Oregon and Klickitat County, Washington
June 2009 ([74 FR 26679](#), 6/3/09)

DOE/EIS-0422

Central Ferry-Lower Monumental 500 kV Transmission Line Project, Garfield, Columbia and Walla Walla Counties, Washington
June 2009 ([74 FR 29205](#), 6/19/09)

DOE/EIS-0424

Klickitat Hatchery Program, Klickitat and Yakima Counties, Washington
July 2009 ([74 FR 34740](#), 7/17/09)

DOE/EIS-0425

Mid-Columbia Coho Restoration Project, Chelan and Okanogan Counties, Washington
July 2009 ([74 FR 38001](#), 7/30/09)

Office of Environmental Management

DOE/EIS-0423

Long-Term Management and Storage of Elemental Mercury

July 2009 ([74 FR 31723](#), 7/2/09)

[Extension of Scoping Period: [74 FR 36684](#), 7/24/09]

National Nuclear Security Administration

DOE/EIS-0426

Continued Operation of the Department of Energy/ National Nuclear Security Administration Nevada Test Site and Off-Site Locations in the State of Nevada

July 2009 ([74 FR 36691](#), 7/24/09)

Western Area Power Administration

DOE/EIS-0427

Interconnection of the Grapevine Canyon Wind Project, Coconino County, Arizona

July 2009 ([74 FR 36689](#), 7/24/09)

Extension of Scoping Period

Western Area Power Administration

DOE/EIS-0411

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

June 2009 ([74 FR 30559](#), 6/26/09)

Notice of Cancellation

Office of Nuclear Energy

DOE/EIS-0396

Global Nuclear Energy Partnership Programmatic Environmental Impact Statement

June 2009 ([74 FR 31017](#), 6/29/09)

¹ As a new feature for online readers, blue text indicates a link to the document.

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Recent EIS-Related Milestones (continued from previous page)

Draft EIS

Western Area Power Administration

DOE/EIS-0398
Delta Mendota Canal California Aqueduct Intertie (DCI) Project, California
July 2009 ([74 FR 34754](#), 7/17/09)

Extension of Public Comment Period

Office of Environmental Management

DOE/EIS-0226-D (Revised)
Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center
June 2009 ([74 FR 28035](#), 6/12/09)
[Availability of EPA comments: [74 FR 29209](#), 6/19/09; EPA Rating, EC-1]

Records of Decision

Bonneville Power Administration

DOE/EIS-0183
Electrical Interconnection of the Golden Hills Wind Project, Oregon
August 2009 ([74 FR 42667](#), 8/24/09)

Office of Fossil Energy

DOE/EIS-0394
FutureGen Project
July 2009 ([74 FR 35174](#), 7/20/09)

National Nuclear Security Administration

DOE/EIS-0380
Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico
July 2009 ([74 FR 33232](#), 7/10/09)

Western Area Power Administration

DOE/EIS-0377
Big Stone II Power Plant and Transmission Project, South Dakota
August 2009 ([74 FR 42667](#), 8/24/09)

Supplement Analyses

Bonneville Power Administration

Lyle Falls Fish Passage Project (DOE/EIS-0397)

DOE/EIS-0397/SA-001
Supplement Analysis for the Proposed Lyle Falls Fish Passage Project, Washington
(Decision: No further NEPA review required)
July 2009

Transmission System Vegetation Management Program

(DOE/EIS-0285)

DOE/EIS-0285/SA-396*
Vegetation Management along the Lancaster-Noxon Transmission Line Corridor, Montana
(Decision: No further NEPA review required)
March 2009

DOE/EIS-0285/SA-397*
Vegetation Management along the Noxon-Libby Transmission Line Corridor, Montana
(Decision: No further NEPA review required)
March 2009

DOE/EIS-0285/SA-398*
Vegetation Management along the Cardwell-Cowlitz No. 1 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
April 2009

DOE/EIS-0285/SA-399*
Vegetation Management along the Transmission Lines in Kittitas County, Washington
(Decision: No further NEPA review required)
May 2009

DOE/EIS-0285/SA-400
Vegetation Management along Dworshak Power House Transmission Line Corridor, Idaho
(Decision: No further NEPA review required)
June 2009

DOE/EIS-0285/SA-401
Vegetation Management along Taft-Bell Transmission Line Corridor, Montana and Idaho
(Decision: No further NEPA review required)
July 2009

DOE/EIS-0285/SA-402
Vegetation Management along South Tacoma, Cowlitz Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
July 2009

DOE/EIS-0285/SA-403
Vegetation Management along Cowlitz to Chehalis-Covington Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
July 2009

**Not previously reported in LLQR*

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.

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

- *Meeting format.* The open house format of public scoping meetings aided in the collection of public concerns regarding the project.

Data Collection/Analysis

What Worked

- *Climate change analysis.* The climate change discussion was developed based on the work of the Intergovernmental Panel on Climate Change. The EIS provided background on climate change, potential impacts associated with global climate change, efforts to curb greenhouse gas emissions, the anticipated project emissions and associated carbon dioxide offsets, and scientific uncertainties related to project impact measurement.
- *Issue-focused EIS section.* We provided in-depth responses to comments regarding mercury emissions in the EIS by including a separate section known as the "mercury response paper."

Schedule

Factors that Facilitated Timely Completion of Documents

- *Project schedule.* The project schedule prompted the staff working on the EIS to increase their efforts to complete the NEPA process.
- *Scheduling.* Effective scheduling minimized disruptions.
- *Regular schedule updates.* The schedule was set by the contractor and updated several times to reflect a more reasonable timeline for completion in light of numerous issues (climate change, alternatives, mercury) and to coordinate with concurrent processes undertaken by state agencies.

- *One-on-one working relationships.* Controversial issues were managed most efficiently when agency team members with expertise in an issue area worked directly with the corresponding contractor.

Factors that Inhibited Timely Completion of Documents

- *Internal review times.* The time needed for internal reviews led to schedule delays. A large number of people needed to review the document at different stages throughout the EA process. While this facilitates a well done NEPA document, it does slow things down.
- *Uncertainties.* The evolving legal and scientific issues surrounding climate change and mercury emissions required more time to be spent on related sections of the EIS.
- *Lengthy, inefficient group meetings.* The EIS preparation contractor scheduled meetings in which all agency comments were addressed line-by-line and vetted by the entire DOE and contractor team, leaving no time for group discussion of critical areas of controversy. Most discussion issues could have easily been resolved by the contractor alone or by the contractor speaking individually with the DOE team member who made the comment.

Teamwork

Factors that Facilitated Effective Teamwork

- *Regular informal meetings.* Weekly meetings allowed discussion of progress and problems and the efficient allocation and completion of work. Moreover, small group meetings allowed an easier exchange of ideas with respect to potential issues.
- *Delineation of work.* The process worked well when DOE and contractors who were assigned to the same sections of the EIS worked together.

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

Factors that Inhibited Effective Teamwork

- *Large group meetings.* In large meetings, contractors who had little or no NEPA experience spent time arguing ideological points that did not aid in the efficient completion of the tasks at hand.

Process

Successful Aspects of the Public Participation Process

- *Public notification.* Distribution of informational letters to the public facilitated a better understanding of the process and the project specifics.
- *Site visits enhance project understanding.* Stakeholders were able to view the project locations from site visits and from maps which helped them see the overall picture and how the project would impact them.
- *Focus on process.* The public participation process was enhanced by focusing on the process and not the public reaction(s) to the project.
- *Response to comments.* Comment periods were extended and the Draft EIS was reissued in order to address stakeholder concerns.

Unsuccessful Aspects of the Public Participation Process

- *Length of comment period.* Several groups requested additional time to comment which lengthened the overall schedule.
- *Tribal communication.* Although Native American Tribes were contacted, numerous comments indicated that the tribes did not view this process as effective.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Agency consultation.* The EA process identified areas where endangered species were found.
- *Environmental impact evaluation.* The impact analyses aided in the decision of whether to grant the interconnection request.

Enhancement/Protection of the Environment

- *Habitat protected.* Critical habitat and other resources were protected through the EA process.
- *Environmental impacts minimized.* The EIS process encouraged the development of additional alternatives, which resulted in a proposed project that would use less water, emit less mercury, and would offset a portion of carbon dioxide emissions.

Other Issues

Guidance Needs Identified

- *Mercury and climate change guidance.* Because the science and legal issues surrounding climate change and mercury impacts are evolving, guidance is needed to show document preparers how to compile the analysis. The team essentially created the climate change methodology from scratch.

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.

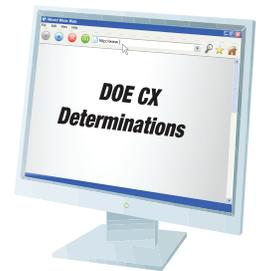
For the past quarter, only one respondent rated the effectiveness of the NEPA process. The respondent rated the process as “4” and stated that the NEPA process was successful because it caused critical habitat areas to be avoided and the mitigation of impacts to other resources.

LESSONS LEARNED

December 1, 2009; Issue No. 61

Fourth Quarter FY 2009

DOE Begins Online Posting of Categorical Exclusion Determinations



The Department of Energy (DOE) is now posting most of its categorical exclusion (CX) determinations on the web under a policy that went into effect November 2, 2009. In establishing the policy, Deputy Secretary Daniel B. Poneman referred to President Obama's commitment to "creating an unprecedented level of openness in Government," including by posting information online. "Such openness is especially important when the information relates to the Department's compliance with the National Environmental Policy Act (NEPA)," Deputy Secretary Poneman wrote in his October 2, 2009, memorandum on NEPA Process Transparency and Openness.

One of the primary purposes of [NEPA] is to inform the public about the environmental implications of government decisions.

*— Deputy Secretary Daniel B. Poneman
October 2, 2009, Memorandum*

A CX is a category of actions that an agency has determined do not individually or cumulatively have a significant effect on the human environment and, thus, do not require preparation of an environmental assessment (EA) or environmental impact statement (EIS). A CX determination is the decision by a DOE NEPA Compliance Officer (NCO) that a proposed action fits within one or more CXs, other requirements for a CX in DOE NEPA regulations (10 CFR Part 1021) are met, and the action is categorically excluded from further NEPA review.

