

LESSONS LEARNED

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First Quarter FY 2010

CEQ Celebrates NEPA at 40 . . . and So Do We!

The Council on Environmental Quality (CEQ) marked the 40th anniversary of the National Environmental Policy Act (NEPA), and of CEQ itself, with a celebratory symposium and reception in Washington, DC, on February 18, 2010. CEQ Chair Nancy Sutley welcomed past CEQ Chairs and General Counsels and current NEPA practitioners from Federal agencies. She invited all to reflect on NEPA's record of accomplishments and to take stock of where NEPA is today and our plans for its future.

Underscoring President Obama's proclamation that NEPA remains a vital tool in protecting our environment and revitalizing our economy, and adding that a strong economy and a healthy environment go hand in hand, Ms. Sutley emphasized that NEPA gives us the flexibility to address environmental priorities as they evolve. Our challenge, she stated, is to do so. She characterized

NEPA as a visionary, transformative, and integrating statute, passed with overwhelming bipartisan support, that has withstood the test of time. In going forward, however, we need to affirm NEPA's importance and consider what we can do to improve its implementation, she said.

In this issue of *LLQR* are a reprint of President Obama's NEPA Proclamation, highlights from the CEQ Symposium discussions on NEPA's legacy and its significance to 21st century issues, and descriptions of four CEQ initiatives to modernize and reinvigorate NEPA implementation. Also, reflecting DOE's observance of 40 years of NEPA, this issue highlights the benefits that DOE's NEPA practitioners have found in the NEPA process and includes the first of a year-long series of contributed essays on NEPA. 



DOE Launches Categorical Exclusion Database

DOE has taken another major step to increase transparency and openness in its implementation of NEPA by creating a comprehensive database of its categorical exclusion (CX) determinations. The searchable, user-friendly database, and a complete set of the "raw" data from the database, are available on the DOE NEPA Website (www.gc.energy.gov/nepa) and have been registered with Data.gov.

Data.gov is a priority Open Government Initiative of the Obama Administration intended to increase public access to important government information. The CX database is the first and so far the only NEPA-specific tool registered with *Data.gov*. The database currently includes more than 700 DOE CX determinations.

This sets a new standard of transparency for the Federal government's implementation of NEPA, and shines a light on an important part of our decisionmaking process.

– Scott Blake Harris, DOE General Counsel

The new database may be searched by state; CX applied; date range; DOE Program, Field, or Site Office; keyword; and whether the CX determination is for a project related to the [American Recovery and Reinvestment Act \(Recovery Act\)](#). Links to CX determination documents are provided. A raw data table (Excel file) containing

(continued on page 18)

Inside **LESSONS LEARNED**

Welcome to the 62nd quarterly report on lessons learned in the NEPA process. In this issue, we start a year-long observance of the 40th anniversary of the National Environmental Policy Act. The occasion calls for celebration of NEPA's successes as well as reflection on opportunities for improvement. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

Celebrating 40 Years with NEPA

CEQ Issues Draft NEPA Guidance.....	3
CEQ NEPA Symposium.....	5
Presidential Proclamation.....	7
Reflections: Professor Mandelker	8
NEPA Process Benefits DOE	10
CEQ Cites DOE Examples on Climate Change, NEPA.....	13
Recovery Act: No Substantial Delay from NEPA.....	14
DOE NEPA Planning Summaries	15
Third Idaho High-Level Waste ROD Issued	16
DOT CAFE Standards Final EIS Issued.....	17
DOE CX Rulemaking Planned.....	19
DOE Senior Sustainability Official Named.....	20
EPA To Discontinue EIS Comment Summaries.....	20
Cooperating Agencies Contribute to DOE EISs	20
Programmatic Agreement on Historic Preservation Review...21	
GAO: NEPA and Recovery Act Implementation	22
Transitions	23
April 22 Is Earth Day 40.....	24
Training Opportunities	26
EAs and EISs Completed This Quarter	28
Cost and Time Facts.....	29
Recent EIS Milestones	29
Questionnaire Results	32

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 3, 2010. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 3, 2010

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2010 (January 1 through March 31, 2010) should be submitted by May 3, 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.

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Mark Your Calendars: Upcoming Conferences



National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) will hold its 2010 conference on April 27–30 in Atlanta, Georgia. The theme this year is *Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment*. Topics to be covered include energy and renewable energy issues, environmental policy, public involvement, and sustainability. The preliminary schedule and event registration are now available at www.naep.org.



State of Environmental Justice in America

DOE, the National Small Town Alliance, the 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. The event will be held in Washington, DC, on May 12–14. Contact Melinda Downing, Environmental Justice Program Manager, at melinda.downing@hq.doe.gov or John Rosenthal, Conference Coordinator, at ejinamerica@hotmail.com for further details.

Celebrating 40 Years with NEPA!

CEQ Issues Three Draft NEPA Guidance Documents for Public Comment and Launches New NEPA.gov



At its celebration of NEPA's 40th anniversary on February 18, 2010, the Council on Environmental Quality (CEQ) announced the availability of draft NEPA guidance on three topics: considering greenhouse gas (GHG) emissions and climate change; mitigation and monitoring; and establishing and applying categorical exclusions (CXs). CEQ also announced the re-launching of NEPA.gov, on which the draft guidance is available. "I'm proud to announce these four actions to modernize and reinvigorate NEPA," said CEQ Chair Nancy Sutley, when describing the three draft NEPA guidance products and the redesigned website at CEQ's 40th anniversary of NEPA symposium.

In the draft guidance documents, CEQ states its intention to issue final guidance expeditiously after considering public comments, and that CEQ does not intend for the guidance to become effective until after issuance in final form. On February 23, 2010, CEQ published notices of availability of the draft guidance documents in the *Federal Register*. Information about each draft guidance document and their public comment periods are described below.

Consideration of the Effects of Climate Change and Greenhouse Gas Emissions

"Climate change is among the most critical environmental issues today, and agencies would be foolish not to consider the potential effects of their greenhouse gas emissions," said Ms. Sutley. She indicated that the draft guidance responds to informal requests from Federal agencies and a formal petition from nongovernmental organizations under the Administrative Procedure Act. The draft guidance explains how Federal agencies should analyze the environmental impacts of GHG emissions and climate change when they describe the environmental impacts of a proposed action under NEPA, she said. She noted, however, that the draft guidance does not address climate change impacts of land management activities, and that CEQ requests public comment on this issue before deciding whether to recommend any particular protocols.

The draft guidance advises Federal agencies to consider opportunities to reduce GHG emissions caused by Federal actions and adapt their actions to climate change impacts. Agencies should consider (1) the GHG emissions effects of a proposed action and alternative actions, and (2) the relationship of climate change effects to a proposed action

and alternatives. The draft guidance defines GHGs in accordance with Executive Order 13514 (*Federal Leadership in Environmental, Energy, and Economic Performance*) to include: carbon dioxide (CO₂), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

When To Analyze GHG Emissions

Throughout the draft guidance, CEQ emphasizes applying "the rule of reason" in addressing GHG emissions, to ensure that analyses are "commensurate with the importance of the GHG emissions of the proposed action, avoiding useless bulk and boilerplate documentation, so that the NEPA document may concentrate on important issues."¹ Consistent with this principle, the draft guidance advises Federal agencies "to consider, in scoping their NEPA analyses, whether the analysis of direct and indirect GHG emissions from their proposed actions may provide meaningful information to decision makers and the public."

To that end, the draft guidance proposes a presumptive threshold of 25,000 metric tons per year or more of direct CO₂-equivalent GHG emissions as "an indicator that a quantitative and qualitative assessment may be meaningful to decision makers and the public." The draft guidance clarifies that the 25,000 metric tons per year threshold is not an indicator of significant effects, but rather is a "minimum level of GHG emissions that may warrant some description." The draft guidance also indicates that direct emissions less than this level sometimes may warrant agency consideration (e.g., for "long-term" actions).

The draft guidance addresses a concern that GHG emissions, no matter how small, arguably may have significant impacts, making CX determinations and findings of no significant impact (FONSI) problematic. The draft guidance, however, indicates that CXs and FONSI may be appropriate. For example, the draft guidance states, "In many cases, the GHG emissions of the proposed action may be so small as to be a negligible consideration. Agency NEPA procedures may identify actions for which GHG emissions and other environmental effects are neither individually or cumulatively significant. 40 CFR 1507.3. Many agency NEPA analyses to date have found that GHG emissions from an individual agency action have small potential effects."

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¹ DOE guidance (Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition, December 2004) uses the term "sliding-scale principle" in describing this concept.

Celebrating 40 Years with NEPA!

CEQ Draft Guidance

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How To Evaluate GHG Emissions

The draft guidance proposes that agencies should focus their analysis on quantifying the annual and cumulative GHG emissions of a proposed action, and on differences in emissions among alternatives. The draft guidance notes that “The estimated level of GHG emissions can serve as a reasonable proxy for assessing climate change impacts”

More specifically, the draft guidance states that, in the analysis of direct effects, agencies should: “(1) quantify cumulative emissions over the life of the project; (2) discuss measures to reduce GHG emissions, including consideration of reasonable alternatives; and (3) qualitatively discuss the link between such GHG emissions and climate change.” For the latter purpose, the guidance suggests that agencies consider incorporating by reference reports of the U.S. Global Change Research Program (www.globalchange.gov).

Some agencies have expressed a concern about the inability to attribute specific global climate change impacts to specific emission sources. The draft guidance addresses this concern, stating: “. . . it is currently not useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions”

While providing agencies discretion regarding methodology for quantifying GHG emissions, the draft guidance recommends that agencies consider using certain technical documents, among them:

- For large direct emission sources – the Environmental Protection Agency’s Final Rule on Mandatory Reporting of Greenhouse Gases (74 FR 56259; October 30, 2009) (www.epa.gov/climatechange)
- For “Scope 1” emissions from Federal facilities – GHG emissions accounting and reporting guidance that will be issued under Executive Order 13514 (www.ofee.gov), and
- For terrestrial carbon sequestration and other projects – the Department of Energy’s 1605(b) Program: *Technical Guidelines, Voluntary Reporting of Greenhouse Gases* (www.eia.doe.gov/oiaf/1605).

Effects of Climate Change on Proposed Actions

The draft guidance notes that climate change can affect the environment of a proposed action in a variety of ways, such as by affecting the integrity of a development or structure by exposing it to a greater risk of flood, storm surge, or higher temperature. Accordingly, the draft

guidance states that “[c]limate change effects should be considered in the analysis of projects that are designed for long-term utility and located in areas that are considered vulnerable to specific effects of climate change (such as increasing sea level or ecological change) within the project’s timeframe.”

Programmatic Analyses

The draft guidance suggests that it could be useful to consider GHG emissions in aggregate, as part of a programmatic analysis. Such aggregate analyses may be useful in considering compliance with the requirements for Federal agencies to implement sustainable practices and achieve GHG reduction targets under Executive Order 13514.

The public comment period for this guidance ends May 24, 2010 (75 FR 8046). Questions about this draft guidance may be addressed to Eric Cohen, Office of NEPA Policy and Compliance, at eric.cohen@hq.doe.gov.

Mitigation and Monitoring

Emphasizing the importance of considering mitigation – measures to avoid, minimize, rectify, reduce, or compensate for adverse environmental impacts – throughout the NEPA process, the draft guidance focuses on ensuring that mitigation commitments are carried out and are effective, particularly where mitigation is essential to render the impacts of proposed actions insignificant (i.e., mitigated FONSI). The draft guidance proposes to amend the 1981 CEQ guidance *Questions and Answers about the NEPA Regulations* (“40 Questions,” available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>) to acknowledge the use of enforceable mitigation measures to support a FONSI.

To ensure that mitigation commitments are implemented, the draft guidance states that “agencies should create internal processes to ensure that mitigation actions . . . are documented and . . . appropriate implementation plans are created” Specific recommendations include “. . . conditions in financial agreements, grants, permits or other approvals, and conditioning funding on implementing the mitigation.” The draft guidance also states that agencies should identify the duration of the agency action and the associated mitigation measures.

Noting each Federal agency has a “continuing duty to gather and evaluate new information relevant to the environmental impact of its actions,” the draft guidance also addresses monitoring. Monitoring is intended not only to ensure that mitigation measures are in fact

(continued on page 12)

Celebrating 40 Years with NEPA!