The new policy is to document and post all determinations based on CXs listed in Appendix B to Subpart D of DOE's NEPA regulations. Determinations based on CXs listed in

Appendix A, which are primarily administrative actions, are not required to be documented or posted. The Office of the General Counsel proposed this new policy as part of its initiative to improve transparency in the DOE NEPA process (*LLQR*, September 2009, page 1).

The DOE NEPA Website provides links to web pages where CX determinations are being posted by Program and Field Offices (www.gc.energy.gov/nepa under DOE NEPA Documents, then Categorical Exclusion Determinations). As of November 30, more than 180 CX determinations have been posted online. The Website also includes a link to Deputy Secretary Poneman's policy memorandum, a *Federal Register* notice announcing the policy to the public (October 9, 2009; 74 FR 52129), and related documents.

Implementation Approaches Vary

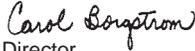
The Office of NEPA Policy and Compliance, in consultation with the Office of the Assistant General Counsel for Environment and with input from NCOs, distributed implementation guidance to facilitate compliance with the new policy in mid-October. The guidance clarifies that the policy applies only to CX determinations made after November 2, 2009, but notes that NCOs may choose to post earlier CX determinations, such as those for Recovery Act projects in light of the extraordinary interest. (More than 155 CX determinations for Recovery Act projects have been posted, including 44 issued before November 2.) The policy requires CX determinations to be posted within 2 weeks, unless additional time is needed to protect classified, confidential, or otherwise exempt information. The guidance explains that posted CX determinations should remain online as long as the action may be of interest.

(continued on page 8)

Inside **LESSONS LEARNED**

Welcome to the 61st quarterly report on lessons learned in the NEPA process. In this issue, we highlight many of the ways that the NEPA process furthers transparency in government decisionmaking. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

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Carol Sorption
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, 2010. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2010

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2010 (October 1 through December 31, 2009) should be submitted by February 1, 2010, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at www.gc.energy.gov/nepa. Also on the website is a cumulative index.

Printed on recycled paper



This icon indicates that *LLQR* online (www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.



Mark Your Calendar: Upcoming Conference

NAEP To Celebrate NEPA at 40

The National Association of Environmental Professionals (NAEP) 2010 conference will be held April 27–30 in Atlanta, with a focus on *Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment*. Additional sessions will explore diverse topics, including energy and renewable energy issues, environmental policy, public involvement, and sustainability. Registration and additional information will soon be available at www.naep.org.



As a result of a reorganization within the Office of the General Counsel, announced October 26, 2009, the Office of NEPA Policy and Compliance now reports to the Deputy General Counsel for Environment and Nuclear Programs. The new organization code is GC-54 (formerly GC-20).

Correction: *LLQR*, September 2009: The citation in the last paragraph of page 3 should be corrected to “Section 1609(c).”



CEQ Reports Timely NEPA Reviews for Recovery Act

Federal agencies “have risen to the challenge of expeditious NEPA compliance” for projects and activities (projects) that receive funding through the American Recovery and Reinvestment Act (Recovery Act), wrote Nancy Sutley, Chair of the Council on Environmental Quality (CEQ), in a memorandum to Federal agency heads on November 20, 2009. “Your efforts in meeting this challenge are commendable and demonstrate the concerted commitment of countless individuals responsible for preparing the NEPA actions as well as for transmitting the quarterly reports,” she continued. Chair Sutley was referring to information in CEQ’s third report to Congress on the NEPA status of projects receiving Recovery Act funds.

The report to Congress summarizes the NEPA status of more than 145,000 projects. Through September 30, Federal agencies completed about 134,000 categorical exclusion (CX) determinations, 4,600 EAs, and 670 EISs¹ related to Recovery Act projects, and concluded that NEPA is not applicable to about 3,500 other projects. These projects together involve obligations of more than \$170 billion in Recovery Act funds. In addition, CEQ reported that about 7,600 NEPA reviews are pending, including approximately 5,200 CX determinations, 2,300 EAs, and 90 EISs.

... timely reporting has provided transparency and accountability.

*– Nancy Sutley, Chair
Council on Environmental Quality*

EERE Leads DOE Progress

DOE completed more than 1,800 NEPA reviews for Recovery Act projects during the quarter ending September 30, including making CX determinations for all or part of 1,560 applications in the Energy Efficiency and Conservation Block Grant Program managed by the Office of Energy Efficiency and Renewable Energy (EERE). This success was due to the efforts of NEPA Compliance Officers from several DOE sites that assisted EERE with application reviews ([LLQR, September 2009, page 1](#)).

The Office of Science also made significant progress during the quarter, both by making new CX determinations and by concluding that existing CX determinations and EAs adequately address the work proposed for funding under the Recovery Act. DOE’s report to CEQ indicates that nearly all NEPA reviews for Science’s Recovery Act projects are complete.

At CEQ’s request, DOE included in its report an explanation of NEPA reviews that had been pending

for more than 3 months. This included 6 CX determinations, 11 EAs, and 5 EISs. These reviews had not been completed for three primary reasons: application review was still ongoing, DOE was awaiting sufficient project information to finalize the review, and the NEPA process was proceeding through the normal steps (e.g., public review).

Future Reports To Identify Benefits of NEPA Review

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through December 31, 2009. Federal agency reports are due to CEQ by January 15, 2010, and CEQ will submit the report to Congress in February.

Over the summer, DOE received applications for competitive solicitations for Recovery Act funding (e.g., for advanced battery manufacturing, carbon sequestration, geothermal energy development). DOE’s next two reports to CEQ will identify the new EAs and EISs required for these applications. For example, the National Energy Technology Laboratory in November 2009 initiated 18 EAs for applications received under the advanced battery manufacturing solicitation. This is consistent with a trend that CEQ noted in its November 2 report that “many agencies continue to exhaust their ‘shovel ready’ projects which have completed environmental analyses and are fully permitted, approved, and ready for implementation” and are shifting to projects that “can be expeditiously developed and reviewed for implementation.”

DOE’s future reports also will continue to explain the status of ongoing NEPA reviews. CEQ has revised its guidance to require identification of any NEPA reviews pending over multiple reports, an explanation why they remain pending in more than one quarterly report, and a summary of progress made since the last report.

In addition, Chair Sutley explained in her memorandum that agencies must now “provide examples of the benefits provided as a result” of NEPA reviews. “The intent of the NEPA process is to help public officials make decisions that are based on an understanding of the environmental consequences of those decisions and take actions that protect, restore and enhance the environment,” she wrote.

The CEQ reports to Congress are available at www.nepa.gov. For more information, contact Brian Costner, DOE Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924.

¹ CEQ reports that the number of EISs is lower than in the previous report due to an error that identified the total number of projects analyzed in a programmatic EIS as the total number of EISs; this error did not affect DOE’s report.

DOE Issues Comprehensive Draft EIS for Hanford Tank Closure and Waste Management

By: Carrie Moeller, Office of NEPA Policy and Compliance

The much-anticipated Draft Tank Closure and Waste Management EIS for the Hanford Site, Richland, Washington (Draft TC & WM EIS) was issued by DOE, in cooperation with the State of Washington's Department of Ecology (Ecology), in late October for a 140-day public comment period. This complex EIS includes the scope of three earlier EIS efforts (text box) and will inform DOE decisionmaking on the management of radioactive waste at the Hanford Site.

Working closely with Ecology in preparing the Draft TC & WM EIS, DOE shared data and analyses, allowing Ecology to independently verify EIS methodologies and results. In a Foreword to the Draft EIS, Ecology stated, “[b]ased on [our] involvement to date, we believe that positive changes have been made to address data quality shortcomings in the [Hanford Solid Waste] EIS.”

The information in this document will help shed light on many key decisions that remain to be made about the Hanford Site cleanup.

– State of Washington's Department of Ecology, describing the importance of the Tank Closure and Waste Management EIS in its Foreword

Origins of the TC & WM EIS

While responding to the State of Washington's discovery requests for ongoing litigation in 2005 concerning the *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program EIS* (DOE/EIS-0286, January 2004), DOE identified significant quality issues in the groundwater analysis in that EIS. DOE agreed in a 2006 settlement agreement with the State of Washington to prepare a single EIS that would provide an integrated evaluation of proposed waste management activities at Hanford and a comprehensive, site-wide reanalysis of groundwater impacts. DOE subsequently issued a Notice of Intent to prepare the TC & WM EIS in February 2006. (See [LLQR, March 2006, page 1.](#))

DOE incorporated lessons learned from its experience with the Hanford Solid Waste EIS and the related quality assurance issues for the groundwater analysis, and



The Hanford Site's single-shell underground storage tank system was built from 1943–1964. The Draft EIS analyzes the potential environmental impacts of closure of Hanford's 149 single-shell tanks.

used its relationship with Ecology, an agency with extensive technical expertise and knowledge of the Hanford Site, to help ensure the adequacy of the Draft TC & WM EIS analyses.

Ecology Explains View in Foreword to EIS

In its Foreword to the Draft TC & WM EIS, Ecology outlined its role as a cooperating agency, explained its regulatory relationship, and identified areas of agreement, disagreement, and concern with regard to tank closure and waste management at the Hanford Site. Ecology agreed with the overall modeling approaches for vadose zone and groundwater analyses, the methods for evaluating and using waste inventory data, and the EIS's technical guidance document, which focuses on parameters shown to be important to the groundwater analysis. Ecology, however, underscored concerns it has regarding the “significant uncertainty” surrounding high-level radioactive waste (HLW) disposal, and EIS assumptions for a particular supplemental treatment technology for low activity waste, among other things.

After issuance of the Final TC & WM EIS, Ecology will determine if the EIS can be adopted in whole or in part to satisfy the requirements of the Washington State Environmental Policy Act. (Ecology may revise its Foreword in the Final TC & WM EIS.)

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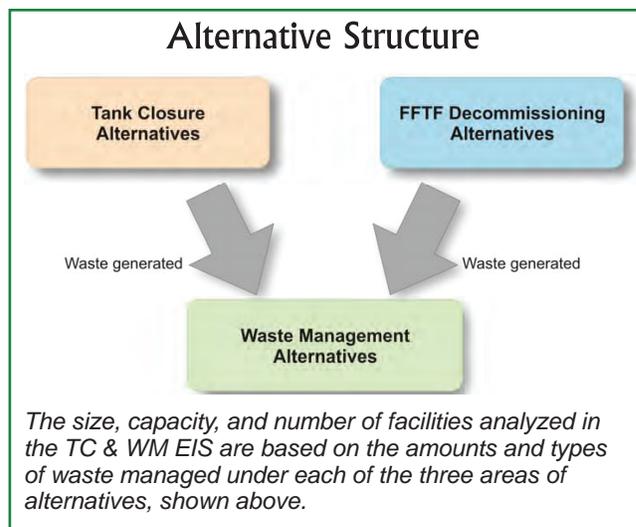
Hanford Tank Closure *(continued from previous page)*

Three Sets of Actions Analyzed

The Draft TC & WM EIS considers three sets of actions: waste management, decommissioning of the Fast Flux Test Facility (FFTF) – a nuclear test reactor, and tank treatment and closure. CEQ regulations require an agency to identify its preferred alternative(s), if one or more exists, in a draft EIS (40 CFR 1502.14(e)). DOE has identified preferred alternative(s) for each of the three sets of actions.

Waste Management – Preferred Alternative Includes Proposed Settlement’s Off-Site Waste Limitation

DOE and the States of Washington and Oregon announced a new proposed legal settlement in August 2009, which includes milestones for managing radioactive waste at the Hanford Site that will go into effect under the Tri-Party



(continued on next page)

Scope and Alternatives of the Draft Tank Closure and Waste Management EIS

The approximately 6,200-page Draft TC & WM EIS includes the scope of two previously-ongoing EISs (the Tank Closure EIS and the Fast Flux Test Facility (FFTF) Decommissioning EIS) and one completed EIS (the Hanford Solid Waste EIS¹). Also, the Draft TC & WM EIS contains a site-wide, quantitative analysis of the cumulative impacts of other past, present, and reasonably foreseeable actions at Hanford.

The Draft TC & WM EIS analyzes alternatives in three areas: tank closure (11 alternatives), FFTF decommissioning (3 alternatives), and waste management (3 alternatives) – a total of 17 alternatives.

- 1. Tank closure**, including retrieving and managing radioactive waste from the 177 underground storage tanks and closure of the single-shell tank system (149 of 177 tanks). The Draft TC & WM EIS:
 - Analyzes alternatives for removing, treating, and packaging the waste, and closing the single-shell tank system, and
 - Builds on analyses initiated in 2003 for the Tank Closure EIS.
- 2. Decommissioning of FFTF**, a nuclear test reactor, and its ancillary facilities. The Draft TC & WM EIS:
 - Analyzes alternatives for dismantling and removing FFTF-related structures, equipment, and materials; treating and disposing of these components and equipment; and closing the area permanently, and
 - Completes the analyses initiated in 2004 for the FFTF Decommissioning EIS.
- 3. Continued and expanded solid waste management operations**, including the disposal of Hanford’s low-level radioactive waste (LLW) and mixed low-level radioactive waste (MLLW) and limited volumes of LLW and MLLW from other DOE sites. The Draft TC & WM EIS:
 - Analyzes alternatives for continued storage of LLW, MLLW, and transuranic waste at Hanford, onsite waste processing, disposal of onsite-generated waste in new onsite facilities, and closure of disposal facilities, and
 - Updates and revises the 2004 Hanford Solid Waste EIS analyses, including a re-evaluation of potential impacts from on-site disposal of low-level and mixed low-activity radioactive waste.

¹ DOE published a NOI for the EIS for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, Washington (Tank Closure EIS) (68 FR 1052) and the EIS for the Decommissioning of the Fast Flux Test Facility at the Hanford Site, Richland, Washington (FFTF Decommissioning EIS) (69 FR 50176) in January 2003 and August 2004, respectively. In the June 2004 Record of Decision for the Hanford Solid Waste EIS (69 FR 39449), DOE decided to dispose of Hanford LLW and MLLW and a limited volume of off-site LLW and MLLW in a new integrated disposal facility in the 200-East Area at Hanford. Upon completion, the Final TC & WM EIS will supersede the Hanford Solid Waste Final EIS (per the 2006 settlement agreement).

Hanford Tank Closure (continued from previous page)

Agreement¹ once a new Consent Decree (also part of the proposed settlement) is approved by the court. In the proposed settlement, which is open for public comment until December 11, DOE agreed to identify a preferred alternative in the EIS that would include limitations and exemptions to off-site waste importation to Hanford until at least the Waste Treatment Plant is operational.² DOE explained in the Draft TC & WM EIS that it prefers disposal of onsite-generated low-level radioactive waste (LLW) and mixed low-level radioactive waste (MLLW) in a single integrated disposal facility.

FFTF Decommissioning – Entombment Preferred

For decommissioning of FFTF, DOE identified the “entombment” alternative as preferred, which would remove all above-grade structures, including the reactor building, and allow below-grade structures to “remain in place” and be filled with grout. Also, remote-handled special components from FFTF would be processed at DOE’s Idaho National Laboratory, but FFTF’s bulk sodium inventories would be processed at Hanford.

Tank Closure – Range of Preferred “Options”

DOE does not have a specific preferred alternative for tank closure. Rather, DOE identified a range of preferred retrieval, treatment, closure, and storage options, and the Draft TC & WM EIS identifies the tank closure alternatives that satisfy each of DOE’s preferred options.

Specifically, DOE prefers the tank closure alternatives that would:

- Retrieve at least 99% of the tank waste
- Allow for separation and segregation of tank waste for management and disposition as LLW and HLW
- Involve “landfill closure” (as opposed to clean closure) of the single-shell tanks, and
- Ship immobilized HLW canisters for disposal off site.

New Direction

As indicated in the Obama Administration’s fiscal year 2010 budget request, the Administration intends to terminate the Yucca Mountain program – development of the site as a geologic repository for the disposal of HLW and spent nuclear fuel (SNF) – while developing nuclear waste disposal alternatives. DOE remains committed to meeting its obligations to manage and ultimately dispose of HLW and SNF. Further, the Administration intends to convene a blue ribbon commission to evaluate alternative approaches for meeting these obligations and provide recommendations that will form the basis for working with Congress to revise the statutory framework for managing and disposing of HLW and SNF.

In response to this new direction, DOE modified the preliminary Draft TC & WM EIS, removing the assumption and corresponding analyses that HLW would be sent to a geologic repository for disposal. The Draft EIS findings are not affected by plans to study HLW disposition alternatives because the analysis shows that vitrified HLW can be safely stored at Hanford for many years.

Next Steps

DOE plans to hold a series of public hearings in the new year, to be announced in a *Federal Register* notice and via other means, such as in local media, during the public comment period that ends March 19, 2010. The proposed settlement agreement is available on the DOE Office of River Protection’s website on the Events Calendar at www5.hanford.gov/hanford/eventcalendar. The Draft TC & WM EIS is available on both the DOE NEPA Website at www.gc.energy.gov/nepa and the Office of River Protection’s website at www.hanford.gov/orp (click on “Tank Closure & WM EIS Info”). For further information about the Draft TC & WM EIS, please contact Mary Beth Burandt, NEPA Document Manager, at 509-372-7772. 

¹ The Tri-Party Agreement, also known as the Hanford Federal Facility Agreement and Consent Order, is an agreement originally signed in 1989 by DOE, the U.S. Environmental Protection Agency, and Ecology that identifies milestones for key environmental restoration and waste management actions at the Hanford Site. A consent decree, which is filed in court, is a legally-enforceable document containing specific commitments.

² The Waste Treatment Plant refers to facilities being constructed in Hanford’s 200-East Area that will thermally treat and immobilize tank waste. In late October, in response to stakeholder concerns as to why the limitation on importing off-site waste to Hanford until the Waste Treatment Plant is operational did not include Greater-than-Class-C waste, DOE issued a statement that even though the proposed settlement agreement did not cover this type of waste, Greater-than-Class-C waste will not be imported to Hanford for the duration of the moratorium that defers importation of off-site waste.

Y-12 Public Hearings Show Different Perspectives

By: Jim Sanderson, Office of NEPA Policy and Compliance

In my 12 years with DOE's NEPA Office, I've attended many EIS public hearings. They are always an adventure for me because I never know what to expect. Will skits be performed? Will songs be sung? Will security guards be needed? One of the things I love most about my job is the public participation aspect of the NEPA process. Regardless of people's views, it makes me proud to work for a program and, in a larger sense, to live in a country where diverse viewpoints regarding major Federal proposals can be expressed in a public forum. On November 17–18, 2009, I attended two public hearings on the Y-12 Draft Site-wide EIS (SWEIS), conducted by the National Nuclear Security Administration's (NNSA's) Y-12 Site Office. Once again, I was not disappointed!

Stations, Posters, and Pamphlets

NNSA's New Hope Center in Oak Ridge, Tennessee, the location of the public hearings, is an impressive facility. It boasts a large auditorium with state-of-the-art media features. Just outside the auditorium there is a large receiving hall that is perfect for displays and information sessions. Half an hour before the hearings began, DOE representatives and contractors, and site proponents (representatives of state and local organizations) were available to answer questions and receive informal public comments. A station was available for attendees to submit written comments and questions. These sessions also featured colorful poster displays that were easy to follow and showed a comparison of today's Y-12 complex versus what NNSA expects Y-12 to look like in the future.

Contrasting Viewpoints

Both hearings were heavily attended with 121 present at the first hearing (evening) and 145 at the second hearing (morning). The evening hearing had a significant presence



Informal session at Y-12 Draft SWEIS public hearing.

of environmental groups opposed to the proposal and critical of the SWEIS. The morning hearing was dominated by people in favor of the proposal and the SWEIS analyses.

Kevin Smith, Deputy Manager of the Y-12 Site Office, gave the opening remarks and assured those in attendance that "NNSA would fully consider and respond to the comments received and make appropriate changes to the SWEIS as warranted." He announced that NNSA had extended the comment period through January 29, 2010, based on feedback from the public. Pam Gorman, NEPA Document Manager, gave a presentation on the proposed actions, timelines, alternatives, impacts analyzed, and the public comment process.