CEQ's Anniversary Symposium Addresses NEPA's Contributions, Future Potential



Speakers at the Council on Environmental Quality's (CEQ's) NEPA Symposium on February 18, 2010, discussed NEPA's contributions over its 40-year history and its potential for the future. Their primary focus was the public involvement aspect of the NEPA process, particularly the transparency that it fosters and its strong relationship to President Obama's openness initiative. NEPA's effect on Federal agency culture and its replication around the world were also emphasized. Looking ahead, Symposium speakers underscored the transformative nature of NEPA and how it can be used to address new environmental issues such as climate change.

NEPA's Legacy

Dinah Bear, CEQ General Counsel from 1983–1993 and 1995–2008, posed a series of questions to a panel of NEPA experts.

Has NEPA really helped fulfill that very important goal of the survival of human beings or has it gotten bogged down in the process? NEPA was prescient and remarkable for its time, as its authors foresaw “sustainability” and embraced public engagement, said Lee Paddock, Associate Dean and Professorial Lecturer, The George Washington University Law School. Although NEPA drives real change and better environmental outcomes, that effect is not always visible to the public as it often occurs during early internal planning, causing some to think NEPA is overrated and underperforming, he said. NEPA drives many applicants to make beneficial changes before proposing a project to a Federal agency, he explained. He advocated engaging the public earlier and more interactively so that it can see NEPA's influence. Information is an important tool for change and central to NEPA's elegance, he emphasized. He noted the wide-ranging influence of NEPA beyond Federal boundaries – NEPA copycats have popped up everywhere, the sincerest form of flattery, he said.

How can NEPA change agency culture? Gene Cleckley, former Director, Southern Resource Center, Federal Highway Administration, emphasized the importance of engaging the highest levels of management, at both headquarters and field offices, and recommended putting environmental goals into managers' performance plans. To institutionalize environmental consciousness, an agency should strive to combine the many reviews performed for a project (e.g., siting, design, state permitting process) with the NEPA review, he said. NEPA can only work if an agency makes a conscious decision to make it work, he noted, and to make it more than a paper exercise.

How has NEPA affected tribes and tribal governments? Elizabeth Homer, Homer Law and member of the Osage Nation of Oklahoma, said that NEPA has been transformative in Indian Country because the worst enemy of Indian Country is ignorance. She pointed to the strong movement to institute “TEPAs,” Tribal Environmental Policy Acts. Federal decisionmakers are ignorant of how their decisions affect tribes and reservation lands, Ms. Homer said. She advocated that Federal agencies incorporate a tribal impact analysis into the NEPA process – build us in, she said. What remains is precious and we had better know what we are doing – “ignorance is not an excuse,” she said.

What has been the effect of NEPA litigation on NEPA's development? Robert Dreher, Principal Deputy Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, said that NEPA is the statute that has been most shaped by common law. Other laws, in contrast to NEPA's broad general mandate, are very prescriptive in nature, he said. The early challenges related to “how to do it,” he said, and courts have defined procedures that make sense. NEPA is a self-implementing statute, intended by design to bring environmental values into every agency, he said. Critics overstate the burden of NEPA litigation, Mr. Dreher commented, as his calculations indicate that only 0.2% of actions that generate environmental assessments (EAs) and environmental impact statements (EISs) are subjected to judiciary reviews, resulting in relatively few injunctions. We can pay that price, he said. One of the great strengths of our country is that we view access to the courts to redress citizen grievances as an essential birthright – it is hard to imagine how NEPA could work effectively if agencies were not held accountable, he said.

What is the major benefit of the NEPA process to the environmental community? Sharon Buccino, Director, Land and Wildlife Program, Natural Resources Defense Council, explained that it is as a mechanism for giving the affected public a voice in Federal decisionmaking. She added that NEPA is the tool to bring impact information – from analysis and modeling – into the front end of a planning process, so that the information can shape decisionmaking. Cost effective mechanisms can be implemented early to avoid expensive consequences at the back end of a project, she explained. Ms. Buccino said that reading NEPA inspires her. It is a tool to shape a better future, and I am proud to be a part of that, she said.

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Celebrating 40 Years with NEPA!

CEQ NEPA Symposium *(continued from previous page)*

NEPA's Significance to 21st Century Issues

Gary Guzy, Deputy Chair and General Counsel, CEQ, led a panel discussion addressing the future of NEPA and whether it is still a relevant tool that can help solve the challenges we face.

With the thousands of projects going forward under the American Recovery and Reinvestment Act, how do we approach significant infrastructure challenges while being respectful of significant environmental concerns?

John Porcari, Deputy Secretary, U.S. Department of Transportation, said that no projects have been held up by NEPA; in fact, the NEPA process has helped states and his agency prioritize projects. He said that the Nation should think long and hard on what we want to get out of the NEPA process, what kind of outcomes we want to drive. NEPA is about finding a better way to live in productive harmony, Mr. Porcari said. He emphasized mitigation as one of the important tools of NEPA, as it presents an outstanding opportunity to do something right.

Does NEPA do an adequate job of bringing communities into agency decisionmaking?

Sheila Foster, Associate Dean, Fordham University School of Law, said it is important to focus on the “who” of NEPA, “who is affected.” For communities less connected to the political process, Ms. Foster emphasized, NEPA and its state counterparts provide the broadest and deepest opportunities to have a voice in the decisionmaking process. However, she noted, the process is set up for reaction, and opportunities for public involvement may not come early enough. Think about how we can make communities partners, she advised, so that they can have a proactive, rather than reactive, role. A bright spot of NEPA practice is the broad interpretation of impacts, including socioeconomic and gentrification issues, she said, and added that it will be important in the future to look at the impact of greenhouse gas emissions and the ability of vulnerable communities to adapt.

How can the NEPA process be most effective in using the information it develops?


Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, referred to ideas from President Obama: first, his firm belief, with Supreme Court Justice Brandeis, that “sunlight is the best disinfectant”; second, that information disclosure can provide people with information they can readily find and use; and third, “[k]nowledge is widely dispersed in society and public officials benefit from having access to that dispersed

knowledge” (January 21, 2009, Memoranda on the Freedom of Information Act, and on Transparency and Open Government). Mr. Sunstein said that if we merge President Obama’s ideas on transparency with the vision that NEPA offers, we could move in two bold directions – to embed environmental considerations into decisions before they are made and to give continuing attention to environmental impacts as developments progress.

Can NEPA be a meaningful contributor in addressing the greenhouse gas issue?

Michael Gerrard, Professor and Director, Center for Climate Change Law, Columbia Law School, said that for quite some time Federal courts have said that climate change is an appropriate subject for analysis under NEPA. The CEQ draft guidance issued for comment (related article, page 3) is a very important step in aiding Federal agencies in this regard, he said. He referred to two other recent steps by the Administration to guide Federal agency consideration of greenhouse gas issues – the Environmental Protection Agency’s greenhouse gas reporting rule that took effect December 29, 2009, and guidance from the Securities and Exchange Commission, issued February 8, 2010. It is helpful that the three guidance products use the same thresholds of study and methods of analysis, he added.

What is the promise of NEPA for the future?

Kenneth S. Weiner, former Deputy Executive Director and Counsel at CEQ, said that NEPA will continue to serve three vital functions – a safety net, an umbrella, and accountability – and could also follow one of three paths. There need not be an existing environmental law or regulation for an agency to consider a new environmental issue, he explained, as NEPA supplements the authority of an agency in this regard, providing a “safety net.” NEPA will continue to bring considerations of different aspects of the environment together in one place, he said, providing a comprehensive look, an “umbrella.” And in so doing, he added, agencies will be accountable under NEPA to see that all actions, particularly mitigation actions, fit together. Mr. Weiner ended by considering the future of NEPA. Although one path could be to do what we do a little better (procedural improvements) and another could be to combine procedure and substance much better (e.g., to provide a new foundation for the green economy), the third path, for NEPA to be transformative to meet our environmental challenges, to go from assessment to action, would require reinvigoration, including active management and incentives, he explained. 

 A video of the [Symposium](#) may be viewed via the “Photos and Video” section of [whitehouse.gov](#), among the selections for February 18, 2010.

**40TH ANNIVERSARY OF THE
NATIONAL ENVIRONMENTAL POLICY ACT, 2010
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION**

Forty years ago, the National Environmental Policy Act (NEPA) was signed into law with overwhelming bipartisan support, ushering in a new era of environmental awareness and citizen participation in government. NEPA elevated the role of environmental considerations in proposed Federal agency actions, and it remains the cornerstone of our Nation's modern environmental protections. On this anniversary, we celebrate this milestone in our Nation's rich history of conservation, and we renew our commitment to preserve our environment for the next generation.

NEPA was enacted to "prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." It established concrete objectives for Federal agencies to enforce these principles, while emphasizing public involvement to give all Americans a role in protecting our environment. It also created the Council on Environmental Quality to lead our Government's conservation efforts and serve as the President's environmental advisor.

America's economic health and prosperity are inexorably linked to the productive and sustainable use of our environment. That is why NEPA remains a vital tool for my Administration as we work to protect our Nation's environment and revitalize our economy. The American Recovery and Reinvestment Act of 2009 reaffirmed NEPA's role in protecting public health, safety, and environmental quality, and in ensuring transparency, accountability, and public involvement in our Government.

Today, my Administration will recognize NEPA's enactment by recommitting to environmental quality through open, accountable, and responsible decision making that involves the American public. Our Nation's long-term prosperity depends upon our faithful stewardship of the air we breathe, the water we drink, and the land we sow. With smart, sustainable policies like those established under NEPA, we can meet our responsibility to future generations of Americans, so they may hope to enjoy the beauty and utility of a clean, healthy planet.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 1, 2010, as the 40th Anniversary of the National Environmental Policy Act. I call upon all executive branch agencies to promote public involvement and transparency in their implementation of the National Environmental Policy Act. I also encourage every American to learn more about the National Environmental Policy Act and how we can all contribute to protecting and enhancing our environment.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

BARACK OBAMA



Celebrating 40 Years with NEPA!

To mark the 40th anniversary of NEPA, the Office of NEPA Policy and Compliance is inviting distinguished NEPA practitioners to share their thoughts on the occasion. The first in this series is Professor Daniel Mandelker, author of NEPA Law and Litigation (which many of us consult frequently) and Environmental Protection: Law and Policy. Professor Mandelker led a panel discussion on NEPA litigation at DOE's 1995 conference commemorating the 25th anniversary of NEPA.

NEPA Changed Landscape of Environmental Responsibility

By: Daniel R. Mandelker, Stamper Professor of Law, Washington University in St. Louis

NEPA at 40 is a celebration. The Magna Carta of our environmental laws, NEPA enacts a mandate to consider environmental consequences. This mandate must be fully satisfied for any project or action carried out by a federal agency or that has a federal presence. As the statute says, federal agencies must comply with NEPA "to the fullest extent possible." NEPA changed the landscape of environmental responsibility.

How does NEPA look after 40 years? What has it accomplished? What challenges remain?

Standing To Sue in Federal Court

Before NEPA, federal decisions with environmental impacts went unchallenged. This critically important legal problem arose because individuals and interests affected by the environmental consequences of government decisions were not parties to those decisions. If a federal agency approved a new dam, for example, that decision was internal, and organizations and individuals concerned about its environmental impacts could not go to a federal court to challenge it. Highways were another example. A state highway agency might plan a highway through a thriving residential neighborhood, but residents of the neighborhood could not sue in court to challenge this decision.

NEPA changed all that. A landmark Supreme Court decision came first and held that environmental injury could be the basis for getting standing to sue in federal court. Then, because NEPA creates a duty to consider environmental consequences, individuals and groups concerned about the environmental consequences of government actions were allowed to go to court to get these actions reviewed. Litigation has become a hallmark of NEPA implementation. The courts are open to complaints about lack of NEPA compliance, and NEPA case law provides a template for agency

responsibilities. There can be argument over the details of doctrine and recent trends in court decisions, but the essential point is that the courts are there to make NEPA workable.

Consideration of Alternatives

One of NEPA's major contributions is the requirement that decisionmakers must consider alternatives. A law enacted the year before NEPA required the consideration of alternatives for transportation projects, but otherwise there was no requirement that a proponent of a project had to consider alternatives to its proposed action. That limitation could be environmentally damaging. An agency could pick a site for a dam or a highway, for example, and not consider alternative locations where environmental impacts would be less severe.

NEPA mandates a duty to consider alternatives to agency proposals and to evaluate their environmental consequences. There is no requirement to select a less damaging alternative, but the mandate to consider alternatives requires a review of ways of doing a project that are not as environmentally damaging as the preferred alternative.

There are three stages in this analysis. An agency must first describe the purpose and need for its action. It cannot describe that purpose and need so narrowly that the consideration of reasonable alternatives is prevented. Next, an agency must select the alternatives it decides to consider in detail. It may not eliminate alternatives that reasonably are another way of carrying out the purpose and need or modifying the project. A no-action alternative, which means the project should not be carried out at all, must always be included. Finally, an agency must adequately consider the reasonable alternatives it identified. If an agency's analysis of alternatives is inadequate, court review can require reconsideration.



Professor Daniel Mandelker
(photo: Washington University/
Mary Butkus)

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Environmental Responsibility

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Cumulative and Indirect Impacts

Another important contribution of NEPA is the requirement in the Council on Environmental Quality NEPA regulations that agencies must consider the cumulative and indirect impacts of their actions. Like the alternatives requirement, the cumulative impact requirement did not exist previously. If a developer wished to build a new housing project in an agricultural area, for example, she was not required to consider the environmental impact of that project along with other similar projects in the area. That is no longer an option under NEPA. If an agency takes an action, such as the granting of a permit to drill natural gas on federal lands, it must consider the environmental impact of any similar projects in the area along with the environmental impacts of its natural gas drilling permit.

This is a powerful requirement that can help agencies overcome the limitations of viewing each decision in isolation, without considering other factors that affect the environment. By requiring the consideration of similar and geographically-related actions, NEPA expands the geographical framework in which agencies must conduct an environmental analysis. The environmental consequences for the larger area can then be taken into account.

An indirect impact is an impact caused by the action under review that occurs “later in time or farther removed in distance” but is still “reasonably foreseeable.” An example of an indirect impact is the growth induced by a new highway, which must be reviewed if the highway receives federal funding. The highway may well induce future growth in the area, and this future growth is an indirect impact the agency must consider in its environmental review.


Is NEPA Working?

NEPA promised a comprehensive environmental review of actions and projects that come under its statutory mandate, but is it working? Detailing NEPA’s requirements has been left to the Council on Environmental Quality and to the federal agencies in their NEPA regulations or guidelines. They have created a three-part framework for NEPA compliance that may need revision. An agency may establish a categorical exclusion, with a public review process and in accordance with its NEPA regulations or guidelines, for a class of actions that it determines

will not have an individually or cumulatively significant environmental impact. Agency actions that fit within the category can then be excluded from additional NEPA review. If an action is not categorically excluded, an agency may prepare an environmental impact statement to analyze potentially significant impacts, or it may prepare an environmental assessment to determine whether any impacts are significant. Based on the environmental assessment, the agency may issue a FONSI (finding of no significant impact) or, if impacts are significant, prepare an environmental impact statement for the action.

These options for reviewing environmental impacts under NEPA overlap and can cause confusion. Determining that some classes of actions clearly do not have potentially significant impacts and are categorically excluded from further review helps focus federal agency resources and attention on actions with potentially significant impacts. The choice between preparing an environmental assessment or an environmental impact statement is not always clear, however. Agencies prepare about ten times more environmental assessments than impact statements. As a result, when an environmental assessment is detailed, a court may wonder, as the Fifth Circuit did in a recent case, whether an environmental impact statement was necessary. Additional guidance could be helpful to clarify the difference in purpose, and therefore in content, between these two options for complying with NEPA requirements to consider environmental impacts of actions.

Conclusion

NEPA has provided a much-needed mandate to make environmental review an essential part of agency decisionmaking. Its requirements that agencies consider the direct, cumulative, and indirect environmental impacts of their proposed actions and alternatives have fundamentally changed agency decisions. The next generation of change must look closely at NEPA and decide what is needed to make good on its environmental promise: “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation” 

Celebrating 40 Years with NEPA!

DOE NEPA Practitioners See Benefit in NEPA Process

By: Jon Hale, Office of NEPA Policy and Compliance

NEPA has a long history of assisting DOE project planning and decisionmaking. This conclusion is drawn from my review of more than 500 Lessons Learned Questionnaire responses submitted by DOE staff involved in the NEPA process.



The [Questionnaire](#) asks a series of questions about the usefulness and effectiveness of the NEPA process. Respondents provide feedback as to whether the NEPA review contributed to decisionmaking, whether it protected or enhanced the environment, and how the respondent would rate the effectiveness on a scale of 0–5 (with 5 being the most effective) and why.

Since 1996, 70 percent of those respondents who filled in this portion of the Questionnaire rated the effectiveness of the NEPA process as 3 or better. The most cited reason for a positive rating was that respondents believed the NEPA process facilitated internal and external stakeholder input to the planning and decisionmaking process, and that this input improved the outcome. Perceived benefits to DOE and the environment included:

- Identification and selection of alternatives that are more cost effective and efficient for DOE to implement
- Reduced environmental impacts either through avoidance or mitigation
- “Education” of internal and external stakeholders about DOE’s constraints and why some actions are feasible and some are not, and
- Delivery of projects that have a higher degree of external stakeholder acceptance.

Common Themes in Questionnaire Responses

Following is a summary of my observations and conclusions, based on common themes that were repeated in the Questionnaires, by different respondents and on different projects:

- Public participation in the NEPA process often helps gather information that improves projects and provides public education that facilitates the planning process.
- Joint planning among DOE Offices often results in high effectiveness ratings (4–5).
- The NEPA process organizes information from multiple sources for project planners and management, which was viewed as helpful.

- Early NEPA initiation and integration throughout the planning process with feedback loops between NEPA staff and project design staff improves projects.
- Low ratings (0–2) are mostly given when respondents believe decisions were essentially already made; but even in these cases, respondents often acknowledge that environmental effects are reduced or avoided due to site-specific design elements identified through the NEPA process. Respondents also acknowledge in some of these cases that the NEPA process drove the completion of the planning and decisionmaking process. Many respondents believed the NEPA process provided a structured decisionmaking framework that was helpful.
- Low ratings are also given when submitters believe the NEPA process is inconsequential, such as when the project is small, the decision is obvious, or other requirements are driving the outcome, such as congressional or judicial mandates.

Responses Add Insight into Staff Views of DOE Implementation of NEPA

The following are Questionnaire excerpts (emphasis added):


- “Although the NEPA process didn’t really help in identifying alternatives for the project siting (this was done prior to NEPA process), ***the NEPA process did facilitate management making a decision that the project could be performed with no significant impacts (this was definitely not known before the EA was prepared).***”
- “The NEPA process was beneficial in that it pulled together all of the environmental information in one place for evaluation and public consumption, but it did not result in the identification of any potential issues that led to changes to the proposed project.”
- “Because the project planning started so far in advance of the document preparation, the process had limited input into the project. ***Earlier determination that an EA is needed would help the process contribute to project planning.***”
- “The process allowed us to work closely with the Forest Service as a cooperating agency and the public to develop alternatives that changed throughout the process and responded more to the needs of all parties involved, while still meeting the purpose and need for the project! ***I continue to be sold on the value of the NEPA process!***”

(continued on next page)

Celebrating 40 Years with NEPA!

Many See Benefit in NEPA Process *(continued from previous page)*

- “This process brought focus to several cross-cutting issues (e.g., utilities and waste management) and influenced alternatives considered in addressing known issues, actions that should be pursued, and proposals that should be dropped or postponed pending further information. These resulted because this EIS was tied into the planning processes for this site, and was focused on the utility of the document for those who implement the NEPA process at the site.”
- **“The NEPA process definitely assisted in determining a project alternative that was less costly and had fewer environmental impacts than alternatives initially considered.”**
- “The process was helpful to facilitate a discussion on the project among project managers, engineers, other internal staff, and the public. Through this communication process, NEPA contributed to informed and sound decisionmaking.”
- “While some of our engineering team will always see NEPA as just another requirement, **most of the engineers and staff see NEPA as an effective tool to GET THE PROJECT BUILT.** That’s what they care about . . . getting it built on time and within budget.”
- “This NEPA process supported decisionmaking by disclosing more comprehensive environmental analysis to the public than would happen in a typical 404 process. Conversely, the 404 process enabled resolution of wetlands mitigation concerns upon which a mitigated FONSI could be based. The synergism of the combined processes was real; NEPA facilitated the 404 permit and vice versa. **The result was expedited project approval by the host State and by the Corps of Engineers.**”
- “NEPA forced better definition of the scope.”
- “The NEPA process allowed DOE and the stakeholders to assess the consequences of conducting the proposed action, and public reaction to implementing the proposed action. This made the NEPA process very useful.”
- **“Important issues and considerations would have been overlooked if NEPA was not done.”**
- “It focused the resolution for the environmental impacts into a framework for decisionmaking that was defensible to outside entities and observers.”
- “Discussions held early [during the] DOE scoping process led to a sound and complete scope of work and resulted in a definite cost savings.”
- **“NEPA helped the decisionmaker focus on the relevant factors needed to make a quality decision.”**
- “The NEPA process was not a major project determinant – environmental issues were minor. However, successful completion of the EA did provide confidence that environmental and human health issues had been fully identified and addressed.”
- “The NEPA document preparation process forced the project folks to define their project and define problems that they hadn’t yet identified – some of which were percolating already but benefited from the nudge they received from the [NEPA] scoping of this project. The NEPA process forced the project folks to get their act together – they started by viewing the process as a irritation and a box to check, but **I think by the time that it was finished they had begun to recognize the real benefit and utility of the process.**”
- “The process went smoothly, was undertaken well in advance of initiation of construction, and environmental affects were avoided.”
- **“The NEPA review . . . caused the project sponsor to do . . . better definition/planning of the project scope.”**
- “I think this NEPA process, by forcing together several separately funded but related projects, helped coordinate planning and was useful in painting the bigger picture of how the projects fit together.”

In closing, this review showed that DOE staff have a long history of getting tangible benefits out of the NEPA process: benefits for DOE, the environment, and the public. Judging from the Questionnaire responses, it’s expected this will continue well into the future. Contact Jon Hale at 202-287-5923 or jon.hale@hq.doe.gov, if you have questions. 

Thoughts from the CEQ NEPA Symposium

NEPA brings out environmental issues that otherwise would not have a forum for being heard.

– William Reilly, former EPA Administrator and Senior CEQ Staff

Celebrating 40 Years with NEPA!

CEQ Draft Guidance

(continued from page 4)

carried out, but also that they are effective in achieving the expected outcomes. To that end, the draft guidance states the importance of engaging the public in the mitigation process, including making mitigation and monitoring reports and related documents available to the public. Further, mitigation commitments in FONSI and records of decision must be clear and made publicly available. With respect to effectiveness, the guidance cautions that a failure of mitigation could trigger a need for supplementary action per 40 CFR 1502.9(c) (regarding supplemental EISs); in cases with a mitigated FONSI, agencies may need to prepare an EIS and avoid actions that would have an adverse impact on the environment or limit the choice of reasonable alternatives, per 40 CFR 1506.1(a), pending completion of the EIS.

The public comment period for this guidance ends May 24, 2010 (75 FR 8046). Questions about this draft guidance may be addressed to Jim Daniel, NEPA Office, at james.daniel@hq.doe.gov.

Establishing and Applying CXs


Many Federal actions do not have significant effects on the environment, the draft CEQ guidance on CXs states, and CXs are the most frequently employed method of complying with NEPA. Although CEQ has previously issued draft guidance on establishing, applying and revising CXs for public comment ([LLQR, September 2009, page 10](#), and [June 2008, page 7](#)), the new draft provides additional clarifications. The draft guidance describes steps that an agency should take to substantiate its determination that a proposed CX describes a category of actions that does not individually or cumulatively have a significant

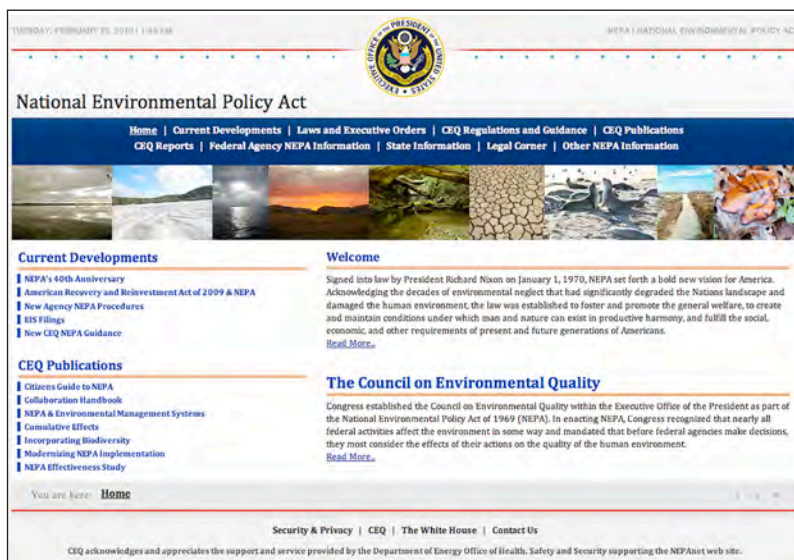
effect on the human environment, i.e., gather information, evaluate it, and make a finding that explains the agency's determination. Information sources that an agency may use, discussed in the guidance, are an evaluation of the impacts of completed or ongoing agency actions, including demonstration actions; professional staff and expert opinions, and scientific analysis; and benchmarking public and private entities' experiences.