Next Steps

NNSA plans to publish the Final SWEIS and issue a Record of Decision in Spring 2010. Additional information about the Y-12 SWEIS is available at www.y12sweis.com. Pam Gorman can be reached at gormanpl@yso.doe.gov or 865-576-9903.

Revised Background Radiation Exposure Estimates



Average annual radiation exposure from all sources has increased by about 70 percent in the United States since the early 1980s, according to 2006 estimates released earlier this year by the National Council on Radiation Protection and Measurements (NCRP). Average total background radiation exposure is now estimated at 620 millirem per year (mrem/yr) compared to 360 mrem/yr estimated in the 1980s. Nearly all the increase is due to the growth in the use of medical imaging procedures, with medical exposures now estimated to contribute 300 mrem/yr compared to 53 mrem/yr in previous estimates. Estimates of ubiquitous background (i.e., excluding medical, consumer, and industrial products, and occupational exposures) increased from 300 mrem/yr to 311 mrem/yr, according to the NCRP.

DOE should use the updated estimates in its NEPA documents when providing perspective on radiation exposure. In presenting the updated estimates, it will be helpful to clearly identify the contributors to the exposure estimates (ubiquitous background, medical sources, etc.). As stated in DOE's *Recommendations for Preparing Environmental Assessments and Environmental Impact Statements* (2004), "Do not assert that the average annual effective dose equivalent caused by a project translates to an insignificant increase in risk simply because it constitutes only a small increase above background . . ."

For additional information on the NCRP's revised estimates, see NCRP Report No. 160, *Ionizing Radiation Exposure of the Population of the United States*, available at www.ncrppublications.org.

DOE CX Determinations Online (continued from page 1)

Each office determines the best way to implement the new policy. Some DOE offices (e.g., Bonneville Power Administration, Savannah River Operations Office) already had a web page to post site-specific EAs and EISs, and have added CX determinations. The National Energy Technology Laboratory revised its standard CX determination template and created a new web page to list CX determinations and relevant information, such as funding recipient and project location.

We want to do everything we can to increase transparency. I've already received positive feedback from inside the administration, including the Council on Environmental Quality, and from the public about this decision to post CX determinations online.

— *Scott Blake Harris, DOE General Counsel*

The NEPA Office is exploring measures to make the posting of CX determinations more user-friendly, such as providing a centralized search capability for CX

Classified and Confidential Information Concerns Addressed in CX Policy Implementation Guidance

In the October 16, 2009, implementation guidance, DOE advises, among other things:

- Do not post information that DOE would not disclose pursuant to the Freedom of Information Act.
- Follow existing procedures where classified and confidential information may be involved.
- In most cases, it should be possible to avoid including classified or confidential information in a CX determination. Seek to redact such information first.
- Post a CX determination only after all classified and confidential issues have been resolved.
- A CX determination may be posted if it contains only publicly available information.

determinations on the DOE NEPA Website. Requests for more information on the CX posting policy may be addressed to askNEPA@hq.doe.gov. 

EERE Electronic CX Determination Form

To simplify compliance with DOE's new web-posting policy for categorical exclusion (CX) determinations, the Office of Energy Efficiency and Renewable Energy (EERE), in consultation with the Office of NEPA Policy and Compliance, has prepared an electronic form using Adobe Acrobat. The new electronic form is modeled on DOE's 1998 guidance on CX determinations and a template developed by the National Energy Technology Laboratory. The form may be used by any DOE Program or Field Office NCO.

"I wanted to create a form that would be both completely electronic and completely user-friendly, cutting down on the steps needed to make and post a CX determination," explained John Jediny, EERE Environmental Specialist. It automates the processes to:

- Document a CX determination, typically on a single page
- Attach supporting documents (e.g., Microsoft Office, Adobe Acrobat, or zip files)
- Sign the CX determination electronically
- Save and forward the CX determination as a pdf file
- Print a copy for office records, and
- Transfer data into a spreadsheet for reporting.



The electronic CX determination form has several features to make completion easier, including: copy and paste functions, easy entry of calendar dates, drop-down lists of states and territories and of the DOE CXs, and a hyperlink to 10 CFR Part 1021.

The Electronic CX Determination Form is posted at www.gc.energy.gov/nepa under DOE NEPA Documents, then Categorical Exclusion Determinations. For information on adapting the form, contact Mr. Jediny at john.jediny@ee.doe.gov; for information on posting CX determinations on the DOE NEPA Website, contact Denise Freeman, DOE NEPA Webmaster, at denise.freeman@hq.doe.gov. 



New Executive Order Assigns Priority to Greenhouse Gas Reduction and Sustainability

A new Executive Order (E.O.) directs Federal agencies to set specific targets for reducing greenhouse gas (GHG) emissions and adopt measures to attain those targets. The E.O. further directs agencies to enhance other aspects of sustainability by reducing water consumption, minimizing waste, supporting sustainable communities, and using Federal purchasing power to promote environmentally-responsible products and technologies. President Obama issued E.O. 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (74 FR 52117; October 8, 2009), to establish an integrated strategy for sustainability and make reduction of GHG emissions a Federal agency priority.



GHG Reduction Goals and Reporting

The new E.O. builds on E.O. 13423, *Strengthening Federal Environmental, Energy and Transportation Management*, issued in 2007. While the earlier E.O. promoted the reduction of GHG indirectly, as a consequence of agencies' reducing energy intensity (i.e., lowering consumption per square foot of building space), the new E.O. obligates agencies to directly establish reduction targets for various types of GHG sources. Agencies must comprehensively track progress and report annually to the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget (OMB) in three GHG emission categories: Scope 1 – direct emissions from sources owned or controlled by the agency; Scope 2 – direct emissions from generation of electricity, heat, or steam purchased by the agency; and Scope 3 – emissions from sources not owned or controlled by the agency but related to agency activities, such as vendor supply chains, delivery services, and employee travel and commuting.

Energy Analyses Required in NEPA Review for New or Expanded Federal Facilities

The E.O. requires the analysis of energy consumption in certain NEPA documents. Federal agencies must

“advance regional and local integrated planning by identifying and analyzing impacts from energy usage and alternative energy sources” in all EAs and EISs for proposals for new or expanded Federal facilities. The E.O. directs agencies to ensure that planning for new Federal facilities or new leases includes consideration of sites that are pedestrian-friendly, near existing employment centers, and accessible to public transit.

Strategic Sustainability Performance Plan

The E.O. statement of policy emphasizes the value of prioritizing actions based on a full accounting of economic and social benefits and costs, and annual performance evaluation to support the extension or expansion of effective measures. To implement the E.O., each agency must submit an annual Strategic Sustainability Performance Plan, subject to approval by the OMB Director, to address, among other topics:

- Sustainability policy and goals, including GHG reduction targets
- Integration with agency strategic planning and budgeting
- Schedules and milestones for all activities that implement the E.O.
- Evaluation of past performance based on net lifecycle benefits, and
- Planning for adaptation to climate change.

The E.O. states “that it is also the policy of the United States that agencies’ efforts and outcomes in implementing this order shall be transparent and that agencies shall therefore disclose results associated with the actions taken pursuant to this order on publicly available Federal websites.” For further information on the E.O. and other sustainability matters, see the website of the Federal Environmental Executive at www.ofee.gov. 

BPA Recognized for Environmental Leadership

DOE’s Bonneville Power Administration (BPA) earned the “Overall Environmental Leadership Award” in the 2009 Champions of Environmental Leadership and Green Government Awards program of the Environmental Protection Agency, Region 10. This program recognizes individuals and initiatives that have gone beyond regulatory compliance and show measurable progress towards target measures involving energy, transportation, waste, and water. To facilitate the adoption of sustainable business practices – and ensure that the agency is indeed “walking its talk” – BPA created an internal “Green Team” in 2007 that supported energy-saving measures in building lighting, heating, and cooling; changes in the automobile fleet; water usage audits of headquarters and field sites; and a program to reduce, reuse, and recycle computer equipment. For more information, contact Darby Collins at dacollins@bpa.gov or 503-230-3811.





My Exploration of NEPAssist

By: Julie A. Smith, Office of NEPA Policy and Compliance

When I was asked to perform an expedited review of an EIS, I needed a tool that would help me quickly and effectively accomplish the task. I came across discussions in earlier editions of *Lessons Learned* that reminded me about the Environmental Protection Agency's (EPA's) nationwide Geographic Information System application, NEPAssist ([LLQR, December 2008, page 7](#); [September 2008, page 1](#)). NEPAssist displays several sets of environmental data spatially and allowed me to go on a "virtual site visit" of the proposed project.

I had worked with NEPAssist before coming to DOE this spring, and was aware of the potential benefits of using the web-based tool for both preparers and reviewers of NEPA documents: identifying important environmental issues at early stages of project development, focusing on significant environmental impacts, helping direct project siting to areas that are the least environmentally sensitive, and facilitating collaboration during the preparation of NEPA documents. NEPAssist also offered an opportunity to follow one of General Counsel Scott Blake Harris's operating principles: to identify and use modern information technologies to improve the review of DOE NEPA documents ([LLQR, September 2009, page 7](#)). So I decided to explore the world of NEPAssist, and have gained a better appreciation of its value.

Traveling Essentials

How To Get There

I first needed information on the location of alternative project sites – which I found in the EIS Notice of Intent. While an actual street address is optimal, and I was lucky to find this information for one alternative site, various types of input can be used in NEPAssist to locate a site. I found one alternative site by identifying the county in which it was located, another by using mapping coordinates (i.e., latitude and longitude), and yet another by selecting a feature of interest (e.g., a river) in the vicinity of the site. More precise information resulted in less time to find a site because I could quickly go to a location rather than spending time "looking around" in the virtual vicinity of a site.

What To Bring

Depending on the information and materials that were available to me, there were several ways to explore the various layers of information found in NEPAssist. Comments submitted during the EIS scoping period

guided me to specific data layers. For example, comments about disproportionate impacts on a minority community adjacent to the site led me to choose the Environmental Justice Demographic Mapping Tool data available through NEPAssist. I was able to assess demographic, health, economic, and employment data (and compare site data to that for the county and state) at various distances from alternative sites to better understand potential environmental justice considerations.