The draft guidance emphasizes that a Federal agency should develop and maintain the capacity to monitor implementation of new CXs to ensure that predictions that there will not be significant impacts are borne out in practice. The guidance also discusses when documentation of the use of a CX may be warranted, and points to DOE's recent initiative to post its CX determinations online as an example of how agencies can effectively increase transparency in their decisionmaking when using CXs.

The public comment period for this guidance ends April 9, 2010 (75 FR 8045). Questions about this draft guidance may be addressed to Carolyn Osborne, NEPA Office, at carolyn.osborne@hq.doe.gov.

NEPA.gov

CEQ has redesigned [NEPA.gov](#) and is providing a wide range of information about NEPA through this portal. CEQ plans to continue to upgrade this site to include more about the status of reviews of agency NEPA guidance, Recovery Act NEPA reporting, and real-time NEPA review status. The website states that these upgrades are designed to improve public participation and the quality of Federal agency administration of NEPA. 



CEQ Cites DOE Examples in Response to Inquiry on Climate Change and NEPA



NEPA reviews can be accomplished in a timely manner without slowing economic recovery, affirmed Council on Environmental Quality (CEQ) Chair Nancy Sutley in a December 29, 2009, letter to two Senators. The Senators had raised concerns regarding the length of NEPA reviews, particularly if CEQ issues guidance requiring consideration of climate change impacts in NEPA documents. Ms. Sutley noted recent successful application of NEPA to Recovery Act projects and that “CEQ sees no basis for excluding greenhouse gas emissions” from consideration in NEPA analyses.

In their October 2009 letter to Ms. Sutley seeking information about CEQ’s plans to advise Federal agencies “on whether or how to incorporate greenhouse gas emissions and climate change impacts into” NEPA analyses, Senators James M. Inhofe and John Barrasso, Ranking Member and Member of the Committee on Environment and Public Works, expressed concern about the consequences of CEQ acceding to a February 2008 petition filed by the International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club. The petition requested that CEQ amend its regulations to clarify that climate change analyses be included in environmental review documents and develop guidance on how to do so ([LLQR, June 2008, page 11](#)). The Senators said that NEPA is “not an appropriate tool to set global climate change policy” and that “requiring analysis of climate change impacts as part of the NEPA process . . . will slow . . . economic recovery while providing no meaningful environmental benefits.”

In response, Ms. Sutley agreed with the Senator’s statement that NEPA is “a bedrock environmental statute,” and assured the Senators that “NEPA cannot be used to regulate greenhouse gas emissions.” Ms. Sutley stated that CEQ was considering responding to the 2008 petition by issuing guidance to Federal agencies on climate change and the NEPA process, and that any such guidance would first be proposed in draft form and made available for public comment. [Note: On February 18, 2010, CEQ issued *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* for a 90-day public comment period (related article, page 3)].

Ms. Sutley went on to state that “the NEPA process should not result in unjustified delay, but [she] believe[s] strongly that adequate environmental reviews and public participation can be accomplished in a timely manner.” She noted that the 2007 report cited by the Senators


identified “improved agency management of NEPA processes as one of many opportunities to reduce overall project delivery time,”

and cited the most recent Department of Transportation (DOT) report to CEQ under Section 1609 of the ARRA, which stated that more than 14,650 NEPA reviews were completed for such projects, including more than 160 EISs, more than 450 EAs, and approximately 14,000 decisions based on categorical exclusions. Ms. Sutley concluded that DOT’s reports “do not indicate that NEPA has hindered DOT’s obligation of more than \$29 billion in ARRA funds or the economic and environmental benefits of these projects.”

CEQ believes that it is appropriate and necessary to consider the impact of significant Federal actions on greenhouse gas emissions and the potential for climate change to affect Federal activities evaluated through NEPA.

**– Nancy Sutley, Chair
Council on Environmental Quality**

DOE EISs Address Greenhouse Gases

In response to a specific request from the Senators for a list of draft or final NEPA documents that have incorporated greenhouse gas emissions or climate change impacts into the analyses, Ms. Sutley referred specifically to DOE’s December 2007 *Lessons Learned Quarterly Report*, which described the analysis of this issue in DOE NEPA documents over the past 20 years ([LLQR, December 2007, page 1](#)). In addition, Ms. Sutley provided a partial list of EISs addressing climate change. Of the 13 EISs in the list, five were DOE documents, including: *Final EIS for FutureGen Project* (DOE/EIS-0394, November 2007), *Supplement to the Draft EIS for the Gilberton Coal-to-Clean Fuels and Power Project* (DOE/EIS-0357D-S1, December 2006), *Final EIS for the Gilberton Coal-to-Clean Fuels and Power Project* (DOE/EIS-0357, October 2007), *Final EIS for the Orlando Gasification Project* (DOE/EIS-0383, January 2007), and the *Mesaba Energy Project Final EIS* (DOE/EIS-0382, November 2009). 

Thoughts from the CEQ NEPA Symposium

NEPA has been so widely replicated in the world because it is considered a hallmark of democracy.

– Robert Smythe, Former Senior Staff Member, CEQ



Many Recovery Act NEPA Reviews Completed, No Substantial Delays, CEQ Reports

“Once again, the progress reported to [the Council on Environmental Quality (CEQ)] indicates that NEPA analyses are informing decisions for expenditure of [Recovery Act] funds in a timely and environmentally sound manner,” wrote Nancy Sutley, in a February 1, 2010, letter to Congress transmitting CEQ’s fourth report on the NEPA status of projects and activities (projects) receiving Recovery Act funds. “No departments or agencies have reported instances of substantial delays related to NEPA reviews.”

The report to Congress summarizes the NEPA status of more than 161,000 projects. Through December 31, 2009, Federal agencies completed more than 154,000 categorical exclusion (CX) determinations and 6,300 EAs related to Recovery Act projects, and more than 710 projects had been analyzed in EISs. Agencies concluded that NEPA is not applicable to about 4,140 other Recovery Act projects. Together, these projects involve obligations of more than \$187 billion in Recovery Act funds. In addition, CEQ reported that more than 5,600 NEPA reviews are underway, including 4,270 CX determinations, 1,275 EAs, and 85 EISs.

Federal agencies “continue to demonstrate that we can contribute to our nation’s economic health while respecting the health of our environment.”

***– Nancy Sutley, Chair
Council on Environmental Quality***

DOE Advances NEPA Recovery Act Progress

DOE completed more than 2,700 NEPA reviews for Recovery Act projects during the quarter ending December 31. As with the previous quarter, most of these NEPA reviews resulted in CX determinations for actions proposed for funding under DOE’s Energy Efficiency and Conservation Block Grant Program ([LLQR, December 2009, page 3](#)). As of December 31, DOE had completed NEPA reviews supporting the obligation of more than \$23.2 billion under the Recovery Act, an increase of more than \$5.8 billion from the previous quarter.

Future NEPA reviews will include many additional CX determinations. DOE also may initiate 100 or more EAs and more than a dozen EISs over the coming year to support Recovery Act projects. These are accounted for in Annual NEPA Planning Summaries submitted by each DOE office at the end of January 2010 (related article, page 15).


Benefits of NEPA Process

The latest report to Congress included for the first time examples of benefits from the NEPA process for Recovery Act projects. Thirteen agencies provided examples highlighting cost and energy savings, better protection of resources (e.g., wetland protection, protection of threatened or endangered species, historic preservation), and public participation and community agreements, said Horst Greczmiel, Deputy Director for NEPA Oversight at CEQ, at a meeting on Section 1609(c) reporting in February.

DOE provided 13 examples of benefits covering CX determinations, EAs, and EISs. DOE used the NEPA process to develop plans to better protect workers and the public from potential radiological exposure, identify alternatives to avoid project delay, improve waste management planning, protect historic resources and threatened or endangered species, explain to the public how a proposal would reduce greenhouse gas emissions, and achieve other benefits.

Future Reports

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 March 31, 2010. Federal agency reports are due to CEQ by April 15, 2010, and CEQ will submit the next report to Congress in May.

The CEQ reports to Congress are available at [NEPA.gov](#). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924. 

Thoughts from the CEQ NEPA Symposium

NEPA documents often focus on *where* to build a plant, not *whether*. More upfront planning is needed . . . when you go to buy a drill, what you really want is a hole.

– Michael Gerrard, Columbia Law School

Planning Summaries Show Large Increase in NEPA Activity

The DOE NEPA workload is projected to increase dramatically, according to the 2010 Annual Planning Summaries (APSs) prepared by DOE Program and Field Offices, mostly due to Recovery Act projects. While DOE completed more than 4,000 categorical exclusion (CX) determinations for Recovery Act projects during 2009, the workload is shifting to EAs and EISs in 2010. The total number of ongoing and projected (over the next 12 months) EAs (259) estimated in the 2010 APSs is more than double the total number in the 2009 APSs (124), and more than three times the number of EAs (79) identified in the 2008 APSs. The number of ongoing and projected (over the next 24 months) EISs estimated in the 2010 APSs is 95, compared to 71 in 2009 and 60 in 2008. See figure below.

While many Offices predict little or no increase from last year, two Offices – Golden Field Office and the National Energy Technology Laboratory (NETL) – anticipate significant increases in EA and EIS workload primarily as a result of Recovery Act related projects.

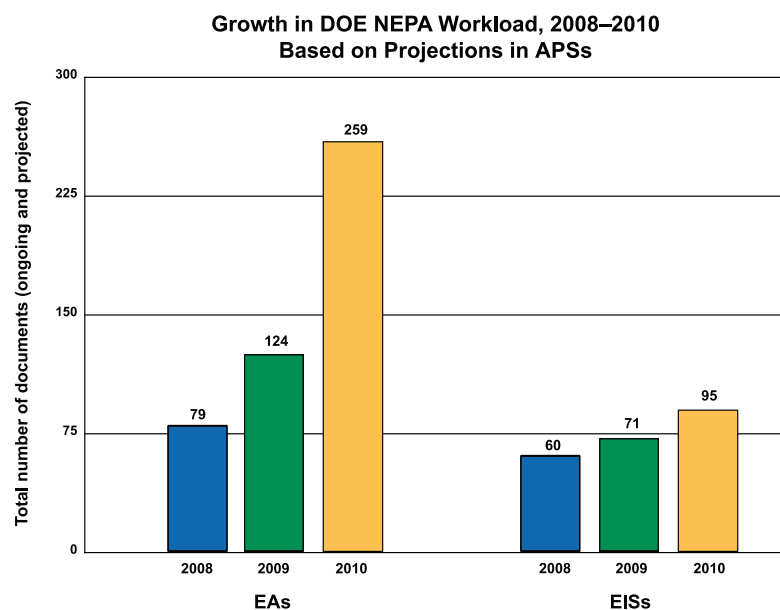
Golden Field Office estimates that its total number of EAs this year will be about 100, up from just 6 in 2009! The actual number depends on ongoing efforts to define projects in response to solicitations by the Office of Energy Efficiency and Renewable Energy (EERE). Golden expects to prepare EAs for proposals related to many types of renewable energy projects, including geothermal heat pump systems, biofuels, hydropower, wind energy, and solar energy.

The planning basis for NETL has increased from 5 EAs in 2009 to 49 in 2010, and from 5 EISs to 19 during that period. Potential EAs would address proposals in the areas of industrial carbon capture and sequestration and clean

coal (Office of Fossil Energy), smart grid demonstrations (Office of Electricity Delivery and Energy Reliability), and combined heat and power and a variety of renewable energy projects (EERE). The estimate includes 17 EAs in preparation by NETL for EERE's advanced battery manufacturing solicitation and two EAs (one ongoing; one completed in February 2010) for proposals under EERE's State Energy Program. EISs include ongoing and potential reviews of clean coal projects and possible EISs for industrial carbon capture and sequestration. As with Golden Field Office's estimates, the actual number of EAs and EISs initiated in 2010 will depend on project definition during the application review process.

Early involvement by senior management in the NEPA planning process is a key component of a successful NEPA compliance program. That's why each Secretarial Officer and Head of Field Organization is required, pursuant to DOE Order 451.1B, *NEPA Compliance Program*, Section 5.a.(7), to submit an APS by January 31 of each year and make it publicly available. In his December 10, 2009, reminder memorandum, Scott Blake Harris, DOE General Counsel, stressed that Offices with responsibility for funding provided by the Recovery Act fully describe their plans in the APSs for all related EAs and EISs. He further emphasized that completion of these EAs and EISs will be one of DOE's highest NEPA compliance priorities throughout 2010.

This year's increases in the number of EAs and EISs will likely require increases in NEPA staffing and contractor resources. The Office of NEPA Policy and Compliance will continue to assist the Program and Field Office NEPA Compliance Officers in managing this workload as efficiently as possible. LL



Third Idaho High-Level Waste ROD Issued; Phased Decision Strategy Completed

With the issuance of an amended Record of Decision (ROD) in December 2009, DOE completed a three-phase decision strategy for high-level radioactive waste and associated facilities at the Idaho National Laboratory (INL), and met a major milestone of a 1995 agreement resolving litigation with the State of Idaho (Idaho Settlement Agreement). “This achievement shows that an EIS can have a long shelf life, providing the flexibility to effectively support agency decisions when they are ripe,” said Eric Cohen, Office of NEPA Policy and Compliance.

In the amended ROD, DOE announced the selection of hot isostatic pressing as the technology to treat the 4,400 cubic meters of high-level radioactive waste calcine at INL’s Idaho Nuclear Technology and Engineering Center (INTEC). Calcine is a dry granular powder waste form that is stored at INTEC in six stainless steel bin sets. The bin sets were designed to be secure for at least 500 years.

Hot Isostatic Pressing Selected

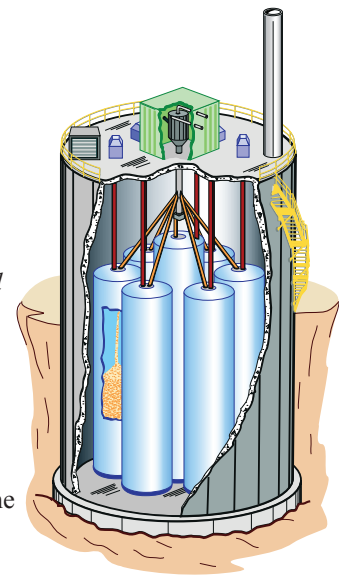
The ROD states that DOE selected hot isostatic pressing because this technology is anticipated to treat the calcine cost-effectively and produce a volume-reduced monolithic waste form suitable for transport outside of Idaho, with completion of treatment by a target date of December 31, 2035, in accordance with the Idaho Settlement Agreement. (The Settlement Agreement required that a ROD be issued no later than December 31, 2009, establishing a plan and date for completion of the treatment of all calcine waste located at INL.)

The ROD also states that DOE considered the Administration’s intent to terminate funding for the Yucca Mountain program while evaluating nuclear waste disposal alternatives, and indicates that the ultimate disposition of the calcine may be affected by the recommendations of a Blue Ribbon Commission charged with evaluating alternatives for managing and ultimately disposing of spent nuclear fuel and high-level waste.¹ In view of uncertainty regarding waste disposal, the decision provides flexibility by incorporating an option intended to ensure that wastes will be ready to leave Idaho by 2035 and that includes potential use of treatment additives to produce a glass-ceramic waste form. The ROD notes that the hot isostatic treatment process also provides the technical capability to further treat liquid sodium-bearing waste, which will be treated using a different technology, steam reforming, as announced in the first ROD.

One EIS Supports Multiple Decisions

DOE issued the *Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement* in October 2002 (DOE/EIS-0287), with the State of Idaho as a cooperating agency. DOE consulted with the State on all of the decisions under the EIS, and the RODs reflect the State’s concurrence and comments on the decisions. The EIS analyzed two sets of alternatives: (1) processing alternatives for liquid sodium-bearing waste and other liquid waste stored in below grade tanks, and for the high-level waste calcine stored in the bin sets at INTEC (for each waste processing alternative the EIS analyzed multiple implementing options and treatment technologies); and (2) facility disposition alternatives for the high-level waste management facilities.

Subsequently, several studies and reviews were conducted before DOE issued RODs under the EIS. In June 2005, DOE issued its *Supplement Analysis for the Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement* (DOE/EIS-0287-SA-01). The supplement analysis (SA) reviewed proposed waste treatment technologies and updated site characterization data and risk calculations. Based on the SA, DOE determined that the EIS analyses did not require supplementation. On August 3, 2005 (70 FR 44598), DOE issued a notice of preferred treatment technology for sodium-bearing waste, reflecting DOE’s evaluation of treatment technology studies conducted after the 2002 EIS was issued. The notice remedied a concern expressed by some members of the public that the preferred alternative identified in the EIS regarding sodium-bearing waste treatment technology was too broad to adequately inform the public of DOE’s plans. On August 11, 2005, after examining this issue, DOE’s Inspector General concluded that the Idaho EIS process complied with NEPA (*LLQR*, September 2005, page 12).



Bin sets are a series of reinforced concrete vaults containing 3 to 12 stainless steel storage bins. A typical bin set is represented here.

(continued on next page)

¹ On January 29, 2010, the President requested that the Secretary of Energy establish a Blue Ribbon Commission on America’s Nuclear Future (Commission) and appoint its members. In a press release on January 29, 2010, DOE announced the formation of the Commission, charged with conducting a comprehensive review of the back end of the nuclear fuel cycle and making recommendations on alternatives for storing, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. As requested by the President, the Commission’s interim report is due within 18 months and a final report within 24 months.

DOT Issues Final EIS on CAFE Standards

The Department of Transportation's National Highway Traffic Safety Administration (NHTSA), with the Environmental Protection Agency (EPA) as a cooperating agency, issued the Final EIS on *Corporate Average Fuel Economy Standard (CAFE), Passenger and Light Trucks, Model Years 2012–2016*, on February 22, 2010.

The Final EIS analyzes the potential environmental impacts of new CAFE standards required by the Energy Independence and Security Act of 2007. NHTSA's proposed action is part of a joint proposed rulemaking with EPA: NHTSA proposed CAFE standards under the Energy Policy and Conservation Act, as amended, and EPA proposed greenhouse gas (GHG) emission standards under the Clean Air Act.

Comprehensive GHG Emissions Analysis

The Final EIS is notable for its extensive analysis of GHG emissions and associated impacts on the human environment. For example, the analysis applies a climate model to analyze four direct and indirect effects of climate

change under alternative GHG emission scenarios, including changes in: (1) carbon dioxide concentrations; (2) global mean surface temperature; (3) regional temperature and precipitation; and (4) sea level. Further, the Final EIS contains detailed discussions of potential climate change-related impacts on a wide range of environmental resource areas, globally and in the United States.

This Final EIS responds to comments received on the Draft EIS (September 2009) and adds new information, including further discussions of potential mitigation policies to reduce GHGs from the light duty vehicle sector (e.g., mass transit improvements, higher gas taxes, or other driving-associated fees, and lower speed limits).

The Final EIS and NHTSA's Notice of Proposed Rulemaking ([LLQR, December 2007, page 24](#)) are available at: www.nhtsa.dot.gov/portal/fueleconomy.jsp. Additional information is available on the website above or from NHTSA's Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Programs, at 202-366-0846. **LL**

Idaho ROD (continued from previous page)

In the first ROD (70 FR 75165; December 19, 2005), DOE decided to treat the liquid sodium-bearing waste using a technology known as steam reforming to allow disposal at the Waste Isolation Pilot Plant in New Mexico or a geologic repository for spent nuclear fuel and high-level waste. DOE also decided to conduct performance-based closure of existing facilities directly related to the high-level waste program at INTEC, excluding the tank farm facilities and bin sets, once their missions are complete. Further, DOE announced a phased decision strategy, with future RODs planned in 2006 and 2009.

In the second ROD (71 FR 68811; November 28, 2006), DOE decided to conduct performance-based closure of the tank farm facilities. This decision followed the Secretary's Determination, in consultation with the Nuclear Regulatory Commission, that residual waste at the tank farm facilities would not be high-level waste because the residuals would meet the criteria in Section 3116(a) of the National Defense Authorization Act for Fiscal Year 2004. **LL**

A Note on ROD Effective Dates

A DOE ROD must be published in the *Federal Register*, but DOE may implement the decision before *Federal Register* publication if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media). (10 CFR 1021.315(d)) This enables a ROD to be effective (or issued) and action taken before *Federal Register* publication, which may take three or more days from the date of signature.

In the case of the third Idaho ROD, the Assistant Secretary for Environmental Management signed the ROD on December 23, 2009, but, because of the holidays, the ROD was not immediately submitted to the *Federal Register*. To ensure that the ROD was issued by December 31, 2009, per the Settlement Agreement, DOE made the signed ROD publicly available by posting it on the INL website and the DOE NEPA Website on December 27. The ROD was docketed for publication in the *Federal Register* on December 31 (at which time it was available for public inspection), and published in the *Federal Register* on January 4, 2010 (75 FR 137). [A correction affecting only the heading of the ROD as published on January 4 was published on January 12, 2010 (75 FR 1615).]

CX Database (continued from page 1)

information about all CX determinations within the database is also available on the DOE NEPA CX Determinations webpage.

CXs are categories of actions that DOE has determined, by regulation, do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS normally is required under NEPA. The new database contains CX determinations required to be posted under the recently established DOE [policy](#) to document and post online all CX determinations involving classes of actions listed in Appendix B to Subpart D of the DOE NEPA regulations ([10 CFR Part 1021](#)). The database also includes some CX determinations for which documentation and posting are optional, i.e., determinations involving classes of actions listed in Appendix A or made before the policy's effective date of November 2, 2009 ([LLQR, December 2009, page 1](#)).

DOE Program and Field Offices post CX determinations on their own websites and in different formats. Although the DOE NEPA Website provides a link to all 53 of these websites, people wanting to review DOE CX determinations collectively may find the process of searching all these websites to be cumbersome. The CX database provides a central location to access information on all of the determinations. This tool opens a window to a part of DOE's environmental review process and supports a core mission to foster transparency.

Open Government and *Data.gov*

The Office of Management and Budget issued its Open Government Directive to executive departments and agencies on December 8, 2009. The Directive outlined specific actions for agencies, including publication of information on the *Data.gov* website.

A primary goal of *Data.gov* is to improve access to and creative use of Federal data. Further, *Data.gov* is committed to creating an unprecedented level of openness, to help promote efficiency and effectiveness in Government.

The *Data.gov* website includes searchable data catalogs providing access to data in three ways: through the raw

The CX Database:

- 741 CX determinations from 22 offices
- 585 of those are related to Recovery Act projects


The most frequently invoked CXs are:

- A9 – Information gathering/data analysis/document preparation/dissemination (232)
- A1 – Routine administrative/financial/personnel actions (119)
- B3.6 – Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects (119)
- B5.1 – Actions to conserve energy (107)

data catalog, the tool catalog, and the geodata catalog. DOE's CX database is listed in the tools catalog, and the raw dataset will be listed in the raw data catalog.

Future Challenges

The Office of NEPA Policy and Compliance will update the CX database approximately monthly to capture new CX determinations and improve usability. The CX database also serves as a pilot for future DOE databases for other NEPA documents. The NEPA Office is exploring how to create similar user-friendly databases for EAs and EISs.

For more information about the CX database or to provide suggestions about further CX database enhancements, contact Jeffrey Dorman, NEPA Office, at jeffrey.dorman@hq.doe.gov or 202-586-3181. 

Thoughts from the CEQ NEPA Symposium

Today civility is strained. NEPA reminds us of the opportunity for shared dialog and it is a way for people to find shared values. Environment is the common ground in a world of battlegrounds. NEPA is the problem solver, but sometimes a tough sell.

– Kathleen McGinty, former Chair, CEQ

CEQ has the potential to be almost anything the President and his principal staff want it to be. It has an almost unlimited potential.