Other scoping concerns related to proximity to wetlands and potential flooding led me to select the U.S. Fish and Wildlife Service wetlands and Federal Emergency Management Agency floodplain data layers. I could easily determine whether the project would be located in a wetland or floodplain, and whether a wetland and floodplain assessment would be needed in the EIS. Specifically, once I chose the data layers to be applied to the project site map, I outlined the footprint of the proposed project on the map, and then used the NEPAssist application to generate a report that identified nearby resources (e.g., number of streams and wetlands located 400 meters from the site? or was the site located within a 100-year floodplain?). In the end, "packing" scoping comments when using the NEPAssist application made my review more efficient because non-significant issues were given less priority from the onset.

Let Realistic Expectations Guide You

It is very important for the NEPAssist journey to be guided by realistic expectations. The data and geographic layering capabilities offered by the technology allow for visualization in many formats (e.g., two-dimensional or three-dimensional; road map or topographical map; or aerial photo or satellite image) and for simultaneous display of data. However, the value of NEPAssist is limited by how often the data are updated (e.g., vegetation land cover data in NEPAssist are from 2001) or if data are not readily available in a consistent format or at the same level of detail. For instance, data regarding municipal or hazardous waste landfills are unavailable in NEPAssist because this information is often maintained by state and local authorities in a variety of formats that require great expense and effort to make compatible for use in the NEPAssist application. Data on existing agency facilities would also have been useful for assessing cumulative impacts more effectively, and EPA is seeking to make data in NEPAssist more robust through partnerships with other agencies ([LLQR, December 2008, page 7](#)).

(continued on page 19)

DOE NEPA Webinar Offers Answers to Potential Loan Guarantee Applicants

More than 1,000 individuals participated in a NEPA compliance webinar, an online video presentation, conducted by the DOE Loan Guarantee Program Office in late September. Several potential applicants had requested to meet individually with the Loan Guarantee Program Office to discuss the environmental report requirements – the method by which the Office obtains the information needed for NEPA compliance.

“Given the high level of interest in the Loan Guarantee Program and large number of potential applicants, a creative means of maximizing the dissemination of useful guidance was needed. A webinar seemed a good choice for doing this,” said Matt McMillen, NEPA Compliance Officer for the Office of the Chief Financial Officer and Director of the Loan Guarantee Program Office’s NEPA Compliance Division.

Introducing the NEPA Process

Mr. McMillen began the webinar by explaining how NEPA applies to the Department’s Loan Guarantee Program. He identified the levels of NEPA review and explained the DOE consultation process with state and tribal historic preservation officers and the U.S. Fish and Wildlife Service. He also briefly summarized the key elements of an applicant’s environmental report, which is submitted with the Part II application, and clarified when DOE starts its NEPA review in the loan guarantee application process. In addition, the Loan Guarantee Program Office prepared and posted on its website a “NEPA Primer” fact sheet, as additional background information, and provided email addresses for the Loan Guarantee Program help desk and other useful references.

The length of time it takes to prepare a NEPA document is largely a product of the quality and timeliness of information submitted by the applicant.

– Matt McMillen

Questions and Answers

Following the presentation, Mr. McMillen and Michael Fraser, Program Manager, also of the Loan Guarantee Program Office, fielded more than 30 questions submitted by participants during the webinar. Many questions pertained to timing concerns and how an

When does DOE start the formal NEPA process for loan guarantee applications?

DOE determines the level of NEPA review required and begins the review process after it has:

- Deemed the application substantially complete
- Established the applicant’s financial and technical eligibility
- Extended an invitation to the applicant for further negotiation of loan guarantee terms, and
- Begun technical and financial due diligence review.

applicant might speed up the NEPA process. Mr. McMillen advised participants to start off with a good quality environmental report and discussed preparation of the report, including the specific content and use of environmental impact assessment contractors.

Mr. Fraser noted that the Loan Guarantee Office is attuned to scheduling issues and the impact it has on potential applicants. “The guidance we are following is not only to spend the money fast, but to spend it well, and to support a superior decisionmaking process. I think all of you as taxpayers want a decision process that is very thorough, accurate, and up to the highest professional standards,” he said.

Additional Information

The NEPA compliance webinar was the second such webinar conducted by the Loan Guarantee Program Office; the first webinar, “How to Build a Strong Application,” was offered in early September, and was designed to explain the program and help both lenders and applicants navigate the process of applying for DOE loan guarantees. In addition, Mr. McMillen participated in an industry-sponsored webinar on NEPA and the loan guarantee process with more than 100 participants in early November. The industry-sponsored webinar covered information and topics similar to that of the Loan Guarantee Program Office’s NEPA compliance webinar in late September.

The “NEPA Primer” fact sheet, presentation slides from the Loan Guarantee Program Office’s NEPA compliance webinar, and an audio recording of both the presentation and question and answer session from the webinar are available on the Loan Guarantee Program’s website at www.lgprogram.energy.gov. 

Federal Agencies Establish Memorandum of Agreement to Expedite Transmission Siting on Federal Lands

To expedite the siting of electrical infrastructure on Federal lands, DOE and eight other Federal agencies in late October 2009 joined in a Memorandum of Understanding (MOU).¹ Expanding and modernizing the electricity transmission grid, states the MOU, will improve reliability and help accommodate additional generating capacity, including from new, clean, low-carbon sources. The MOU will promote consistency and transparency by describing each entity's role and responsibilities, including management of the NEPA process, when project applicants wish to build electric transmission facilities.

The MOU, which supersedes a 2006 agreement, will help expedite the siting and construction of "qualified transmission projects" by improving the coordination among project applicants, Federal agencies, and states and tribes involved in the siting and permitting process. Qualified projects under the MOU are high voltage (generally 230 kilovolts or above) transmission line projects and associated facilities for which all or part of the proposed transmission line crosses jurisdictions administered by more than one of the participating agencies (with exceptions, such as transmission lines that cross the U.S. international border and facilities constructed by Federal Power Marketing Administrations).

DOE, under provisions of Section 216 of the Federal Power Act, as amended by Section 1221(a) of the Energy Policy Act of 2005, will designate a lead agency for each project with multiple participating agencies – generally, the agency with the most significant land management interests relating to the project. The lead agency is responsible for coordinating the Federal agency reviews, permits, and approvals, including NEPA. The lead agency role includes preparing "unified environmental documentation" to serve as the basis for all Federal decisions required to authorize the use of Federal lands, maintaining a consolidated administrative record, and serving as the point of contact for applicants, state agencies, Indian tribes, and other stakeholders.

The MOU outlines the responsibility of the lead agency to establish project schedules. Cooperating agencies are

obligated to make their respective decisions regarding permits or approvals in a timely manner:

- For a project for which an EA and finding of no significant impact are appropriate, within 1 year of receiving a completed application, and
- For a project for which an EIS is required, within 1 year and 30 days after the close of the public comment period for a draft EIS.

DOE's Office of Electricity Delivery and Energy Reliability (OE) participated in developing the MOU. This Office will provide technical expertise to a designated lead agency to help determine the suitability of proposed projects; evaluate technical, siting, and mitigation issues; and coordinate with regional electric power industry institutions. DOE will also assist a lead agency in establishing and tracking project schedules, and will maintain a publicly available project website with links to the information from all participating and cooperating agencies.

In the course of developing this MOU, the participating agencies exhibited a level of cooperation and coordination that I haven't seen in more than 30 years of government service. I believe the real success of this effort goes beyond the signing of the MOU, however, to the creation of a coordination process that will survive the individuals who worked on this document.

– Tony Como
Acting Deputy Assistant Secretary
for Permitting, Siting and Analysis, OE

For additional information, see the [MOU](#) or contact Tony Como at anthony.como@hq.doe.gov. 



¹ The MOU was signed by the Departments of Agriculture, Commerce, Defense, Energy, and the Interior; the Environmental Protection Agency; the Council on Environmental Quality; the Federal Energy Regulatory Commission; and the Advisory Council on Historic Preservation.

Litigation Updates



DOE NEPA Litigation

District Court Validates EA on Kansas City Plant Relocation

The U.S. District Court for the District of Columbia granted the Government's motion for summary judgment on October 19, 2009, in a case challenging the *Environmental Assessment for the Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the Kansas City Plant* (DOE/EA-1592, April 2008) and associated finding of no significant impact (FONSI) (73 FR 23244; April 29, 2008) prepared by the General Services Administration (GSA) and the National Nuclear Security Administration (NNSA). The court rejected each of the plaintiffs' challenges to the EA. The decision opens the way for construction of a new facility in the Kansas City, Missouri, area to house NNSA operations to manufacture and procure nonnuclear components for nuclear weapons. (See [LLQR, December 2008, page 34.](#))

In its oral ruling from the bench, the court held that an analysis of the disposition of existing facilities at the Bannister Federal Complex (site of the Kansas City Plant for the past 60 years) was not required in the EA, in large part because such analysis would not be meaningful absent a specific disposition proposal, and that even though GSA and NNSA had considered the general need for disposition of those facilities, the expression of that need was not sufficient to require analysis in the EA.

In addressing the plaintiffs' allegation that GSA and NNSA had predetermined the outcome of the NEPA

process, the court acknowledged a number of steps by the agencies that clearly indicated a preferred alternative. The court concluded, however, that the agencies had not predetermined the outcome of the NEPA process prior to completion of the EA and the issuance of the FONSI, and had not made an irreversible and irretrievable commitment of resources toward the preferred alternative. The court also recognized that while the Draft EA considered only alternatives at the current and preferred locations, the Final EA responded to public comments with a discussion of other alternatives that were analyzed in the same level of detail as the preferred and no action alternatives.

The court also addressed the plaintiffs' allegation that GSA had not followed its own NEPA implementing requirements as identified in GSA's *NEPA Desk Guide*. The court held that where an agency lists an action as "normally" requiring an EIS, the agency is not required to prepare an EIS for that action. In this case, the court held that the EA sufficiently addressed the potential environmental impacts associated with the Council on Environmental Quality significance factors in determining whether to prepare an EIS. The court entered its final appealable order and judgment in the case on November 19. (*Natural Resources Defense Council v. DOE*, Case No.: 08-01709 (D. D.C.))