– Russell Train, first Chair, CEQ

DOE Plans Categorical Exclusion Rulemaking

DOE is undertaking a major review of its existing categorical exclusions (CXs) as part of a proposal to revise and add to those CXs listed in the DOE NEPA regulations (10 CFR Part 1021, Subpart D, Appendices A and B). DOE's existing CXs do not fully account for the Department's current priorities or advances in technology.

Since 1996 when DOE last updated its existing CXs, "the range of actions in which DOE is involved has expanded," the Department explained in a December 21, 2009, Request for Information (RFI) that publicly announced DOE's intent to update its CXs (related notice at 74 FR 68729; December 29, 2009). "For example, in recent years, DOE has become more involved in funding actions proposed by applicants, including actions that enhance the environment and/or energy efficiency through grant and loan programs pursuant to the Recovery Act and the Energy Policy Act of 2005. While DOE has successfully applied its existing CXs to many of these proposed actions, it seeks to establish new CXs more directly tailored to them. Another change since 1996 is the general growth of new technologies in the private and public sectors that did not exist when DOE last established CXs."

The purposes of CXs include reducing excessive paperwork and delay (40 CFR 1500.4 and 1500.5).

Moreover, DOE's experience reviewing proposed projects over the past almost 14 years provides valuable information to better understand the potential impacts associated with the various types of actions that DOE undertakes. This information may suggest ways to improve DOE's existing CXs to help achieve the goal of focusing environmental reviews on the areas with the greatest potential for significant impact. (See article on Council on Environmental Quality (CEQ) draft guidance on Establishing and Applying Categorical Exclusions, page 3.)

CEQ defines a CX as a category of actions that a Federal agency has determined, under its NEPA procedures, do "not individually or cumulatively have a significant effect


on the human environment . . . and for which, therefore, neither an environmental assessment nor an environmental impact statement is required" (40 CFR 1508.4).

Development of Proposed CXs Underway

The Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment are coordinating an effort to identify candidate new or modified classes of actions. To establish a CX, an agency must gather and evaluate information that substantiates a determination that the covered actions normally would not have significant environmental effects, states the CEQ draft guidance. The Office of the General Counsel solicited suggestions from Program and Field Offices, with their network of NEPA Compliance Officers, in a memorandum of December 7, 2009. The 28 responses included many useful suggestions on CXs for facility operations, safety and health, general research, power resources, renewable energy projects, and waste management.

The RFI that DOE issued in December invited the public to help identify activities that should be considered for new or revised CXs. DOE received 11 responses to the RFI, most of which addressed activities associated with energy efficiency and renewable energy. To identify additional candidates for new or expanded CXs, staff of the NEPA Office surveyed the large archive of DOE EAs that led to a finding of no significant impact, considered the CXs established by approximately 50 Federal agencies, and reviewed existing DOE CXs for limits on scope that may not be directly related to the significance of the environmental impacts of an action.

Next Steps

The NEPA Office is working with NEPA Compliance Officers to develop wording for proposed new and modified CXs and to identify supporting information. DOE intends to prepare a notice of proposed rulemaking and issue it for public comment. DOE will consider comments received, then issue a final rule. The RFI and responses are posted in the DOE CX rulemaking docket at [Regulations.gov](http://www.Regulations.gov) (Docket ID: DOE-HQ-2010-0002). The notice of proposed rulemaking and public comments also will be posted in this docket. 



Thoughts from the CEQ NEPA Symposium

NEPA is not a paper tiger. When its working well, NEPA will have effects even though it does not dictate the outcome.

— Cass Sunstein, Office of Management and Budget

Deputy Secretary Poneman Named DOE Senior Sustainability Official

The Secretary has named Deputy Secretary of Energy Daniel B. Poneman as the Department's Senior Sustainability Official under Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*. This Executive Order directs agencies to establish greenhouse gas reduction goals and report on attainment progress, undertake energy analyses for Federal facilities, and implement a Strategic Sustainability Performance Plan (*LLQR*, December 2009, page 9).

Deputy Secretary Poneman will be supported by Ingrid Kolb, Director, Office of Management, in meeting DOE's responsibilities under the Executive Order. DOE's Office of Energy Efficiency and Renewable Energy will continue to support the Council of Environmental Quality, the Office of the Federal Environmental Executive, and the Office of Management and Budget in the execution of the Executive Order through DOE's Federal Energy Management Program, which will provide technical and analytical support. ■■

Cooperating Agencies Contribute to Most DOE EISs

About three-quarters of the EISs listed in DOE's 2009 Cooperating Agency Report to the Council on Environmental Quality (CEQ) – 31 out of 41 – were or are being prepared with cooperating agencies. The report, submitted to CEQ on December 11, 2009, covers EISs for which DOE issued a notice of intent on or after October 1, 2005, and that were completed during fiscal year 2009 or were still ongoing as of September 30, 2009. Thirteen of the 15 EISs started in fiscal year 2009 (and therefore included in the report for the first time) are being prepared with cooperating agencies.

None of the 31 EAs that DOE completed as the lead agency during fiscal year 2009 (and therefore counted in the report) were prepared with cooperating agencies. This statistic is highly variable from year to year, depending on the extent to which the proposals evaluated in the EAs involve other agencies and the extent that consulting or commenting suffices to address their concerns. This does not reflect a change in DOE policy from past years.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating

EPA To Discontinue EIS Comment Summaries in *Federal Register*

In accordance with Section 309(a) of the Clean Air Act, the Environmental Protection Agency (EPA) is required to make public its comments on EISs issued by other Federal agencies. Historically, EPA has met this mandate by publishing in the *Federal Register* a weekly notice of availability of EPA comments, which includes a brief summary of EPA's comment letters.

For more than 2 years, EPA has been posting its EIS comment letters at www.epa.gov/compliance/nepa/eisdata.html. EPA has concluded that posting entire EIS comment letters on the website satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, EPA has announced that after March 31, 2010, it will discontinue the publication of a notice of availability of EPA comments in the *Federal Register*. However, EPA will continue to publish, usually on Fridays, a weekly notice of availability of EISs filed during the previous week. ■■

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 are 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.

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. ■■



Thoughts from the CEQ NEPA Symposium

When people complain about the NEPA process, ask them – What is it that you do not want to know? What is it that you do not want the public to know? How much time and money are you willing to spend in Federal court defending that view?

– Robert Smythe, Former Senior Staff Member, CEQ

Programmatic Agreement Streamlines Historic Preservation Reviews of Recovery Act Projects

DOE has taken innovative steps in coordination with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers to make the Section 106 process under the National Historic Preservation Act more efficient while ensuring protection of the Nation's historic properties. The organizations worked together to develop a Prototype Programmatic Agreement¹ (programmatic agreement) to help facilitate Section 106 reviews for projects to be funded under three Office of Energy Efficiency and Renewable Energy (EERE) financial assistance programs – Energy Efficiency and Conservation Block Grant (EECBG), State Energy Program (SEP), and Weatherization Assistance Program (WAP). On February 5, 2010, ACHP released the programmatic agreement for use by DOE and its recipients in these three programs.

The programmatic agreement was written in response to the “unprecedented levels of funding” – more than \$11 billion combined for the three programs – made available through the Recovery Act. This created “a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds” to create new jobs and improve local and state economies, the programmatic agreement states.

DOE, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects.

*– Prototype Programmatic Agreement
February 5, 2010*



Improving insulation normally would be exempt from Section 106 review under the programmatic agreement. (photo: SMS)

Categorical Approach Used

Normally, Section 106 requires the Federal agency to consider potential effects on historic properties for each of its undertakings and provide the ACHP an opportunity to comment. Once the State Energy Office, DOE, and the State Historic Preservation Officer (SHPO) sign the programmatic agreement, the protocol described therein serves to meet DOE's Section 106 responsibilities. The terms of the programmatic agreement will be applicable to other DOE-funded EECBG, SEP, and WAP recipients in each state (such as counties, municipalities, and other local governments) through the terms of the grant agreements. The primary responsibilities of DOE and ACHP would include participating in dispute resolution and providing technical guidance. Also, DOE retains responsibility for government-to-government consultation with Indian tribes, unless a tribe agrees to delegation of this responsibility to the state's energy office.

A key feature of the programmatic agreement is a “categorical approach to streamline reviews and reduce the heavy burden placed on SHPOs,” wrote Claire Broido Johnson, Acting Program Manager in EERE's Office of Weatherization and Intergovernmental Program, in a Program Notice on February 11, 2010.

(continued on next page)

¹ ACHP's regulations (36 CFR 800.14(b)(4)) allow the ACHP to designate an agreement document as a Prototype Programmatic Agreement, which the agency may then develop and execute with the appropriate SHPO/THPO without the need for ACHP participation or signature.

Historic Preservation Reviews

(continued from previous page)

The programmatic agreement identifies routine activities with limited potential to affect historic properties that are exempt from Section 106 review. Examples include many energy efficiency activities such as caulking and weather-stripping, installing solar hot water systems (provided structures are not visible from a public right-of-way), reroofing, and installing more energy efficient appliances. Further, the programmatic agreement identifies standard mitigation measures, such as recording and salvaging significant architectural features, to address potential adverse effects on historic properties.

The type of activities exempted under the programmatic agreement from Section 106 review also commonly qualify for categorical exclusion determinations under DOE's NEPA regulations (10 CFR Part 1021). For projects requiring either an EA or EIS, nothing in the agreement prevents DOE and its grant recipients from utilizing procedures in ACHP regulations (36 CFR Part 800) to coordinate and conduct historic preservation reviews in conjunction with NEPA reviews.


Agreement Builds Upon 2009 EERE Memorandum

DOE initiated changes to historic review processes last summer. Catherine Zoi, EERE Assistant Secretary, in an August 28, 2009, memorandum to SHPOs and Tribal Historic Preservation Officers (THPOs), authorized applicants in the three programs to consult with SHPOs to initiate the Section 106 review process. Assistant Secretary Zoi's 2009 memorandum allowed applicants to gather information and identify and evaluate historic

properties, and work with consulting parties to assess effects. However, DOE retained its responsibility to initiate government-to-government consultation with Federally-recognized Indian tribes, and further, to document its findings and determinations to finalize Section 106 reviews.

The programmatic agreement builds upon the 2009 memorandum. The programmatic agreement delineates in more detail the roles and responsibilities of involved parties. In addition, the programmatic agreement recognizes and incorporates certain pre-existing interagency state agreements. For example, if a State agency and SHPO had already negotiated an agreement prior to February 5, 2010 (and it was executed no later than February 19, 2010) the programmatic agreement provides that the interagency agreement may be used to meet Section 106 requirements in lieu of the programmatic agreement.² Similarly, a grant recipient that already has an executed Section 106 Agreement for Community Development Block Grants with the SHPO does not need a separate Section 106 review if certain conditions are met.³ States and SHPOs should execute the programmatic agreement as soon as possible and send it to DOE for execution.

More Information

The Prototype Programmatic Agreement and related documents are available on EERE's website at http://apps1.eere.energy.gov/wip/historic_preservation.cfm. For further information, contact Derek Passarelli, Chief Counsel for DOE's Golden Field Office, at historicpreservation@go.doe.gov. 

² See Section III of the programmatic agreement entitled "State Interagency Agreements."


³ See Section V(A) of the programmatic agreement regarding "Review Procedures for Non-Exempt Undertakings."

GAO: Historic Preservation, NEPA Among Factors Affecting Recovery Act Implementation

The Government Accountability Office's (GAO's) latest report on Recovery Act implementation identifies Federal requirements cited by agency officials as slowing the pace of funding. The three most often cited are Davis-Bacon wage rate requirements, Buy American requirements, and compliance with the National Historic Preservation Act.

"Officials from 3 federal agencies – Commerce, Energy, and Housing and Urban Development – stated that NEPA had affected project timing; another 8 federal agencies stated that NEPA may affect project timing," notes GAO. "Officials from 3 states also said that NEPA affected project timing." Two of these states provided examples involving DOE. "For example, California officials said that the State Energy Commission must submit some of its Recovery Act projects to Energy for NEPA review because

they are not covered by Energy's existing categorical exclusions. State officials said that such reviews can take up to 6 or more weeks. Both California and Mississippi officials told us that activities that are categorically excluded under NEPA (e.g., road repaving or energy-efficient upgrades to existing buildings) still require clearance before the state can award funds. Staff must spend time filling out forms and supplying information to Energy on projects that may qualify for a categorical exclusion," reported GAO.

The full report, *RECOVERY ACT: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors* (GAO-10-383, February 2010), is available on the GAO's website at www.gao.gov. 

Transitions: NEPA Compliance Officers



Welcome!

Advanced Research Projects Agency – Energy: Matthew Dunne

The Advanced Research Projects Agency – Energy (ARPA-E) has designated its Acting Chief Counsel, Matthew Dunne, as NCO. Mr. Dunne formerly worked for King & Spalding in Washington, DC, where he focused on intellectual property litigation and international arbitration. He also advised his clients on Federal laws and regulations that impact their business, including imports, exports, and investments. Mr. Dunne can be reached at matthew.dunne@hq.doe.gov or 202-287-6079.

Civilian Radioactive Waste Management: Kathryn Knapp

Kathryn Knapp has 24 years of regulatory experience, including NEPA compliance. She supported the DOE Yucca Mountain Project with oversight, development, review, and management of key NEPA documents for the high-level radioactive waste repository and Nevada rail line. Among Ms. Knapp's responsibilities as an NCO will be certain Office of Energy Efficiency and Renewable Energy projects for which the Office of Civilian Radioactive Waste Management is providing support (*LLQR*, September 2009, page 1). Ms. Knapp can be reached at kathryn_knapp@ymp.gov or 702-794-1467.

National Energy Technology Laboratory: Four New NCOs

To manage significantly increased responsibilities under the Recovery Act, the National Energy Technology Laboratory (NETL) has designated four additional NCOs.

Pierina Fayish has been active in NETL's NEPA program since 2004. She has been a Project Manager and the NEPA Document Manager for projects under the Clean Coal Power Initiative and Regional Carbon Sequestration Partnerships, and now is responsible for numerous EAs in preparation for projects under the Recovery Act. Ms. Fayish can be reached at pierina.fayish@netl.doe.gov or 412-386-5428.

Richard Hargis has served in NETL since it was established in 1999, and in its predecessor energy technology laboratories starting in 1987. He has been a NEPA Document Manager for projects under the original Clean Coal Technology Program and more recently the Clean Coal Power Initiative. Mr. Hargis can be reached at hargis@netl.doe.gov or 412-386-6065.

Mark McKoy joined the Federal environment, safety, and health workforce at NETL in 2001, after nearly 10 years of site support services in environmental compliance and natural gas research and development. He has been a NEPA Document Manager since 2001 and currently also serves as a Senior Management Regulatory and Technical Advisor. Mr. McKoy can be reached at mmckoy@netl.doe.gov or 304-285-4426.

Cliff Whyte was the Principal Engineer of an environmental engineering firm and an assistant director with the West Virginia Department of Environmental Protection, before joining NETL's NEPA program in 2009. His expertise includes water quality and waste management issues. Mr. Whyte can be reached at cliff.whyte@netl.doe.gov or 304-285-2098.

Redeployed!

NCOs Assist Golden Field Office

Due to increased NEPA workload arising from Recovery Act projects administered through the Office of Energy Efficiency and Renewable Energy (EERE), the Golden Field Office is receiving extra support from other NCOs for several months. **David Boron** (EERE), **Gary Hartman** (Oak Ridge Office), **Jane Summerson** (Civilian Radioactive Waste Management), and **Pete Yerace** (Environmental Management Consolidated Business Center) will help Golden NCOs **Steve Blazek** and **Kristen Kerwin** in making NEPA-related determinations and reviewing documents. (See *LLQR*, September 2009, page 1.)

(continued on next page)



Transitions: NCOs

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Welcome Back!

At the Grand Junction Office, **Tracy Plessinger** now serves as NCO for **Legacy Management** (a Headquarters Program Office). From 2000–2004, she was the NCO for the Grand Junction Office when it reported to the Office of Environmental Management through the Idaho Operations Office. Legacy Management's former NCO, **Rich Bush**, now leads long-term stewardship initiatives for Uranium Mill Tailings Radiation Control Act sites.

Idaho Operations Office: Jack Depperschmidt returns to the NCO role after a detail as Acting Director for the Office's National Security/Science and Technology Division.

National Energy Technology Laboratory: Jesse Garcia, formerly NCO in NETL's Tulsa Office, is now NCO in NETL's Morgantown Office.

Farewell!

Jody Barringer, formerly an NCO for EERE, has taken a position with the Office of Management and Budget, where she has responsibility for oversight of the Environmental Protection Agency Superfund, Brownfields, and Recovery Act programs.

William Bierbower, formerly the NCO for ARPA-E, has returned to the National Aeronautics and Space Administration, Marshall Space Flight Center, in Huntsville, Alabama, where he serves as Chief Counsel.

On behalf of the DOE NEPA Community, we offer **Roy Spears**, formerly an NCO for NETL, best wishes on his retirement. 

Irene Atney, Environmental Counsel

Irene Atney, Environmental Counsel at the Brookhaven Site Office for 19 years, died on February 6 after a long illness. Irene was a key member of Brookhaven's NEPA compliance program, where she handled a wide range of environmental and general law matters. Her colleagues report that she took ownership of any NEPA document that crossed her desk, and strove to streamline the NEPA process, make EAs more concise, and ensure that documents were of excellent quality. Irene worked on the proposal that resulted in DOE categorical exclusion B3.10 (involving particle accelerators) and contributed to the NEPA Contracting Quality Improvement Team. Irene's friends and colleagues will miss her generosity, intellectual curiosity, sense of humor, and energy.

April 22 Is Earth Day 40

Planning is now well underway for a week of Earth Day celebration at DOE Headquarters. On April 22, 2010, DOE will celebrate the 40th anniversary of the founding of Earth Day. The DOE Headquarters Earth Day celebration will take place at the Forrestal Building on April 19–23 and at DOE's Germantown facility on April 26–30.

DOE's Office of Environmental Policy and Assistance, within the Office of Health, Safety and Security, is leading the DOE-Headquarters' Earth Day celebration planning effort. For more information, contact Ms. Beverly Whitehead, Office of Environmental Policy and Assistance, at beverly.whitehead@hq.doe.gov.

The NEPA Office is joining in, and will report on the event in the June issue of *LLQR*. We would be happy to include your celebration in our report. Send a description and photos of your Office's Earth Day activities to Carrie Moeller (carrie.moeller@hq.doe.gov).




Transitions: NEPA Policy and Compliance

The Office of NEPA Policy and Compliance is pleased to welcome three Environmental Protection Specialists to its staff.

Connie Chen brings DOE 5 years experience as an environmental consultant in California, where she helped prepare environmental documentation pursuant to the California Environmental Quality Act (CEQA) and NEPA. She has worked on a range of projects, including residential and commercial development, transportation and public utilities infrastructure, natural resource restoration, and alternative energy. She also has experience in air quality and transportation impact analyses, focusing on project-level air quality modeling, including greenhouse gas emissions and mitigation compliance under CEQA regulations. Connie has an educational background in public environmental management and economics. She joins the Eastern Energy and Waste Management Unit and can be reached at connie.chen@hq.doe.gov or 202-586-0733.

Jon Hale brings over 23 years experience in planning, applied biology, and project lifecycle management. As a NEPA specialist since 1998, both as a Federal employee and as a contractor, he led numerous NEPA reviews involving transportation, water supply development, and natural resource management. Jon worked with endangered sea turtles to minimize the effects from explosive removal of offshore oil and gas platforms. He was involved in the radiological cleanup of the Johnston Island atmospheric nuclear testing site and, as a member of the Base Closure Team for Midway Island Naval Air Facility, helped plan and implement a 5-year, \$84 million, environmental cleanup and transfer of the Naval base, including removal of underground fuel tanks, demolition of buildings, remediation of contaminated soil, and closure of three landfills. Jon works in the Science/Nuclear Unit, and can be reached at jon.hale@hq.doe.gov or 202-287-5923.

Michael Wach has over 24 years of professional experience related to environmental law and science. He joins DOE after 2 years at BIO (Biotechnology Industry Organization), where he served as Managing Director for Science and Regulatory Affairs for agricultural biotechnology, and 4 years at the Department of Agriculture, where he advised agency staff on NEPA issues associated with the regulation of biotech crops. In addition to a doctorate in Molecular Plant Pathology and Biochemistry, with 20 years of experience in agricultural science, he also has a law degree with a specialty in environmental law. His earlier work, with the public-interest law firm in Eugene, Oregon, that initiated the first lawsuits to protect the Northern Spotted Owl, provided him with experience in NEPA and other environmental laws as well as the Freedom of Information Act. His focus was on issues of forest and wildlife management, endangered species, water and air pollution, pesticides, and public lands management. Mike joins the Western Energy and Waste Management Unit and can be reached at michael.wach@hq.doe.gov or 202-586-6043. 



Jon Hale (left), Mike Wach, and Connie Chen recently joined the DOE NEPA Office and bring diverse expertise and experience.

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 Litigation
Boulder, CO: June 16-18
\$1,299 (\$999 webcast)
(course reference code CR045)
- International Association for Public Participation
703-837-1197
iap2training@theperspectivesgroup.com
www.iap2.org
Communications for Effective Public Participation
St. Paul, MN: March 17
Kansas City, KS: April 7
Washington, DC: May 5
Columbus, OH: June 23
San Diego, CA: July 14
\$360
Techniques for Effective Public Participation
St. Paul, MN: March 18-19
Kansas City, KS: April 8-9
Washington, DC: May 6-7
Columbus, OH: June 24-25
San Diego, CA: July 15-16
\$720
Emotion, Outrage, and Public Participation
Tucson, AZ: March 18-19
Washington, DC: April 8-9
\$700
Planning for Effective Public Participation
Kansas City, KS: April 5-6
Washington, DC: May 3-4
Columbus, OH: June 21-22
San Diego, CA: July 12-13
\$720
- 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: March 15-19
\$1,250
- The Law of NEPA**
Durham, NC: June 2-4
\$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
Phoenix, AZ: March 30-31
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
Clear Writing for NEPA Specialists
San Antonio, TX: March 9-11
\$985 (GSA contract: \$895)
Collaboration in the NEPA Process
Salt Lake City, UT: April 8-9
\$745 (GSA contract: \$655)
Applying the NEPA Process and Writing Effective NEPA Documents
Nashville, TN: April 13-16
\$1,185 (GSA contract: \$1,095)
NEPA Climate Change Analysis and Documentation and NEPA Cumulative Effects Analysis and Documentation
Salt Lake City, UT: May 4-7
Baltimore, MD: July 13-16
\$1,145 (GSA contract: \$1,055) until 3/23/10
NEPA Climate Change Analysis and Documentation and Clear Writing for NEPA Specialists
Milwaukee, WI: May 10-14
\$1,345 (GSA contract: \$1,255) until 4/26/10

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Training Opportunities

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

Denver, CO: June 2-4
\$945 (GSA contract: \$855) until 4/21/10

**Applying the NEPA Process and Writing
Effective NEPA Documents and NEPA
Cumulative Effects Analysis
and Documentation**

Portland, OR: June 7-11
\$1,345 (GSA contract \$1,255)
until 4/26/10

**Applying the NEPA Process
and Reviewing NEPA Documents**

Albuquerque, NM: June 21-25
\$1,345 (GSA contract: \$1,255)
until 5/10/10

**Managing NEPA Projects and Teams
and Reviewing NEPA Documents**

St. Louis, MO: July 19-23
\$1,345 (GSA contract: \$1,255) until 6/7/10

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/](http://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

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

**Interest-Based Negotiation
of Environmental Issues**

Lakewood, CO: April 21-22
\$500

Collaboration Skills

Lakewood, CO: June 15-17
\$750

Customized NEPA Training

- Environmental Impact Training
512-963-1962
info@eiatraining.com
www.eiatraining.com
- Environmental Training & Consulting
International, Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.com
- International Institute for Indigenous
Resource Management
303-733-0481
iiirm@iiirm.org
www.iiirm.org
- ICF International
916-737-3000
www.jonesandstokes.com
- Environmental Planning Strategies, Inc.
563-332-6870
jleeeeps@mchsi.com
www.jlee-eps.com/workshops.php

EAs and EISs Completed October 1 to December 31, 2009

EAs

Brookhaven Site Office/Office of Science

[DOE/EA-1663](#) (12/4/09)

Environmental Assessment for BP Solar Array Project, Brookhaven National Laboratory, Upton, New York

Cost: \$65,000

Time: 9 months

Office of the Chief Financial Officer

[DOE/EA-1676](#) (12/2/09)

Environmental Assessment for Department of Energy Loan Guarantee for U.S. Geothermal's Neal Hot Springs Geothermal Facility in Vale, Oregon

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

Time: 6 months

[DOE/EA-1678](#) (11/25/09)

Environmental Assessment for Department of Energy Loan to Nissan North America, Inc., for Advanced Technology Electric Vehicle Manufacturing Project in Smyrna, Tennessee

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

Time: 5 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1440-S-2](#) (11/10/09)

Final Supplement-II to Final Site-wide Environmental Assessment: National Renewable Energy Laboratory South Table Mountain Complex, Golden, Colorado

Cost: \$257,000

Time: 21 months

[DOE/EA-1661](#) (12/17/09)

Wind Energy Project, Mount Wachusett Community College, Gardner, Massachusetts

Cost: \$68,000

Time: 42 months

[DOE/EA-1680](#) (9/11/09)*

AltaRock/NCPA Engineered Geothermal Enhancement System Demonstration Project, Lake County, California

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

Time: 10 months

[Bureau of Land Management was the lead Federal agency and issued its EA 3/6/09. Golden Field Office adopted this EA and signed a FONSI on 9/11/09; the FONSI was made publicly available on 12/30/09.]