Appeals Court Affirms DOE's NEPA Compliance for West Valley

The U.S. Court of Appeals for the Second Circuit affirmed in August a district court's 2007 ruling in favor of DOE in a long-standing dispute regarding DOE's nuclear waste management and site closure activities at the West Valley Demonstration Project (WVDP) near Buffalo, New York. The District Court for the Western District of New York previously held that DOE did not violate NEPA or a 1987 settlement between DOE and an environmental organization.

The appellants, *Coalition on West Valley Nuclear Wastes* and a private citizen, alleged that: (1) DOE had improperly segmented the environmental impact review of the WVDP actions by "rescoping" the EIS into one EIS for decontamination and waste management and a second EIS for decommissioning the Western New York Nuclear Service Center, which includes the WVDP site; (2) DOE's

revised strategy for environmental review breached a stipulation – to prepare an EIS – made in a 1987 agreement that settled a 1986 lawsuit; and (3) DOE lacks the authority to reclassify waste as "waste incidental to reprocessing." (See [LLQR, December 2007, page 22.](#))

The appellate court upheld the district court's finding that DOE had not engaged in improper segmentation by preparing two separate EISs for waste management and site closure. Further, the court held that since the action by DOE did not violate NEPA, there was no breach of the settlement agreement. With respect to the third claim, the court upheld the district court's determination that this issue was not ripe for review because the appellants failed to develop their argument in their brief on appeal. (Case No.: 07-5243; August 31, 2009, opinion at www.ca2.uscourts.gov/opinions.htm)

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Other Agency NEPA Litigation

Five recent legal decisions involving NEPA issues are summarized below, listed by lead plaintiff.¹ Due to the number of cases covered in this issue, LLQR summarizes the outcomes below, using the court's language, as appropriate; in LLQR online, the computer icon  links to the full opinion. We encourage readers to examine the entire opinion for cases of interest.

- In *Center for Biological Diversity*, the appeals court reversed the district court's approval of a land exchange, finding that an EIS and record of decision (ROD) for the exchange failed to compare the environmental impacts of alternatives.
- In *Center for Food Safety*, the district court found that the potential spread of pollen from a genetically-engineered crop to non-engineered crops constitutes a significant effect on the environment requiring preparation of an EIS.
- In *Natural Resources Defense Council*, the district court found that the agency, in issuing a permit for a cross-border pipeline, had exercised the President's discretionary power, which is not subject to NEPA.
- In *North Slope Borough*, the appeals court found that an agency had satisfied NEPA requirements by taking a "hard look" at new information concerning potential impacts of activities related to an oil and gas lease sale in the Beaufort Sea outer-continental shelf and is not required to prepare a supplemental EIS.
- In *State of California*, the appeals court permanently enjoined implementation of the State Petitions Rule and affirmed a district court ruling reinstating the Roadless Area Conservation Rule upon finding that a rulemaking was not merely procedural but had potentially significant impacts.

Center for Biological Diversity v. Department of the Interior

- **Agency Action:** The Department of the Interior, Bureau of Land Management (BLM), after preparing an EIS and issuing a ROD, approved a proposed exchange of public and privately owned land with Asarco LLC, a mining company.
- **NEPA Issue:** The appeals court found that BLM assumed that the foreseeable uses of the land and consequently the environmental impacts caused by the mining operations would be the same for all alternatives, irrespective of the proposed land exchange. **"Because the BLM has conducted no comparative analysis, we hold that it has not taken a "hard look" at the environmental consequences of its proposed action' in violation of NEPA"**
- **Other Issues:** The court found that the determination contained in the ROD – that the proposed land exchange is in the "public interest" within the meaning of the Federal Land and Policy Management Act – was arbitrary and capricious. This determination was based on "an erroneous assumption" that mining operations would not be affected by the land exchange.



- U.S. Court of Appeals for the Ninth Circuit. Case No.: 07-16423; September 14, 2009.

¹ Many cases have multiple plaintiffs and defendants, which may 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; in the broader literature these cases may be known by the name of the Secretary of Agriculture or the Chief of the Forest Service at the time the legal document was issued.

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Center for Food Safety v. Department of Agriculture

- **Agency Action:** After preparing an EA and issuing a finding of no significant impact, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, approved deregulation of sugar beets that are genetically engineered to be resistant to glyphosate (“Roundup,” a weedkiller). Monsanto Company, which produces the beets, had petitioned APHIS to deregulate the sugar beets because they “do not present a plant pest risk.” (The genetically-engineered material is derived from and delivered into the beet DNA by plant pathogens.)
- **NEPA Issues:** The court ordered that APHIS prepare an EIS because the EA did not evaluate factors with potentially significant effect on the human environment: potential elimination of a farmer’s choice to grow non-genetically-engineered crops and a consumer’s choice to eat non-genetically-engineered food. The court found that APHIS was cursory in its consideration of the distance beet pollen can travel by wind, and its potential to cross-pollinate sugar beets, table beets, and Swiss chard. APHIS claimed that it was not required to analyze the economic impacts of deregulation on farmers and processors seeking to avoid genetically-engineered sugar beets. The court disagreed, finding that economic effects are relevant and must be addressed in the environmental review when they are interrelated with natural or physical environmental effects. The court found that the APHIS **“finding of no significant impact was not supported by a convincing statement of reasons and thus was unreasonable.”**
- U.S. District Court for the Northern District of California. Case No.: 08-00484; September 21, 2009.



Natural Resources Defense Council v. Department of State

- **Agency Action:** The U.S. Department of State issued a presidential permit to TransCanada Keystone, LP to develop a cross-border oil pipeline between the United States and Canada. The State Department was delegated the authority to issue permits for the construction of oil pipelines across the border of the United States by Executive Order 13337. (DOE was a cooperating agency in preparation of the EIS but not a party to the lawsuit.)
- **NEPA Issue:** The Natural Resources Defense Council suit against the State Department was based on a claim that issuance of the permit violated NEPA due to a deficient EIS. The court found that the State Department proceeded on behalf of the President and **“the President’s authority to issue permits for cross-border pipelines is completely discretionary and is not subject to any statutory limitation, including NEPA’s impact statement requirements.”**
- U.S. District Court for the District of Columbia. Case No.: 08-1363; September 29, 2009.



North Slope Borough v. Minerals Management Service

- **Agency Action:** The Department of the Interior, Minerals Management Service (MMS), in 2003 prepared an EIS for three proposed oil and gas lease sales within Alaska’s Beaufort Sea scheduled between 2003 and 2007. In 2006, MMS prepared an EA for Lease Sale 202, scheduled for 2007, to determine whether any new information would necessitate preparation of a supplemental EIS.² MMS issued a “Finding of No New Significant Impacts.”
- **NEPA Issues:** The District Court of Alaska upheld the MMS determination that the potential impacts from Lease Sale 202 did not require a supplemental EIS. The appeals court affirmed the district court’s finding that the MMS satisfied NEPA requirements by taking a “hard look” at new information concerning potential impacts as it adequately addressed the impact of seismic activity on Inupiat subsistence activities, the effectiveness of existing and newly proposed mitigation measures, and the risks posed to polar bears by the cumulative effects of global warming. In addition, the appeals court rejected the argument that the MMS violated NEPA when it failed to disclose dissenting opinions from its scientists on whether a supplemental EIS was needed to address new information on the impacts of Lease Sale 202 on Arctic wildlife because the requirement to do so applies to an EIS, not an EA. Finally, the appeals court found **“MMS’s use of significance thresholds in interpreting and applying the significance factors . . . does not violate NEPA.”**
- U.S. District Court, District of Alaska. Case No.: 07-0045; April 12, 2007.
U.S. Court of Appeals for the Ninth Circuit. Case No.: 08-35180; August 27, 2009.



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² DOE would call such an evaluation a “supplement analysis” (10 CFR 1021.314(c)).



State of California v. USDA Forest Service

- **Agency Action:** The U.S. Department of Agriculture Forest Service in May 2005 adopted the State Petitions for Inventoried Roadless Area Management Rule (State Petitions Rule). The State Petitions Rule effectively repealed the Roadless Area Conservation Rule (36 CFR Part 294, also known as the Roadless Rule), which affords greater protection of unspoiled areas of national forests.
- **NEPA Issues:** The Forest Service categorically excluded the State Petitions Rule because the “final rule is merely procedural in nature and scope and, as such, has no direct, indirect, or cumulative effect on the environment.” In 2006 the Northern District Court of California found for the plaintiffs on all NEPA claims, setting aside the State Petitions Rule and reinstating the Roadless Rule. (See [LLQR, September 2007, page 20.](#)) The Forest Service appealed, challenging the district court’s holding that environmental analysis was required. The district court held that **“the replacement of the Roadless Rule’s uniform substantive protection with a less protective and more varied land management plan would qualify as significant, therefore meeting the requirements of NEPA.”** The Ninth Circuit Court of Appeals agreed with the district court that the Forest Service’s characterization of the State Petitions Rule as “merely procedural in nature and scope” was unreasonable.
- **Other Issues:** The Forest Service also challenged the district court’s holding that consultation was required under the Endangered Species Act (ESA) and the court’s authority to reinstate the Roadless Rule. Upon appeal, the court found that the Forest Service determination that no ESA consultation was required was arbitrary and capricious, and that the district court did not abuse its discretion by enjoining the States Petition Rule and reinstating the Roadless Rule.
- U.S. Court of Appeals for the Ninth Circuit. Case No.: 07-15613; August 5, 2009.



NEPA Contracting Updates

The contracting page of the DOE NEPA Website (www.gc.energy.gov/nepa) has been updated to reflect the reassignment of contract administration from the National Nuclear Security Administration (NNSA) Service Center to the NNSA Headquarters’ Office of Procurement Operations. A notable addition to the web page is a link to the Contractor Performance Assessment Reporting System (CPARS), used by DOE to evaluate contractor performance on each task issued under the DOE-wide NEPA contracts. The web page also contains the statement of work for the contracts issued in the spring of 2009, contact information for the seven program managers of the contracts, and as background, DOE *NEPA Contracting Reform Guidance* issued in 1996.

The following tasks were awarded recently. For additional information, contact Aneesah Vaughn, Contract Specialist, at aneesah.vaughn@nnsa.doe.gov or 202-586-1815.