EISs

Bonneville Power Administration

[DOE/EIS-0384](#) (74 FR 62305, 11/27/09)

(EPA Rating: EC-2)

Chief Joseph Hatchery Program, Okanogan County, Washington

Cost: \$320,000

Time: 51 months

Office of Fossil Energy/

National Energy Technology Laboratory

[DOE/EIS-0382](#) (74 FR 60260, 11/20/09)

(EPA Rating: EO-2)

Mesaba Energy Project, Itasca and St. Louis Counties, Minnesota

Cost: \$1,400,000

Time: 49 months

[Co-lead: State of Minnesota, Department of Commerce]

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

*Not previously reported in LLQR.

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 3 EAs for which cost data were applicable was \$68,000; the average cost was \$130,000.
- Cumulatively, for the 12 months that ended December 31, 2009, the median cost for the preparation of 20 EAs for which cost data were applicable was \$55,000; the average was \$82,000.
- For this quarter, the median completion time of 6 EAs was 9.5 months; the average was 15.5 months.
- Cumulatively, for the 12 months that ended December 31, 2009, the median completion time for 34 EAs was 8 months; the average was 15 months.

EIS Cost and Completion Times

- For this quarter, the costs for the completion of 2 EISs were \$320,000 and \$1.4 million.
- Cumulatively, for the 12 months that ended December 31, 2009, the costs for the preparation of 2 EISs for which cost data were applicable were \$320,000 and \$1.4 million.
- For this quarter, the completion times for 2 EISs were 49 and 51 months.
- Cumulatively, for the 12 months that ended December 31, 2009, the median completion time for 3 EISs was 49 months; the average was 50 months.

Recent EIS-Related Milestones (December 1, 2009 to February 28, 2010)

Notices of Intent

Western Area Power Administration

DOE/EIS-0438

Interconnection of the Proposed Hermosa West Wind Farm Project, Albany County, Wyoming
January 2010 ([75 FR 2138](#), 1/14/10)

DOE/EIS-0440

Construction and Operation of the Quartzsite Solar Energy Project, La Paz County, Arizona
January 2010 ([75 FR 2133](#), 1/14/10)

Notice of Extension of Public Comment Period

National Nuclear Security Administration

DOE/EIS-0387

Draft Site-Wide Environmental Impact Statement for the Y-12 National Security Complex,

Oak Ridge, Tennessee

December 2009 ([74 FR 68599](#), 12/28/09)

[EPA notice of amendment, [75 FR 2540](#), 1/15/10]

Notice of Modifications to Preferred Alternatives

Office of Environmental Management/ Richland Operations Office

DOE/EIS-0391

Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington
December 2009 ([74 FR 67189](#), 12/18/09)

[Notice of public hearings, [75 FR 1048](#), 1/8/10; notice of additional public hearings, [75 FR 3902](#), 1/25/10]

Draft EISs

Office of Environmental Management

DOE/EIS-0423

Draft Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement, Colorado, Idaho, Missouri, Nevada, South Carolina, Texas, Washington
January 2010 ([75 FR 4812](#), 1/29/10)

Western Area Power Administration

DOE/EIS-0415

Deer Creek Station Energy Facility Project, Brookings County, South Dakota
February 2010 ([75 FR 6027](#), 2/5/10)

(continued on next page)

Recent EIS-Related Milestones (continued from previous page)

Draft EISs (continued from previous page)

DOE/EIS-0418

Draft Environmental Impact Statement for the South Dakota Prairie Winds Project, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota
[Co-lead: U.S. Department of Agriculture]
January 2010 ([75 FR 2540](#), 1/15/10)

Final EISs

Office of Environmental Management

DOE/EIS-0226

Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, Erie and Cattaraugus Counties, New York
January 2010 ([75 FR 4812](#), 1/29/10)

Western Area Power Administration

DOE/EIS-0398

Delta-Mendota Canal California Aqueduct Intertie (DCI) Project, California
February 2010 ([75 FR 6027](#), 2/5/10)
[DOE adopted an EA and FEIS from the Department of the Interior's Bureau of Reclamation]

DOE/EIS-0443

Project Financing for Southwest Intertie Project-South, Clark, Lincoln, Nye, and White Pine Counties, Nevada
February 2010 ([75 FR 7479](#), 2/19/10)
[DOE adopted an EA and FEIS from the Department of the Interior's Bureau of Land Management]

Record of Decision

Bonneville Power Administration

DOE/EIS-0183

Electrical Interconnection of the Lower Snake River Wind Energy Project, Washington
February 2010 ([75 FR 6020](#), 2/5/10)

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0287

Idaho High-Level Waste and Facilities Disposition, Idaho Falls, Idaho
January 2010 ([75 FR 137](#), 1/4/10)
[Correction to amended record of decision, [75 FR 1615](#), 1/12/10]

Supplement Analyses

Bonneville Power Administration

Transmission System Vegetation Management Program

(DOE/EIS-0285)

[DOE/EIS-0285/SA-408*](#)

Vegetation Management along the Olympia-Shelton Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
November 2009

[DOE/EIS-0285/SA-409*](#)

Vegetation Management and Access Road Maintenance Activities along the Chehalis-Covington Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
November 2009

[DOE/EIS-0285/SA-410](#)

Vegetation Management along the Shelton-Fairmount Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
December 2009

[DOE/EIS-0285/SA-411*](#)

Vegetation Management along the Raver-Echo Lake Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
November 2009

[DOE/EIS-0285/SA-412](#)

Vegetation Management along the Ross-Lexington Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
December 2009

[DOE/EIS-0285/SA-414](#)

Vegetation Management along the Custer-Intalco No. 1 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
January 2010

[DOE/EIS-0285/SA-415](#)

Vegetation Management along the Custer-Intalco No. 2 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
January 2010

[DOE/EIS-0285/SA-416](#)

Vegetation Management along the Raver-Covington No. 1 and No. 2 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
January 2010

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*Not previously reported in LLQR

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

[DOE/EIS-0285/SA-417](#)

Vegetation Management along the Custer-Ingledow No. 1 and No. 2 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
January 2010

[DOE/EIS-0285/SA-418](#)

Vegetation Management along the Raver-Paul No. 1 and Paul-Allston No. 2 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
February 2010

[DOE/EIS-0285/SA-419](#)

Vegetation Management along the Paul-Satsop No. 1 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
January 2010

[DOE/EIS-0285/SA-420](#)

Vegetation Management along the McNary-Ross No. 1 Transmission Line Corridor, Washington
(Decision: No further NEPA review required)
January 2010

Thoughts from the CEQ NEPA Symposium

Sunshine rarely falls on the hundreds of millions of dollars of effort that goes into the preparation of EISs. Too many are prepared with a very 1970's technology – the 3-ring binder. Too many end up in a filing cabinet and no one has any idea what is there. Hopefully, [NEPA.gov](#) will put all EISs in one spot online.

– *Michael Gerrard, Columbia Law School*

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

- *Group reorganization.* The re-configuration of the DOE communications group negatively impacted NEPA public involvement and tribal relations.

Data Collection/Analysis

What Worked

- *Planning methodology.* A master planning process analyzed many alternatives before the NEPA process began. DOE was then able to prepare the Draft EIS very quickly and inexpensively by updating and adopting the master plan data.
- *Information consolidation.* The EA process pulled together all of the environmental information in one place for evaluation and public review.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Frequent meetings.* The team held EA progress meetings biweekly, then weekly, to resolve issues quickly.

Factors that Inhibited Timely Completion of Documents

- *Review process.* The EA focused too heavily on a tangential permitting process that did not add value to the impact analysis.
- *Late entry of cooperating agency.* A Federal cooperating agency became involved after the Draft EIS was issued. It then took 2.5 years to determine that the EIS and other processes were adequate to support their decision.
- *Involvement of multiple groups.* A high level of integration and coordination among EA preparation team members was required, which impacted the completion of the EA.

- *Resource availability.* The cooperating agency was unable to fund or assign help to this EIS, although it recognized its role and responsibility.

Teamwork

Factors that Facilitated Effective Teamwork

- *Resource experts.* The integration of resource experts from the internal team helped to facilitate effective preparation of the EA.
- *Applicant involvement.* The main EA author was a project manager from the applicant who was knowledgeable and responsive and made the process run smoothly.
- *Good communication and adherence to schedule.* Frequent communication among the DOE team and adherence to deadlines helped to facilitate teamwork and EA preparation.
- *Applicant participation.* The applicant prepared the Draft EA and managed the Draft EA contractors.
- *Contractor experience.* The contractors preparing this EIS were very experienced. Their knowledge of the project area and regulatory agencies allowed for cohesive teamwork.

Process

Successful Aspects of the Public Participation Process

- *Early issue identification.* The prompt identification of issues and timely resolutions enhanced overall understanding of the project's environmental impacts and resulted in the public's view that the EA process was beneficial.
- *Informative public meeting.* A public meeting held prior to issuance of the Draft EA facilitated a better understanding of the NEPA process and its purpose.

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

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Consideration of environmental consequences.* The NEPA process influenced the applicant's decisionmaking as opposed to the Federal decisionmaking process. The NEPA process motivated the applicant to fully consider the environmental consequences of its proposals.
- *Early identification of issues.* The NEPA process helped to uncover and address potential seismic issues associated with the project early on, and adequately addressed this concern in the EA, which informed DOE decisionmaking.
- *Analysis approach.* The NEPA process made DOE aware of the environmental infrastructure already in place at the applicant's facility.

Agency Planning and Decisionmaking: What Didn't Work

- *Untimely issuance of Records of Decision (RODs).* The cooperating agency's ROD will be issued well after the DOE ROD, as its headquarters has to review all the process, work and products independently.

Enhancement/Protection of the Environment

- *Control measures employed.* The EA process ensured that all practicable environmental control measures were considered and employed where possible.
- *Pre-existing environmental framework.* The manufacturer maintained a similar facility prior to project commencement. The operations of this facility provided the framework for a high level of awareness of environmental issues and concerns within the site and local community.
- *Protection of endangered species.* The EIS process resulted in enhancement of the environment in that the hatchery production of salmon that are listed under the Endangered Species Act will occur, resulting in tribal utilization of the salmon for ceremonial and subsistence purposes. It may also result in an economic benefit.

Other Issues

Guidance Needs Identified

- *Formal communication protocol.* The lack of a formal way to communicate about the cooperating agency status of the other involved Federal agency led to long delays in the issuance of the final EIS.

Effectiveness of the NEPA Process

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

For the past quarter, in which 4 questionnaire responses were received for EAs and EISs, 2 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the applicant's decision to proceed with the project was heavily dependent upon the outcome of the EA, therefore making the NEPA process vital to the success of the project.
- A respondent who rated the process as "3" stated that the NEPA process was effective in providing assurance to the decisionmakers that the project was not a potential source of seismic activity, a main concern of DOE.
- A respondent who rated the process as "2" stated that the NEPA process found no "negative" environmental impacts and did not influence DOE decisionmaking.
- A respondent who rated the process as "2" stated that the NEPA process tweaked design and siting minimally. Most environmental effects were discovered by the master planning process that came before the EIS. NEPA did help agencies and the public learn about the project so it garnered more broad-based support.