Description	DOE Contact	Date Awarded	Contract Team
EAs for Advanced Battery Area of Interest 1: Cell and Battery Manufacturing Facilities (Recovery Act project)	Pierina Fayish 412-386-5428 pierina.fayish@netl.doe.gov	9/29/2009	JAD Environmental
EAs for Advanced Battery Area of Interest 2: Supplier Manufacturing Facilities (Recovery Act project)	Pierina Fayish 412-386-5428 pierina.fayish@netl.doe.gov	9/29/2009	Potomac-Hudson Engineering

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.

- American Law Institute and American Bar Association
800-253-6397
www.ali-aba.org
Environmental Impact Assessment: NEPA and Related Requirements
Washington, DC: December 9-11
\$1,149 (\$949 webcast)
(course reference code CR009)
- Continuing Legal Education
800-873-7130
www.cle.com
NEPA: Climate Change, Cumulative Impacts and Compliance
Portland, OR: December 10-11
\$695
San Francisco, CA: January 21-22
\$795
- International Association for Public Participation
703-837-1197
iap2training@theperspectivesgroup.com
www.iap2.org
Planning for Effective Public Participation
Washington, DC: December 7-8
St. Paul, MN: December 17-18
\$700
Emotion, Outrage, and Public Participation
Portland, OR: December 7-8
Las Vegas, NV: February 4-5
Tucson, Arizona: March 18-19
Washington, DC: April 8-9
\$700
Communications for Effective Public Participation
Washington, DC: December 9
St. Paul, MN: January 6
\$350
Techniques for Effective Public Participation
Washington, DC: December 10-11
St. Paul, MN: January 7-8
\$700
- Nicholas School of the Environment and Earth Sciences, Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuinged/courses.html
Preparing and Documenting Environmental Impact Analyses
Durham, NC: February 17-19
\$925
Considering Greenhouse Gas Emissions and Climate Change under NEPA
Durham, NC: March 3-5
\$800
Implementation of NEPA
Durham, NC: March 15-19
\$1250
Scoping, Public Involvement and Environmental Justice
Durham, NC: March 29-31
\$925
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 course registration.
- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org
NEPA: Writing the Perfect EA/FONSI or EIS
Seattle, WA: February 3-4
Houston, TX: April 21-22
Atlanta, GA: April 26-27
\$495 (\$395 for Federal employees)
- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
Reviewing NEPA Documents
St. Louis, MO: December 7-9
\$985 (GSA contract: \$895)

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Training Opportunities

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Reviewing NEPA Documents and Effective Environmental Contracting

St. Louis, MO: December 7-11
\$1385 (GSA contract: \$1295)

Core Principles: Telling the NEPA Story, Keeping Documents Brief, Meeting Legal Requirements

Salt Lake City, UT: December 8-9
New Orleans, LA: January 20-22
\$945 (GSA contract: \$855) until 12/2/09

Applying the NEPA Process and Writing Effective NEPA Documents

Denver, CO: January 12-15
Nashville, TN: April 13-16
\$1,185 (GSA contract: \$1,095)

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

San Francisco, CA: January 26-29
\$1,145 (GSA contract: \$1,055) until 12/15/09

Applying the NEPA Process: Emphasis on Native American Issues

Las Vegas, NV: February 3-5
\$945 (GSA contract: \$855) until 12/23/09

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

Nashville, TN: February 17-19
\$945 (GSA contract: \$855) until 1/13/10

Overview of the NEPA Process and Managing NEPA Projects and Teams

San Francisco, CA: March 2-5
\$1145 (GSA contract: \$1055) until 1/26/10

Clear Writing for NEPA Specialists

San Antonio, TX: March 9-11
\$945 (GSA contract: \$855) until 2/10/10

Collaboration in the NEPA Process

Salt Lake City, UT: April 8-9
\$745 (GSA contract: \$655) until 2/25/10

NEPA Certificate Program

Requires successful completion of four core and three elective courses, and a capstone course offered by The Shipley Group.

\$5,450

Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922; judy.kurtzman@usu.edu; www.cnr.usu.edu/htm/students/grad-degrees/nepa/

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

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

Austin, TX: April 26-27
\$695

Customized NEPA Training

- Environmental Impact Training
512-963-1962
info@eiatraining.com
www.eiatraining.com
- Environmental Planning Strategies, Inc.
563-332-6870
jleeeeps@mchsi.com
www.jlee-eps.com/workshops.php
- Environmental Training & Consulting International Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.com
- ICF Jones & Stokes
916-737-3000
www.jonesandstokes.com
- International Institute for Indigenous Resource Management
303-733-0481
iiirm@iiirm.org
www.iiirm.org

EAs and EISs Completed¹ July 1 to September 30, 2009

EAs²

Berkeley Site Office/Office of Science

[DOE/EA-1655](#) (9/4/09)

The Berkeley Lab Laser Accelerator (BELLA) Laser Acquisition, Installation and Use for Research and Development, Berkeley, California

Cost: \$70,000

Time: 6 months

Chicago Operations Office/Office of Science

[DOE/EA-1659](#) (8/11/09)

Proposed Demolition of Building 330 at Argonne National Laboratory, Argonne, Illinois

Cost: \$60,000

Time: 5 months

Office of the Chief Financial Officer

[DOE/EA-1645](#) (7/1/09)

Loan Guarantee for Sage Electrochromics SageGlass® High Volume Manufacturing (HVM) Facility in Faribault, Minnesota

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

Time: 7 months

Office of Energy Efficiency and Renewable Energy

[DOE/EA-1673](#) (7/22/09)

Energy Conservation Program: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment, Washington, DC

Cost: \$13,500

Time: 5 months

[DOE/EA-1674](#) (8/5/09)

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines, Washington, DC

Cost: \$50,000

Time: 6 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1584](#) (9/15/09, FONSI 9/16/09)

Sandpoint Wind Installation Project, Sand Point, Alaska

Cost: \$28,000

Time: 46 months

[DOE/EA-1652](#) (7/30/09)

Wind Technology Testing Center,

Boston, Massachusetts

Cost: \$47,000

Time: 22 months

National Energy Technology Laboratory/Office of Fossil Energy

[DOE/EA-1642](#) (8/12/09)

Design and Construction of an Early Lead Mini Fischer-Tropsch Refinery at the University of Kentucky Center for Applied Energy Research, Lexington, Kentucky

Cost: \$22,000

Time: 10 months

Richland Operations Office/Office of Environmental Management

[DOE/EA-1660](#) (7/20/09)

Combined Community Communications Facility and Infrastructure Cleanup on the Fitzner/Eberhardt Arid Lands Ecology Reserve, Hanford Site, Richland, Washington

Cost: \$219,000

Time: 5 months

Western Area Power Administration

[DOE/EA-1689](#) (8/14/09, FONSI 8/17/09)

Prairie Winds ND-1 Wind Generation Project near Minot, North Dakota

EA was adopted; therefore cost and time data are not applicable. [Rural Utilities Service was the lead agency; Western was a cooperating agency.]

EISs

There were no EISs completed during this quarter.

¹ For online readers the blue text indicates a link to the document.

² EA and FONSI issuance are the same date except as marked.

My Exploration of NEPAAssist

If a NEPA practitioner is prepared by gathering location, scoping, and other project-specific information before using NEPAAssist, he or she can use this tool to facilitate timely, efficient NEPA document preparation and review. This is a trip that I will take again, soon and often.

(continued from page 10)

For additional information on my experience with NEPAAssist, contact me at juliea.smith@hq.doe.gov or 202-586-7668. For direct inquiries or to apply for a password to NEPAAssist, contact Aimee Hessert, EPA Office of Federal Activities, at hessert.aimee@epa.gov or 202-564-0993. 

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 8 EAs for which cost data were applicable was \$49,000; the average cost was \$64,000.
- Cumulatively, for the 12 months that ended September 30, 2009, the median cost for the preparation of 23 EAs for which cost data were applicable was \$50,000; the average was \$85,000.
- For this quarter, the mean completion time for 9 EAs for which time data were applicable was 6 months; the average was 12 months.
- Cumulatively, for the 12 months that ended September 30, 2009, the median completion time for 33 EAs was 7 months; the average was 14 months.

EIS Cost and Completion Times

- For this quarter, there were no EISs completed.
- Cumulatively, for the 12 months that ended September 30, 2009, the median cost for the preparation of 3 EISs for which cost data were applicable was \$2.20 million; the average cost was \$2.22 million.
- Cumulatively, for the 12 months that ended September 30, 2009, the median completion time for 5 EISs was 30 months; the average was 31 months.

Recent EIS-Related Milestones¹ (September 1 to November 30, 2009)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0436

I-5 Corridor Reinforcement Project, Cowlitz and Clark Counties, Washington, and Multnomah County, Oregon
October 2009 ([74 FR 52482](#), 10/13/09)

Office of Chief Financial Officer

DOE/EIS-0428

Loan Guarantee for the Mississippi Gasification, LLC, Industrial Gasification Facility, Moss Point, Mississippi
November 2009 ([74 FR 58262](#), 11/12/09)

DOE/EIS-0429

Loan Guarantee for the Indiana Gasification, LLC, Industrial Gasification Facility, Rockport, Indiana
November 2009 ([74 FR 58265](#), 11/12/09)

DOE/EIS-0430

Loan Guarantee for Construction and Start-up of the Taylorville Energy Center, Taylorville, Illinois
October 2009 ([FR 74 52228](#), 10/09/09)

DOE/EIS-0432

Loan Guarantee for the Medicine Bow Fuel and Power Coal-to-Liquid Facility, Carbon County, Wyoming
November 2009 ([74 FR 62290](#), 11/27/09)

Western Area Power Administration

DOE/EIS-0434

Interconnection of the Hualapai Valley Solar Project, Mohave County, Arizona
September 2009 ([74 FR 47245](#), 9/15/09)

DOE/EIS-0435

Modification of the Groton Generation Station Interconnection Agreement, Brown County, South Dakota
September 2009 ([74 FR 48067](#), 9/21/09)

DOE/EIS-0437

Interconnection of the Buffalo Ridge III Wind Project, Brookings and Deuel Counties, South Dakota
November 2009 ([74 FR 62998](#), 11/27/09)

(continued on next page)

¹ For online readers the blue text indicates a link to the document.

Recent EIS-Related Milestones (continued from previous page)

Notice of Cancellation

Western Area Power Administration
DOE/EIS-0411
Construction, Operation, and Maintenance of the Proposed Transmission Agency of Northern California Transmission Project, California
September 2009 ([74 FR 46584](#), 9/10/09)

Draft EISs

Office of Energy Efficiency and Renewable Energy/Golden Field Office
DOE/EIS-0407
Abengoa Biorefinery Project near Hugoton, Stevens County, Kansas
September 2009 ([74 FR 48951](#), 9/25/09)

Office of Environmental Management/ Office of River Protection
DOE/EIS-0391
Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington
October 2009 ([74 FR 56194](#), 10/30/09)

Office of Fossil Energy/National Energy Technology Laboratory
DOE/EIS-0409
Kemper County Integrated Gasification Combined-Cycle (IGCC) Project, Kemper County, Mississippi
November 2009 ([74 FR 57467](#), 11/6/09)

National Nuclear Security Administration/Y-12 Site Office
DOE/EIS-0387
Site-wide Environmental Impact Statement for the Y-12 National Security Complex, Oak Ridge, Tennessee
October 2009 ([74 FR 56195](#), 10/30/09)

Final EIS

Bonneville Power Administration
DOE/EIS-0384
Chief Joseph Hatchery Program, Washington
November 2009 ([74 FR 62305](#), 11/27/09)

Office of Fossil Energy/ National Energy Technology Laboratory
DOE/EIS-0382
Mesaba Energy Project Final Environmental Impact Statement, Itasca County, Minnesota
November 2009 ([74 FR 60260](#), 11/20/09)

Records of Decision

Bonneville Power Administration
DOE/EIS-0183
Electrical Interconnection of the Kittitas Valley Wind Project, Kittitas County, Washington
September 2009 ([74 FR 47570](#), 9/16/09)

DOE/EIS-0312
Washington-Action Agency Estuary Habitat Memorandum of Agreement, Washington
September 2009 ([74 FR 48530](#), 9/23/09)

Western Area Power Administration
DOE/EIS-0399
Montana Alberta Tie, Ltd. (MATL) 230-kV Transmission Line, Great Falls, Montana
September 2009 ([74 FR 48947](#), 9/25/09)

Supplement Analyses

Bonneville Power Administration
Fish and Wildlife Implementation Plan
(DOE/EIS-0312)
[DOE/EIS-0312/SA-03](#)
Supplement Analysis for the Fish and Wildlife Implementation Plan, Washington
(Decision: No further NEPA review required)
October 2009

Transmission System Vegetation Management Program
(DOE/EIS-0285)
DOE/EIS-0285/SA-404
Vegetation Management along the Wautoma-Ostrander Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
October 2009

DOE/EIS-0285/SA-405
Vegetation Management along the Keeler-Allston Transmission Line Corridor, Washington and Oregon
(Decision: No further NEPA review required)
October 2009

DOE/EIS-0285/SA-406
Vegetation Management along the Trojan-Allston Transmission Line Corridor, Oregon
(Decision: No further NEPA review required)
November 2009

(continued on page 24)

*Not previously reported in LLQR

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.

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

- *Bounding assumptions.* During the internal scoping meeting, we agreed to use broad, bounding assumptions in the EA, which provided the necessary technical flexibility to execute the project.

Data Collection/Analysis

What Worked

- *Collaboration and use of standard research tools.* Related data were collected through collaboration with other affected parties, while additional information was generated during the ecological and cultural review process. Historical data were collected using standard research tools.
- *Good communication.* The contractor maintained good communication with the project manager during the collection of characterization data.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Tribal/local government interaction.* Interaction with the tribal government and local governments was very useful. Weekly meetings with an integrated project team were held to discuss project activities and schedule. Comments on the EA were consolidated at a single meeting with a document editor sitting at a computer to make changes in real time. Tribal workshops were held to help facilitate comment resolutions during the review process.
- *Competent contractors.* The EA was completed on schedule due in large part to the help of competent and responsive contractors.

- *Consolidation of review periods.* By sequencing the National Historic Preservation Act Section 106 reviews with the state 30-day review and the public comment period 15-day review, we were able to align the EA with the proposed project schedule.
- *Coordinated review process.* The coordination of the issue resolution and EA approval timelines with Headquarters legal review staff allowed completion of the EA on schedule.
- *Efficient scheduling.* A schedule was developed and used to track all EA-related documentation and review activities.
- *Efficient troubleshooting.* The EA document manager recognized issues quickly and resolved them in a timely manner.
- *Open communication.* Maintaining open communication between the contractor, project manager, and the EA review team facilitated punctual assignment completion.

Factors that Inhibited Timely Completion of Documents

- *Comment volume.* We received more public comments than expected on the draft EA, requiring more time than anticipated to address comments.
- *Geographical location.* The project was located in a traditional cultural property area that required substantial interaction with the tribes. The project location was on a mountain and weather was a factor in completing the necessary ecological reviews. Additional time, not previously considered in the EA schedule, was needed to complete these reviews.
- *Iterative review process.* EA completion was slowed partially by a lengthy, iterative Headquarters legal staff review process that required ongoing analysis and editing of several suggested, but non-required, elements.

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

Teamwork

Factors that Facilitated Effective Teamwork

- *Contractor efficiency.* The EA preparation contractor selected by the applicant was very knowledgeable, quick, and responsive.
- *Defined scope of work.* The scope of work provided by the contractor was well defined and the contractor was fully integrated within DOE's project team.
- *Integrated project team meetings.* Weekly meetings were attended by the integrated project team, including the affected parties and subject matter experts from DOE and the contractor.
- *Managed review schedule.* The EA document manager ensured that the review and issue resolution schedule for the draft EA was met.
- *Open communication.* Communication was the key to good teamwork between DOE and the contractor.
- *Resource expertise.* The integration of resource experts from the internal team helped to facilitate effective preparation of the EA.

Process

Successful Aspects of the Public Participation Process

- *Local contact.* A local point of contact made the public participation process smooth, with comments returned in a timely manner.
- *Prompt agency response.* Comments from the Illinois Environmental Protection Agency on the draft EA were prompt and responsive.
- *Public process streamlined.* Soliciting comments via email with an attached pdf file of the EA streamlined the public process. Hard copies were provided at public information repositories. Workshops were held with tribal staff to facilitate comment resolutions.

Unsuccessful Aspects of the Public Participation Process

- *Timing.* The public requested more time to comment as well as access to the preparers of the EA. The additional time needed had not been considered in our schedule.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Applicant NEPA awareness.* The NEPA process was the impetus for the applicant's full consideration of the environmental consequences of its proposal.
- *Early coordination.* Early coordination with the applicant ensured that an environmentally benign site was selected. The alternative sites were considered during the NEPA process and it was concluded that there was no significant impact at the selected site.
- *Impact analysis approach.* The EA established conservative environmental assumptions, ensuring the execution of the project would be within the established environmental boundaries.
- *Memorandum of Agreement (MOA).* Obtaining an MOA with the state Historic Preservation Office was helpful. The MOA facilitated an agreement towards the protection of cultural resources and a means to maintain tribal relationships for future interactions.
- *Sustainable planning.* The NEPA process identified certain locations where additional tribal interactions were needed to maintain culturally significant areas that were vital to project completion. It identified the necessary controls to limit ecological and cultural impacts, and facilitated necessary interface protocols that allowed cleanup activities to take place.

Agency Planning and Decisionmaking: What Didn't Work

- *Project scope.* Because this project was for research and development to test a concept, there were really no action alternatives to consider.

Enhancement/Protection of the Environment

- *Public awareness provided.* Although the NEPA process did not enhance the environment, the public was better informed about the environmental impacts of the project because of it.
- *Restoring natural settings.* The NEPA process assisted in the removal of man-made structures and restoring the property to a natural setting.

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Questionnaire Results

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

- *Site selection.* The environment was protected because the importance of timely NEPA completion was emphasized early in the process, which encouraged the applicant to choose an environmentally favorable site adjacent to its existing facility.
- A respondent who rated the process as “5” stated that the NEPA process facilitated a clear understanding of environmental settings and acted as a catalyst for interactions that provided a better understanding of tribal and community values.
- A respondent who rated the process as “4” stated that NEPA was used as an important planning tool in identifying environmental aspects and impacts in accordance with the requirement of the site Environmental Management System.
- A respondent who rated the process as “3” stated that the applicant took action in the design of the facility to minimize potential environmental impacts and to demonstrate environmental stewardship. This allowed the rest of the team to feel confident in moving the project forward.
- A respondent who rated the process as “2” stated that the NEPA process was not effective because, for this research and development project within an existing building, there were no action alternatives to consider.

Other Issues

Guidance Needs Identified

- *Program NEPA guidance.* An office management system for EA preparation is needed.

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 quarter, in which 4 questionnaire responses were received for EAs, 3 out of 4 respondents rated the NEPA process as “effective.”

Recent EIS-Related Milestones *(continued from page 21)*

(Supplement Analyses, continued)

DOE/EIS-0285/SA-407

Vegetation Management along the Allston-Astoria Transmission Line Corridor, Washington and Oregon
(Decision: No further NEPA review required)
November 2009

**Office of Environmental Management/
Savannah River Operations Office**

Interim Management of Nuclear Materials
(DOE/EIS-0220)

[DOE/EIS-0220/SA-01](#)

Supplement Analysis, Interim Management of Nuclear Materials Final Environmental Impact Statement, South Carolina
(Decision: No further NEPA review required)
September 2009

Office of Fossil Energy/Strategic Petroleum Reserve Program Management Office

Strategic Petroleum Reserve Phase III Development, Texoma and Seaway Group Salt Domes (West Hackberry and Bryan Mound Expansion, Big Hill Development)
(DOE/EIS-0075)

DOE/EIS-0075/SA-02

Supplement Analysis of Site-Specific and Programmatic Environmental Impact Statements: Operational and Engineering Modifications and Regulatory Review
(Decision: No further NEPA review required)
September 2009